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Submitted Electronically

Brian J. Feldman, Chair
Cheryl C. Kagan, Vice Chair
Senate Education, Energy, and the Environment Committee
2 West
Miller Senate Office Building
Annapolis, MD 21401

RE: Senate Bill 660 –The Maryland Voting Rights Act of 2024 – Favorable

Dear Chair Feldman and Vice Chair Kagan:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF),[1] we appreciate the opportunity to submit written testimony in strong support of SB 660, the Maryland Voting Rights Act of 2024 ("MDVRA").[2] The MDVRA builds upon the best parts of the landmark federal Voting Rights Act of 1965[3] and recent efforts by states such as New York, Connecticut, and neighboring Virginia to provide much-needed protections against voting discrimination.[4] Through this critical legislation, Maryland would help set the standard for state-level protections for Black voters and other voters of color, and immediately become a national leader in building an inclusive, multiracial democracy.

The MDVRA's voter protections include stronger and more efficient causes of action against vote suppression and vote dilution than currently exist in the federal VRA;[5] an important private right of action against voter intimidation, obstruction, or interference;[6] as well as expanded language access provisions.[7] LDF strongly supports the entire bill—in fact, advancing the MDVRA is a top affirmative voting rights priority for our organization. While we support the full legislation, our testimony

[1] Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in the areas of education, economic justice, political participation, and criminal justice. It has been a separate organization from the NAACP since 1957.
[2] S.B. 660, 2024 Leg., 446th Sess. (Md. 2024), https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/SB0660?ys=2024RS (hereinafter "MDVRA"), (cross-filed as H.B. 800, 2024 Leg., 446th Sess. (Md. 2024), https://mgaleg.maryland.gov/2024RS/bills/hb/hb0800F.pdf).
[3] 52 U.S.C. § 10301 et seq.
[4] A.6678E / S.1046E, 2022 Reg. Sess. (N.Y. 21-22), https://www.nysenate.gov/legislation/bills/2021/A6678 (hereinafter "NYVRA"); S.B. 1395, 2022 Reg. Sess. (Va. 2021), https ://lis.virginia.gov/cgi-bin/legp604.exe?211+sum+SB1395; H.B. 6941, 2023 Reg. Sess (Conn. 2023), https://www.cga.ct.gov/2023/ACT/PA/PDF/2023PA-00204-R00HB-06941-PA.PDF (hereinafter "CTVRA").
[5] MDVRA § 15.5–201-206.
[6] MDVRA § 15.5–501.
[7] MDVRA § 15.5–301.

submitted today will focus on the legislation's "preclearance" requirement that certain jurisdictions with a demonstrated history of discrimination secure pre-approval from state officials or a court before changing certain voting polices. Several partners and allies in this effort will submit testimony in support of other key components of the legislation.

For the reasons outlined herein, Maryland should enact the MDVRA.

The Legal Defense Fund's Long History of Protecting and Advancing Voting Rights

Founded in 1940 under the leadership of Maryland native Thurgood Marshall, LDF is America's premier legal organization fighting for racial justice. Through litigation, advocacy, and public education, LDF seeks structural changes to expand democracy, eliminate disparities, and achieve racial justice in a society that fulfills the promise of equality for all Americans. Justice Marshall—who litigated LDF's watershed victory in *Brown v. Board of Education*,[8] which set in motion the end of legal apartheid in this country and transformed the direction of American democracy in the 20th century—referred to *Smith v. Allwright*,[9] the 1944 case ending whites-only primary elections, as his most consequential case. He often shared that he held this view because he believed that the right to vote, and the opportunity to access political power, was critical to fulfilling the guarantee of full citizenship promised to Black people in the 14th Amendment to the U.S. Constitution.

LDF has prioritized its work protecting the right of Black citizens to vote for more than 80 years—representing marchers, including Dr. Martin Luther King, Jr., in Selma, Alabama in 1965, advancing the passage of the Voting Rights Act (VRA) and litigating seminal cases interpreting its scope,[10] and working in communities across the South to strengthen and protect the ability of Black citizens to participate in the political process free from discrimination.

Black voters face some of the greatest threats of discrimination and disenfranchisement since the Jim Crow era which the VRA helped bring to a close. In the wake of recent Supreme Court cases that have undercut the federal VRA,[11] as Congress struggles to respond with federal legislation,[12] and as states across the country move to further restrict the franchise,[13] LDF has prioritized working to advance state voting rights acts to meet the urgent need to protect Black voters from discrimination. In 2022, we advocated successfully for the enactment of the John R. Lewis Voting Rights Act of New York (NYVRA).[14] In 2023 we worked alongside local and national partners to help enact the John R. Lewis Voting Rights Act of Connecticut ("CTVRA").[15] This year we are working with robust

[8] 347 U.S. 483 (1954).
[9] 321 U.S. 649 (1944).
[10] LDF was lead counsel in a recent federal VRA case before the Supreme Court. *Merrill v. Milligan*, 142 S.Ct. 879 (2022).
[11] *See Shelby County v. Holder*, 570 U.S. 529 (2013). *See Brnovich v. Democratic National Committee*, 590 U.S. (2021).
[12] Freedom to Vote Act, H.R. 11, 118th Cong. (2023), https://www.congress.gov/bill/118th-congress/house-bill/11; John R. Lewis Voting Rights Advancement Act of 2023, H.R. 14, 118th Cong. (2023), https://www.congress.gov/bill/118th-congress/house-bill/14; Freedom to Vote Act, S. 1, 118th Cong. (2023), https://www.congress.gov/bill/118th-congress/senate-bill/1.
[13] *Voting Laws Roundup: 2023 in Review*, Brennan Center for Justice (Jan. 18, 2024), https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2023-review.
[14] NYVRA.
[15] CTVRA.

coalitions of civil and voting rights advocates to advance similar laws in Florida, Minnesota, and New Jersey.[16] As the most diverse state on the East Coast[17] with historic new Black leadership, a state with a longstanding history of racial discrimination that has made substantial strides in opening its democracy,[18] and as the birthplace of our founder Thurgood Marshall, we are excited to work with the General Assembly to ensure that Maryland can lead the way forward. The Free State can become a national leader by meeting a critical local need.

Even if Congress ultimately acts to restore and strengthen the federal VRA and the Supreme Court corrects course to fully value the voting rights of all eligible Americans, state VRAs will remain important tools to protect voters of color from discrimination. States have plenary authority to make rules and standards for state and local elections, and can more finely tailor a suite of protections to specific needs and conditions.

Why Preclearance is Important in Maryland

The importance of the right to vote cannot be overstated. The United States Supreme Court has long described voting as a fundamental right, because it is preservative of all other rights.[19] Voting is "the citizen's link to his laws and government"[20] and "the essence of a democratic society."[21] If the right to vote is undermined, the Court has cautioned, other rights "are illusory."[22] Thus, in a democracy, safeguarding the right to vote "is a fundamental matter."[23]

Preclearance has proven to be a tremendously powerful and effective tool to protect these rights. Preclearance programs require certain jurisdictions with demonstrated histories of discrimination to secure the approval of state officials or a court before implementing changes to voting policies or practices that could harm voters of color.[24] Such programs are based upon the simple premise that when it comes to a matter as fundamental as the right to vote, an ounce of prevention can be worth a pound of cure.

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[16] NAACP Legal Def. & Educ. Fund, *Florida Needs Its Own Voting Rights Act*, https://www.naacpldf.org/case-issue/florida-voting-rights-act/; NAACP Legal Def. & Educ. Fund, *Maryland Needs Its Own Voting Rights Act*, https://www.naacpldf.org/case-issue/maryland-voting-rights-act/; NAACP Legal Def. & Educ. Fund, *New Jersey Needs Its Own Voting Rights Act*, https://www.naacpldf.org/case-issue/new-jersey-voting-rights-act/; Democracy For The People Act, H.F. 3, 93rd Sess. (Minn. 2023), https://www.revisor.mn.gov/bills/text.php?number=HF3&type=bill&version=6&session=ls93&session_year=2023&session_number=0&format=pdf.

[17] Marissa J. Lang & Ted Mellnik, *Census data shows Maryland is now the East Coast's most diverse state, while D.C. is r*, Wash. Post (Aug. 12, 2021), https://www.washingtonpost.com/dc-md-va/2021/08/12/dc-virginia-maryland-census-redistricting-2/.

[18] Bennett Leckrone, *Election Reforms Will Make Voting More Accessible In Maryland, Advocates Say*, Maryland Matters (June 16, 2021), https://www.marylandmatters.org/2021/06/16/election-reforms-will-make-voting-more-accessible-in-maryland-advocates-say/.

[19] *See Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

[20] *Evans v. Cornman*, 398 U.S. 419, 422 (1970).

[21] *Harman v. Forssenius*, 380 U.S. 528, 537 (1965).

[22] *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).

[23] *Reynolds v. Sims*, 377 U.S. 533, 561–62 (1964).

[24] 52 U.S.C. § 10303; NYVRA § 17–210; CTVRA § 414(c)-(f).

Preclearance was the "heart" of the federal Voting Rights Act of 1965[25] because it prevented voting discrimination *before* it occurred. Challenging voting discrimination can be expensive and time-consuming,[26] and often several elections take place before discriminatory rules are addressed through litigation or policy action.[27] What the Supreme Court observed over fifty years ago remains true today: "Voting suits are unusually onerous to prepare" and "[l]itigation has been exceedingly slow, in part because of the ample opportunities for delay afforded voting officials . . . ."[28] Once an election has taken place under a discriminatory system, it generally cannot be undone; there is no "do over" when a person's right to vote is denied or abridged in an election. It was for this reason that the drafters of the federal Voting Rights Act devised preclearance as a way to have a second set of eyes on potentially discriminatory voting policies *before* they can go into effect, thus "shift[ing] the advantage of time and inertia from the perpetrators of the evil to its victims."[29]

Notably, many jurisdictions that were subject to federal preclearance saw the program not as a burden, but rather as a valuable way to garner expert advice on the probable impact of proposed voting changes and minimize the chances of costly litigation down the line.[30]

In 2013, the U.S. Supreme Court struck down the particular criteria for determining which jurisdictions would be covered by the federal preclearance program, not the concept of preclearance itself.[31] One indication of the effectiveness of federal preclearance is that, after the program became inoperative, voters in jurisdictions that were previously required to pre-clear voting changes began to face substantially increased discrimination.[32]

The recent process of redrawing district lines after the 2020 Census demonstrates why bringing the successful preclearance process to Maryland will both prevent future discrimination and also save voters and taxpayers time and money. In several jurisdictions throughout the state, the process caused

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[25] *South Carolina v. Katzenbach*, 383 U.S. 301, 315 (1966).

[26] Leah Aden, *The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation*, NAACP Legal Def. & Educ. Fund, Inc. (Sept. 2021), https://www.naacpldf.org/wp-content/uploads/Section-2-costs-9.19.21-Final.pdf; Voting Rights Act: Section 5 of the Act – History, Scope, and Purpose: Hr'g Before the Subcomm. on the Const. of the H. Comm. on the Judiciary, 109th Cong. 79 (2005) ("Two to five years is a rough average" for the length of Section 2 lawsuits), https://commdocs.house.gov/committees/judiciary/hju24120.000/hju24120_0f.htm.

[27] In just one example, Plaintiffs successfully challenged Texas' voter identification law, which an appellate court once considered the most restrictive in the country. During three years of appeals after a federal court held that the law created an unconstitutional burden on the right to vote, Texas voters elected dozens federal, state, and local candidates. *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016).

[28] *Katzenbach*, 383 U.S. at 314.

[29] *Id.* at 328.

[30] *See* Brief for the States of New York, California, Mississippi, and North Carolina As Amici Curiae in Support of Respondents, *Shelby County v. Holder* (U.S. 2013); Brief for the States of North Carolina, Arizona, California, Louisiana, Mississippi, and New York as Amici Curiae in Support of Eric H. Holder, Jr., et al., *Northwest Austin Municipal Utility District No. 1 v. Holder*, 08-322 at 11 (2009); *see also* Brief for Amicus Curiae, the City of New York, the Council of the City of New York, Michael R. Bloomberg, in his Capacity as Mayor of the City of New York, and Christine S. Quinn, in her Capacity as the Speaker of the City Council of the City of New York, in Support of Respondents, *Shelby County. v. Holder*, No. 12-96 (U.S. 2013).

[31] *Shelby County v. Holder*, 570 U.S. 529 (2013).

[32] Leah Aden, *Democracy Diminished*, NAACP Legal Def. & Educ. Fund's Thurgood Marshall Inst. (Oct. 6, 2021), https://www.naacpldf.org/wp-content/uploads/Democracy-Diminished_-10.06.2021-Final.pdf.

public concern about the potential discriminatory impact of newly drawn districts, and some places required expensive and time-consuming litigation to address these concerns.[33]

One case in point involves Baltimore County's districting plan. Despite demographic shifts over the past decade that led to nearly half the County population being people of color, the County Council enacted a districting plan that packed Black voters into a single super-majority district while maintaining significant white majorities in the six remaining districts.[34] The Council acted in the face of sustained advocacy by voting rights groups and clear warnings that the proposed plan would violate federal non-discrimination standards.[35] Local residents and civil rights groups sued under the federal Voting Rights Act and secured a court ruling invalidating the discriminatory plan.[36] This process, however, cost organizations time and effort better spent on affirmative priorities such as expanding voting access; and will almost certainly cost Baltimore County taxpayers at least one million dollars in legal fees.[37]

Given the County's history of discrimination,[38] it would likely qualify as a "covered jurisdiction" under the MDVRA's preclearance program.[39] If the MDVRA had been in place and Baltimore County was deemed covered by the preclearance program, the Attorney General or the Anne Arundel Circuit Court would almost certainly have declined to preclear the proposed districting plan under the MDVRA's standard of review,[40] and the County would have gone back to the drawing board to produce a nondiscriminatory plan—producing fair districts more quickly and saving taxpayer resources.

Similarly, last year, Black voters and organizations that represent them, such as the NAACP and the Caucus of African American Leaders, were forced to sue the Town of Federalsburg to end a discriminatory at-large election system that has kept governance exclusively white for two centuries in a community that is now nearly half Black.[41] Black residents warned of the discriminatory impact of the current at-large system prior to filing suit.[42] Under a court order, Federalsburg created a new election system that led to the election of the community's first ever Black town council members in

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[33] ACLU of Maryland, Testimony for the Ways and Means Committee (Mar. 7, 2023), https://mgaleg.maryland.gov/cmte_testimony/2023/wam/1nse5lqvnqZ_P9ljK6PoDcUMxyTW0tzHy.pdf.

[34] *Baltimore County Branch of the NAACP v. Baltimore County*, 2022 WL 657562 (D. Md. 2022).

[35] Bennett Leckrone, *In Baltimore County Redistricting Case, Plaintiffs Say New Council Map Doesn't Comply With Voting Rights Act*, Maryland Matters (Mar. 10, 2022), https://www.marylandmatters.org/2022/03/10/in-baltimore-county-redistricting-case-plaintiffs-say-new-council-map-doesnt-comply-with-voting-rights-act/.

[36] *Baltimore County Branch of the NAACP v. Baltimore County*, 2022 WL 657562 (D. Md. 2022).

[37] Meredith Curtis Goode, *Victory: Federal Judge Orders Baltimore County to Submit Redistricting Plan that Complies with Voting Rights Act*, ACLU of Maryland (Feb. 22, 2022), https://www.aclu-md.org/en/press-releases/victory-federal-judge-orders-baltimore-county-submit-redistricting-plan-complies.

[38] No Black candidate was elected to County office until 2002, and only one Black official has served at any given time since.

[39] MDVRA § 15.5–401(B).

[40] MDVRA § 15.5–404(E).

[41] Ezola Webb & Meredith Curtis Goode, *Black Voters, Advocates Challenge Election System in Eastern Shore Town Shamefully Marking Bicentennial with Continued All-White Government*, ACLU of Maryland (Feb. 22, 2023), https://www.aclu-md.org/en/press-releases/black-voters-advocates-challenge-election-system-eastern-shore-town-shamefully.

[42] *Id.*

October 2023.[43] This victory, however, has come at substantial cost to both voters and local taxpayers. And, there are other communities where residents of color suffer underrepresentation yet the particular circumstances are less amenable to a federal lawsuit.[44]

At least nine counties in Maryland use full or partial at-large election systems, in addition to municipalities such as Federalsburg.[45] Nearly two-thirds of municipalities with substantial populations of people of color use at-large systems.[46] These systems and unfair district maps have contributed to significant underrepresentation for Black Marylanders and other people of color at the local level. Approximately one-third of Maryland counties and one-quarter of municipalities with substantial populations of people of color have all-white government, according to an analysis by ACLU of Maryland.[47]

Establishing a preclearance program for the local redistricting that will occur after the next Census will help avoid such discriminatory election systems, resulting in fairer outcomes and saving taxpayer money. But the benefits of preclearance go well beyond redistricting. For example, a shortage of election judges and voting machines has led to long lines at the polls, particularly in Black and brown communities.[48] Under preclearance, certain municipalities would need to submit their proposed

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[43] Order directing Def. to submit to this court, by no later than 5/23/2023, a status report, Caroline County NAACP et al. v. Federalsburg, No. 1:23-cv-00484-SAG (D. Md. 2024), ECF No. 27; Joe Heim & Erin Cox, *After lawsuit, a town elects first Black leaders in its 200-year history*, Wash. Post (Oct. 1, 2023), https://www.washingtonpost.com/dc-md-va/2023/10/01/federalsburg-election-naacp-aclu-maryland/.

[44] The Town of Delmar is an example of a community with a substantial Black population that does not appear to be sufficiently concentrated in one part of the community to meet the requirements of a federal lawsuit. See Data USA, Delmar, MD, https://datausa.io/profile/geo/delmar-md/; Rachel Lord, *Delmar Commission Election to Take Place on Nov. 16*, Morning Star Publications (Sept. 23, 2021), https://starpublications.online/delmar-commission-election-to-take-place-on-nov-16/.

[45] H.B. 655, 2021 Leg., 443rd Sess. (Md. 2021), https://mgaleg.maryland.gov/2021RS/fnotes/bil_0005/hb0655.pdf.

[46] *Why Maryland Needs Its Own Voting Rights Act*, ACLU of Maryland, https://www.aclu-md.org/sites/default/files/mdvra_need_public_onepager_mdga24.pdf.

[47] *Id.*

[48] Scott Dance & Cassidy Jensen, *As Maryland voters cast in-person ballots Tuesday, election judge shortages punctuate an unusual primary election season*, Baltimore Sun (July 19, 2022), https://www.baltimoresun.com/politics/bs-md-pol-election-day-updates-20220719-sh6cvarkofgvzmmx4vdzug2yca-story.html; Hannah Klain, Kevin Morris, Rebecca Ayala, & Max Feldman, *Waiting to Vote*, Brennan Center, https://www.brennancenter.org/our-work/research-reports/waiting-vote#footnoteref6_etr2asr; Barry Simms, *Some counties reducing numbers of polling places due to election judge shortage*, WBALTV11, https://www.wbaltv.com/article/maryland-election-judge-shortage-counties-reduce-number-of-polling-places/33457657# (reporting the reduction in polling sites in certain counties due to election judge shortages); Ovetta Wiggins, Rebecca Tan, Rachel Chason, & Erin Cox, *Citing a history of voter suppression, Black Marylanders turn out to vote in person*, Wash. Post (Oct. 25, 2020), https://www.washingtonpost.com/local/md-politics/maryland-early-voting-prince-georges-trust/2020/10/25/847c5afc-1537-11eb-ad6f-36c93e6e94fb_story.html (discussing the long lines Black voters had to wait in when voting in the 2020 election); Rachel Baye, *Maryland lawmakers say local election officials violated state law by opening fewer polling places*, WYPR (Sept. 30, 2022), https://www.wypr.org/wypr-news/2022-09-30/maryland-lawmakers-say-local-election-officials-violated-state-law-by-opening-fewer-polling-places (discussing the consolidation of polling places for the 2022 election, resulting in declines of as much as 45% of a county's voting locations); Maryland General Assembly's House Ways and Means Committee *Election Data Overview* (Sept. 29, 2022), https://s3.documentcloud.org/documents/23115106/election-data-overview-9-29-22.pdf (showing the comparative difference in the amount of polling places per county in 2018 versus in 2022).

allocation of polling locations across communities for review to ensure that resource allocation decisions do not leave Black or Latino neighborhoods with longer lines on Election Day.[49]

While preclearance would impose a small compliance requirement on covered localities, it would ultimately save many of those jurisdictions significant time and money by identifying discriminatory policies *before* they are enacted, thereby avoiding subsequent litigation. Moreover, it would serve as a powerful prophylactic to prevent voting discrimination and promote fairness and equal access to the fundamental right to vote for Maryland citizens.

How the MDVRA's Preclearance Program Works

The MDVRA's preclearance program is modeled after the programs enacted by New York State in 2022[50] and Connecticut in 2023,[51] which were in turn based upon the successful federal program.[52] The program requires a limited set of jurisdictions with a demonstrated history of discrimination to secure pre-approval from the Attorney General or a court before making changes to an enumerated set of voting practices. To ensure that covered jurisdictions may move forward with nondiscriminatory changes in a timely manner, a jurisdiction may seek preclearance either through a streamlined administrative process with defined timelines run by the Attorney General[53] or by the Circuit Court for Anne Arundel County.[54] A covered jurisdiction may appeal the denial of preclearance by the Attorney General[55] or the Circuit Court.[56]

Covered Jurisdictions

To determine which jurisdictions are subject to the preclearance requirement, the MDVRA constructs a coverage framework consisting of five distinct criteria, or "prongs." Each prong provides a different way to assess the jurisdiction's history of discrimination in a manner that courts have found relevant to the accessibility of the political process. Critically, each prong is time-bound, only encompassing jurisdictions that meet its criteria within a certain number of years. This ensures that the coverage framework is responsive to current conditions. It also means that jurisdictions that come under preclearance are not covered in perpetuity; but rather can roll out of coverage after a sustained period of nondiscriminatory voting administration.

The following criteria qualify a county, municipality, or school board as a covered jurisdiction:

[49] MDVRA § 15.5–401(C)(2). Because county election administration is largely controlled by the State Board of Elections, counties are only subject to preclearance for the purposes of redistricting.
[50] NYVRA § 17–210.
[51] CTVRA § 414(c)-(f).
[52] 52 U.S.C. § 10303.
[53] MDVRA § 15.5–404.
[54] MDVRA § 15.5–406.
[55] MDVRA § 15.5–404(G).
[56] MDVRA § 15.5–406(I).

Any local government with at least one voting rights violation in the past 25 years.[57] Past voting discrimination is perhaps the clearest sign that a jurisdiction may engage in future voting discrimination. The federal Voting Rights Act's preclearance coverage was based upon whether certain jurisdictions had discriminatory practices in place when the law was passed.[58] The leading legislation in Congress to restore federal preclearance determines geographic-based preclearance coverage based largely upon voting rights violations within the past 25 years, similar to this prong of the MDVRA's coverage.[59] The 25-year, rolling look-back window provides a long enough period to establish patterns[60] while also ensuring that coverage is based upon present conditions rather than the more distant past.[61]

Any local government with at least one race-based civil rights violation "concerning a pattern, practice, or policy of discrimination" in the past 25 years.[62] Congress and the courts have long recognized that underlying social conditions resulting from past and ongoing discrimination often interact with particular voting rules to cause or exacerbate voting disparities.[63] For example, courts have long considered "the effects of discrimination in such areas as education, employment, and health" to be relevant to analyzing potential voting rights violations," because such conditions can "hinder [a minority group's] ability to participate effectively in the political process."[64] The MDVRA relies upon the same body of law and social science research and evidence or findings in constructing its preclearance program. Jurisdictions that have engaged in discrimination in these and other areas

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[57] MDVRA § 15.5–401(B)(1) ("Covered jurisdiction means any local government: that, within the immediately preceding 25 years has become subject to a court order or government enforcement action based on a finding of a violation of this title, the federal Voting Rights Act, the 15th Amendment to the U.S. Constitution, or a voting-related violation of the 14th Amendment to the U.S. Constitution.").

[58] 52 U.S.C. § 10303.

[59] John R. Lewis Voting Rights Advancement Act of 2023, H.R. 14, 118th Cong. (2023), https://www.congress.gov/bill/118th-congress/house-bill/14.

[60] Voting discrimination, for example, is often concentrated during redistricting, which occurs once-per-decade after each decennial census, and a 25-year look-back allows consideration of two redistricting cycles—including the post-redistricting litigation that may span several years before a court adjudication that a redistricting plan illegally discriminated against voters of color.

[61] Although states have more leeway to pass voting protections than does Congress (which must act pursuant to the Elections Clause or specific authority to enforce the U.S. Constitution), it is notable that this 25-year rolling look-back period is consistent with the period of time the U.S. Supreme Court has considered voting and other civil rights violations to be relevant for informing current conditions. In the 1999 case *Lopez v. Monterey County*, the Court upheld the constitutionality of Section 5 at that time, and rejected a challenge brought by a jurisdiction that was covered based on conditions in the jurisdiction in 1968. 525 U.S. 266, 282-285 (1999). *Lopez* thereby recognizes that evidence of voting discrimination from 30 years ago may justify preclearance, and that Congress, in 1982, acted properly in subjecting jurisdictions to preclearance for 25 additional years based on evidence of voting discrimination from 1968. Similarly, in *Tennessee v. Lane*, the Court upheld Title II of the Americans with Disabilities Act ("ADA") as applied to court access by looking to evidence of discrimination dating back to 1972—32 years before the Court's decision in *Lane*, and 18 years before Congress enacted the ADA in 1990. *Tennessee v. Lane*, 541 U.S. 509, 525 nn. 12 & 14 (2004).

[62] MDVRA § 15.5–401(B)(2) ("Covered jurisdiction means any local government: that, within the immediately preceding 25 years has become subject to at least three court orders or government enforcement actions based on a finding of a violation of a federal or State civil rights law or the 14th Amendment to the U.S. Constitution concerning discrimination against members of a protected class.").

[63] *See, e.g.*, *Thornburg v. Gingles*, 478 U.S. 30, 44-47 (1986).

[64] *Id.* at 36-47 (quoting S. Rep. No. 97–417, at 28-29 (1982), reprinted in 1982 U.S.C.C.A.N. 177, 206-207).

of civil rights are more likely to engage in voting discrimination, and discrimination in these areas can make voting more difficult or impossible.

Any local government with a significant number of citizens of voting age population of any protected class where the traffic stop rate or arrest rate of that protected class is significantly higher than that of the population as a whole.[65] Getting stopped or arrested is the first step in engagement with the criminal legal system, which can have both immediate and long-term effects on an individual's and a community's engagement in the political process. Most directly, Maryland does not permit those convicted of felonies to vote while incarcerated.[66] In addition, studies have shown that voter turnout is lower in neighborhoods with high incarceration rates, even among residents with no criminal convictions themselves.[67] Congress and the Supreme Court have required lower courts to consider in evaluating claims of racial discrimination in voting brought under Section 2 of the Voting Rights Act of 1965, "the extent to which minorities in the state or political subdivision bear the effects of discrimination in education, employment, and health, which hinder their ability to participate effectively in the political process."[68] As part of this analysis, courts have considered whether and to what extent there are "disparities . . . in the numbers of law enforcement stops, arrests, fines, and fees."[69] Unlike many other states, Maryland collects and makes publicly available traffic stop data by race, making it feasible to include this metric along with arrest rates.[70]

Any local government where there is a substantial disparity (at least 10%) in either voter registration or voter turnout rates between members of a protected class and the jurisdiction as a whole.[71] Disparities in participation as measured by voter registration and voter turnout are direct evidence of unequal access to the ballot.[72] For this reason, registration and turnout disparities in a

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[65] MDVRA § 15.5–401(B)(4) ("Covered jurisdiction means any local government: where the traffic stop rate, or the combined misdemeanor and felony arrest rate of members of any protected class consisting of at least 10.000 citizens of voting age or whose members comprise at least 10% of the citizen voting age population of the local government, exceeds the proportion that the protected class constitutes of the citizen voting age population of the local government as a whole by at least 10% at any point within the immediately preceding 10 years.").

[66] Julie Zauzmer Weil & Ovetta Wiggins, *D.C. and Maryland have new policies allowing prisoners to vote. Making it happen is hard*, Wash. Post (Sept. 28, 2020), https://www.washingtonpost.com/dc-md-va/2020/09/28/dc-maryland-prisoners-voting/.

[67] Traci Burch, *Trading Democracy for Justice: Criminal Convictions and the Decline of Neighborhood Political Participation*, American Bar Foundation (Aug. 2013), https://www.americanbarfoundation.org/resources/trading-democracy-for-justice-criminal-convictions-and-the-decline-of-neighborhood-political-participation/.

[68] *See* S. Rep. No. 97–417, at 28-29 (Senate Judiciary Comm. report on 1982 Amendments to Section 2 of the Voting Rights Act, 52 U.S.C. § 10301); *see also Thornburg v. Gingles*, 478 U.S. 30, 44-45 (1986).

[69] *See, e.g., Missouri State Conf. NAACP v. Ferguson-Florissant Sch. Dist.*, 201 F. Supp. 3d 1006, 1071 (E.D. Mo. 2016), *aff'd*, 894 F.3d 924 (8th Cir. 2018).

[70] Governor's Office of Crime Prevention, Youth, and Victim Services, *Race-Based Traffic Stop Data Dashboard*, http://goccp.maryland.gov/data-dashboards/traffic-stop-data-dashboard/.

[71] MDVRA § 15.5-401(B)(5)&(6).

[72] Studies have shown that eligible citizens of color often face more substantial burdens or barriers to exercising their fundamental right to vote. Brennan Center, *The Impact of Voter Suppression on Communities of Color* (Jan. 10, 2022), https://www.brennancenter.org/our-work/research-reports/impact-voter-suppression-communities-color.

particular jurisdiction were specifically cited in the federal Voting Rights Act as factors for consideration during federal preclearance determinations.[73]

Unfortunately, substantial voter registration and turnout disparities persist in Maryland, which means that a significant number of Black and brown potential voters are sidelined each election. In April 2022, the nonpartisan Voter Participation Center conducted a nationwide analysis to identify the most severe participation disparities across race, gender, and age. The Center found a 33.3% disparity between white turnout and participation by voters of color in the state in the 2020 election, which put Maryland in the top third of the country.[74] In addition, the share of the citizen population registered to vote was nearly 10% lower than overall share of citizen population for people of color in Maryland.[75] The Center placed Maryland in its top quintile with respect to the need to reduce registration disparities between citizen populations by race.[76] This general picture is confirmed by U.S. Census data for the 2022 elections which reports significant voter registration and turnout disparities between white Marylanders and residents of color, including a more than 10 point turnout gap between white and Black voters and 20 points (or a 50% difference) between white and Latine voters.[77]

Retain preclearance coverage for any covered jurisdiction that fails to submit required voting changes to either the Attorney General or a court.[78] This prong does not add to the number of jurisdictions covered under the program, but would rather extend the time period that already-covered jurisdictions would be within the program if they do not follow the rules; therefore, it provides a strong incentive for covered jurisdictions to comply. These five coverage prongs are modeled after the recently enacted New York Voting Rights Act and Connecticut Voting Rights Act.[79] Taken as a whole, they serve to identify jurisdictions where recent discrimination substantially increases the risk of current or future voting discrimination.

Covered Voting Policies and Practices

The MDVRA enumerates a specific set of "covered policies" and practices that jurisdictions are required to submit for expert review prior to enactment that experience shows have the potential to be deployed in a discriminatory fashion.[80] These covered policies include changes to forms of government, election methods, district lines, polling locations, and language or disability assistance.[81]

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[73] 52 U.S.C. § 10303(a)(2).

[74] Voter Participation Center, *Demographic and Turnout Trends from Voter File/Census Estimates (April 2022)*, https://docs.google.com/spreadsheets/d/1Lldx15dtruOmvT7_fZsZSR35ci67hKreJ-jdp7BYRlY/edit#gid=799968722.

[75] *Id*., at https://docs.google.com/spreadsheets/d/1Lldx15dtruOmvT7_fZsZSR35ci67hKreJ-jdp7BYRlY/edit#gid=1187652746.

[76] *Id*., at https://docs.google.com/spreadsheets/d/1Lldx15dtruOmvT7_fZsZSR35ci67hKreJ-jdp7BYRlY/edit#gid=1792381242.

[77] U.S. Census Bureau, Voting and Registration in the Election of November 2022: Table 4b (Reported Voting and Registration of the Total Voting-Age Population, by Sex, Race and Hispanic Origin, for States: November 2022 [<1.0 MB]) (Apr. 2023), https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-586.html

[78] MDVRA § 15.5-401(B)(3).

[79] NYVRA § 17–210, CTVRA § 414(c)-(f).

[80] MDVRA § 15.5–401(C).

[81] *Id*.

The aim is to protect voters against discriminatory changes while making compliance as efficient as possible both for covered jurisdictions and the preclearance administrator.

Counties are subject to preclearance only for the purposes of redistricting and method of election since their election administration is largely controlled by state law and the State Board of Elections.[82] Municipalities, on the other hand, are subject to fewer protections or controls on how they administer elections; and are therefore subject to preclearance for a wider range of practices.[83]

Standard of Review for Preclearance Decisions

The MDVRA differs from federal preclearance and the New York model in that it provides for a standard of preclearance review that is more protective of voters. Under the federal preclearance program, a voting change would be precleared as long as the change would not diminish the voting power of a protected class, a standard that came to be known as anti-retrogression.[84] This standard is the result of statutory interpretation by the Supreme Court, not the explicit intent of the drafters of the VRA, who focused on remedying discrimination in voting not only preventing it from getting worse.[85] The MDVRA includes this standard because it is clear and relatively easy to administer: do not make voters of color worse off.[86]

Anti-retrogression, however, is not sufficient to address discrimination in certain circumstances—such as when a local population has already been suffering from discrimination for years (so a change might not be a step backwards, but maintains a discriminatory regime), or when fairness requires voters of color be given additional opportunities to elect candidates of choice (such as when population shifts should require an additional majority-Black district). For this reason, the MDVRA also prohibits the preclearance of any enumerated policy that "is more likely than not to violate a provision" of the MDVRA as a whole.[87]

Taken as a whole, MDVRA's preclearance program is designed to help both voters and local jurisdictions avoid voting discrimination before it occurs and save all members of a community the time and expense of bringing a lawsuit to resolve such discrimination after the fact. Because the opportunity to obtain advanced review of voting changes by experts in the Attorney General's office is a substantial benefit, the MDVRA makes this review available to all Maryland communities, not just those required to preclear changes. Any local government may submit any proposed policy change for preclearance review, regardless of whether that government is a "covered jurisdiction" or the change affects a "covered policy" under the law.[88] In addition, the MDVRA provides for a Voting Rights Act Implementation Fund that can assist local jurisdictions with the minimal cost associated with preclearance submissions.[89]

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[82] MDVRA § 15.5–401(C)(2).
[83] MDVRA § 15.5–401(C)(2)(I).
[84] *Beer v. United States*, 425 U.S. 130 (1976).
[85] *Id.*
[86] MDVRA 15.5–404(A); 15.5–406(G).
[87] *Id.*
[88] MDVRA 15.5–402(B).
[89] MDVRA 15.5–703.

Conclusion

This Committee hearing takes place just prior to the 59th anniversary of the Bloody Sunday Selma-to-Montgomery march that led directly to the passage of the federal VRA. Maryland now has an opportunity to carry forward that legacy by enacting its own VRA. We urge this Committee to seize this opportunity by moving the MDVRA forward to the Senate floor; and we stand ready to work with you to protect Black voters, and other voters of color, in the Free State.

Please feel free to contact Adam Lioz at (917) 494-2617 or alioz@naacpldf.org with any questions or to discuss the MDVRA in more detail.

Sincerely,

/s/ Adam Lioz

Adam Lioz, Senior Policy Counsel
NAACP Legal Defense & Educational Fund, Inc.
700 14th Street N.W., Ste. 600
Washington, DC 20005

NAACP Legal Defense and Educational Fund, Inc. ("LDF")

Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in education, economic justice, political participation, and criminal justice. Throughout its history, LDF has worked to enforce and promote laws and policies that increase access to the electoral process and prohibit voter discrimination, intimidation, and suppression. LDF has been fully separate from the National Association for the Advancement of Colored People ("NAACP") since 1957, though LDF was originally founded by the NAACP and shares its commitment to equal rights.

SB0660_MD_Voting_Rights_Act_MLC_FAV.pdf
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Position: FAV

MARYLAND LEGISLATIVE COALITION

TESTIMONY FOR SB0660
MARYLAND VOTING RIGHTS ACT OF 2024 – COUNTIES AND MUNICIPALITIES

Bill Sponsor: Senator Sydnor
Committee: Education, Energy, and the Environment
Organization Submitting: Maryland Legislative Coalition
Person Submitting: Cecilia Plante, co-chair
Position: FAVORABLE

I am submitting this testimony in favor of SB0660 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of activists - individuals and grassroots groups in every district in the state. We are unpaid citizen lobbyists, and our Coalition supports well over 30,000 members.

While Maryland is a state that can generally be proud of its record of inclusivity and accessibility in the voting process, there are areas in Maryland that continue to make it harder to vote, particularly for people of color. This bill, if enacted, would restore the full power of the Federal Voting Rights Act. Specifically, it would –

- Prevent voting discrimination before it occurs by requiring counties and other jurisdictions with a demonstrated history of discrimination to get pre-approval of certain voting changes from the Attorney General or a court;
- Expand protections for voters who don't speak English as their primary language;
- Protect voters against intimidation and deceptive practices;
- Make it easier for voters experiencing discrimination to fight back in court; and
- Add critical research and enforcement tools, such as a statewide database of demographics and voting rules.

Our members want to see Maryland's voting system rise to the level that was envisioned in the original Federal Voting Rights Act. We support this bill and recommend a **FAVORABLE** report in committee.

SB 660 final testimony.pdf
Uploaded by: Charles E. Sydnor III
Position: FAV

CHARLES E. SYDNOR III, ESQ.
Legislative District 44
Baltimore County

DEPUTY MAJORITY WHIP

Judicial Proceedings Committee
Executive Nominations Committee

Joint Committees
Administrative, Executive, and Legislative Review
Children, Youth, and Families
Senate Chair, Legislative Ethics

Chair
Baltimore County Senate Delegation

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Testimony Regarding SB 660
Maryland Voting Rights Act of 2024– Counties and Municipalities
February 21, 2024

Good afternoon Chair Feldman, members of the Education, Energy, and Environment Committee,

In 1985, then Attorney General Stephen H. Sachs completed a 111-page audit of 11 heavily black counties. The audit found racial discrimination and polarization in a number of Maryland's southern and Eastern Shore counties.[1] Specifically, the audit showed that over a 20-year span, from 1962 to 1982, out of a total of 282 commissioners and county council members that were elected in those counties, only one official was Black. The counties' voting-age populations were, on average, approximately 21% Black. At the time, the Washington Post reported that the audit showed "[t]here is a 'special sense of isolation among members of the Black community… a sense that they are governed, but do not participate in governing, and that important public issues are decided for them, not by them."[2] Unfortunately, obsolete—Maryland voters continue to face situations such as these.

Just recently, Maryland residents reported multiple instances of voter suppression. Residents in Montgomery County's White Oak neighborhood repeatedly asked election officials for an early voting center in the majority-minority neighborhood. Delegate Brian Crosby asserted that the lack of a second early voting center in his county amounted to "voter suppression".[3] During the 2021 redistricting process, a Baltimore County Redistricting Commission proposed a redistricting plan that would maintain a White majority in six of seven Council districts by "packing" a supermajority of Black voters (over 70%) into its single majority Black district, a tactic the United States Supreme Court[4] has counseled against. Advocacy organizations, my colleagues, and I attempted to persuade the County Council to amend the map to better reflect the demographics of the county. Instead, the Council amended the map creating an even more precarious council

[1] Paul Valentine. *Voting Bias Found in Some Md. Counties*. Washington Post. July 19, 1985.
[2] *Id*.
[3] https://www.marylandmatters.org/2019/10/08/state-board-will-consider-additional-early-voting-site-in-montgomery-but-not-baltimore/
[4] *See generally Rucho v. Common Cause*, 588 U.S __, 139 S. Ct. 2484 (2019); *Allen v. Milligan*, 599 U.S. 1 (2023).

districts. The Council's response led me and other Baltimore County citizens to join the ACLU, the League of Women Voters of Baltimore County, the Baltimore County Branch of the NAACP, and Common Cause-Maryland to file a federal lawsuit challenging the racially discriminatory and unlawful redistricting plan approved by the Baltimore County Council in December 2021.

United Sates District Judge Lydia Kay Griggsby issued an injunction overturning Baltimore County's racially discriminatory redistricting plan, and required the County to reconfigure its election system in compliance with the Voting Rights Act ("VRA").[5] The County Council ultimately adopted a plan, accepted by the District Court, which led to a Baltimore County Council comprising of only one non-white member, and no women. A council not reflective of the population of Baltimore County, or Maryland at large. The VRA gives the US Attorney General the ability to sue any government which violates the VRA. However, the harsh reality is, that Attorney General does not have the capacity to get involved in every violation that occurs, violations slip through the cracks—like what happened in Federalsburg.

In 2022 the Town of Federalsburg, located in Caroline County, was sued to end a discriminatory at-large election system that has kept governance exclusively White for two centuries in a community that is now nearly half Black. As of October 1, 2023, the federal lawsuit was still pending.[6] Under judicial supervision, the town amended its election to be a two-district system, in compliance with the VRA.[7] For the first time in its 200-year history, the town, whose population is about 43% Black, elected its first Black leaders.[8]

Furthermore, in December 2023, several civil rights groups filed suit against Wicomico County for violations of the VRA.[9] Although Wicomico County is comprised of around 30% Black people and 40% non-white people in total, six representatives are white, and only one is black.[10] Wicomico County, like Federalsburg, utilizes at-large seats, and the lawsuit is calling for those seats to be eliminated.[11]

SB 660 hopes to address these inequalities. SB 660 proposes the most comprehensive state law protections governing the right to vote in the United States. Specifically, it provides an efficient, cost-effective framework to address barriers that deny voting opportunities in the political process for both voters and local governments in the State.

SB 660 modifies state law in a few ways. It:

- provides definitions and general overarching provisions of the bill.[12]

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[5] *Balt. Cnty Branch of the Nat'l Ass'n for the Advancement of Colored People, et al., v. Balt. Cnt'y, Md.*, 2022 WL 888419 (2022).
[6] After lawsuit, a town elects first Black leaders in its 200-year history, Joe Heim, Erin Cox, The Washington Post, https://www.washingtonpost.com/dc-md-va/2023/10/01/federalsburg-election-naacp-aclu-maryland/
[7] *Id.*
[8] *Id.*
[9] Maryland Civil Rights Groups Allege County Violates Voting Rights Laws, Joe Heim, The Washington Post, https://www.washingtonpost.com/dc-md-va/2023/12/08/maryland-wicomico-lawsuit-naacp-civil-rights/
[10] *Id.*
[11] *Id.*
[12] See subtitle 1.

- prohibits local governments or entity responsible for election administration from denying or impairing the right to vote of protected class members through any (1) qualification for eligibility to be a voter or other prerequisite to voting; (2) ordinance, regulation, or other law regarding the administration of elections, or any standard, practice, procedure, or policy; or (3) action or inaction.
- requires language-related assistance in local government elections under certain circumstances.[13]
- provides for a preclearance program ensuring that certain "covered jurisdictions submits any proposals to our Attorney General or the Courts prior to enactment so they do not run afoul of the law."[14]
- prohibits voter intimidation, deception, and obstruction.[15]
- requires the State Board of Elections to conduct a specified needs assessment and establishes the Voting Rights Act Implementation Grant Fund to support activities designed to further voting rights in the State.[16]

To conclude, the people of Maryland deserve more than what the diminished VRA proffers to afford them. Marylanders deserve protection, equality, and control of our elections. We must uplift those who have felt impeded in exercising their constitutional right in casting a vote. SB 660 does just that. For the above reasons, I respectfully request a favorable report for SB 660.

[13] See subtitle 3.
[14] See subtitle 4.
[15] See subtitle 5.
[16] See subtitle 7.

SB 660 - Maryland Voting Rights Act of 2024 – Coun
Uploaded by: Donna Edwards
Position: FAV

MARYLAND STATE & D.C. AFL-CIO

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SB 660 - Maryland Voting Rights Act of 2024 – Counties and Municipalities
Senate Education, Energy, and the Environment Committee
February 21, 2024

SUPPORT

Donna S. Edwards
President
Maryland State and DC AFL-CIO

Chair and members of the Committee, thank you for the opportunity to provide testimony in support of the Maryland Voting Rights Act of 2024. My name is Donna S. Edwards, and I am the President of the Maryland State and DC AFL-CIO. On behalf of the 300,000 union members in the state of Maryland, I offer the following comments.

SB 660 applies many of the protections previously guaranteed by the federal Voting Rights Act of 1965, prior to Shelby County v. Holder, to Maryland's county and municipal elections. This includes requirements for pre-clearance approval by the Attorney General or the circuit courts for changes to voting methods, redistricting, election timing, precinct reorganization, and other important components of facilitating fair elections. SB 660 provides protections and language assistance for voters whose primary language is not english. The bill also bans voter intimidation, interference, and obstruction.

Multiple states have passed their own state-level Voting Rights Acts, including: California, Washington, Oregon, Virginia, New York, Connecticut, and Illinois. Similar bills are being considered in New Jersey, Michigan, and Florida.[1]

We urge a favorable report on SB 660.

[1] Legal Defense Fund. "State Voting Rights Acts: Building a More Inclusive Democracy."

Appendix 1 - National AFL-CIO Position on Voting Rights

Voting Rights Should Be Expanded

The U.S. government needs to expand voting opportunities in America and support universal voter registration—not erect new hurdles, like strict voter ID laws.

We support legislative and administrative reforms at the federal, state and local levels to expand voter registration and greater access to voting, including expanded early voting, no-excuse absentee voting, same day registration and voter registration modernization. We also think voting rights should be restored to individuals who have committed crimes but served their time.

According to the Brennan Center for Justice, the Voting Rights Act was passed in 1965 to ensure state and local governments do not pass laws or policies that deny American citizens the equal right to vote based on race. As one of the world's leading democracies, the United States should work to keep voting free, fair and accessible. That's why the Voting Rights Act is so important. It makes sure every citizen, regardless of race, has an equal opportunity to participate in our great democracy.

On June 25, 2013, the U.S. Supreme Court invalidated Section 4, a key provision of the Voting Rights Act, thereby removing a critical tool to combat racial discrimination in voting. Under Section 5 of the act, jurisdictions with a history of discrimination must seek pre-approval of changes in voting rules. This process, known as "preclearance," helps to block discrimination before it occurs. In Shelby County v. Holder, the court found that the formula in Section 4—which determines the states and localities covered by Section 5—was unconstitutional, meaning the formula could no longer be used as a basis for subjecting jurisdictions to preclearance. The court claimed that a more current coverage formula was needed.

This is a giant step backward and Congress needs to take up legislation to fully restore the Voting Rights Act and ensure all who want to vote, can vote.

Appendix 2 - 2017 National AFL-CIO Convention Resolution 14

Voting Rights: Building An Inclusive Pro-Voter Democracy to Move A Winning Agenda for Working People - October 24, 2017

The labor movement believes that ensuring and protecting the right of every citizen to vote is a bedrock principle of our democracy. One major way we advocate for ourselves to great affect is through the ballot box—by electing and protecting champions of working people and winning policy fights that matter to all workers. However, our democracy suffers from deliberate voter suppression and disenfranchisement that severely limits the labor movement and other progressive movements' ability to move a winning agenda for working men, women, their families and their communities that we serve.

We see the common threads among the continued erosion of rights for working families, the attack on an economy that works for everyone, and the assault on one of our most fundamental democratic rights—the right to vote. The right to vote, fair representation and access to democracy are key in moving a winning agenda for all people and ensuring that not one community continues to suffer needlessly. Moreover, a number of states have reversed efforts to make it easier for citizens to vote by mail or vote early. Some have rescinded same-day voter registration and provisional ballots. Others have reduced the number of polling places and caused long delays in of-color and low-income

neighborhoods. These are some of the same states that have waged a full attack on the labor movement.

We believe that voting in elections should be as convenient, fair and secure as possible. Yet some citizens face voter suppression tactics such as limits to early voting, fewer polling locations and voting machines, long lines, and intimidation at polling stations. Three states that currently hold elections entirely by mail, Colorado, Oregon and Washington, have significantly higher voter participation during elections. Vote by mail is efficient and cost effective, and creates a verifiable paper trail. Studies have shown that voting by mail does not give an advantage to any political party, and support for vote by mail includes all demographic groups, geographic areas and political affiliation. This is one of many pro-voter reforms that we know works to deliver a democracy that is inclusive.

America's hardworking families and communities deserve full access to the ballot box. As a movement of working people we demand that a pro-voter agenda be adopted immediately, starting with the restoration and expansion of the Voting Rights Act and passage of legislation that expands opportunities for citizens to vote. We join with hundreds of other civic organizations across the political spectrum in calling for real integrity in our democracy, and urge our leaders to expand and protect the right to vote.

WHEREAS, labor union members must be engaged as voters, activists, volunteers and stakeholders. Our unique infrastructure, which is in place in 50 states, allows us to catalyze organizing, mobilizing and resourcing the work to build an inclusive democracy with and through our affiliates, constituency groups and national strategic partners.

THEREFORE, BE IT RESOLVED, that the AFL-CIO shall stand firm with the principles of an inclusive democracy through:

Prioritizing a pro-voter platform within our fight forward to reclaim the economic narrative that speaks for working families, as well as an opportunity to build an independent political movement that aligns with our shared values;

Advocating to expand and protect voting rights at the federal and state level, including the full restoration of the federal Voting Rights Act; ensuring the modernization of voting through automatic registration, online registration and same-day registration; making it easier for working people to vote by expanding early voting, permanent mail ballot and vote by mail through legislation and ballot initiatives at the local, state and federal levels; restoring the rights of returning citizens; and maintaining and expanding the availability of straight-ticket voting and a host of other voter protections that happen prior to elections;

Fighting to protect the voting rights of working people and all people of color when they come under attack, especially against attempts to suppress votes in the lead-up to elections, including through support for community-focused voter education and voter protection efforts;

Preventing corporations and the wealthy few from buying elections;

Changing structural rules to ensure that every vote and every voice counts equally; and

Reshaping the political debate to demand full democracy at every level of government.

The institutions of our government need to function on behalf of the people, regardless of whom has power—it is bigger than parties, politics or profits.

Appendix 3 - "The Labor Movement Is Ready to Ensure that Voting Rights Are Fully Restored"
By Fred Redmond, Secretary Treasurer, AFL-CIO - June 16, 2023

The right to vote is the cornerstone of democracy and was at the heart of the civil rights movement.

Dr. Martin Luther King Jr., John Lewis and other civil rights leaders and allies—including the labor movement—called attention to the pervasive and pernicious tools used to disenfranchise Black voters in the South. Work that led to the enactment of the Voting Rights Act (VRA) in 1965, which put an end to the physical intimidation, harassment, poll taxes and literacy tests Black voters were subjected to just to exercise our right to vote.

But the VRA has been chipped away ever since it became law. A number of states have made it more difficult to vote through restrictive photo identification requirements, and by rescinding same-day voter registration, provisional ballots and early voting periods.

Other states have reduced the number of polling places—often in communities of color where voters have to endure the long lines and extra steps meant to dissuade us from casting a ballot.

And some states have redrawn congressional districts in an attempt to dilute the power of certain racial demographic groups.

Racial gerrymandering is prohibited by the VRA, and was at the heart of a case taken up by the Supreme Court last week. In Allen v. Milligan, the high court ruled Alabama violated the Voting Rights Act when it drew its congressional map following the 2020 census.

It was a surprising decision by this Supreme Court, given this bench's track record and conservative ideological leanings, but it shouldn't have been—not for a country that values democracy and the democratic process.

And, unfortunately, this decision does nothing to repair the one it made a decade ago that ripped a gaping hole in the VRA and empowered extremist lawmakers to restrict access to the ballot box.

Shelby County v. Holder was a wake-up call—that we must always be vigilant to protect our freedoms and rights, and that political extremists will go to terrific lengths for power and personal gain, even if that means jeopardizing our democracy.

It also was a wake-up call for the labor movement to re-engage and tighten our relationship with civil and voting rights coalitions.

The labor movement has a long history of supporting civil and voting rights and the Voting Rights Act. We educate union members about the importance of voting rights. We mobilize union members in support of positive voting rights reforms. We advocate, along with our allies at the state and federal levels, for improvements to our voting laws. And we fight discriminatory voter ID legislation and other voter suppression laws that restrict the right to vote.

And we will continue to do so.

When President Liz Shuler and I were elected to lead the AFL-CIO a year ago, we pledged to ensure racial and social justice is in everything we do—in all of our programmatic work and at every level of the federation. We are committed to advancing racial justice in our outreach and programs, and to opening pathways for young people and people of color to enter leadership positions. We are committed to vanquishing oppression in all its forms.

That includes fighting state legislatures that try to prevent people of color, women, young adults, LGBTQ+ people and other marginalized people from exercising their right to take part in our electoral process.

And we will continue to push Congress to do its job and pass the John R. Lewis Voting Rights Advancement Act to fully restore and permanently protect voting rights, and ensure access to free and fair elections.

MDVRA_Need_Legislator_OnePager_MDGA24.pdf
Uploaded by: Gregory Brown
Position: FAV

WHY MARYLAND NEEDS ITS OWN *Voting Rights Act*

The right to vote is a fundamental part of our democracy. Everyone's vote must count equally. But in many Maryland counties, cities, and towns, the local election systems in place dilute votes of Black, Indigenous, and People of Color (BIPOC). The *Maryland Voting Rights Act* (MDVRA) would give counties, cities, and towns the opportunity to make their elections fairer, and give BIPOC voters an equal vote. In 2024, it is high time that we pass the *Maryland Voting Rights Act*.

BIPOC PEOPLE ARE UNDERREPRESENTED IN COUNTY GOVERNMENTS

- 75% of Maryland counties have substantial BIPOC populations.*
- ⅓ of those Maryland counties with substantial BIPOC populations have all-white governments.

Even counties that have some BIPOC representation, vote dilution is still present, and BIPOC people are underrepresented:

- **Baltimore County:** Ordered by a federal judge to re-draw its district lines; but the Federal VRA has allowed the county to implement a plan that continues to dilute the vote, where there remains only a single Black opportunity district. The last Council election resulted in 6 out of 7 seats being occupied by white representatives. (See *Baltimore County Branch of NAACP v. Baltimore County,* No. 21-CV-03232-LKG, 2022 WL 657562, [D. Md. Feb. 22, 2022].)
- **Wicomico County:** Mixed at-large and district system, where the white population holds 60% of the population, and control 6 out of 7 seats on the council. If the County were to re-district, as they must, a second Black opportunity district could be created, and create 2 out of 7 BIPOC opportunity districts. (See *Wicomico County Branch of NAACP v. Wicomico County,* No. 23-CV-03325-MJM [D. Md. Dec. 7, 2023].)

MARYLAND NEEDS A VOTING RIGHTS ACT BECAUSE:

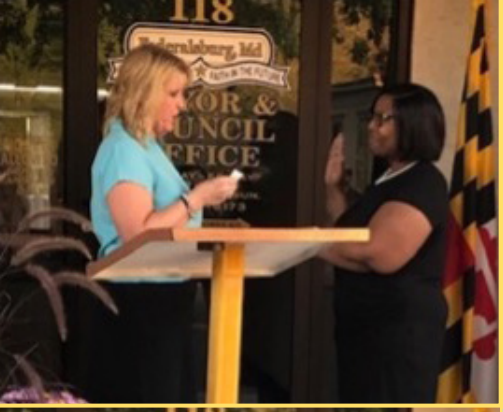
1. BIPOC voters are underrepresented in their local governments.
2. Solving this problem through lawsuits is expensive, slow, and inefficient.
3. The federal Voting Rights Act of 1965 (VRA) cannot comprehensively fix vote dilution like the MDVRA can.

BILLS: SB 660 / HB 800

aclu-md.org/mdga24

ACLU Maryland

* Substantial BIPOC population is defined in this document as a BIPOC population of more than 20 percent.



THE POWER OF FIXING ELECTION SYSTEMS TO MAKE THEM MORE FAIR: A MUNICIPAL EXAMPLE

The town of Federalsburg faced an all-white government for 200 years.

That finally changed in 2023 when 7 Black women from Federalsburg sued the town for diluting their right to vote through the town's at-large system.

The federal lawsuit involved extensive and expensive expert analysis and testimony and a year's worth of advocacy until the court ordered a new election plan be produced. That plan changed the at-large system into a district system.

The people of Federalsburg were finally able to elect two Black women to the Council.

"I've been here all my life, 68 years. I haven't seen no African American on the board. But we're not going back. We're going forward. It's time for a change getting young African Americans on that board."

– Roberta Butler
A Black woman, voter, and lifelong resident of Federalsburg

BIPOC PEOPLE ARE UNDERREPRESENTED IN MUNICIPAL GOVERNMENTS

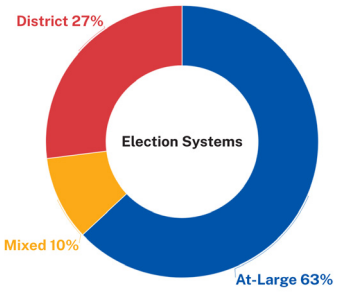
- 54% of the municipalities in Maryland have substantial BIPOC populations.*
- Of the municipalities with substantial BIPOC populations, 23% have all-white governments

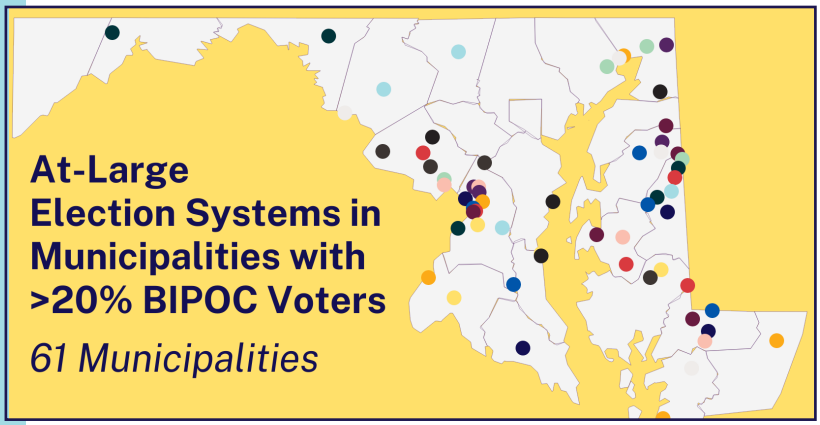
Some municipalities are particularly egregious:

- There are 18 municipalities with over 80% BIPOC populations (less than 20% white).
- In 7 of them, BIPOC representatives hold less than half of the seats in their municipal governments.

AT-LARGE ELECTION SYSTEMS ARE COMMON ACROSS MARYLAND

- In municipalities with a substantial BIPOC population,* 73% of them have a mixed at-large and district-based election system, and 63% have an at-large system only.





GLOSSARY

- **At-Large Election System:** In at-large elections, the entire electorate of a town, city, or county votes for the elected official. At-large systems have been used to dilute BIPOC votes because you only need a bare majority to win the seat. Therefore, a 50% white population could elect all of the seats to the local government, shutting out the possibility of a BIPOC candidate from winning.
- **District-Based Election System:** In a district-based election system, a county, city, or town is divided into separate districts, where voters who live in that district can only vote for a candidate to represent them from that geographic subdivision. Districts are the most common legal remedy that courts use to fix at-large election systems. However, districts can still dilute votes if drawn unfairly.

ACLU Maryland

SB 660 Favorable.pdf
Uploaded by: Gregory Brown
Position: FAV

Testimony for the EEE Committee

SB 660 - Maryland Voting Rights Act of 2024 – Counties and Municipalities

February 21ST, 2024

FAVORABLE

GREGORY BROWN
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The ACLU of Maryland urges a favorable report on SB 660, a historic bill that would bring strong voting protections to Marylanders across the state. HB800 would establish preclearance procedures, strictly for the purposes of redistricting, for jurisdictions with a history of voter discrimination, provide language assistance materials to communities that meet the threshold, prohibit vote denial and dilution, and prohibit voting intimidation, obstruction, and deception by providing a civil cause of action for Marylanders to bring suit when they are faced with these impediments to casting a ballot.

Voter intimidation has been a historic tool to effectively bar Black communities from participating at the polls. While the forms of intimidation have evolved from racist, violent instances of brutality that Black communities faced from the Reconstruction Era to the Civil Rights movement such as lynchings, police beatings, and harassment from white mobs, the need to protect all voters from any form of voter intimidation remains.

Last year, we testified on this bill on the 58th Anniversary of Bloody Sunday, and duly highlighted the intimidation, violence, and hatred the advocates who came before us faced in order to secure the right to vote. Bloody Sunday put racist voter intimidation on display for the world to see, making clear the need for protections against these abuses. The actions of that day ultimately resulted in the passage of the most effective civil rights law in our nation's history, the Voting Rights Act of 1965. Maryland now has the chance to take the framework of that iconic law and implement protections and legal remedies that would secure the right to be free from fear and intimidation while voting. SB 660 does just that by allowing Marylanders to bring suit against those who would seek to intimidate, obstruct, or deceive others who are trying to access the ballot. In addition to providing a civil cause of action against those who would use threats of violence or otherwise intimidating

behavior, SB 660 also prohibits the use of deceptive devices or communications that would otherwise interfere with one's right to vote. Protecting Marylanders from bad actors who would seek to unduly influence our elections via deception and misinformation is critical to guaranteeing free and fair elections in our state.

The need for voter intimidation protections in Maryland

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF MARYLAND

Although some may argue that Maryland does not experience instances of voter intimidation, obstruction, or deception, the need for protections and legal remedies remains due to the fact that there are indeed forms of voter intimidation that go unchecked in the state. In La Plata, Maryland a man was reported on to the Attorney General's office for "trying to intimidate people to vote for Trump."[1] In Montgomery County flyers, used to intimidate minority communities, warning non-U.S. citizens of the legal penalties of voting in a U.S. election were posted at a high school.[2] In Cecil County, a man was addressed a letter that referenced the Proud Boys and contained the hashtag "#moregunsthanu" despite reporting there was no political signage in his yard.[3] These forms of voter intimidation, obstruction, and deception are real and likely happen more often than are reported.

The need for these protections becomes greater when candidates and their operatives themselves engage in intimidation and obstruction. A week before our most previous state wide election, a gubernatorial nominee put out a call for volunteers to "monitor" drop boxes.[4] While the "monitoring" of drop boxes or polling stations themselves cannot inherently be categorized as intimidation, the history of these monitoring operations reveals the true intent of these endeavors. In 1981 the Republican National Committee (RNC) sent a "ballot security task force" into predominately Black and Latino neighborhoods where they posted "warning" signs and "monitored" polls wearing arm bands and armed with guns.[5] The resulting lawsuit found the RNC in violation of the law for intimidating voters, despite the task force committing no physical violence.[6] Targeted "monitoring" operations such as the one a recent gubernatorial candidate called for have the sole goal of intimidation and obstruction, just as these kinds of operations had in 1981. Maryland has a historic opportunity to secure voting rights for all and ensure

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[1] https://apnews.com/article/election-2020-technology-elections-maryland-email-b8f5045edd5c37b47e172011f6bb4263
[2] *Id.*
[3] *Id.*
[4] https://www.marylandmatters.org/2022/11/03/concerns-grow-that-voter-intimidation-could-disrupt-midterm-elections/
[5] https://www.retroreport.org/video/poll-watchers-and-the-long-history-of-voter-intimidation/
[6] *Id.*

every Marylander has legal recourse in the face of deception, obstruction, or intimidation when accessing the ballot.

For these reasons we urge a favorable report on SB 660.

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MARYLAND

LatinoJustice PRLDEF MD VRA 2024 testimony - favor
Uploaded by: Isabelle Muhlbauer
Position: FAV

Lourdes M. Rosado
President and General Counsel

Testimony in Favor of Senate Bill 660: Maryland Voting Rights Act of 2024

February 21, 2024

Good afternoon, Honorable Chair Brian J. Feldman, Vice Chair Cheryl C. Kagan, and Esteemed Members of the Education, Energy and the Environment Committee,

My name is Isabelle C. Muhlbauer, and I am the Voting Rights Advocacy Manager at LatinoJustice PRLDEF. LatinoJustice PRLDEF uses and challenges laws to create a more just and equitable society. We transform harmful systems, empower our communities, fight for racial justice, and grow the next generation of líderes. I am here to testify in strong support of S.B. 660, the Maryland State Voting Rights Act of 2024.

S.B. 660 will strengthen democracy in Maryland by ensuring all voters have equal access to the ballot box. Unfortunately, voting rights are under attack across the country in ways that disproportionately impact black and brown voters. Court decisions have stripped away many of the protections in the federal Voting Rights Act of 1965, leaving communities of Black and Brown voters vulnerable to voter suppression and discrimination. Maryland is no exception to such practices, which is why it is crucial that this legislature pass S.B. 660. Successful passage ensures Maryland can be a leader in revitalizing democracy in America and ensure access to the ballot is not curtailed by discriminatory policies and practices.

For decades, LatinoJustice PRLDEF has championed the expansion of language access rights, driven by the vision that every member of the Latinx and allied communities deserves unfettered access to voting. This dedication is rooted in an understanding of the multifaceted nature of America's demographic fabric, recognizing how language barriers disenfranchise minority

groups. Through comprehensive efforts including litigation, advocacy for policy changes, and educational outreach, LatinoJustice works to remove these obstacles. This ensures voting processes are accessible to all, embodying our commitment to fostering a democratic environment where language limitations do not limit civic engagement.

We enthusiastically support S.B. 660 as it extends language access beyond what is required by the federal Voting Rights Act of 1965 (VRA). Under the VRA, only two counties in Maryland are required to have language assistance for Limited English Proficient (LEP) voters, but according to the most recent census data, more than 425,000 Maryland residents *statewide* have limited English proficiency. We can and should do more to improve language access for our communities and make voting easier for minority populations speaking other languages. Language barriers must not continue to be an impediment to LEP communities that seek to exercise their constitutional right to vote.

S.B. 660 expands language access by lowering the population threshold requirements for municipalities to provide language translation. Not only does the bill require assistance at the polls, but it will also guarantee that translated materials are available for voters, including voter registration notices and forms, ballots, election instructions and all other materials related to the electoral process. It is critically important that Maryland, as the most diverse state on the East Coast, meet the needs of language minority voters. Every voter has the right to be heard, regardless of their English proficiency.

S.B. 660 is supported by a strong coalition of racial justice and civil rights organizations. Central to the bill is the introduction of a preclearance provision, a preventative measure requiring

local jurisdictions with documented histories of discrimination to seek approval before implementing any changes to voting procedures. This critical step aims to proactively protect Black and Brown communities from policies or practices that could diminish their voting power or infringe upon their rights, addressing potential issues at their root before they can cause harm.

Furthermore, S.B. 660 strengthens voter protections on several fronts, offering expanded safeguards against harassment and intimidation at the polls and equips advocates with enhanced tools to challenge and combat discriminatory voting practices in court. This comprehensive approach not only fortifies the legal framework supporting voters' rights, but also empowers communities and advocates by actively safeguarding the integrity of the democratic process in Maryland.

Unhindered access to the ballot is at the core of a representative democracy. As such, we must continue to ensure that all voters, including historically marginalized communities, are able to freely have their voices heard through their vote. LatinoJustice calls on the Maryland legislature to pass S.B. 660, the Maryland Voting Rights Act of 2024 to codify state-level protections for voting rights that are under attack nationwide.

Thank you for your time.

2024 MDVRA Partner Support Letter.pdf
Uploaded by: Joanne Antoine
Position: FAV

Chair Brian Feldman
Education, Energy and the Environment Committee
2 West St., Senate Office Building
Annapolis, MD 21401

Vice Chair Cheryl Kagan
Education, Energy, and the Environment Committee
2 West St., Senate Office Building
Annapolis, MD 21401

RE: SUPPORT FOR THE MARYLAND VOTING RIGHTS ACT OF 2024

Dear Chair Feldman and Vice Chair Kagan:

We write to express our strong support for the Maryland Voting Rights Act ("MDVRA"). This landmark legislation would address discrimination against voters of color in Maryland and immediately position the Free State as a national leader on protecting the right to vote. For these reasons, the MDVRA is a top priority for the undersigned civil and voting rights organizations.

A decade after the Supreme Court's disastrous Shelby County[1] decision that undercut the federal Voting Rights Act, many states are unfortunately moving backwards on ensuring free, fair, and nondiscriminatory elections.[2] And despite substantial recent progress in strengthening voting laws at the state level, many discriminatory barriers to equal participation still exist in the state for voters of color and voters whose first language is not English, particularly at the local level. As we enter another critical election cycle, it's clear that now is the time for our State leaders to stand up for equal, inclusive democracy.

Maryland's history of discrimination includes English literacy tests, property ownership requirements and entitlements linked to voting, as well as laws that carry forward discrimination in the criminal legal system into our democracy, and those forces are still felt today. In addition,

[1] Shelby County v. Holder, 570 U.S. 529 (2013).
[2] Brennan Center for Justice, Voting Laws Roundup: February 2023 (February 22, 2023).

some local jurisdictions still use at-large elections[3] which can empower a white majority to capture most or all seats, even where there is a substantial population of Black, Indigenous, and other voters of color.

The MDVRA will set a new standard for protecting the right to vote by:

● Providing new legal tools to fight discriminatory voting rules and election systems in court.
● Launching a “preclearance” program that requires places with records of discrimination to prove that proposed voting changes will not harm voters of color before they can go into effect.
● Expanding language assistance for voters with limited English proficiency.
● Creating strong protections against voter intimidation, deception, or obstruction.

The MDVRA builds upon successful laws already passed in California, Washington, Oregon, Virginia, and New York, and Connecticut. Similar bills are also under consideration in Florida, Minnesota, and New Jersey this session. The MDVRA will carry forward this momentum and become one of the most comprehensive state-level voting rights acts in the country.

Now is Maryland’s time to lead. We encourage you to prioritize, and pass the MDVRA this legislative session, and we stand ready to work with you to secure this victory for all Maryland voters.

Sincerely,

[3] Some examples of municipalities that have at-large election systems include Brentwood in Prince George’s County, Aberdeen in Harford County, and Frederick City in Frederick County. At-large election systems account for 63% of all municipal voting systems in the state, and an additional 10% have a mix of at-large and district seats.

ACLU of Maryland
Common Cause Maryland
NAACP Legal Defense Fund
Campaign Legal Center
NAACP Maryland State Conference
League of Women Voters Maryland
Movement Advancement Project
Maryland League of Conservation Voters
Maryland Votes for Animals, Inc.
FairVote Action
National Council of Jewish Women
Maryland Action Team
Caucus of African-American Leaders
The Arc Maryland
Public Justice Center
No Boundaries Coalition
Advance Maryland
Mothers On The Move
Lower Shore Progressive Caucus
Declaration for American Democracy Coalition
Indivisible Central Maryland
AAAsk, LLC
Definitive Mechanical
Community Development Network of Maryland
AFT-Maryland
Public Citizen
Montgomery County Women's Democratic Club
SEIU Local 500
Get Money Out — Maryland
Maryland Center on Economic Policy
DemCast USA
Fair Elections Center
Human Rights Campaign
Hip Hop Caucus
LatinoJustice PRLDEF
Asian and Pacific Islander American Vote (APIAVote)
Demos
Allen AME Church
DoTheMostGood
Center for Popular Democracy
Cedar Lane Environmental Justice Ministry
Council on American-Islamic Relations
Stand Up America
Everyone Votes Maryland Coalition
Planned Parenthood of Maryland
The Talking Drum Incorporated
Secure Elections Network
Franciscan Action Network
STAR Scholars
The Baltimore City Civilian Review Board
End Citizens United/Let America Vote
Showing Up for Racial Justice Annapolis and Anne Arundel County
Quaker Voice of Maryland
PETA
Indivisible Howard County
CAIR

Appendix A.pdf
Uploaded by: Lata Nott
Position: FAV

BEYOND SES: A RESOURCE MODEL OF POLITICAL PARTICIPATION

HENRY E. BRADY *University of California, Berkeley*
SIDNEY VERBA *Harvard University*
KAY LEHMAN SCHLOZMAN *Boston College*

This paper develops a resource model of political participation. The resources considered are time, money, and civic skills—those communications and organizational capacities that are essential to political activity. These skills are not only acquired early in life but developed in the nonpolitical institutional settings of adult life: the workplace, organizations, and churches and synagogues. These resources are distributed differentially among groups defined by socioeconomic status. A two-stage least squares analysis shows these resources have powerful effects on overall political activity, thus explaining why socioeconomic status has traditionally been so powerful in predicting participation. We disaggregate overall activity into three kinds of acts: those that involve giving time, those that entail donating money, and voting. Each requires a different configuration of resources resulting in different patterns of stratification across various political acts.

Why do citizens participate in political life? One way to think about this puzzle is to invert the question and ask why people don't take part in politics. Three answers immediately suggest themselves: because they can't, because they don't want to, or because nobody asked.[1] "They can't" suggests a paucity of necessary *resources*: *time* to take part in political activity, *money* to make contributions, and *civic skills* (i.e., the communications and organizational skills that facilitate effective participation). "They don't want to" focuses on the absence of psychological *engagement* with politics—a lack of interest in politics, minimal concern with public issues, a sense that activity makes no difference, and no consciousness of membership in a group with shared political interests. "Nobody asked" implies isolation from the *recruitment networks* through which citizens are mobilized to politics.[2]

All three factors help explain political participation, but we focus on the role of resources—time, money, and civic skills[3]—for explaining political participation in America. Adding resources to the other two explanations permits us to move beyond the "SES model," that is, beyond explanations of political activity based on one or more of the components of *socioeconomic status*: education, income, and occupation.[4] By attending to resources conceived at a general level, we can probe the way resources link backward to SES and other social characteristics and forward to political activity. Going backward from resources, we can show that the three resources of money, time, and civic skills vary in their association with SES and other social characteristics. Money and some kinds of civic skills are closely related to SES, but time and other civic skills are less stratified. Civic skills are less stratified by SES partly because social characteristics such as affiliations with "congregational" churches are not highly correlated with SES and these affiliations serve as training grounds for civic skills. As we go forward from resources to political activity we can show how the importance of a resource depends upon the particular activity. Education, for example, is important for some political activities because it enhances political interest and civic skills while income is important for other activities because of the monetary resources it provides.[5] By showing how resources differentially available on the basis of SES affect various modes of political activity, we explain not only why some individuals are more active and others less but also why certain kinds of people engage in particular kinds of political activity.

A resource-based approach also has methodological and theoretical advantages, especially in comparison to explanations based solely on psychological engagement with politics, thus yielding a more powerful explanation of participation. We are more confident in our ability to measure resources than in our ability to measure psychological engagement. Reports of attitudes are notoriously fugitive, unreliable, and difficult to compare across respondents (Duncan 1984). As we shall see, the measurement of resources rests on more factual questions for which the metrics used—dollars, hours, and the number of letters written or speeches given—are unlikely to vary in meaning from respondent to respondent. Although responses may suffer from the fallibility of human memory, at least these questions are about concrete, everyday matters. Furthermore, when linking engagement and activity, it is hard to be certain of the direction of the causal arrow. Political interest and political efficacy, for example, certainly facilitate political activity, but activity presumably enhances interest and efficacy as well. Indeed, most measures of psychological engagement with politics are, by their very nature, perilously close to activity itself. This makes them robust predictors of political participation but trivial (and possibly spurious) explanations for participation. Yet despite its apparent "head start" as a predictor of participation, we show that political interest—a standard measure of psychologi-

cal engagement in politics—does not displace resources as a predictor of political participation.

Theoretical considerations lend additional support to the notion that a resource model can provide a powerful explanation of political participation. Unlike psychological engagement in politics, which probably develops along with political activity, the institutional involvements from which citizens acquire resources generally antedate or occur independently of political activity. Obviously, family background and early experiences in school—critical for both the development of resources for politics and for the future institutional commitments that permit the further enhancement of political resources—precede adult activity. In the absence of actual life histories collected over respondents' lifetimes, we cannot be absolutely certain that adult decisions about family, work, organizational involvements, or affiliations with religious institutions are apart from and in advance of choices to take part politically, but these seem plausible assumptions.[6] In addition, a resource theory has implications for the normative issue of how we construe political inactivity, especially when the politically quiescent have obvious and pressing needs. If individuals eschew politics because they do not care—because they prefer to devote themselves to private rather than public pursuits—then we are apt to dismiss inactivity as a matter of personal choice. If the failure to get involved is the consequence of resource constraints that make it difficult for even those who are politically interested and engaged to take part in political life, then we are likely to be more concerned about political inactivity.

Finally, resource models of political participation tie into two powerful intellectual traditions: stratification theories from sociology and individual choice perspectives from economics. The SES model follows naturally from stratification theories,[7] which suggest that class and status hierarchies are fundamental features of modern industrial societies that often determine their politics. True to the theory, the SES model does an excellent job *predicting* political participation.[8] Yet the SES model fails to specify clearly the *mechanism* linking social statuses to activity. Rational choice theories, on the other hand, have clearly specified how and why individuals might decide to participate in politics to pursue their self-interest, but these theories have done a very poor job predicting political participation.[9] Indeed, with respect to SES and participation, at least one variant of the rational choice approach suggests no relationship at all or, if any, that people of high SES (who by virtue of their high levels of education command the intellectual sophistication to comprehend the free-rider problem and who by virtue of their high salaries would find the opportunity cost of participation prohibitive) to be least likely to take part in politics. Instead those with high levels of SES, who are not otherwise known for particular irrationality in the conduct of their lives, are the most likely to be active.[10]

The problem is that rational choice approaches have focused on how the benefits of participation might offset the costs of participation without examining costs very carefully. A resource perspective takes seriously the costs of using resources. In doing so, we apply to politics an important variant of rational choice theory. The Chicago school of economics[11] has shown how a powerful theory of choice can be built not upon restrictions on the motives for choice (as the emphasis on self-interest over altruism or duty does) but upon the budget constraints on resources that limit choices. If there are multiple constraints on a series of resources that vary independently in the population, then a formidable theory can be based upon the degree to which each resource constraint is binding in a particular situation. And since resources such as money, time, and skills can be measured and affected by policymakers, it is useful to formulate a theory based on a careful description of how variations in resources flowing from social stratification enable and restrict individual activity.

To develop a resource model of political participation requires four steps. First, we define resources and explicate how we measure them. Second, we show how resources are distributed in the population, in particular, how they relate to SES. Third, we look closely at the resource of civic skills (particularly those acquired as an adult) in order to show that our somewhat indirect indicators of civic skills indeed measure a single dimension of civic skill that is developed in extrapolitical institutional settings and available for political activity. The fourth step is the heart of our enterprise—we show that resources explain political participation and that different resources are related to different activities.

THE CITIZEN PARTICIPATION STUDY

Our data come from a large-scale, two-stage survey of the voluntary activity of the American public. The first stage consisted of over 15,000 telephone interviews of a random sample of the American public conducted during the last six months of 1989. These 20-minute screener interviews provided a profile of political and nonpolitical activity as well as basic demographic information. In the spring of 1990, much longer, in-person interviews were conducted with a subset of 2,517 of the original 15,000 respondents chosen so as to produce a disproportionate number of both activists as well as African-Americans and Latinos. In the following analyses, we have reweighted the follow-up sample so that we have a representative sample. (See Verba, Schlozman, Brady, and Nie 1993 for a description of the sample.)

The study is unusual in focusing on voluntary activity not only in politics but also in churches and organizations. In addition, we construed political participation quite broadly, including not only voting and other forms of electoral activity (e.g., working in campaigns, making financial contributions) but also contacting public officials, attending protests, and getting involved either formally or informally on local

issues. (Appendix A provides a list of the questions used in this paper.)

DEFINING AND MEASURING POLITICAL RESOURCES

We begin by outlining the resources for political participation.

Time and Money

The two prime resources for investment in political participation are time and money. Individuals use time in the service of political action in many ways (e.g., working in a campaign, writing a letter to a public official, attending a community meeting). Money, of course, can be donated to candidates, parties, or innumerable political organizations or causes. We measure money resources by family income from all sources in $10,000 units.[12] We measure the "free" time available for political activity by the hours, if any, left over after accounting for time spent in an average day doing work for pay, doing necessary household work of all sorts, studying or going to school, and sleeping.[13] Time and money differ in significant ways as resources. In comparison with money, time is both more constrained and more equally distributed—everyone has only 24 hours in a day. The upper limit on money, of course, is much less constrained, and differences among individuals can be much larger. Time is constrained in another way that affects the way it is distributed. Time not used today cannot be put in the bank. Money, in contrast, can be accumulated for later use.[14]

Civic Skills

Civic skills—those communications and organizational capacities that are so essential to political activity—constitute a third resource for participation.[15] Citizens who can speak or write well or who are comfortable organizing and taking part in meetings are likely to be more effective when they get involved in politics. The acquisition of civic skills begins early in life—at home and, especially, in school. However, the process need not cease with the end of schooling but can continue throughout adulthood. Adult civic skills relevant for politics can be acquired and honed in the nonpolitical institutions of adult life—the workplace, voluntary associations, and churches. Managing a reception for new employees and addressing them about company benefits policy, coordinating the volunteers for the Heart Fund drive, or arranging the details for a tour by the church children's choir—all these undertakings represent opportunities in nonpolitical settings to learn, maintain, or improve civic skills.

We measured civic skills in several ways. Since communications and organizational skills are acquired in school, we asked an extensive set of questions about educational attainment.[16] From these we constructed an eight-point scale ranging from a grammar school education to a Ph.D. or professional degree.[17] In addition, one particular aspect of educational experience—participation in student government in high school—provides a potentially useful measure of civic skills.[18] We measure this by a four-point scale ranging from no activity to very active. Since facility in expression is central to the ability to communicate effectively, we also use two measures of language ability, testing somewhat different notions of how verbal facility matters. American society puts a premium on speaking and understanding English, so we asked our respondents what language they ordinarily speak at home: English (scored as 3), a combination of English and another language (2), or another language (1). We thought that those who did not speak English at home would be less likely to find it easy to participate in politics. In addition, to assess verbal ability, we used the score (number of items correct) on a 10-item vocabulary test that has been used regularly since 1974 on the National Opinion Research Center's General Social Survey.[19] For the 1% of our sample interviewed in Spanish, this test was administered using Spanish words.[20] Alwin notes that this vocabulary score is strongly related to schooling (a correlation of .51 in our sample and .54 in Alwin's), but such scores also "correlate highly with tests of general intelligence—usually .8 or higher—and are good indicators of scores on the verbal component of standard tests of general intelligence" (1991, 627).[21] Years of education and vocabulary score are included in our model to show that both schooling and general intelligence matter for political participation and to provide additional support for our contention that civic skills matter when other factors are controlled.

To measure civic skills developed as an adult, we asked those with jobs and those who reported activity in a church or an organization[22] whether as part of their involvement in each sphere, they had, in the past six months, engaged in the following activities: written a letter, gone to a meeting where decisions were made, planned or chaired a meeting, or given a presentation or speech. In each realm (on the job, at church, or in nonpolitical voluntary organizations) we measured civic skills as the number, ranging from zero to four, of these *skill-acts* undertaken by the respondent in the last six months. Those who have an opportunity to do these things in a nonpolitical setting would, presumably, be more willing and able to do them in a political context. In this sense, we expect that these competencies can be used as independent variables to explain political participation. Table 1 presents, both for all respondents and for only those involved in each arena, the frequency with which individuals engage in activities that we expect to produce civic skills. People are most likely to engage in skill-acts at work: 53% of the sample practiced at least one skill on the job in the six months before the survey. Yet 33% of the population engaged in skill-acts in nonpolitical organizations and 20% in churches or synagogues.

TABLE 1

Percent Reporting Various Activities in Nonpolitical Settings

	ON THE JOB		IN NONPOLITICAL ORGANIZATIONS		IN CHURCH OR SYNAGOGUE	
CIVIL SKILL	% OF WHOLE SAMPLE	% OF WORKING[a]	% OF WHOLE SAMPLE	% OF ORGANIZATIONALLY INVOLVED[b]	% OF WHOLE SAMPLE	% OF CHURCH MEMBERS[c]
Attend a meeting where decisions are made	48	70	30	41	18	27
Plan such a meeting	24	36	14	19	9	13
Write a letter	40	58	15	16	6	9
Make a speech or presentation	28	40	15	18	10	15
At least one of the above	53	78	33	44	20	29

Source: Citizen Participation Study.
[a]Working full- or part-time; with a job but not at work due to vacation, illness, etc.
[b]Member of or contributor to an organization that does not take stands on public issues.
[c]Member of or regular attender of services at a local church or synagogue.

THE DISTRIBUTION OF POLITICAL RESOURCES

As we shall demonstrate, the presence or absence of resources contributes substantially to individual differences in participation. Resources are, in turn, not equally distributed; some socioeconomic groups are better endowed than others. This makes a resource model useful not only for explaining individual differences in political activity but for explaining differences in activity among politically significant social groups, especially differences along SES lines. However, resources vary in the extent to which they are stratified by SES, that is, in the extent to which they are differentially available to those high on the SES scale.

Money and Time

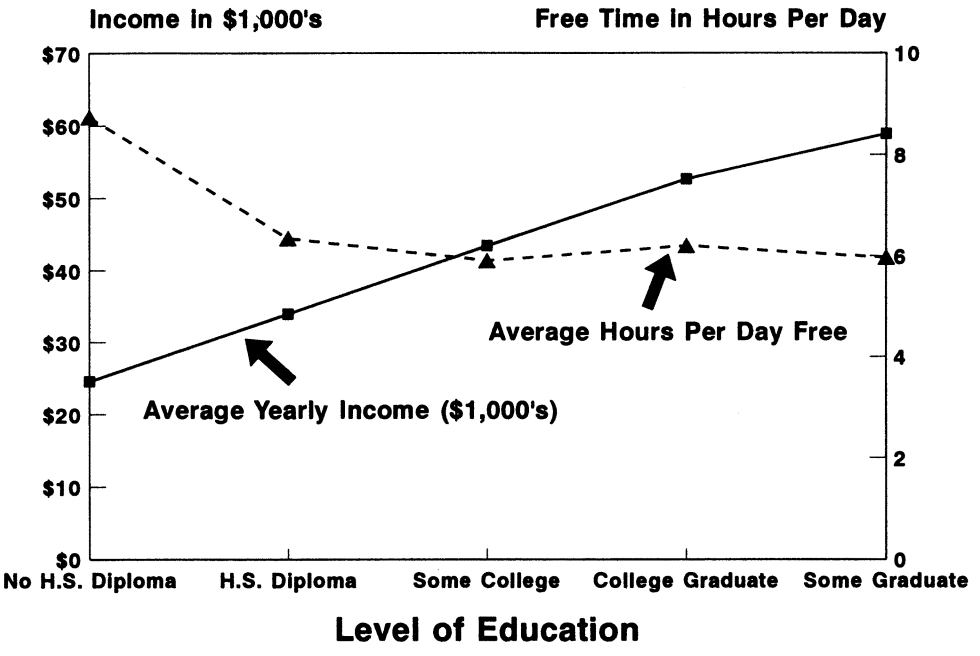
If you want to give money, you must have money; if you want to contribute time, you must have some free time. Income, of course, is one of the components of socioeconomic status. By definition, it is concentrated in the hands of the wealthy; we also know that those with more education and higher-status jobs command a disproportionate share of the wealth. We know less about the distribution of free time in relation to SES. On one hand, the rich might have more free time because they can hire others to do what most people have to do for themselves. On the other, the rich might have less free time because they accumulate their wealth by logging long hours at work. These conjectures reflect the contradictory predictions of economic theory, which holds both that an income effect would produce more leisure for the rich because they are able to purchase it and that a substitution effect would produce less because their higher wages raise the opportunity cost of free time (Mincer 1962). In fact, neither conjecture is correct: free time and SES are unrelated.

Figure 1 shows the very different relationship between money and SES (as measured by educational attainment) and time and SES. As expected, education and family income are strongly related. There is no such consistent pattern of stratification when it comes to time. Those in the least well educated group—a disproportionate number (51%) of whom are retired, keeping house, or permanently disabled—have on average more free time. Beyond this, however, greater educational advantage is associated with neither more nor less free time. If we were to consider another aspect of SES—position on the occupational hierarchy—the contrast between money and time would appear even more clearly. If working respondents are stratified into job levels based on how much formal education and on-the-job training their jobs require, we find, not surprisingly, that family income rises sharply with each step on the occupational ladder. However, this pattern is not repeated for free time: those in the least skilled jobs have almost exactly the same number of hours free time per day as do those in the highest level jobs.

What then affects the availability of free time? The answer is simple. The factors that affect free time are "life circumstances": having a job, especially a full-time one; having a spouse with a job; and having children at home, especially preschool children—all diminish the amount of free time available. Those working full-time report, on average, six fewer hours free per day; a working spouse reduces free time by about three hours; preschoolers at home reduce free time by about three hours.[23] This finding—that in contrast to money, which is of a piece with SES, the amount of free time available varies with life circumstances rather than with socioeconomic advantage—has implications for American politics. To the extent that citizen politics in America relies increasingly on modes of activity that use money rather than time as a resource, the edge enjoyed by the already-advantaged is enhanced.

FIGURE 1

Educational Stratification of Income and Free Time



Civic Skills

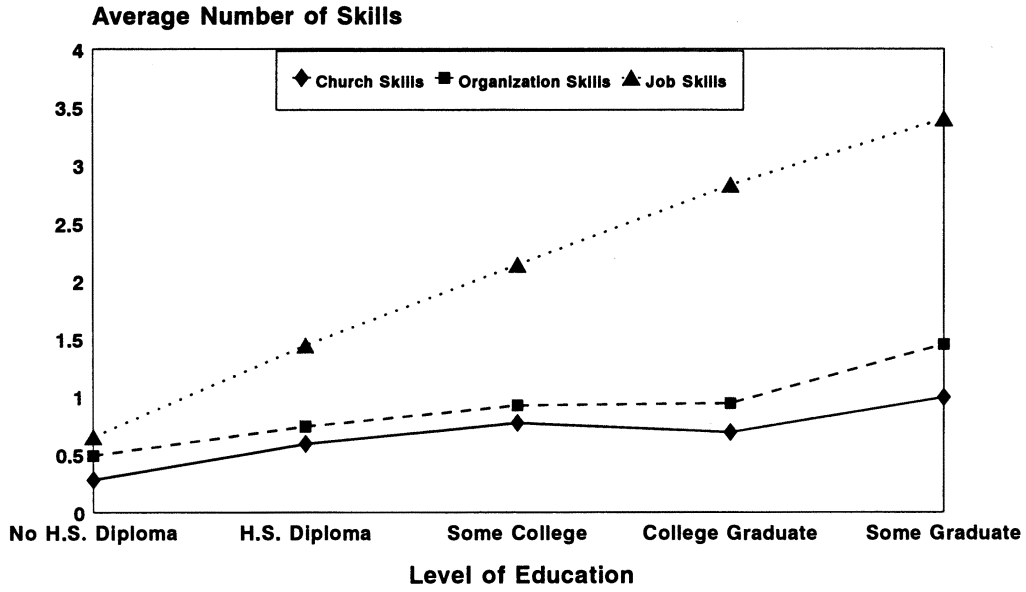
Civic skills are, in general, more likely to be possessed by the socioeconomically advantaged. Those with higher levels of education are more likely to speak English at home, to have better vocabulary skills, and to have taken part in high school government. Civic skills acquired as an adult at work, in organizations, and in church are also stratified by education. The stratification of civic skills by education, however, varies greatly across jobs, organizations, and religious institutions. Figure 2 shows the mean number of skills exercised in each of the three institutional settings for those at various levels of education. (The pattern would be the same if the measure of SES were income or occupational level.) All respondents are included in the computation of average skills whether they are involved in a particular setting or not (i.e., whether they have jobs, are affiliated with an organization, or belong to a church or not). Those who never finished high school receive few skill opportunities anywhere. Those with at least a high school diploma have more opportunities to practice civic skills on the job than in organizations or in church, presumably reflecting the fact that most people spend more time working than engaging in organizational or church activities. The net result is that in providing opportunities to exercise skills, workplaces discriminate most—and churches least—on the basis of educational attainment.

The process by which these results are achieved varies across these institutions. The opportunity to practice civic skills in an institution requires both *involvement* in the institution and a setting that provides the *chance* to practice some skills. The stratification by education for job-based civic skills comes primarily from differences in chances to practice skills and not from differences in attachments to the labor force. Those with higher education are only slightly more likely to be working than the less well educated, but among those with jobs, the better-educated are much more likely to have chances to practice skills. The stratification of skill opportunities in voluntary associations is somewhat different. The advantage of the educated in this respect comes from the fact that those with high levels of educational attainment are considerably more likely than those at lower levels to be involved with an organization. Among the involved, however, there is less difference among educational groups in the practice of civic skills. Finally, churches are most egalitarian in the civic skill opportunities they afford, and they are egalitarian in two ways: (1) there is no consistent relationship between education and church membership: those with the least education are as likely as those with the most to attend church regularly; and (2) among those who attend church, there is relatively little stratification by education in terms of who makes a speech or organizes a meeting.

The differences across the three institutions are significant for the stratification of participation in American politics. The workplace reinforces initial socioeconomic advantage as the well-educated compound their advantage by developing skills on the job. Since the educated join more organizations, voluntary associations also reinforce earlier advantage. However, organizations offer those affiliated

FIGURE 2

Average Civic Skills Acquired on Job, in a Non-Political Organization, and in Church



Among all respondents at each educational level

with them chances to practice skills with relatively little regard for educational attainment. Finally, because church attendance is not stratified by SES and because, within the church or synagogue, education plays a smaller role in who is active, religious institutions are the most egalitarian in terms of civic training. Compare, for example, the skill-developing opportunities in *workplace versus church* for a Catholic with a professional or managerial job (53% of whom graduated from college) and a Baptist with a clerical or blue-collar job (only 3% of whom graduated from college). The Catholic professional or manager practices an average of 2.89 skills on the job but only .22 skills in church. Compared to the Catholic professional or manager, the Baptist clerical or blue-collar worker averages fewer skill acts (only 1.11) on the job but much more at church (.84).

To summarize, we have considered several kinds of resources. These resources are distributed differentially across socioeconomic groups. If these resources, acquired outside of politics, affect political activity, we will have a potent explanation of the origin of disparities in participation across social groups. If the various resources are differentially useful for alternative political activities, our model will also explain why some forms of involvement are more stratified than others.

Figure 3 displays the resource model schematically. We shall not discuss it fully here but refer to it as we move through our argument. At this point, let us simply indicate that Figure 3 summarizes the way in which involvement with institutions—first in school and later on the job, in organizations, and in church—provides opportunities to acquire the resources relevant to political activity. Civic skills are a central—and, we believe, innovative—component of our model. They are also somewhat problematic. We begin our analysis of the resource model with a closer look at civic skills.

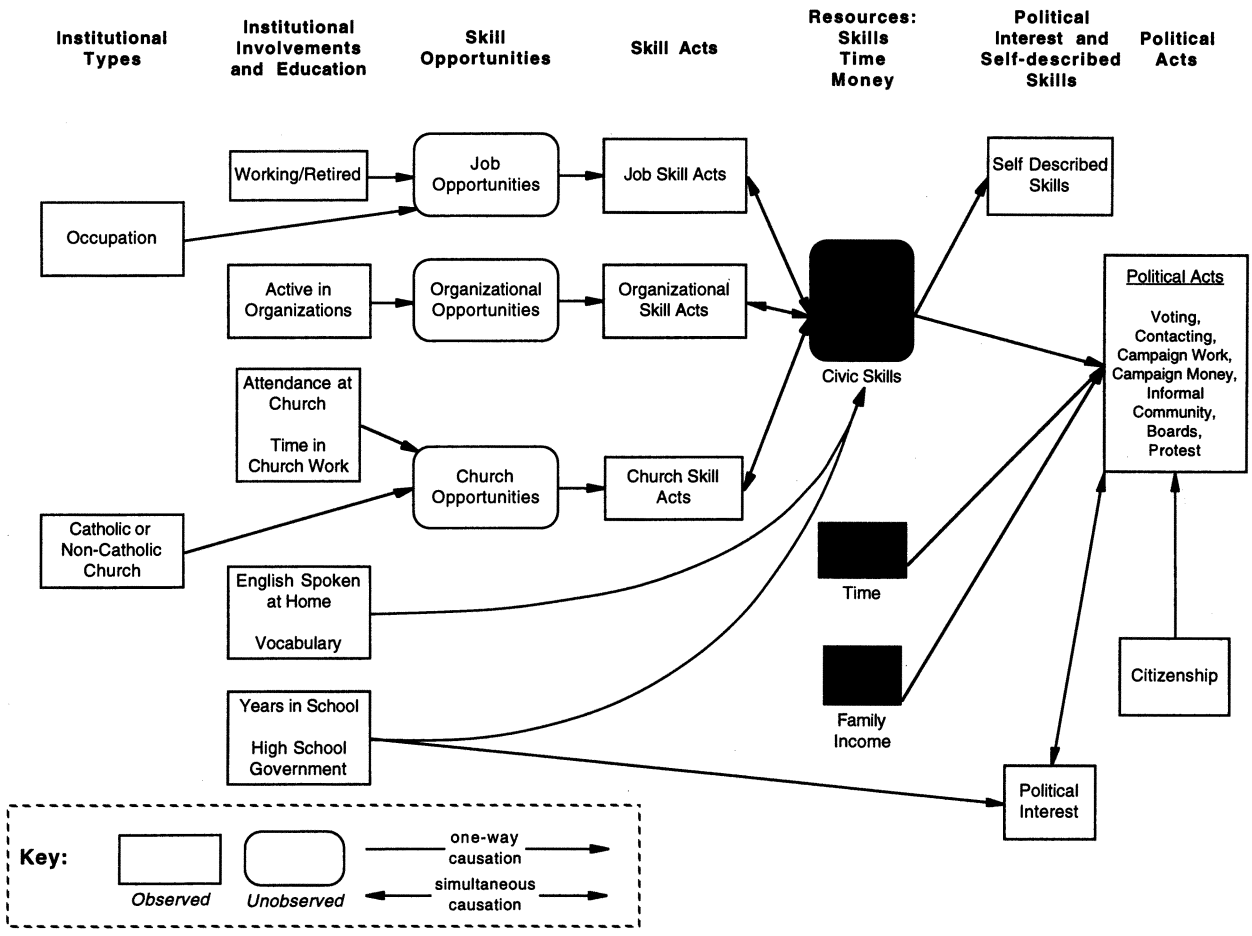
DEVELOPING CIVIC SKILLS: A LEARNING MODEL

Our measures of civic skills—educational attainment, participation in high school government, language ability, and reports on activities in adult institutions—are a disparate and somewhat indirect set. Therefore, we need to demonstrate that these are all indeed measures of civic skills and that these skills are developed or perfected in the institutions we describe. If these conditions hold, we will have a powerful set of variables that can be used to explain political activity. The task is somewhat easier for civic skills learned in the home and in school. It seems reasonable to suppose that education, language abilities, and participation in high school government constitute real measures of skills that can facilitate political participation. And we know that they are temporally prior to adult engagement in politics. However, we wish to demonstrate that civic skills are also developed in adulthood and that these skills then foster political participation.

There are three obstacles to making this case for civic skills in general and for adult civic skills in particular. First, there is a *measurement problem*. We

FIGURE 3

The Resource Model



measure civic skills acquired before adulthood indirectly by asking about educational experiences and language abilities. It is not certain that those with high levels of educational attainment, experience in high school government, high vocabulary scores, or the ability to speak English have the capacity to communicate in political settings or to organize political activities. A similar but more severe problem applies to civic skills developed in adulthood. It seems likely that respondents who report engaging in an activity such as writing a letter or organizing a meeting have the skill to do so. However, the converse is not necessarily true; all those with the skill to write letters do not necessarily do so at work. Our measure of adult civic skills, then, really measures engaging in activities that require skills, what we shall call *skill-acts*. Our claim that skill acts measure civic skills amounts to arguing there must be at least some correlation between civic skills and the three skill-acts variables at the center of Figure 3.

Second, correlation is not enough. Even if some measure of civic skills is correlated with skill-acts, there might be a *spurious correlation problem*. A third variable (e.g., a general taste for activity) may lead individuals both to practice skills in nonpolitical institutions and to have civic skills. There may be no causal relationship between skill-acts and civic skills, and we should not draw causal arrows between skill-acts and civic skills as we do on Figure 3. Finally, there is the *locus of development problem*, the issue of where skills are developed. Even if the correlation between skill acts and civic skills is not the result of some third variable, the relationship may be due to the fact that civic skills lead to the performance of skill-acts, not vice versa. Individuals may perform skill-acts in a particular institutional setting because they brought skills with them, perhaps innate skills or skills learned elsewhere. If this is the case, civic skills will not be developed in nonpolitical institutions through skill-acts. The exercise of skill-acts in a particular institutional setting will not imply that civic skills are obtained or enhanced in that setting.

In short, to establish the proposed links between civic skills and political participation we must dem-

onstrate that our measures indeed measure real skills; that there is no unspecified additional factor (e.g., a taste for involvement) responsible for both the performance of skill acts and political activity; and that these skills were developed or enhanced in the nonpolitical institutions where they are exercised.

One response to the measurement problem is that our measures have a good deal of face validity. This is certainly the case for education and language ability. It also applies to the exercise of skills in adult institutions. Because those who perform a skill-act are presumably learning a new skill or maintaining and improving a preexisting one by practicing it, the measure of skill-acts is very likely to be an indicator of the existence of civic skills.[24] Moreover, because we ask about skill-acts in three major secondary institutions, we capture the main opportunities people have to practice such skills. Despite these arguments in their favor, the questions about skill-acts have what might seem at first to be a disconcerting feature. Responses to them are not all highly correlated across the three domains of job, organization, and church.[25] How can these questions measure a coherent one-dimensional concept like civic skills if a person who reports performing skill-acts in one domain is not very likely to do so in another? Answering this question requires some careful modeling of how opportunities to exercise skills interact with the skills individuals already possess to produce the kinds of skill-acts our respondents report.

With some extensions, a model can also provide the basis for meeting the other two problems we have delineated. We must show that the performance of skill-acts in each domain represents an *exercise* of civic skills (not merely the reflection of some third variable) and that those who perform skill-acts thereby *develop* civic skills as well. In other words, people use preexisting civic skills (education-based organizational and communications skills as well as innate skills) to perform skill-acts. In turn, when they perform skill-acts in one institution they increase their skills so that they can engage in still more skill-acts in that or some other domain. Establishing this kind of reciprocal causation is usually very difficult in cross-sectional studies without making some arbitrary "exclusion" restrictions on which variables affect other ones but we have leverage on this problem because we have asked people about their activities in three different domains that cover most of the major opportunities adults have to gain skills. Within each domain, it is obvious that the type of institution and the level of involvement in it should affect skill-acts in that domain but not in the other domains. This provides some obvious exclusion restrictions.

Figure 3 displays what we believe to be the reciprocal causation between civic skills and skill-acts in the three domains of work, organizations, and church. We propose that an individual's preexisting *civic skills* represented by the shaded rounded box at the upper right of Figure 3 combine with *opportunities to practice skills* in each domain listed in the third column to produce the *skill-acts* listed in the fourth column. For example, such preexisting civic skills as the ability to write a letter combine with opportunities on the job to write letters to produce job skill-acts captured by our questions. In turn, these skill-acts (as shown by the arrow going from skill-acts to civic skills) develop and enhance civic skills.

As indicated by the rounded boxes on Figure 3, we do not have direct measures for several of the key variables, skill opportunities, and civic skills. Therefore, we must find proxies for them. Whether an individual gets the opportunity to practice a civic skill at work, in an organization, or at church depends upon several things. Obviously, it depends upon *the institutional involvements* listed in the second column in Figure 3—having a job or being affiliated with a voluntary association or religious institution. We measure workplace involvement by a three-point scale of employment status (not working scored as 0, part-time as 1, and full-time as 2); attachment to organizations by a three-point scale (ranging from no involvement, scored as 1, to attending meetings, scored as 3); and involvement in religious institutions by a nine-point measure of frequency of religious attendance and a six-point measure of the number of hours devoted to church activities. Beyond institutional involvements, the opportunity to practice skills also depends on the *type of institution* listed in the first column in Figure 3. Occupations, voluntary organizations, and churches differ substantially in the extent to which they afford opportunities to exercise skills germane to politics. Someone who works in a consulting firm rather than a dry-cleaning shop, who is involved in a fraternal organization rather than softball league, or who is active in a congregationally organized, rather than a hierarchically organized, church is more likely to have an opportunity to develop civic skills. For jobs we describe the type of institution by a nine-point occupation scale[26] in which higher values indicate higher-status jobs, which presumably provide more opportunities for skill-acts, and for religious institutions we use a dummy variable for belonging to a Catholic church, which provides fewer opportunities for skill-acts, presumably because of its hierarchical structure.

Obviously, it would have been preferable to have direct measures of *civic skills*, but we could hardly follow our respondents around to observe their skill in making public statements or organizing meetings. As substitute measures, we use our respondents' subjective reports of their civic skills. *Self-described skills* (the box in the upper right-hand corner of Figure 3) are measured by questions as to whether respondents believe they could write a convincing letter on a public matter, could talk well at a meeting, and would be taken seriously if they made a public statement. These three items are correlated about .32 with each other and form a reasonable eight-point scale. There are, however, potential problems with this measure. For one thing, it raises the same questions we discussed earlier with respect to measures of political efficacy (which, in fact, it resembles); that is, high self-assessments of civic skills could be the result

as well as the cause of political activity. This limits the usefulness of the measure for explaining political participation but does not affect its usefulness for understanding the relationship among civic skills, skill-acts, and opportunities to exercise skills.[27] A second potential defect is of greater concern: people's self-assessments are unlikely to be fully accurate as measures of their real talents. At worst, however, the measurement error inherent in respondents' subjective reports of their civic skills would probably depress our estimates of the relationships between civic skills and skill-acts. Therefore, in this context, self-described skills are a reasonable measure of civic skills.

Estimates of the learning model for civic skills are in Appendix B. We show that there is a single dimension of "civic skills" underlying the various measures of civic skills—the three measures of adult skill-acts, the two educational experiences, and language ability. Moreover, people develop civic skills through their involvement in the institutions of adult life. Engaging in skill-acts (planning meetings, making speeches, etc.) develops civic skills that are potentially transferable to politics. We also show that the nature of the institution itself affects the number of skills exercised there—even after a number of individual characteristics that might affect the performance of skill-acts have been taken into account. This supports the notion that we are observing a real process of skill development within institutions, not merely the consequences of the attributes that people bring with them. The analysis in Appendix B demonstrates in a concrete way how churches, jobs, and organizations can serve as potential training grounds for political activity and how nonpolitical choices about jobs, organizations, and church attendance may affect political life. To demonstrate that they do, in fact, have such an effect is our next, and most fundamental, task.

POLITICAL PARTICIPATION AND RESOURCES

We have shown that accidents of birth combine with choices about jobs, family, and organizational and religious involvement to determine the resources of time, money, and skills that individuals bring to politics. We now inquire about the links between these resources and political activity. We construe political participation quite broadly and include the following in the scale:

voting in the 1988 presidential election (70% of the population)
contacting at federal or local level in last year (34%)
giving campaign money between January 1988 and the interview in Spring 1990 (24%)
working informally with others on community problems in the last year (17%)
campaign work between January 1988 and the interview in Spring 1990 (9%)
protesting during the last two years (5%)
board membership or regular meeting attender during last two years (5%)

These participatory acts vary along many dimensions. Some require the investment of time, some money. Some require skill, others do not. Some are ongoing, others episodic. And some are considered mainstream, others less so. Our survey has questions about several other activities such as voting in local elections, participating in political organizations, and phoning in to radio talk shows, but the activities listed above cover the major dimensions of political activity. Our survey also includes detailed information on the time and money devoted to political acts. Later we will use this additional information, but for the moment, we score each of these seven activities as 1 for people who engage in it and 0 otherwise. Then a simple sum[28] of the number of acts yields an average of 1.63 activities in the sample (with a standard deviation of 1.35). This suggests that the average person votes and performs part of another act. In fact, the frequency distribution of acts is skewed with 21% performing no acts, 33% one, 21% two, 14% three, 7% four, 3% five, and 1% or less six or seven acts.[29] Thus, three-quarters of the population performs between zero and two acts, and the remaining quarter is concentrated at three or four acts.

Estimating the Model

We presented the complete resource model in Figure 3, in which such resources as free time, family income, and civic skills, along with citizenship status and political interest, explain the level of political participation. We do not observe civic skills directly but have shown that they can be represented by skill-acts, language abilities, and formal educational experiences. This suggests that we can use ordinary least squares (OLS) to regress political acts on free time, family income, skill-acts, language abilities, and formal educational experiences. Proceeding in this way, however, depends upon our faith in the exogeneity and reliability of the resource measures and our willingness to make assumptions about what affects political participation. We have argued that one of the advantages of a resource explanation for political participation is that resources result from decisions about life circumstances, jobs, joining organizations, and attending church that are temporally prior to political participation. This seems obviously true for family income and free time, and it seems very likely true for adult civic skills developed at work, in church, and in nonpolitical organizations. If so, resources can be considered exogenous and OLS can be used to estimate the resource model.

This leaves us with one possible problem. If some omitted variable (e.g., a taste for participation) is correlated with both the accumulation of resources (most likely civic skills as measured by skill-acts) and political participation, then ordinary least squares will yield biased estimates. There are good reasons to

believe that this might not be much of a problem in our model. First, the inclusion of participation in high school governance probably helps control for preexisting tastes for political activity. Second, we do not believe that the process that leads to involvement in a church, for example, has much to do with a taste for political participation. Yet we do believe that psychological engagement with politics matters for political participation, so that it seems sensible to add an additional control for *tastes* in the participation equation by including the sum of interest in local and national political affairs.[30] This has the virtue of allowing us to compare the relative importance of resources and psychological engagement. It has the defect, however, that it may introduce another problem. As we have discussed, political interest may be as much an effect as a cause of political activity: it may be endogenous. This may require using two-stage least squares (2SLS) to correct for biases created by the endogeneity of political interest.

Ordinary Least Squares Estimates

Before going to 2SLS estimates, it is instructive to consider the OLS estimates in Table 2, which reports regression coefficients, standard errors, and beta weights[31] for the impact of various resources in a linear model.[32] The only difference between the left- and right-hand set of columns is the inclusion of political interest in the latter equation. The results clearly demonstrate the importance of resources. Except for speaking English at home, the measures of civic skills acquired early in life (education, participation in high school government,[33] and vocabulary ability) are positively related to political activity. When citizenship is left out of the equation, speaking English at home appears to have an impact, but our analyses suggest that this is merely because it spuriously picks up the impact of citizenship with which it is correlated at .48. Citizenship must be included in the equation because it is a prerequisite for voting and might affect other kinds of participation as well. Civic skills acquired as an adult in nonpolitical institutions are also significant, making clear the role of the social institutions of civil society in creating a competent and active citizenry. Family income also matters a great deal. The only resource measure that does not have a significant effect is free time. As we shall see, when we purge free time of error, it too emerges as a significant factor in explaining political activity.

Now consider the right-hand columns reporting the equation that includes political interest. Note that with the exception of retirement, neither the degree of institutional involvement nor the type of institution is more than modestly important in determining participation. Time spent in educational, charitable, or social activities associated with a church has a small impact that is barely statistically significant but none of the rest of the institutional involvements has a statistically significant impact on political participation. Simply being involved with nonpolitical institu-

TABLE 2

Determinants of Overall Political Participation: Ordinary Least Squares Estimation

	OVERALL POLITICAL PARTICIPATION MEASURE			
	MODEL W/O INTEREST		MODEL WITH INTEREST	
INDEPENDENT VARIABLE	COEFF. (SE)	BETA WT.	COEFF. (SE)	BETA WT.
Political Interest	—	—	.261** (.015)	.304
Adult skill-acts				
Job	.087** (.022)	.101	.057** (.021)	.066
Organizational	.137** (.029)	.106	.123** (.027)	.095
Church	.118** (.033)	.088	.096** (.031)	.072
Time and money				
Free time	.000 (.007)	.002	.004 (.006)	.013
Family income	.051** (.009)	.112	.047** (.008)	.104
Institutional involvements				
Working	−.045 (.038)	−.030	−.008 (.036)	−.006
Retired	.388** (.090)	.090	.313** (.085)	.073
Organizational	.070 (.036)	.043	.031 (.034)	.019
Attendance at church	.010 (.011)	.021	.001 (.010)	.002
Time in church work	.049 (.028)	.043	.053 (.027*	.047
Institutional types				
Occupation	.020 (.011)	.040	.021* (.010)	.042
Catholic church	.061 (.055)	.020	.086 (.052)	.028
Formal education				
Years of education	.145** (.021)	.164	.120** (.020)	.136
High school governance	.178** (.025)	.130	.118** (.024)	.086
Language ability				
Speaking English at home	.045 (.077)	.011	.056 (.073)	.014
Vocabulary score	.062** (.013)	.099	.032* (.012)	.051
Citizenship	.889** (.158)	.109	.790** (.150)	.097
Constant	−1.380** (.193)	—	−2.281** (.190)	—
R^2	.301		.377	
Sample size	2,438		2,429	

Source: Data from Citizen Participation Survey.
Note: COEFF. refers to the regression coefficient and SE to its standard error. BETA WT. refers to the standardized regression coefficient.
*$p \leq .05$.
**$p \leq .01$.

tions does not foster political activity. What counts is what happens there—in particular, whether there are opportunities to learn, improve, or maintain skills. This result elaborates in an important way our understanding of the role of nonpolitical institutions in stimulating political activity.

That political interest is related to political activity is, in itself, not very illuminating. As we have pointed out, political interest is likely to be a consequence as well as a cause of political activity. Even if we consider it only as a cause of activity, however, it is hardly astonishing that those who are interested in politics are also active.[34] What is important is that its inclusion does not supplant the effects of civic skills and family income. The relationship between resources and activity remains even with this powerful predictor of political activity in the equation.

Problems of Endogeneity

There is still room for worry, however. If political interest is endogenous, then the OLS estimates may be biased. Even if political interest is not endogenous, OLS estimates may still be biased if some unmeasured variable not captured by political interest affects both the accumulation of resources and political participation.[35] One approach to this problem (Achen 1986) is to find exogenous variables that explain skill-acts but are not also proxies for the tastes that directly cause political participation. These can then be used as instrumental variables to purge the measures of civic skills of this taste factor.

Two-stage least squares is the most efficient method for combining the instrumental variables that we need for civic skills and political interest. It is also useful for correcting for error in free time and income.[36] It requires the availability of good instruments—exogenous variables that are highly correlated with the included endogenous variables. It also requires that enough instruments be excluded from each equation to produce identification. Because we have a theory in which institutional involvements and institutional types have no direct impact on citizen participation (see Appendix B), we can use these variables as instruments in the participation equation. After all, our theory says that institutional involvements and types should be omitted from the participation equation. One might, however, wonder whether institutional involvements might also proxy a taste for participation. This suggests that it would be interesting to include these measures in the equation to see if they have an impact beyond resources. Unfortunately, this may leave us with a meager and weak set of instruments.

Our solution is to proceed in two complementary ways. We use 2SLS to estimate a model in which institutional involvements are excluded and used as instruments. Then we use 2SLS to estimate a model that excludes institutional type and religious attendance to ensure identification but that includes measures of institutional involvement for jobs, organizations, and church. These two approaches and the OLS results converge on a common interpretation in which resources and psychological engagements drive political participation.

Two-Stage Least Squares Estimates

Whereas the OLS model incorporates the possibility of direct effects from institutional involvements and types to political participation, our first 2SLS model assumes that these paths are zero. We assume this because our resource model suggests that these paths should be zero. This provides a substantial set of variables that were in the OLS equations but are excluded from the 2SLS model and used as instrumental variables: *working, retired, occupation, organizational involvement, attendance at church, time devoted to church work,* and *Catholic.* In addition, we include in the equation (and treat as exogenous) *family income, participation in high school governance, speaking English at home, formal educational experience, vocabulary score,* and *citizenship status.* This means that the three skill-acts measures and free time are treated as endogenous. Finally, we also use a set of individual characteristics that are clearly exogenous as instruments: *race* (African–American and all others), *ethnicity* (Latino and all others), *parents' education average* on a nine-point scale, *gender, number of children at home,* whether any children are of *preschool age,* and whether the *spouse works* full-time, part-time, or not at all.[37] For the equation with political interest in it, we use one additional instrument: the respondent's *political interest* as reported on a screener interview completed 6 to 12 months before the final interview.[38]

Table 3 presents data from a 2SLS analysis in which institutional involvements and types (as well as the set of demographic attributes and life circumstances listed) are used as instruments but excluded from the equation. This approach should avoid the problem of possible bias in the OLS estimates. The result for the resource model are very similar to what we found in Table 3 except that free time, now that it is purged of error, is also significant. Somewhat surprisingly, political interest and adult civic skills matter even more in the 2SLS equation than in the OLS version. We believe this is because political interest and adult civic skills are measured with error and 2SLS corrects not only for endogeneity but also for unreliability.[39] In this case, it appears that unreliability has depressed the OLS estimates.

The similarity of the coefficients for the three kinds of adult civic skills is especially striking. If the skill-act measures really measure skills and if the resources model is correct, then we would expect that skills exercised at work, in nonpolitical organizations, and in church would be transferable to politics at about the same rate. If either of these hypotheses fail, it would seem unlikely that the coefficients would be equal to one another. A test for equality of the coefficients strongly supports the conclusion that the three coefficients can be treated as equal to one another.[40] We impose this restriction on the skill-acts in the third column, and this shows that simply

TABLE 3

Determinants of Overall Political Participation: Two-Stage Least Squares Estimation

	OVERALL POLITICAL PARTICIPATION MEASURE			
	WITH ADULT CIVIC SKILLS SEPARATE		WITH SUM OF ADULT CIVIC SKILLS	
INDEPENDENT VARIABLES	COEFF. (SE)	BETA WT.	COEFF. (SE)	BETA WT.
Political interest	.420 (.030)	.489	.399** (.031)	.465
Adult skill-acts				
Job	.163** (.047)	.189	—	—
Organizational	.091** (.040)	.070	—	—
Church	.177** (.036)	.131	—	—
Sum of adult civic skills	—	—	.154** (.021)	.303
Time and money				
Free time	.044** (.012)	.150	.042** (.008)	.142
Family income	.037** (.009)	.082	.032** (.008)	.072
Formal educational experiences				
Years of education	.089** (.023)	.101	.079** (.020)	.090
High school governance	.073** (.026)	.053	.070** (.025)	.051
Language ability				
Speaking English at home	.034 (.076)	.009	.039 (.074)	.010
Vocabulary score	.010 (.013)	.016	.011 (.013)	.017
U.S. citizenship	.699** (.156)	.085	.686** (.153)	.084
Constant	−2.862** (.202)	—	−2.721** (.200)	—
R^2	.337		.345	
Sample size	2,427		2,430	

Source: Data from Citizen Participation Survey.
Note: COEFF. refers to the regression coefficient and SE to its standard error. BETA WT. refers to the standardized regression coefficient. Instrumental variables for 2SLS estimation are working at job, retired or not, occupational type, degree of organizational involvement, attendance at church, time in church activities, Catholic, years of education, involvement in high school governance, speaking English at home, vocabulary score, family income, black, Hispanic, education of parents, number of kids, preschool kids, sex, spouse work full-time, spouse work part-time, citizen, and interest in politics from the screener. The endogenous variables are therefore political interest, job skill-acts, organizational skill-acts, church skill-acts (or the sum of these three), and free time.
*$p \leq .05$.
**$p \leq .01$.

taking the sum of skill-acts yields a highly significant coefficient with a beta weight (.303) roughly comparable to the impact of political interest (.465).

Although we do not report the details here, we have also estimated this model with institutional involvements (working, retired, organizational involvement, attendance at church, and time in church activity) included as independent exogenous variables meant to represent tastes for participation. The sum of skill-acts is still highly significant, with a t-statistic of 3.46 and a beta weight of .394. Moreover, the coefficients for the institutional involvements in the equation are, with the exception of the effects of being retired and working, insignificant or of the wrong sign.[41] This suggests, once again, that it is civic skills that matter for political participation, not institutional involvements. In sum, our several modes of estimation show political resources to be potent for political activity.[42]

We can still conjure up other possible nuisances that could explain our results, but we believe that we have tried systematically to eliminate as many alternative explanations as possible with the data and techniques at hand. We show, for example, that skill-acts measure civic skills, that skills are developed in adult institutions, that civic skills predict participation even with controls for political interest and other confounding variables, and that a theoretically generated set of instrumental variables produce the same result. In addition, we have tried systematically, with zeal and thoroughness, to make our results evaporate by estimating many other models. For example, we have included age, length of residence, intensity of party identification, and many other variables in other specifications not reported here, and tried many nonlinear specifications. The results we report are typical of what we get; and in no case have we been able to eliminate—or even reduce much—the strong and significant results of civic skills and money.[43]

POLITICAL RESOURCES AND SPECIFIC POLITICAL ACTS

The resource model works very well for an overall measure of political participation. However, a summary activity measure presumably masks significant differences among political acts, differences that might be related to resources. We distinguish three kinds of activity: acts requiring an investment of money (through contributions to campaigns and political causes); acts requiring an investment of time (by, e.g., working in a campaign or on a community issue, taking part in a protest, contacting an official); and voting. We would expect these to differ in their resource requirements. Making a contribution obviously demands money but should require little in the way of free time and may not require skills. The time-based acts obviously demand some free time and probably require, on average, a higher level of civic skills. As the easiest political act, voting ought not to require much in the way of resources except, perhaps, some free time to get to the polls. Political

interest might be especially important for voting because there are so few concrete payoffs to voting.

Voting

We begin with what is seemingly the least demanding form of political activity, voting. To construct the dependent variable, we combine two questions—one each about how often the respondent votes in local and national elections—to yield a nine-point scale. To simplify the presentation of the effects of the independent variables, we combine the three adult civic skills measures into one measure by simply taking their sum for each person.[44] The left-hand columns of Table 4 presents the results of a 2SLS analysis in which we regress the nine-point voting scale on average adult civic skills and other variables in the resource model. We use the same instruments as before. Political interest has by far the most substantial impact, with free time and citizenship also significant.[45] (The beta weights are .54, .23, and .15, respectively.) Income has no impact and civic skills have less impact (a beta weight of .21) than they do with the full participation index (where they have a beta weight of .30).

A consistent finding in the literature is the substantial impact of education on voting (Wolfinger and Rosenstone 1980; Teixeira 1992). Consequently, the statistically insignificant and incorrectly signed impact of education on turnout is especially surprising, but we believe that it is correct. Because past work has not treated political interest as a possibly unreliable and endogenous measure, we believe it has substantially underestimated the impact of interest and overestimated the direct impact of education. Indeed, we have replicated our results using National Election Studies data and validated and self-reported votes.[46] This does not mean, however, that education is unimportant. When we regress political interest on formal educational experiences and language abilities, we find that the impact of education on voting is funnelled entirely through political interest. Educational attainment (beta = .17), participation in high school government (.19), and vocabulary (.17) all have an effect on political interest. (The effect on political interest of speaking English at home (.03) is much smaller.) In summary, our work leads to a revised picture of voting as an act that is driven very strongly by political interest and that requires little in the way of money. Indeed, political interest is much more important than resources if our main project is to explain voting turnout.

Money

Our interest, of course, extends beyond voting. Making political contributions is an increasingly important mode of citizen participation (Sorauf 1988). When it comes to explaining contributions, the resource model provides striking results. We asked our respondents whether they had made contributions to electoral campaigns or, in response to direct-mail requests, to any political cause. If they had, we asked how much they gave. By adding the amounts given to campaigns and causes, we develop a measure of the amount donated to politics. The middle columns of Table 4 present the results of a 2SLS analysis in which this variable is regressed on the variables in the resource model. The results are unambiguous: the major determinant of giving money is having money. Years of education also matter, but neither free time nor civic skills[47] affect monetary contributions. Strikingly, even political interest has only a modest impact (beta weight of .08) on the amount donated to politics. In short, it is easy to explain the amount given: a contributor needs money—and little else in the way of civic skills or political interest—to give money.

Time

The impact of resources on the forms of political activity that require giving time (working in a campaign, contacting government officials, protesting, engaging in informal community activity, serving on a local governing board or attending board meetings) is quite different from the pattern we observed for voting or monetary contributions. In the right-hand column of Table 4, we present the results of an estimation of the resource model with the dependent variable as the number of time-based acts performed by the respondent. Political interest clearly matters (beta weight of .33), as does free time (beta of .09). Family income does not matter, but civic skills clearly have a significant impact. Adult civic skills exercised in nonpolitical institutions[48] (beta of .30) and participation in high school government (beta of .09) both matter. Educational attainment has only a weak impact, but this is because so much of its impact is funneled through adult civic skills and political interest. (Educational attainment is correlated at .48 with the average of adult civic skills and at .33 with political interest.)

The contrasting patterns for voting and performing time-based acts, particularly in relation to skills and interest, bear elaboration. Because formal education simultaneously stimulates political interest and inculcates civic skills, both interest and skills have significant positive bivariate relationships with two forms of participation: voting and performing time-based acts. However, these equations demonstrate that while voting appears to require interest but much less in the way of civic skills, time-based acts depend on civic skills as well as interest. In short, education affects voting not so much by imparting skills as by increasing political interest. In contrast, education and participation in high school government have an impact on the performance of time-based acts by enhancing skills.

Free time is also worth more consideration. For each of three of the time-based acts (working in a campaign, getting involved informally on a community issue or problem, and serving on a local community board or attending its meetings), we asked activists the number of hours they give to the activity

TABLE 4

Determinants of Different Types of Acts (Two-Stage Least Squares Estimations)

INDEPENDENT VARIABLES	VOTING (0–8)[a] COEFF. (SE)	VOTING BETA WT.	POLITICAL MONEY ($0–$5,500)[b] COEFF. (SE)	POLITICAL MONEY BETA WT.	ACTS TAKING TIME (0–5)[c] COEFF. (SE)	ACTS TAKING TIME BETA WT.
Political interest	.884** (.065)	.542	16.0* (8.1)	.081	.191** (.023)	.326
Sum of adult civic skills	.200** (.044)	.209	−5.5 (5.5)	−.047	.103** (.016)	.298
Time and money						
Free time	.129** (.018)	.232	3.1 (2.2)	.045	.018** (.006)	.091
Family income	.013 (.018)	.015	34.9** (2.2)	.341	.009 (.006)	.031
Educational experiences						
Years of education	−.042 (.044)	−.025	12.2* (5.4)	.060	.027 (.015)	.045
High school governance	.003 (.054)	.001	5.4 (6.6)	.017	.081** (.019)	.087
Language ability						
Speaking English at home	−.025 (.174)	−.003	−13.3 (19.5)	−.015	.066 (.055)	.025
Vocabulary score	.058* (.027)	.049	.8 (3.3)	.006	−.009 (.009)	−.020
Citizenship	4.110** (.575)	.147	26.1 (40.3)	.014	−.002 (.115)	−.000
Constant	−3.563** (.593)	—	−236.5** (52.5)	—	−1.168 (.149)	—
R^2	.235		.138		.202	
Sample size	2,322		2,430		2,430	

Source: Data from Citizen Participation Survey.

Note: COEFF. refers to the regression coefficient and SE to its standard error. BETA WT. refers to the standardized regression coefficient. Instrumental variables for 2SLS estimation are working at job, retired or not, occupational type, degree of organizational involvement, attendance at church, time in church activities, Catholic, years of education, involvement in high school governance, speaking English at home, vocabulary score, family income, black, Hispanic, education of parents, number of kids, preschool kids, sex, spouse work full-time, spouse work part-time, citizen, and interest in politics from the screener. The endogenous variables are therefore political interest, sum of adult civic skills, and free time.

[a]National and local.

[b]Campaign and mail.

[c]Board or meetings, informal, campaign, contact, and protest.

*$p \leq .05$.

**$p \leq .01$.

each week. When we limit the analysis to the 16% of our respondents who devote an hour or more per week to one of these activities (n = 393), we find a very strong relationship between the total number of hours given and the amount of free time available. Roughly speaking, each additional hour of free time per day leads to about one-third more hour of political activity per week.[49] Thus the amount of free time available seems especially important for the amount of time people give to activities. What we observe, then, is a two-stage process of political activation. Political interest and resources like adult civic skills have a major impact on the *decision* to participate (free time has a minor impact as well), but constraints on free time control the *amount* of the time-based political activity once this decision is made. Interestingly, the pattern for making political contributions is quite different. Income is determinative for the decision to donate, as well as the size of the contribution.

The different effects of political interest, civic skills, time, and money on participatory acts provide part of the explanation for the well-known multidimensionality of political participation (Verba and Nie 1972). Because different acts require different kinds of resources and more or less political interest, they form distinct clusters. Our model provides a way of explaining the existence of these clusters. It also demonstrates why formal education is so highly correlated with virtually every political act. Education affects political participation in at least two separate ways: for some activities, especially voting, education instills political interest and participatory motiva-

tions; for others, especially those that require time, education leads to skills that facilitate activity.[50]

THE IMPACT OF RESOURCES ON POLITICAL ACTIVITY

While it is beyond our scope here to describe the many ways that differences in resources contribute to different rates of participation across groups distinguished by income, race, ethnicity, or other characteristics, we can give a few illustrations of the effects on political activity of changes in resources.

Church Involvement. Consider an otherwise average person who has no involvement with a religious institution. If he or she joins a church and begins to attend services weekly and to devote an additional three hours a week to other church activity, this person will perform approximately two more church skill-acts (for the coefficients for church activity and attendance at church, see Table A-1), which will produce an increase of political acts from the average of 1.63 to 2.0 (see the left-hand column of Table 3). This increase represents over 25% of the standard deviation (1.35) of the summary acts measure.

Income. Consider an otherwise average person whose income goes up by $10,000. The middle columns of Table 4 suggest that in consequence, this person's political contributions will increase over 50% from an average of $66 to $101.

Free Time. Finally, consider the impact of children. If there are preschool children at home, a person loses 3½ hours of free time each day. This means, based upon the preceding analysis, that among those people who are already putting in at least an hour a week in political activities, the addition of preschool children will reduce their total time spent on informal community activity, campaign work, board membership, or attending meetings by about an hour per week.[51]

In each of these cases, the ordinary changes that people experience in their lives (joining a church and attending a Bible-study class, getting a large raise, or having a baby) affect the amount of political resources available and thus lead to significant changes in political participation. Most importantly from the perspective of understanding patterns of participation, changes in life circumstances have different impacts on time, money, and civic skills; and these resources, in turn, have different links to each kind of political act.

CONCLUSION

The model developed here demonstrates that motivations such as interest in politics are not enough to explain political participation. The resources of time, money, and skills are also powerful predictors of political participation in America. A model that includes resources has several advantages in explaining political activity. Resources can be measured more reliably than is possible with the motivations (e.g., efficacy or political interest) that often are used to explain activity. Furthermore, they are causally prior to political activity, deriving from home and school, choices about jobs and family, and involvements in nonpolitical organizations and churches. The civic skills that facilitate participation are not only acquired in childhood but cultivated throughout the life cycle in the major secondary institutions of adult life. In this way, the institutions of civil society operate, as Tocqueville noted, as the school of democracy.

The resource model permits us to go beyond the "standard SES model" in two ways. First, by moving to a more general level and specifying the resources derived from socioeconomic position that can be applied to politics, the model establishes the mechanisms that link SES to participation. In addition, by moving beyond SES and encompassing other resources not based on socioeconomic position (e.g., patterns of religious affiliation or involvement in nonpolitical organizations), we move toward an understanding of the disparities in activity among politically relevant groups distinguished by characteristics (e.g., race, ethnicity, or gender) in addition to SES.

Finally, the resource model illumines American politics. We have seen that different resources are differentially available to various politically relevant groups and differentially critical for various kinds of activity. To give a reductionist version of our findings—political interest is especially important for turnout; civic skills, for acts requiring an investment of time; and money, for acts involving an investment of money. To the extent that money is the least equally distributed resource and to the extent that making contributions has become in recent decades an increasingly important citizen activity, the character of American politics is profoundly altered.

APPENDIX A: THE QUESTIONS

SES and Social Characteristics

Income. Which of the income groups listed on this card includes the *total* 1989 income before taxes of *all members of your family living in your home*? Please include all salaries, wages, pensions, dividends, interest, and all other income. (If uncertain,) What would be your best guess?

Education.

What is the highest grade of regular school that you have completed and gotten credit for? (If necessary, add,) By regular school we mean a school which can be counted toward an elementary or high school diploma or a college or university degree.

Did you get a high school diploma or pass a high school equivalency test?

What is the highest degree you have earned?

Which of the categories on this card best describes the highest educational level (mother/father) completed and got credit for?

Race and Ethnicity. Do you consider yourself Hispanic or Latino? What is your race?

Citizenship. Were you born in the United States? (If *no,*) Are you an American citizen?

Work.

Last week, were you working full-time for pay, working part-time for pay, going to school, keeping house, or something else?
(Before you retired/In the last five years,) did you ever work for as long as one full year?
What kind of work (do you/did you) normally do? That is, what (is/was) your job called? (If necessary, probe,) What (are/were) your main duties?
Here is a list of things that people sometimes have to do as part of their jobs. After I read each one, please tell me whether or not you have engaged in that activity in the last six months as part of your job. Have you

A. written a letter
B. gone to a meeting where you took part in making decisions
C. planned or chaired a meeting
D. given a presentation or speech
E. contacted a government official?

Is your (husband/wife/partner) currently working part-time for pay, going to school, keeping house, or something else?

Family Structure.

How many children do you have *living at home* with you? Please include step- and adopted children living in your household.
Is this child under age 5? How many of these children are under age 5?

Language. What language do you usually speak at home—English or something else?

Institutional Involvements and Skills

High School Government. How active were you in school government? Were you very active, somewhat active, not very active, or not at all active?

Time.

About how many hours per day do you spend on necessary work for your home and family, including cooking, cleaning, taking care of children or other relatives, shopping, house and yard chores, and so forth? About how many hours in total do you spend in an average day on such necessary activities for home and family?
About how many hours do you spend on gainful employment in an average day, including commuting and work that you take home?
About how many hours do you spend studying for a degree or enrolled in courses for a degree in an average day?
About how many hours of sleep do you average a night?

Organizational Involvements.

Here is a list of organizations. Please read through this list and when you have finished, I'll have some questions. Are you a member of ————?
Have you attended a meeting of the organization in the past twelve months?
Does this organization sometimes take stands on any public issues—either locally or nationally?
Here is a list of things that people sometimes have to do as part of their involvement with organizations. After I read each one, please tell me whether or not you have engaged in that activity in the last six months as part of your involvement with this organization. Have you

A. written a letter
B. gone to a meeting where you took part in making decisions
C. planned or chaired a meeting
D. given a presentation or speech
E. contacted a government official?

Religious Organizations.

Now on a different subject, what is your religious preference? Is it Protestant, Catholic, Jewish, some other religion, or no religion? What specific denomination is that, if any?
Now I would like to ask you some questions about your religious activity. How often do you attend religious services?
If you average across the last twelve months, about how many hours per week did you give to (church/synagogue) work—aside from attending services?
Here is a list of things that people sometimes have to do as part of their church/synagogue) activities. After I read each one, please tell me whether or not you have engaged in that activity in the last six months as part of your (church/synagogue) activities. Have you

A. written a letter
B. gone to a meeting where you took part in making decisions
C. planned or chaired a meeting
D. given a presentation or speech
E. contacted a government official?

Vocabulary. Now we would like to know something about how people go about guessing words they do not know. On this card are listed some words—you may know some of them, and you may not know quite a few of them. On each line the first word is in capital letters—like BEAST. Then there are five other words. Tell me the number of the word that comes *closest* to the meaning of the word in capital letters. For example, if the word in capital letters is BEAST, you would say "4" since "animal" comes closer to BEAST than any of the other words. If you wish, I will read the words to you. These words are difficult for almost everyone—just give me your best guess if you are not sure of the answer.

Self-described Skills.

Imagine you went to a community meeting and people were making comments and statements. Do you think you speak well enough to make an effective statement in public at such a meeting?
If you did speak up, do you think people would pay a lot of attention to what you said, some attention, very little attention, or none at all?
Suppose you wanted to write a letter to someone in the government—perhaps your member of Congress or a local city official—on some issue or problem that concerned you. Do you feel that you write well enough to write a convincing letter expressing your point or do you feel that you do not?

Political Interest and Political Activities

Interest in Politics.

Thinking about your *local* community, how interested are you in *local* community politics and local community affairs?
How interested are you in *national* politics and *national* affairs?
[Screener item] How interested are you in politics?

Voting.

In talking to people about elections, we find that they are sometimes not able to vote because they're not registered, they don't have time, or they have difficulty getting to the polls.
Think about the presidential elections since you were old enough to vote. Have you voted in all of them, in most of them, in some of them, rarely voted in them, or have you never voted in a presidential election?
Thinking back to the national election in November 1988, when the presidential candidates were Michael Dukakis, the Democrat, and George Bush, the Republican, did you happen to vote in that election?

Campaign Work. Since January 1988, the start of the last national election year, have you worked as a volunteer—that is, for no pay at all or only for a token amount—for a candidate running for national, state, or local office?

Campaign Money.

Since January 1988, did you contribute money—to an individual candidate, a party group, a political action committee, or any other organization that supported candidates?

In your best estimate, about how much money in total did you contribute since January 1988?

Contacting.

In the past twelve months, have you initiated any contacts with a *federal elected* official or someone on the staff of such an official: I mean someone in the White House or a Congressional or Senate Office?

What about a nonelected official in a *federal government agency*? Have you initiated a contact with such a person in the last twelve months?

What about an *elected* official *on the state or local level*—a governor or mayor or a member of the state legislature or a city or town council—or someone on the staff of such an elected official?

And what about a nonelected official in a *state or local government agency or board*? Have you initiated a contact with such a person in the last twelve months?

Protesting. In the past two years, since (current month 1988), have you taken part in a protest, march, or demonstration on some national or local issue (other than a strike against your employer)?

Board Membership. Now some questions about your role in your community. In the past *two years*, since (current month 1988), have you served in a voluntary capacity—that is, for no pay at all or for only a token amount—on any official issues such as a town council, a school board, a zoning board, a planning board, or the like?

Attend Meetings. Have you attended a meeting of such an official local government board or council in the past *twelve months*?

Informal Community Work. Aside from membership on a board or council or attendance at meetings, I'd like to ask also about informal activity in your community or neighborhood. In the past twelve months, have you gotten together *informally* with or worked with others in your community or neighborhood to try to deal with some community issue or problem? (If you have mentioned this activity elsewhere, perhaps in connection with your church or synagogue, or an organization or local campaign, don't repeat it here.)

APPENDIX B: A LEARNING MODEL FOR CIVIC SKILLS

Production of Skill-Acts

People engage in skill-acts when they are presented with opportunities on the job, in organizations, or in church to write a letter, make a speech, organize a meeting, or participate in a meeting and when they have enough preexisting skills to respond positively to the opportunity. If they lack either preexisting skills or opportunities to exercise them, then they cannot carry out the activity. For each domain j, skill-acts are the joint result of skill opportunities and preexisting skills:

$$\text{Skill-Acts } j = a_j + b_j\,(\text{Skill-Opportunities } j) + c_j\,(\text{Skills}) + \text{error}, \quad \textbf{(A-1)}$$

where a_j is a constant and b_j and c_j indicate how skill-opportunities and preexisting skills are converted into skill-acts. This equation shows why all three measures of skill-acts can be useful indicators of skills even though they may not be highly correlated with one another. To the extent that individual *opportunities* to exercise skills in jobs, organizations, and churches are not highly correlated with one another, skill acts will not be highly correlated even though they are partly determined by individual skills. And there is no reason to expect a high correlation among institutionally based opportunities to engage in skill acts. Though skills are transferable and may be carried from one institutional setting to another, there is little reason to expect that an individual involved in one type of institution (e.g., having a job) would be more likely to be involved in a different one (e.g., to attend church).

If skills are converted into skill-acts at the same rate across all three institutional domains, then all c_1, c_2, and c_3 will be equal. This might be true, but it will only show up in our data if we have exactly the correct functional form for equation A-1. This seems unlikely.[52] It is asking too much for the c_j to equal one another, but it is not asking too much to have the c_j differ significantly from zero. If a c_j is zero, then skills would not be a cause of skill-acts in that domain even though, as we shall see shortly, skills might still be a consequence of skill-acts. It seems unlikely to us, however, that skill-acts would produce civic skills without also being a product of civic skills. Therefore, the first requirement for our model is that all c_j differ from zero.

Developing Skills

A central assertion of the resource model is that skills result from a "learning process." Not only do people engage in skill-acts because they have civic skills, they also develop skills because they perform skill-acts. When they write letters or organize meetings, people become more adept at these activities: their civic skills increase. Language ability (vocabulary score and speaking English at home) and formal educational experiences (educational attainment and participation in student government) also provide skills:

$$\text{Skills} = e + d_1\,(\text{Skill-Acts 1}) + d_2\,(\text{Skill-Acts 2}) + d_3\,(\text{Skill-Acts 3}) + d_4\,(\text{Language Ability}) + d_5\,(\text{Formal Educational Experiences}) + \text{error}, \quad \textbf{(A-2)}$$

where e is a constant and d_1 through d_5 indicate how skill-acts, language ability, and educational experiences are converted into civic skills. This equation will almost certainly be misspecified if we omit major institutional settings that create skills because we would expect a correlation between skill-acts in that domain and skill-acts in another domain. Thus it is of great importance that workplaces, organizations, and, churches encompass the major institutional settings where civic skills can be learned in adulthood.

If all skill-acts were turned into skills at the same rate, we would expect d_1, d_2, and d_3 to be equal. This seems unlikely, however, for several reasons: the functional form is uncertain, our measures of skill-acts miss the frequency with which people practice skills in each domain, and we did not ask in detail about the skill-acts performed. For example, we might expect those who practice skill-acts on the job to be more likely to learn from them because they spend so much time at their jobs. However, if the skill-acts performed on the job are merely routine, they would be less productive of skills. In any case, because we believe that engaging in skill-acts develops skills, we expect d_1, d_2, and d_3 to be positive but not necessarily equal.

Skill Opportunities from Institutional Involvements

Opportunities for individuals to perform skill-acts in an institution depend upon institutional involvements and institutional types:

$$\text{Skill Opportunities } j = f_j\,(\text{Involvement } j) + g_j\,(\text{Type } j) + \text{error}, \quad \textbf{(A3)}$$

where the intercept is zero to determine the mean of the unobserved skill opportunities measure.

Defining the Variables

To estimate the equations for the development of civic skills requires measures of skill-acts, skill opportunities in adult institu-

TABLE A-1

Determinants of Each Adult Civic Skill: Two-Stage Least Squares Estimations

INDEPENDENT VARIABLES	ADULT CIVIC SKILLS: JOB SKILLS-ACTS COEFF. (SE)	JOB SKILLS-ACTS BETA WT.	ORGANIZATION SKILL-ACTS COEFF. (SE)	ORGANIZATION SKILL-ACTS BETA WT.	CHURCH SKILL-ACTS COEFF. (SE)	CHURCH SKILL-ACTS BETA WT.
Self-described skills	.595** (.045)	.561	.286** (.034)	.337	.135** (.020)	.200
Involvements in institutions						
Working at job	.742** (.034)	.434	—	—	—	—
Retired from job	−.178* (.095)	—	—	—	—	—
Organizational involvement	—	—	.731** (.032)	.458	—	—
Attendance at church	—	—	—	—	.063** (.007)	.167
Time in church work	—	—	—	—	.479** (.015)	.564
Institutional types						
Occupational type	.110** (.012)	.187	—	—	—	—
Hierarchical church	—	—	—	—	−.235** (.034)	−.104
Constant	−3.746** (.255)	—	−2.630 (.189)	—	−.987** (.133)	
R^2	.433		.301		.484	
Sample size	2,448		2,445		2,448	

Source: Data from Citizen Participation Survey.
Note: COEFF. refers to the regression coefficient and SE to its standard error. BETA WT. refers to the standardized regression coefficient. Instrumental variables for 2SLS estimation are working at job, retired or not, occupational type, degree of organizational involvement, attendance at church, time in church activities, Catholic, years of education, involvement in high school governance, speaking English at home, vocabulary score, family income, black, Hispanic, education of parents, number of kids, preschool kids, sex, spouse work full-time, and spouse work part-time. The endogenous variable in all three equations is self-described skills.
*$p \leq .05$.
**$p \leq .01$.

tions, language ability, formal educational experiences, as well as a measure of civic skills themselves. The performance of skill-acts in each of three domains is measured by a five-point scale (0–4) as described earlier.[53] We did not measure skill opportunities directly, but use as proxies institutional involvements and types described, along with all the other variables in our model, in the main text.

Estimating the Equations

Equations A-1 and A-2 are basic to a model of skill development in which skill-acts are the result of having skills and getting the opportunities to exercise them; and skills, in turn, are the result of engaging in skill-acts, language ability, and formal educational experiences. They form a system of equations in which self-described civic skills and skill-acts appear on both sides of the equations; these measures, then, are endogenous. A standard way to estimate equations of this sort is 2SLS (Hanushek and Jackson 1977). This requires finding exogenous variables excluded from each equation that can be used as instruments. These are easy to find in this system of equations. For the three skill-acts equations formed by substituting equation A-3 into A-1, we can use the measures of institutional involvements and institutional types that are not in the current equation and the measures of language ability and formal educational experiences. For example, for the equation for skill-acts on the job, we can use the measure of organizational affiliations, attendance at church, time devoted to church activities, the dummy for a Catholic church, and the measures of language skills and formal educational experiences. For the single skills equation A-2, we can use all the measures of institutional involvements and types as instruments. In addition to the instrumental variables that arise naturally from the system of equations, we also use a set of individual characteristics that are clearly exogenous. These are race (African American and all others), ethnicity (Latino and all others), family income in thousands of dollars, the average of parents' education on a nine-point scale, gender, number of children at home, whether any children are of preschool age, and whether or not the spouse is working full or part time.

Table A-1 reports the results of 2SLS estimations of the three skill-acts equations formed by substituting equation A-3 into A-1. The first row shows the impact of self-described skills on each kind of skill-act. All three regression coefficients are highly significant, ranging from .13 to .59. A change of 1.5 in self-described skills (about one standard deviation) leads to .9 more job skill-acts, .4 more organizational skill-acts, and .2 more church skill-acts. These are significant effects for self-described civic skills measured on five-point scales, and they amount to .56, .34, and .20 standard deviation changes ("beta weights") in job skill-acts, organizational skill-acts, and church skill-acts respectively.

Not surprisingly, the degree of involvement in an institution (e.g., working full-time, rather than part-time) has a lot to do with engaging in skill acts. In addition, it is striking how much the type of institution—working in a higher-status occupation or attending

TABLE A-2

Two-Stage Least Squares Estimates of Determinants of Self-Described Skills

INDEPENDENT VARIABLES	RESPONDENT'S SELF-DESCRIBED CIVIC SKILLS					
	FIRST EQUATION		SECOND EQUATION		THIRD EQUATION	
	COEFF. (SE)	BETA WT.	COEFF. (SE)	BETA WT.	COEFF. (SE)	BETA WT.
Adult skill-acts						
Job	.216** (.030)	.229	.236** (.029)	.251	—	—
Organizational	.148** (.046)	.126				
Church	.043 (.041)	.029	.093* (.038)	.063	—	—
Sum	—	—	—	—	.146** (.018)	.262
Formal educational experiences						
Years of education	.080** (.025)	.083	.102** (.024)	.105	.108** (.024)	.111
High school governance	.172** (.029)	.114	.189** (.028)	.126	.164** (.029)	.109
Language ability						
Speaking English at home	.119 (.078)	.027	.120 (.078)	.028	.129 (.078)	.030
Vocabulary score	.149** (.014)	.217	.152** (.014)	.222	.150** (.014)	.218
Constant	4.065** (.171)	—	4.008** (.171)	—	4.006** (.170)	—
R^2	.234		.231		.218	
Sample size	2,448		2,448		2,448	

Source: Data from Citizen Participation Survey.
Note: COEFF. refers to the regression coefficient and SE to its standard error. BETA WT. refers to the standardized regression coefficient. Instrumental variables for 2SLS estimation are working at job, retired or not, occupational type, degree of organizational involvement, attendance at church, time in church activities, Catholic, years of education, involvement in high school governance, speaking English at home, vocabulary score, family income, black, Hispanic, education of parents, number of kids, preschool kids, sex, spouse work full-time, and spouse work part-time. The endogenous variables are the adult civic skills (job skill-acts, organizational skill-acts, church skill-acts, and sum of skill-acts).
*$p \leq .05$.
**$p \leq .01$.

a Catholic church—matters for job skill-acts and church skill-acts respectively. In fact, moving from a Catholic to a non-Catholic church has about the same impact on church skill-acts as a one-standard-deviation increase in self-described skills, and moving from the lowest to the highest rung on the nine-point occupational ladder has a greater impact than a one-standard-deviation increase in self-described skills.

The results in Table A-1 show that self-described civic skills and skill opportunities lead to skill-acts. This means that we can use skill-acts as a rough measure of civic skills. It does not, however, prove that people actually learn such skills through their involvement in adult institutions.

Using the same instruments as in Table A-1, Table A-2 establishes this important point by showing that the three measures of skill-acts help explain self-described civic skills. Consider the results for the first equation. The coefficients for job skill-acts and organizational skill-acts are highly significant. The coefficient for church skill-acts is disappointing, but an examination of the correlation matrix for the coefficients reveals that there is a high correlation between the estimate for the impact of organizational skill-acts and church skill-acts. The correlation of −.38 between these two coefficients means that the estimation procedure found it hard to distinguish one from the other. This suggests that if we dropped one of them, the other one will "take up the slack." In the second equation, we drop the organizational skill-acts variable, and the impact of church skill-acts becomes much larger and statistically significant. When we omit both the organizational and church skill-act measures (not reported), the regression sum of squares becomes significantly smaller than when we include both in the first equation. An *F*-test rejects the notion that we should drop both variables. Finally, when we return to the first equation and do a *t*-test to assess whether the coefficients for organizational skill-acts and church skill-acts are equal, we find that despite the apparent difference, we cannot reject the hypothesis that they are identical.[54]

Taken together, these results imply that the joint effect of organizational skill-acts and church skill-acts is not zero and that the two kinds of skill-acts have identical impacts. There is good reason, then, to believe that all three skill-act variables are important determinants of civic skills. The third equation imposes the constraint that all three skill-acts have the same impact by substituting their average for each of them individually. An *F*-test implies that this is too strong an assumption, but the R-squared and other statistics suggest that it is not a bad approximation to the truth.

Table A-1 shows how having skills leads to skill-acts, and Table A-2 shows how engaging in skill-acts leads to having more skills. Table A-2 contains an additional important finding. With the exception of the measure of speaking English at home, the other quite varied measures of civic skills (formal education, vocabulary score, and participation in high school government) all relate significantly to self-described skills. This gives us confidence that

we are measuring a coherent phenomenon that can be called civic skills.

Notes

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1. People also avoid politics because "they aren't allowed to participate." This was a major reason for nonparticipation in the United States at one time and it remains important in many countries.

2. Using an impressive time series of surveys, Rosenstone and Hansen (1993) emphasize the importance of mobilization by political leaders, mobilization around issues, and mobilization by political opportunities. Their data are especially well suited for showing how the changing political environment encourages or discourages political participation. Our data are especially appropriate for describing the linkages from SES to resources to participation. A complete theory of political participation must synthesize both perspectives.

3. Our approach has strong affinities with resource mobilization theory in sociology, although we concentrate upon the resources available to individuals instead of the resources available to social movement organizations. Social movement theorists argue that organizations mobilize people by the skillful use of resources; we argue that resources are a necessary condition for people becoming involved in politics. The two theories converge in their emphasis upon the crucial role of resources for political participation and in their description of the relevant resources. McCarthy and Zald (1977), for example, consider time and money and "skills in lobbying, accounting, and fund raising" as the most basic resources (pp. 1224, 1234).

4. The SES–participation relationship is well documented; the finding appears "with monotonous regularity" (Nagel 1987, 59). For citations of relevant literature, see Bennett and Bennett 1986, 183–186; Conway 1991, 21–27; and Milbrath and Goel 1977, 92. The SES–activity connection has been elaborated in multiple ways, including (1) differentiation among political acts, usually distinguishing between voting and "more difficult" political acts, with the SES–participation relationship more potent for the latter (Verba and Nie 1972; Verba, Nie, and Kim 1978); (2) analyses of the links between SES and activity, usually focusing on such motivating attitudes as political interest and efficacy (Almond and Verba 1963; Barnes and Kaase 1979; Kaase and Marsh 1979; Verba and Nie 1972; Verba, Nie, and Kim 1978) or on the different impacts of components of SES (Rosenstone and Hansen 1993; Wolfinger and Rosenstone 1980); (3) analyses of factors that diminish the impact of SES, often focusing on the mobilizing effects of organizational affiliations or such attitudes as group consciousness (Olsen 1982; Verba and Nie 1972).

5. After noting that "remarkably little effort has been devoted to explaining why certain resources matter and others do not," Wolfinger and Rosenstone unpack SES into its constituent parts and demonstrate that it is education, rather than income or occupation, that has consequences for voting; but they can go no farther than to say, "We cannot measure all resources directly; instead, we infer them from the individual's demographic characteristics" (1980, 9). This makes it hard for them to explain exactly how education has an impact on turnout. We shall follow their lead by elaborating resources and extending the analysis to forms of participation other than voting.

6. Huckfeldt and Sprague take a similar position in their careful review of the literature on contextual effects in politics. They express skepticism about "simple versions of the self-selection argument. To what extent do people choose their location in the social structure? How many of us really choose our workplace colleagues, our coreligionists, our neighbors? To the extent that we are able to exercise control over our surroundings, do we use political criteria in exercising such choice? Or do we choose a job because it pays well? A church because our parents raised us in it? And then we take the politics that accompanies the choice" (1993, 294). There is still the possibility that some resources may be produced through political activity. Although it is hard to see how political activity would generate rather than consume free time, it can produce more income (e.g., if activists gain patronage jobs or favorable treatment for their businesses). Similarly, those who take part in politics may develop political skills "on the job," that is, learn and improve political skills through their political activity. Although some activists do generate political resources through their voluntary participation, politics is such a small part of the lives of even the most active citizens that most of their income and skills must be amassed outside it.

7. Stratification theory describes the distribution of class, status, and power, and their consequences for the operation of society (e.g., Bendix and Lipset 1966; Wright 1985). We shall show how money, time, and skills flow from class and status and how these resources are converted into political participation.

8. Milbrath and Goel note: "No matter how class is measured, studies consistently show that *higher class persons are more likely to participate in politics than lower class persons*. . . . This proposition has been confirmed in numerous countries" (1977, 92; emphasis original).

9. Contrary to the logic of the theory, many people vote and join organizations even though they cannot possibly hope to recoup their costs through their gains to self-interest. If the range of self-interested benefits is, as it must be, expanded to encompass such psychic benefits as the satisfaction of doing one's civic duty, then the theory becomes much less potent.

10. Another rational choice approach dating back at least to Downs (1957) argues that lower information and transaction costs for well-educated people means that they will be more likely to engage in politics. Not much has been done to elucidate this approach. Our concept of civic skills, however, explains why transaction and information costs might be lower among the well-educated.

11. The Chicago school takes into account constraints on time as well as money (Becker 1965, 1976), the production of commodities by the household (Michael 1973; Michael and Becker 1973), and investment in human capital (Becker 1975). In this theory, individual behavior is constrained by income, time, and household production capabilities. Household production functions vary from person to person depending upon accumulated skills, but production capabilities can be improved through the investment of time and goods in human capital. This is exactly the argument we make here.

12. The question was on total income from all sources for the family. With the exception of the lowest of the 16 categories (which was scored at two-thirds of the range) and the highest (which was scored at one-and-a-half), responses were scored at the midpoint of the range in thousands of dollars.

13. We would have been able to generate more precise data if we had asked respondents to keep time-budgets instead of asking about a typical day, but this would have been too complicated and costly in a survey designed to cover a wide range of concerns. In fact, the results based on our approximations accord very well with the results contained in the literature on time use (e.g., Hill 1985). We did not ask about "free time" directly because pretesting indicated that this concept had no clear-cut meaning to respondents, whereas the time spent working, doing household work, studying and sleeping seemed meaningful to them. We concluded that there would be much more error in an ambiguous query about free time than in the total error across all of our easily understood questions.

14. On the similarities and contrasts between time and money, see Sharp 1981 and Mincer 1962.

15. There is precedent for considering the role of civic skills in facilitating participation. Strate and his colleagues (1989) demonstrate the importance of "civic competence" for voting turnout. However, the variables included in their measure of civic competence (e.g., attentiveness to politics and level of political information) are explicitly political. Therefore, we cannot be sure that they are not also a result as well as a source of activity. Wald mentions the extent to which "congregational organizations may serve as leadership training institutes for people who lack other means of exposure to organizational skills" and cites studies that find a strong relationship between attendance at church services and electoral turnout but not between religious attendance and other forms of political activity (1992, 35). In his study of parish-connected, non-Latino Catholics, Leege (1988) finds a relationship between parish activity and political activity and discusses the potential of parish activity for developing the kinds of skills we measure here.

16. Schooling affects participation in several ways: it fosters values conducive to participation, broadens social networks, and creates income-producing occupational opportunities. We shall return to these themes. Here, we focus on the skill-creating aspect of education.

17. The eight categories and their scores were (1) grammar school or less, (2) some high school, (3) high school graduate or GED, (4) some college, (5) college graduate, (6) some graduate work, (7) master's degree, and (8) PhD. or professional degree. Not much is gained by cluttering our equations with dummy variables for these categories, so we have used this eight-point scale throughout.

18. Participation in high school governance might also measure a "taste" for participation. A close relationship between "tastes" and "skills" is predicted by George Stigler and Gary Becker (1977), who argue that as people develop skills in an area (e.g., baseball, music, politics), they will be more likely to prefer the activity because they can derive more and more pleasure from it at the same cost. Whether it measures tastes or skills, participation in high school governance belongs in our model.

19. Thorndike and Gallup describe this test as a "test of verbal intelligence. . . . [that assesses] the nature of past learnings and not the ability to make novel adaptations" (1944, 78–79). The mean of 6.20 (with standard deviation of 2.15) on our vocabulary score is close to the mean of 6.51 (with standard deviation of 2.25) reported by Alwin for the 1989 GSS, which covered a slightly different population (1991, 628, table 1).

20. The vocabulary test may not be a very good measure of verbal ability for a very small fraction of our sample. The 1.8% of the sample who sometimes or always spoke another language at home besides English or Spanish (and therefore did not have the choice of being interviewed in their own language) might have done better if they had been interviewed in their native language. Our results, however, are not affected by excluding these people so we have left them in our analysis.

21. These facts suggest that the vocabulary score measures something more than just schooling, but for our purposes the exact relationship between vocabulary score and education is not important. What is important is that the vocabulary score allows us to control for verbal ability wherever or however it has been obtained.

22. Voluntary associations vary substantially in the extent to which they are involved in politics. We isolated affiliations with nonpolitical organizations as follows. Respondents were presented a comprehensive list of 20 kinds of voluntary organizations (e.g., unions, professional associations, fraternal groups, block clubs, political issue organizations). For each category for which the respondent indicated an organizational affiliation, we asked a series of follow-up questions about that organization (or, if more than one, about the one with which the respondent was most involved). Among these questions was whether the organization takes stands on public issues. We consider any organization that does not take stands on public issues to be nonpolitical. Unless otherwise specified, we are referring in our discussion to these nonpolitical organizations.

23. There is an interaction with gender: in families where both spouses work full-time, preschoolers reduce the hours at home for a woman by 1.5 hours more than they reduce the hours at home for a man.

24. The skill-act items have several attractive features consistent with the conclusion that they measure the acquisition of transferable skills. For one thing, in each domain the four items form similar Guttman scales (with differences explainable by variations in chances to perform the skill from one domain to another) indicating that they measure something common across institutions, not something specific to a particular institution. In addition, one activity—contacting a government official—included in the list asked in each domain (though we did consider it not an opportunity to gain a civic skill but an actual political act) does not scale with the other activities, whether one uses Cronbach's alpha as a criterion, loadings or communalities in a factor analysis, or the coefficient of determination for a Guttman scale. For example, the *lowest* loading for the four items in factor analyses of each domain is .527 while the loadings for contacting are .279, .446, and .385. This too is consistent with the hypothesis that these activities are a common set.

25. The correlations are .30 between job skill-acts and organization skill-acts, .09 between job skill-acts and church skill-acts, and .29 between organization skill-acts and church skill-acts.

26. By using these scales in our regressions, we are assuming a linear relationship between our dependent variables and each one of them. This turns out to be close to the truth in every case. We have tried numerous specifications where we use dummy variables for each occupation, workplace status, level of attachment to organizations, and every other independent variable defined by a scale. The results are very close to those reported here, and using the scales simplifies the reporting of results.

27. All that matters for our purposes is that self-described skills measure civic skills. Then our demonstration that self-described skills are related to the exercise of skill-acts implies that civic skills are related to skill-acts.

28. A count of activities is a simple and straightforward measure that simplifies the initial presentation and analysis. The extensive literature on the multiple dimensions of participation (Verba and Nie 1972) suggests the importance of disaggregating this simple measure, and one of the strengths of the resource model is its ability to predict separate dimensions of participation, such as who is likely to give money, work in campaigns, or engage in some other activities. The resource model does this by considering what is common across people (i.e., resource constraints) while lumping together acts with varying issue content. As with standard turnout models that typically do not take into account the multifarious issues that impel voters to go to the polls (e.g., Wolfinger and Rosenstone 1980), we assume for the resource model that it makes sense to consign to the error term the many issues that might motivate people to participate. On average, we suppose that these issue considerations are uncorrelated with the resources that constrain or enable their activity. Because we asked our respondents whether any specific issue motivated their participation, we have, however, been able to show (in work available upon request) that the resource model works for specific issue areas, as well as a heterogeneous collection of them.

29. A number of papers have noted that respondents typically overreport forms of participation like these because of a *social desirability bias* "in which cognitive dissonance can lead to a rather consistent distortion of memory in order to reinforce continued perception of oneself as a good citizen" (Cahalan 1968; see Anderson and Silver 1986; Hill and Hurely 1984; Katosh and Traugott 1981; Silver, Anderson, and Abramson 1986; Volgy and Schwarz 1984; Weiss 1986). One explanation for our results could be that these same biases inflate reports of involvement in high school governance, church attendance, and other activities leading to a spurious

correlation with political participation. We worried about this possibility but rejected it for several reasons. First, social desirability bias has to enter in a very specific way so that some subgroups are more prone to it than others for it to produce spurious results (Brady 1986). Second, the evidence we have reviewed is consistent with the notion that social desirability bias is a general human trait that is uncorrelated with specific characteristics of the respondents. This means that it would not bias our results at all (except for the intercept of our regressions because of overall overreporting). Third, if there are different forms of social desirability (some people think that church attendance is desirable, others do not, then social desirability may lead to an underestimation of the importance of some factors because of what amounts to a classic errors in variables situation. Fourth, our questions were designed to maximize true recall and to minimize false reporting by asking details of each act so that we have tried to minimize social desirability bias to begin with. Fifth, the most crucial part of our model is the relationship between skills and participation; but if all of our skills are socially desirable, then they should correlate because of this common fact. In fact, the correlations are .30 between job skill-acts and organization skill-acts, .09 between job skill-acts and church skill-acts, and .29 between organizational skill-acts and church skill-acts. The lowest of these numbers is the upper bound on the possible amount of common social desirability bias. It is hard to believe that a correlation of .09 could account for all of our results. A detailed memorandum available from the authors elaborates upon this points.

30. The sum goes from 2 (not at all interested in either local or national affairs) to 8 (very interested in both). The Pearson correlation of .54 between the two items compares favorably with the correlation of .55 between interest in national politics and a general interest in politics question on the screener. (Interest in local politics and the screener question correlate at .50.)

31. Beta weights are not a perfect way to measure the importance of a variable (Achen 1982), but they are convenient for making comparisons across variables.

32. An alternative to the linear form would be the assumption that participation requires the interaction (or product) of political interest and resources, but the logarithm of this functional form would be a linear form in the logarithms of each variable. It might be worth testing this functional form if the measures in the equation had a known metric (e.g., quantities or prices in a typical economics problem); but almost all the measures in the equation have an unknown metric, so we cannot be sure that we should take their logarithms. Our approach to this problem is to stick with the simple linear form in the text. Another approach is to include an interaction term of, say, political interest and the sum of civic skills to see if it matters. In fact, it does, with a highly significant *t*-statistic of 5.93; but we do not believe that this really takes us beyond what we already know from the linear formulation that can be considered the first term in a Taylor series approximation of a product. Still another approach is to try out many alternative functional forms including the logarithm of participation, a Poisson regression, logarithms of some of the independent variables (e.g., family income), and dummy variable versions of scales for occupation, education, work status, and many other variables. Our results remain the same under these alternative specifications.

33. Measures of involvement in high school sports or having taken high school civics courses, by the way, had no impact on political participation or on the development of civic skills as reported in Appendix B.

34. Nevertheless, when we consider various political acts separately, we shall see that political interest is not uniform in its impact on all modes of participation.

35. This describes a "triangular" system of causation in which participation is explained by resources and some other exogenous variables and resources, in turn, are explained only by the other exogenous variables. It is well known that triangular systems can be estimated consistently by OLS only if the error terms are uncorrelated. If there is some unobserved factor such as a taste for organizational activity that affects both resources and participation, then the error terms will obviously be correlated and the resources variables in the participation equation will be correlated with the error term in the equation, which leads to specification bias (Achen 1986, chap. 2).

36. So far, we have argued that we must include political interest in the participation equation and treat skill-acts and political interest as endogenous. Family income and free time also present special problems. It seems likely that our measures of these resources contain error, and this means that OLS estimates of their coefficients will be biased in unpredictable ways. The conventional wisdom is that their coefficients will be biased toward zero and that other "proxies" will pick up some of their effect. This is probably often true, but other things can happen (see Achen 1985). We solve this problem for the family income measure by using the income question on the screener to calculate the reliability of the income measure. This is then used to construct a new measure of income that is corrected for error. The family income measure that we use in all the regressions here is the predicted value from a regression of the follow-up measure on the screener measure. This amounts to a correction for attenuation. (We used the screener value for family income in the small number of cases where only the screener variables was available.) Although a reasonable measure, family income measured in this way is clearly only an approximation of the money available to an individual to use for political or other contributions. To solve this problem for free time, we treat it as endogenous and we use family size, preschool children, work status, and other variables as instruments to purge it of error.

37. The computer code and the data for all of our runs are available from the authors upon request and will be archived at the ICPSR at the University of Michigan.

38. We model the simultaneity between political interest and political participation by assuming that current participation depends directly upon current interest (and other factors, of course), which, in turn, depends upon current participation and past interest. Past interest is measured by a question on a screener interview 6 to 12 months before the final interview. In this setup, even if both interest items are measured with error, 2SLS provides consistent estimates for the participation equation. We can supply this proof upon request.

39. Another possibility is that interest and skills are picking up the effects of variables that appear in the OLS estimation but are omitted from the 2SLS version based upon our theoretical assumptions. If our theory is right, then they should be omitted. If our theory is wrong, then they should be included, but this leaves us with no instruments for solving the endogeneity problem. If endogeneity is not a problem, of course, then the OLS estimation suggests that these variables should be omitted. We are stymied, then, only in the case when endogeneity is a problem and our theoretical assumptions are wrong.

40. The appropriate χ^2 test is described by Judge and his colleagues, and the value of 1.92 with two degrees of freedom (highly insignificant with a probability value of about .35) strongly supports the null hypothesis that the coefficients are equal to one another (1985, 614).

41. The impact of free time becomes insignificant when we include dummy variables for working and retirement in the equation because these two variables are so highly correlated with free time. This suggests the fragility of this result, but it also raises questions about how we should think about the impact of work and retirement on participation. It seems likely that work increases participation through the development of skills (job skills and working are correlated at .605) and decreases participation by reducing free time (free time and working are correlated at −.626). These seem to be the main routes by which working can have an impact so that once job skills and free time are included in an equation for participation, working (and retirement) should be excluded. When we do include working in an equation with job skills, free time, and many other variables, we find that it has a negative coefficient and that free time appears to have no impact. Yet we can think of no consequence of working, other

than its reduction of free time, which would cause its coefficient to be negative. Moreover, the estimated coefficients for working and for free time are correlated at .609 with one another, suggesting that working is acting in place of free time. Of all our results, the impact of free time is the most fragile; but there is strong evidence (discussed later that free time, at the very least, affects the number of hours given to time-intensive participation once the decision to participate is made.

42. Another test of our model would be to include measures of recruitment to politics and measures of psychological engagement other than interest. In other work (Verba, Schlozman, and Brady 1995), we have estimated both OLS and 2SLS versions of our models after adding political efficacy, partisan strength, political interest, political information, and a measure of recruitment to politics. We found no substantial change in our results.

43. In the language of econometrics (Granger 1990; Leamer 1990), we have investigated the "fragility" of our results regarding civic skills and income and found that alternative specifications lead to the same result. As noted in n. 41, our results regarding free time are more fragile than the others.

44. A χ^2 test where the null hypothesis is the equality of the three coefficients for the skills variables in the voting equation yields a value of 3.36 which is not even significant at the .10 level so that we cannot reject the null hypothesis (Judge et al. 1985, 614).

45. The impact of citizenship is, of course, to be expected. We include it, rather than running the equation for citizens only (which might seem appropriate), because it enables us to see the impact of the resources over and above this obviously potent variable. In addition, we want to compare the role of citizenship in connection with voting with its impact on other acts for which it is not a requisite.

46. This becomes apparent using the 1990–93 National Election Studies panel. An OLS regression of self-reported vote for 1992 on education and interest in the campaign (there was no general interest question in 1992) yields beta coefficients of .22 and .34 respectively. Because interest in the campaign is likely to be unreliable and endogenous, the 1990 campaign interest measure is used as an instrumental variable for it, and then the beta weights go to .08 for education and .90 for interest. (The regression coefficient on education is barely significant at the .05 level in a sample of 1,242.) The 1990 campaign interest measure is an excellent instrument for 1992 campaign interest if the only problem with interest is due to its unreliability. If campaign interest is also endogenous, then we need a still better set of instruments like those used here. Nevertheless, using lagged campaign interest at least solves the reliability problem, and it must be considered better than using simple OLS, which has typically been done in the literature. We get similar results when we use self-reports about voting in 1988 from the same data set with betas of .11 for education and .44 for campaign interest. Finally, because self-reports of voting might be strongly driven by interest whereas validated votes might not be (perhaps because of some social desirability bias), we also used validated vote in 1988. (Our data file did not have validated vote for 1992.) The results were a beta of .03 for education (with a standard error larger than the regression coefficient) and .43 for campaign interest.

47. A χ^2 test where the null hypothesis is the equality of the coefficients for the three skills variables in the political money equation yields a value of 1.53, which has a probability value of about .50 (Judge et al., 1985, 614). Moreover, a χ^2 test for all three equaling zero yields 1.59 with three degrees of freedom which has a probability value of about .60. Finally, the t-statistic for the sum of the skill acts reported in Table 5 is -1.00 with a probability value of .32. The evidence is overwhelming that civic skills have nothing to do with giving money.

48. A χ^2 test where the null hypothesis is the equality of the coefficients for the three skills variables in the equation for acts requiring time yields a value of 4.35, which has a probability value of about .15, so that we cannot reject the null hypothesis (Judge et al. 1985, 614).

49. A regression of the total number of hours spent working on a campaign, getting involved informally on a community issue, and serving on a local community board or attending its meetings for just those with nonzero time on the independent variables of resources (time, income, the sum of adult civic skills, participation in high school governance, education, vocabulary score, speaking English at home), political interest, and citizenship shows that only free time matters. Skeptics might suggest that this result might be produced by some artifact in the way we measure time. Perhaps some people consistently under- or overestimate how much time they spend on activities in politics and in other parts of their lives. In fact, if this were the case, it would create a negative correlation between free time (which is measured as 24 minus the hours devoted to paid work, household maintenance tasks and child care, school, and sleep) and political activity.

50. The impact of education is broader still, affecting the networks people are in, as well as the likelihood that they will be in high-paying jobs. We explore these connections in later publications.

51. In this case, it matters whether our average person is male or female. Since a working woman loses more free time than a man when there is a preschooler at home, the impact on the amount of time she gives to time-based political activities will be that much greater.

52. It seems unlikely for two reasons. First, it seems improbable that we have hit upon the ideal way to measure skill-acts in our first try. There are probably some difficulties comparing our measures across domains. Second, equation A-1 is basically a "production function" for skill-acts from skills and opportunities. This suggests alternative functional forms. For example, skill-acts might be a function of the product (or interaction) of skills and opportunities as in a Cobb–Douglas production function, but by simply taking logarithms we could get the linear form in the text. Knowing as little as we do about the proper functional forms, it is better to stay with the simple linear formulations.

53. Those not involved in an institution were scored at zero. However, those scored at zero are not necessarily completely without skills. Hence, our observation of skills is censored by whether or not the person was involved in a particular institution. One of the reasons for constructing the model in the text is to overcome this difficulty by including the major institutions in which someone might develop skills. In this section only, we measure skill-acts in all kinds of organizations; elsewhere we refer to nonpolitical organizations only. For the job skill-acts we imputed some missing data. Description of the method and code used to impute these data can be obtained from the authors.

54. This test involves asking whether the difference between the coefficients for organization skill-acts and church skill-acts is zero. The test requires knowing the covariance between the estimates of these two coefficients, ascertained from their correlation and the standard errors for each coefficient as reported in the table. The value for the t-test is 1.45, well short of statistical significance.

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The Issue of Our Time: Economic Inequality and Political Power in America

Linda Faye Williams

Does deepening economic inequality in the United States threaten our democracy? This is the fundamental question posed by the APSA task force report, and the answer is a resounding Yes. The critical synthesis of the literature on participation, governance, and policy is intellectually provocative, and the forceful presentation of recent trends in political inequality that support this conclusion underscores important practical implications for the nation's political economy.

As with every research product, however, there is always room for improvement. As the report points out, much is known about "discrete fragments," but little is known about "interrelationships . . . and their cumulative effects." As a result, while the report is dynamic when it comes to description, it is weak on explanation. And it does not address Lenin's famous question: What is to be done? These shortcomings are particularly evident in the report's implications for racial inequality, place inequality, and public policy alternatives—the foci of this essay.

Ethnoracial Inequality

The task force report deserves credit for noting that inequalities other than those associated with class (in particular, gender, ethnicity, and race) persist. It also impressively avoids the tired and erroneous conclusion that the increasing significance of one social factor (e.g., class) necessarily indicates the declining significance of other social factors (e.g., race or gender). Indeed, the report provides data demonstrating just how stark racial inequality continues to be. What remains underdeveloped, however, is its analysis of the interrelationships among demographic categories, that is, how factors such as race, ethnicity, and gender intersect with one another as well as with the growing class divide.

Understanding intersections is important because even when one factor (e.g., race) has no direct causal effect on an observed outcome, disparate effects within the population are still likely when groups are not distributed randomly across an intersecting demographic category (e.g., class). For example, although it has been well established that the relationship between race and voter participation nearly vanishes when one controls for education, this finding is mitigated by the fact that both blacks and Latinos continue to lag far behind non-Latino whites in educational attainment and other measures of socioeconomic success—key factors in determining rates of civic and political participation. The fact that blacks and Latinos also have relatively younger populations further increases the likelihood of disparate effects on racial groups—given the fact that young Americans' disinclination for political participation (especially voting) is notorious.

In short, by ignoring intersections among demographic categories, too little is learned about the complex connection between economic inequality and political power in general and about the socioeconomic correlates of participation, responsive government, and policy consequences in particular. A more nuanced study of what happens when rising class inequality is grafted onto preexisting inequalities could help explain recent trends in political inequality and, furthermore, highlight specific actions that the nation might take to reverse such trends.

Instead, the report generally treats race and class as discrete categories, in a tone implying that the problem of racial inequality might well already be resolved if not for the seemingly new "more subtle but still potent threat—the growing concentration of the country's wealth and income in the hands of the few."[1] To buttress this point, the report points to factoids like "African American men have moved into the highest-income categories at an impressive rate over the last few decades" and "[p]ublic opinion toward African Americans and other minorities experienced a remarkable shift."[2]

Such examples demonstrate the dangers of misinterpreting isolated facts. Indeed, other (uncited) facts demonstrate just the opposite trend. For instance, African American

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and Latino men have *left* the labor market at even more impressive rates than they have entered higher-income categories. While the rate of growth of African American and Latino men in high-income categories (here defined as $75,000 or more) was 1.2 percent between 1992 and 2001 for black men and 1.8 percent for Latino men, the rate of exit from the civilian labor force was 6.1 percent for black men and 2.4 percent for Latino men.[3] Indeed, as unemployment statistics have consistently shown since World War II, when white Americans get a cold, African Americans get pneumonia. One can predict the unemployment rate of blacks by knowing that of whites, and vice versa, since, whether high or low, the black rate is usually twice (or recently more than twice) that of whites.[4] The problem is—as data on unemployment, income, education, occupational deployment, industrial deployment, and wealth clearly demonstrate—that class and race remain tightly linked in the United States.

There are, of course, some members of every racial and ethnic group in every class, but blacks, Latinos, and particularly Native Americans demonstrate two important class patterns. First, they are at the bottom of whichever class they belong to. Second, they are much more likely to be in the working class, not the middle or upper classes. In 2001, for example, the proportion of blacks living in households with incomes of $60,000 or more was only about half the proportion of whites living at the same income level.[5] In 2002, African American, Latino, Asian and Pacific Islander families composed 28.8 percent of all families in the United States, but 55.6 percent of families living in poverty; black families alone composed 27.1 percent of families living in poverty, although they made up only 12.1 percent of all families.[6]

Data on wealth provide another perspective on the extent to which blacks and Latinos remain both disproportionately in lower socioeconomic categories and at the bottom of whichever class to which they belong. In 2000 the median net worth of households with a black or Latino householder was, respectively, $7,500 and $9,740, compared to $79,400 for households with a non-Latino white householder. Although households headed by people of color composed less than a quarter of all households (24 percent), they composed nearly half (45 percent) of households with a net worth of less than $5,000. White households in every income quintile had significantly higher levels of median net worth than black and Latino households. In the lowest quintile in 2000, the median net worth for non-Latino white households was $24,000, for Latino households $500, and for black households $57. The corresponding figures for the highest quintile were $208,023, $73,032, and $65,141, respectively.[7] Indeed, racial and ethnic gaps in wealth-holding appear to be not only large, but growing. In 1995, Latino and black median net worth were, respectively, 14.7 percent and 14.4 percent that of whites, while by 2000, Latino and black median net worth were only 9.5 and 9.3 percent that of whites.[8] Thus, when rising class inequality in general occurs alongside existing inequalities based on other characteristics, such as ethnicity and race, those suffering double or triple disadvantages suffer more. Instead of the class divide replacing the racial divide or even just slowing down racial progress, the class divide tends to aggravate the racial divide because of the strong links between the two.

There are also problems in the task force report's public opinion examples. White commitment to the *principle* of racial equality is not matched by white support for standard government policies designed to implement programs that might secure equal opportunity. Indeed, across a number of national polls in the 1970s, 1980s, and 1990s, about 40 percent of white Americans believed African Americans were treated unfairly. This is almost exactly the number found in 1946.[9] From the post–World War II era to today, white perception of the treatment of blacks has remained remarkably stable, not changing.

These issues are empirically and theoretically important to an adequately sophisticated understanding of the relationship between economic inequality and political power. Historically, regardless of the level of commitment to egalitarianism in principle or the shifting level of equality achieved among white Americans in practice, the nation has maintained a remarkably strong commitment to racial inequality. White America has avoided the dilemma posed by racial inegalitarianism in a supposedly egalitarian society by adopting, tacitly or explicitly, notions of racial superiority to explain the practice of racial dominance.[10]

As long as race and class remain inextricably linked, working-class whites are very susceptible to being diverted from their legitimate class concerns by leaders who point to race issues. In such a context, racist arguments claiming that inadequate population groups and workforces—not institutions, policies, and corporate power—reinforce inequality and poverty, flourish. Thus, while egalitarianism and de jure equality can oppose racism and inequality, they can also generate an increasing demand for "racism as a defense against what appears to be their failure in practice."[11] Shopping for scapegoats to explain their worsening fates, downtrodden whites may be more likely, given developments in de jure equality, to blame people of color. In fact, albeit somewhat paradoxically, racism may become more, not less, necessary to explain heightening inequality in a society that espouses egalitarianism.

Certainly, important progress has been made in moderating racial inequality: significantly more people of color are in the middle and upper classes than prior to the 1960s; the overt daily horrors posed by white terrorist groups such as the Ku Klux Klan have declined dramatically; and at least some people of color are visible in positions of leadership, affluence, and influence in almost every sector of American life.[12] Yet the current recognition of inequality growing in society at large must not naively prevent or hide recognition of the

continuing American race dilemma.[13] Since, as Gunnar Myrdal concluded, a study of racial inequality "must record nearly everything which is bad and wrong in America," understanding racial inequality remains a route to understanding inequality more generally.[14] Just as an idealized attachment to democratic egalitarianism historically limited the perception of racial discrimination, it also can nurture a culture of acceptance of persistent and deepening income and wealth inequality across the board. Now we must identify ways in which contemporary racism continues to blind Americans to the mushrooming inequality overtaking the nation as a whole. Indeed, as has already occurred, the glossing over (and among conservatives, at least, downright dismissal of) racial inequality as a serious problem, can be the foundation of the backlash against policies such as affirmative action and antidiscrimination law enforcement in areas such as fair housing and school desegregation—policies now couched in terms of color-blind egalitarianism and masquerading as a genuine concern for preventing any and all "racial preference" in policy and practice.

> Important progress has been made in moderating racial inequality. . . . Yet the current recognition of inequality growing in society at large must not naively prevent or hide recognition of the continuing American race dilemma.

Finally, two additional concerns about the report's treatment of demographic categories other than class in bolstering rising inequality require further consideration. First, the report virtually ignores some ethnoracial groups. Although the oft-stated conclusion that race relations in the United States are no longer a black/white issue has become practically a mantra among representatives of the right, left, and center,[15] the report only barely mentions groups other than blacks and whites. It also ignores the growing ethnic diversity within racial and ethnic groups, not only among Latinos and Asians, but also among blacks and whites.[16] In particular, Latinos, a population growing four times faster than the nation at large—comprising an electorate projected to have grown 17 percent over the last four years[17]—are virtually a footnote in the report. Asian Americans, Native Americans, and Arab Americans are missing altogether in the analysis. This is a potentially large oversight, since it is increasingly clear that the old binary-style analyses do not adequately capture real-world economics and politics of many communities of color.

How, for example, might understanding the link between education inequality and political inequality be challenged when the highly educated but low-participating Asian American community is analyzed? Will shared political attitudes and reactions to common experiences of racialization in the United States lead Latino and Asian Americans to fully emerge as political forces, allowing ethnic leaders to organize and mobilize disparate elements around a pan-ethnic identity? In general, which structures in the nation's political system contribute to political inequality? What role, for example, do single-member districts, winner-take-all elections, balloting and voting procedures, naturalization requirements, and disenfranchisement of ex-felons play—apart from and interacting with rising economic inequality. A big part of the problem, of course, is the paucity of evidence for studying some of these issues and groups, and, to its credit, one of the three key recommendations in the report is for more and better collection of data "on the living conditions, attitudes, and political behavior and experiences of minorities, women, and less affluent Americans"—one of the areas that lacks "critically important data."[18] One can only hope that philanthropic foundations and the National Science Foundation accept this challenge.

Gender inequality, too, is given short shrift in the report, which concludes that after the rights revolution, "the number of women in managerial and professional jobs rose impressively."[19] As with race, the report finds that today's problem is mainly that rising inequality across the board is threatening women's gains and further progress. But what about the old gender barriers and their relationship to rising class inequality? Men remain both more likely to engage in volunteerism (even in neighborhood associations and churches) and more likely to participate in formal politics than women. The gender gap is widest at the level of psychological involvement in politics. Only voting and participation in organized protest (with low numbers in general) are outliers to the gender gap in civic engagement and political participation.[20] Yet it is not clear why rising class inequality in and of itself would retard women's political participation—given that women are born into families across the class spectrum. An analysis of continuing barriers arising from men's advantage with respect to jobs and income could shed light on the complexity of this situation in the United States today.

Despite the dramatic decline, for example, in traditional educational disparities between the sexes, white men made up 95 percent of professionals and managers in Fortune 500 companies in 1995, although only 37 percent of the adult population that year.[21] Recent court cases resolved in favor of women complainants (for example, at Merrill Lynch, Smith Barney, and Morgan Stanley) demonstrate that women remain greatly underrepresented in key positions. Persistent gender-related economic inequalities do play a role in political inequality since, as some research shows, civic engagement and political participation is in part determined by job background; some kinds of jobs foster civic skills and propel individuals toward political activity more than others.[22]

The interrelationships between continuing racial, ethnic, and gender inequalities deserve more careful treatment than the report was able to achieve. Such inequalities are not just curiosities in demographic and opinion research; they are directly associated with access to nearly all products and services associated with the good life.[23] One must not confuse egalitarianism legalized and egalitarianism practiced.

In sum, the report fails to go beyond dealing with class, race, and gender as discrete categories. The dynamics of how race, gender, and class intersect needs to be addressed if we are to fully understand today's mushrooming economic and political equalities.

Place Inequality

Where people work and live tends to amplify preexisting inequalities. Given the separation of political jurisdictions (especially at the level of municipalities and school districts), place inequality among the poor, middle class, and wealthy in the United States is an important component of rising overall economic and political inequalities. Some have more opportunities and some have fewer because they live in places that are sharply distinguished in terms of tax bases and the quality of public services. Suburban sprawl, concentrated poverty in central cities, and segregation (if not hypersegregation) have boosted inequality.[24] For instance, in 1960, per capita income in cities was 105 percent of suburban per-capita income. By 1990 this fell to 84 percent, where it remained in 2000. The race/place mix is evident: blacks disproportionately live in center-city neighborhoods (52 percent of African Americans and 21 percent of whites) while whites disproportionately live in suburbs (57 percent of whites but just 36 percent of blacks).[25] Meanwhile Latino/white segregation has increased in recent years.[26]

Place inequality makes it hard to do anything about class and race inequality. For instance, declining segregation of African Americans, however slight, has not, apparently, translated into blacks being able to move into better neighborhoods. The median census tract or neighborhood income for the typical black household in 1990 was $27,808, compared to $45,486 for whites—a gap of $17,679. By 2000 that gap had increased to $18,112. Perhaps more problematic is the fact that similar patterns are observed in households with incomes above $60,000. For example, in 1990 the typical black household with an income of above $60,000 lived in a neighborhood where the median income was $31,585, compared to $46,760 for the typical white household in this income bracket—a gap of $15,175. By 2000 these figures changed to $35,306 for blacks and $51,459 for whites, for an even larger gap of $16,152. The same pattern holds for Latinos.[27] Further confounding the intersection of place and race is the fact that in 2000 poor blacks and Latinos were far more likely than poor whites to live in poor neighborhoods. While over 18 percent of poor blacks and almost 14 percent of poor Latinos lived in such areas, fewer than 6 percent of poor whites did.[28]

Geographical mismatches between where people live and where they work and shop further exacerbate inequality.[29] Lower-income residents of poorer communities generally reside in or near city centers, while job growth and siting of discount shopping malls are more likely in outlying suburban communities. Those most in need of employment and bargains, therefore, have difficulty finding and getting to available jobs and low-cost goods. Once again this dynamic is not racially neutral. As of 2000, no racial group was more physically isolated from jobs than African Americans.[30] Racial minorities tend to search for jobs in slow-growing areas, while whites tend to search in fast-growing communities. The differences in the quality of these job searches is accounted for primarily by residential racial segregation even after taking into consideration racial differences in social networks and search methods.[31] Compounding these troubles are the "mental maps" many employers draw in which they attribute various job-related characteristics (for example, skills, experience, and attitudes) to residents of certain neighborhoods. A job applicant's address often has effects beyond his or her actual human capital that make it difficult, particularly for people of color from urban areas, to secure employment.[32] Such divergent employment experiences, of course, contribute directly to the income and wealth disparities discussed above.

Perhaps more important for the work of the task force, inequalities and economic segregation stemming from place make it easy to isolate people with similar economic and social backgrounds into the same political jurisdictions.[33] The more homogenous political jurisdictions become, the more "safe" districts become, and the more boring and predictable elections become, driving down levels of political participation, especially voting. Eric Oliver has explored the civic effects of economic segregation and found a curvilinear relationship: participation is the lowest in the most affluent homogenous cities, slightly higher in poorer cities, and highest in diverse middle-income cities because of varying levels of political interest. Oliver suggests that affluent cities have fewer social needs to promote citizen action. By contrast, heterogeneous cities have more competition for public goods, which stimulates citizen interest and participation. Unable to overcome their dire socioeconomic strait or to shape local policies due to fiscal constraints, the poor tend to lose interest in politics. Similarly in homogenous settings, political parties and activists have fewer incentives to mobilize new groups of voters or develop new issue appeals. In effect, place inequality increases economic inequality and decreases civic participation.[34]

Since the literature on the contextual effects of place is large and growing, it is surprising that the task force report devotes virtually no attention to explaining its impact on inequality. A focus on the role of place in the evolution of inequality in all likelihood suggests greater attention to policies is in order, since the construction of place is clearly a

concomitant of a range of policy decisions made by public officials and policy-related actions taken in the private and nonprofit sectors. From the interstate highway system to home mortgage deductions to zoning decisions of local government to taxation, tax credits, franchises, charters, banking, trade regulation, and research funding, policies at all levels of government have played an important role in fostering place inequalities. Since policy has played such an obvious role in determining who gets what and why, attention to place can lead us to look at policy decisions that could alter patterns of inequality. Inequalities nurtured by policy can also be altered by policy.

Policy Matters

The task force obviously believes that policy matters. The report concludes that while other nations face changes in technology, family life, and markets like those driving economic inequality in the United States, their regulatory, tax, and social policies have buffered inequality. Because of APSA rules, the task force could not offer policy recommendations. Still, one would have expected the task force to at least point the nation toward the policy arenas that might diminish inequality: jobs, wages, taxes, Social Security, Medicare/health, future deficits, energy and transportation,[35] or any other policy arena with enormous potential for ameliorating inequality. An analysis of alternative policy proposals in these areas or an analysis based on what could be gleaned from the experiences of the United States' international counterparts would have fallen within the APSA constraints. In short, much more could have been said about actual and specific policies' effect on economic and political inequalities. If it is important to point out that past policies, such as public education, Social Security, and Medicare encouraged "ordinary citizens" by helping to spread opportunity and boost civic participation, then it should also be important to point to the role more recent policies have had in producing the opposite effect, helping to attenuate opportunity and discourage democratic life.

Indeed, a sharper focus on the role of policies in rising inequality would also generate discussions on corporate power and the role of government. Although the report discusses business mobilization to gain greater ascendancy, how the federal government, as well as state and local governments, pursued policies—from trade to labor law—that strengthened corporate power and weakened labor power is not fleshed out. Nor are the Federal Reserve's financial bailouts since 1980 addressed. Tax cuts for the very top income brackets, regressive state taxes (heavily reliant on sales taxes), and a falling corporate share of paid federal taxes (down to approximately 7 percent, compared to 22 percent in the 1960s) were all policies worth our attention. Finally, the role of the corporate global trade regime—manifested in the rules of the World Trade Organization and other trade agreements—in freeing corporations to locate production anywhere in the world, thereby diminishing Americans' union base, worker power, and wages, might be explored. In sum, even within the APSA's constraints, a fuller focus on policy was possible. Focusing on the policies driving inequality might help to dispense the myth that growing inequality is inevitable. Recall that the concentration of wealth in the United States actually fell steadily from the period of the Great Depression until the early or mid-1970s.

Implicit in this last example is another blind spot in the task force's work. The report does not sufficiently analyze the 25-year attack upon the very idea of the affirmative state and related efforts to reduce the role of politics—distributive or productive—altogether. Further scholarly and public attention is due to the effects of deregulation, privatization, reduction of the social safety net, lack of enforcement of civil rights, retrenchment of civil liberties, and curtailments of domestic spending on increasing inequality.

Conclusion

None of my comments are meant to disparage the task force's work in any way. The report is full of intriguing insights, and its warning demands serious consideration. Perhaps the report's most important contribution is to end the silence of political scientists on inequality, the central issue of our time. I hope that from now on, political scientists, with APSA's backing, will more fully share with sociologists and economists the task of heavy lifting—both theoretical and empirical—on the problem of inequality. Bravo to the APSA Task Force on Inequality and American Democracy for masterfully entering the debate over inequality and setting out a path for those who are not too blind to see it.

Notes

1 American democracy 2004, 651.
2 Ibid., 660.
3 U.S. Bureau of the Census 2004.
4 U.S. Department of Labor 2003.
5 U.S. Bureau of the Census 2004.
6 U.S. Bureau of the Census 2003a.
7 U.S. Bureau of the Census 2001.
8 U.S. Bureau of the Census 2003b.
9 Hughes and Tuch 2000.
10 Leach 2002.
11 Ibid., 691.
12 Hochschild 1995; Williams 2003.
13 Brown et al. 2003.
14 Myrdal 1944, xix.
15 Thernstrom and Thernstrom 1997; Brown et al. 2003; Iceland, Weinberg, and Steinmetz 2002.
16 West Indian- and African-born populations, for example, are growing at a rate far faster than native-born blacks, and recent immigrants from Eastern European countries are becoming a more significant part of white America.

17 Williams 2003.
18 American democracy 2004, 662.
19 Ibid., 660.
20 Burns, Schlozman, and Verba 2001.
21 Glass Ceiling Commission 1995.
22 Burns, Schlozman, and Verba 2001.
23 Fung and Wright 2003.
24 Orfield 2002; Squires 2002; Squires 2004.
25 McKinnon 2003.
26 Iceland, Weinberg, and Steinmetz 2002.
27 Logan 2002, tables 2 and 3.
28 Jargowsky 2003.
29 Kain 2004.
30 Raphael and Stoll 2002; O'Connor, Tilly, and Bobo 2001.
31 Raphael and Stoll 2002.
32 Tilly 2003; Wilson 1996. Recent research has found that it is easier for a white person with a felony conviction to get a job than a black person with no felony convictions, even among applicants with otherwise comparable credentials or where blacks had slightly better employment histories. See Pager 2003.
33 Swanstrom, Dreier, and Mollenkopf 2002.
34 Oliver 1999.
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Appendix B.pdf
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A Police Stop Is Enough to Make Someone Less Likely to Vote

New research shows how the communities that are most heavily policed are pushed away from politics and from having a say in changing policy.

Jonathan Ben-Menachem | February 1, 2023

Facebook/Tampa Police Department

Florida Governor Ron DeSantis grabbed headlines throughout 2022 for practices that weakened democracy—from creating a police force to monitor voting to coordinating the arrests of people who allegedly voted illegally after the state told them they were eligible. In August, he suspended Tampa's elected prosecutor, Democrat Andrew Warren, over his stated refusal to prosecute cases relating to abortion and trans rights, overriding voters' decision.

But a host of more routine decisions made by Florida officials may be undermining the health of the state's elections as well, even when they don't seem directly related to voting rights.

the conservative Federalist Society. One of Lopez's first decisions was to rescind a policy implemented by Warren to not prosecute bicyclists and pedestrians for certain traffic charges. A 2015 *Tampa Bay Times* report exposed the Tampa police department's relentless ticketing of Black cyclists for things like having inadequate lighting, or riding on handlebars, a dynamic local organizers have labeled "bicycling while Black." The report catalyzed a Justice Department investigation which ultimately confirmed the disproportionate enforcement.

New research shows how such low-level interactions with the police can undercut our democracy by reducing the number of people who participate in elections. A study I co-authored with fellow researcher Kevin Morris, published in December in the American Political Science Review, finds that traffic stops by police stops in Hillsborough County reduced voter turnout in 2014, 2016, and 2018 federal elections.

Our study compared the voter turnout of Hillsborough motorists who were stopped by police shortly before and after each election. Drawing on information about each person's turnout in past cycles, we found that these stops reduced the likelihood that a stopped individual turned out to vote by 1.8 percentage points on average. The effect held when accounting for characteristics like race, gender, party affiliation, past turnout, and prior traffic stops to improve our comparisons. The discouraging effect of stops was slightly higher in 2014 and 2018.

These results make clear that the collateral consequences of policing—including worsening outcomes for economic security, educational attainment, and health—also extend to political participation. If the communities who are most frequently subjected to policing are also discouraged from voting as a result, it could create a vicious feedback loop of political withdrawal.

Why would traffic stops make people less likely to show up to the polls? Past research has already established that the most disruptive forms of criminal legal contact, like arrest and incarceration, discourage people from voting. Our study shows that low-level police contact matters in the same way. If a traffic stop makes a motorist fear that the government will harm them, it can prompt a withdrawal from civic life that political scientists call "strategic retreat." Motorists might worry that a routine traffic stop could escalate into police violence, a more common outcome for Black people in particular. Beyond justified fears of violent victimization, voters might also bristle at the perception of being targeted to raise revenue through excessive ticketing. Accordingly, if incarceration 'teaches' would-be voters that their government is an alienating and harmful force in their lives, traffic stops could catalyze a similar form of 'learning.'

"I think that people see police as a part of the government," Bernice Lauredan, director of voter engagement at Dream Defenders, an organization that champions voting rights in Florida, told *Bolts*. "I don't believe any interaction with police is safe for people of color–having any interactions with police gives them a negative image of the government. And it may give them a negative idea of voting."

And while millions of white Americans have also been swept up in municipal ticketing efforts, the fines and fees in Florida as elsewhere disproportionately affect Black communities.

On average, we found that the deterrent effect was smaller for Black drivers: It reduced their likelihood to vote by 1 percentage point, compared to 1.8 for the overall population. We went further and looked at when voters had been stopped. If they had been stopped in the six months before the election, stops discouraged Black people from voting more than non-Black people. But as the time between a stop and the election increased, the effect weakened. That averaged out to a comparatively smaller effect over the whole two-year period.

We think that this counterintuitive result might be a mix of two things: on one hand, Black Americans probably have less to "learn" about government from a traffic stop, considering that Black Americans are more likely to have a family member in jail than other Americans. On the other hand, Black Americans probably know that a traffic stop is more likely to turn deadly for them compared to white drivers, which could cause "anticipatory stress" that reduces willingness to vote in the short term.

"Black folks and other people of color are criminalized in Tampa," Lauredan says.

While Florida Republicans have dialed up the use of criminalization to maintain political power, deep-blue urban dwellers also face the political ramifications of policing in their own backyards.

In New York City, for example, Mayor Eric Adams has dramatically increased police presence and encouraged police to be more proactive in punishing behaviors ranging from public drinking and dice games to carrying unlicensed firearms. New York Governor Kathy Hochul has also announced plans to beef up a "hot spots" policing initiative that focuses on gun violence—quite similar to the Memphis police squad ("SCORPION") that killed Tyre Nichols in January. Gun control policing efforts in New York could be driving a dynamic similar to the "strategic retreat" that our research demonstrated in Tampa—another ly found that NYPD stop and frisk practices, which expanded significantly under Mayor Michael Bloomberg, may have uced voter turnout in the 2006 and 2010 midterm elections.

ballooned from 86,000 to 378,000 between 2015 and 2021. In addition to boosting city revenues through regressive taxation, these traffic stops also function as a pipeline for gun possession arrests (which have been steadily increasing over time, despite criticisms from local prosecutor Kim Foxx).

The civic consequences of criminalization don't stop at voting, either. Research also shows that Americans who have been stopped by police, arrested, or incarcerated become less likely to engage with a range of public institutions that they perceive as surveilling them. Sociologist Sarah Brayne calls this phenomenon "system avoidance," and argues that the record-keeping practices of institutions like hospitals, schools, and banks—and the ability of state actors to surveil data from these institutions— justify why criminalized people withdraw from them. It's an ugly realization—harsh punishments and increased carceral surveillance are causing lasting damage to the social fabric of criminalized communities.

"The more communities are abused by the system, the more natural it is for them to feel alienated from it," said Yannick Wood, director of the criminal justice reform program at the New Jersey Institute for Social Justice, an organization that advocates reducing the interactions between the criminal legal system and democracy in New Jersey. "They don't feel like the system serves them, and they don't feel like their voices are represented, or even respected."

This is the most important takeaway from our research: American communities most likely to oppose "tough on crime" policy (thanks to their personal experience) are being pushed away from politics and from opportunities to steer policy change.

In Tampa, ticketing practices work in tandem with an extremely harsh regime of felony disenfranchisement that drives Floridians away from politics more explicitly. Almost one-quarter of the 4.6 million Americans barred from voting due to felony convictions live in Florida. The Florida Rights Restoration Coalition (FRRC) led the successful 2018 campaign to pass a state constitutional amendment restoring voting rights to Floridians with felony convictions, though their victory was diminished by subsequent state legislation requiring fines and fees payments before voting rights were restored, leaving more than 1 million people without access to the ballot. Traffic stops affect an even larger share of Florida residents.

"Criminalizing any kind of behavior can have unintended consequences," FRRC deputy director Neil Volz told *Bolts*. "Voting is a reflection of our belief that we're part of the system, that our voice matters, that we can take that past pain and turn it into something productive."

March 16, 2022

Florida Creates a New Police Force to Investigate Elections

Kay-Ann Henry

April 11, 2022

Texas Conservatives Want Private Cops to Police Elections

Michael Barajas

March 14, 2022

“The Goal Was to Scare People, but It Could Boomerang.”

Daniel Nichanian

FACT SHEET

The Impact of Voter Suppression on Communities of Color

Kamil Krzaczynski/AFP via Getty Images

Studies show that new laws will disproportionately harm voters of color. Federal legislation is necessary.

PUBLISHED: January 10, 2022

Ensure Every American Can Vote

- Vote Suppression

Over the past decade, scholars have studied myriad ways in which certain state voting rules make participation disproportionately difficult for Americans of color — including strict voter ID laws, lines faced

on Election Day, and other facets of our election system. This analysis catalogs some of the most prominent research findings on the negative impact of voting restrictions on voters of color.

There is a large and growing pile of evidence that strict voter ID laws disproportionately impact voters of color.

- **Using county-level turnout data** around the country, researchers demonstrated that the racial turnout gap grew when states enacted strict voter ID laws.
- Researchers have also **looked specifically** at the turnout of individuals in North Carolina without proper identification, and they found that the enactment of the law reduced turnout. The turnout effects continued *even after* the strict voter ID law was repealed.
- **Another study** shows that voters in Texas who would be barred from voting absent the state's "Reasonable Impediments Declaration" (a court-ordered remedy allowing voters without proper IDs to participate) are disproportionately Black and Latino. The study argues that its "findings indicate that strict identification laws will stop a disproportionately minority, otherwise willing set of registered voters from voting."
- **An article** using a similar methodology and administrative records found that voters of color in Michigan were more likely to show up to the polls without proper identification.
- **Yet another study** used survey data to demonstrate that voters of color in states across the country lacked access to the needed IDs to vote in their state.
- While some studies have argued that voter IDs have little effect on *overall* turnout, it is clear that voters of color are less likely to have the IDs needed to participate.

Restrictions on Sunday voting — such as those proposed last year in Georgia and Texas — would fall disproportionately on voters of color.

- **Our research** showed that voters of color were substantially more likely to vote on Sundays in Georgia than white voters.
- **Another study** argues that these Sunday voters do not seamlessly transition to other days after cuts are made. For example, when Sunday voting was outlawed in Florida in 2012, Black voters who voted on Sunday in 2008 were especially likely to abstain from voting.

Voters of color consistently face longer wait times on Election Day — lines that would be exacerbated by cutting alternative options, such as vote-by-mail or expansive early voting hours.

- **Our report** from 2020 indicates that voters of color around the country reported longer wait times in the 2018 midterms, using self-reported wait times from a national survey.
- **Other researchers** have used cellphone data to demonstrate the same thing: waits are longer in neighborhoods with more racial and ethnic minorities.

- **Other research** — including **work from the Brennan Center** — has also used administrative data to show that polling places with fewer white voters have more slowdowns.

Even vote-by-mail options, however, don't completely level the playing field. Voters of color face more difficulties voting by mail, too.

- **Our research shows** that mail ballots were rejected at much higher rates than those of white voters in the Georgia primary in 2020.
- **Other studies** have found that this was true in Georgia and Florida's 2018 general elections, too.

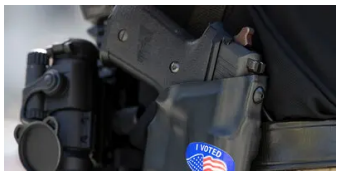
Polling place consolidation is also especially harmful for the turnout of racial and ethnic minorities.

- The Brennan Center authored the **first academic study** documenting the turnout effects of the Covid-19 pandemic. We showed that polling place consolidation severely depressed turnout in Milwaukee's presidential primary — and that the effects were even larger for Black than white voters.
- This joins **other research** showing that voters of color are disproportionately impacted by polling place closures. This may be due to worse transportation access.

ANALYSIS

Closing Arguments in Lawsuit Against Texas Voter Suppression Law

The law exacerbates challenges faced by many Texans already burdened



ANALYSIS

New Legislation Aims to Stop Armed Intimidation of Voters

A California bill, the Peace Act, would establish a presumption that the presence of guns in and

The Right to Voter Assistance Is Under Attack

February 13, 2024 // Kendall Karson, Jasleen Singh

Texas Law Punishes Voters

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MORE NEWS & ANALYSIS

by economic, social, or physical hardships.

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February 15, 2024

around our elections is intimidating.

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February 15, 2024

Article

The Civic Voluntarism of "Custodial Citizens": Involuntary Criminal Justice Contact, Associational Life, and Political Participation

Michael Leo Owens and Hannah L. Walker

A growing body of research explores the influence of involuntary criminal justice contact on political participation, demonstrating that all types of contact weaken political participation. We posit, however, that personal connections to civil society organizations (CSOs) moderate the negative effects of involuntary criminal justice contact on political participation, particularly political activism beyond registering to vote and voting. We test this proposition with individual-level and aggregate-level data from metropolitan and municipal Chicago. Our findings confirm a paradox of participation by custodial citizens. One, we demonstrate positive, statistically significant, and substantive effects of personal connections to CSOs on *nonvoting political participation* by custodial citizens. Two, the negative effects of involuntary criminal justice contact on *voting participation* among individuals and communities may endure, despite personal connections to CSOs, even in a state where the franchise is restored immediately after incarceration. Our study suggests that an associational account of political participation deepens our understanding of the political behavior of custodial citizens and their communities in the age of mass incarceration.

In the United States, citizens (and immigrant denizens) may experience unwanted, even unwarranted, contact with the criminal justice system. Categories of such criminal justice contact[1] include police stops of drivers and frisks of pedestrians, arrests without formal charges and convictions, diversion from court convictions via "problem-solving" or specialized courts such as drug courts, and court convictions for misdemeanors and felonies, accompanied by sentences of incarceration, parole, or probation, along with the imposition of fees and fines by the courts.[2] Criminal justice contact also includes unwanted interactions between youth and "resource officers" (i.e., police working in elementary and secondary schools), arrests and detentions of youth in juvenile or adult correctional facilities, and community supervision by and beyond "youth diversion programs."[3] The myriad of

A list of permanent links to Supplementary Materials provided by the authors precedes the References section.

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Hannah L. Walker is Assistant Professor of Political Science and Criminal Justice at Rutgers University (hlwalker@polisci.rutgers.edu). Walker's work explores political mobilization against the carceral state, focusing on the impact of criminal justice contact on the families and loved ones of the incarcerated.

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moments for unwanted contact between citizens and the criminal justice system in the United States multiplies membership in the group scholars call "custodial citizens."[4] They are the growing set of citizens law enforcement agencies have detained for questioning, arrested, charged, convicted, or placed under some form of correctional control for suspicion of or actual criminal behavior.

The number and rate of Americans who are custodial citizens are great, even as violent and property crime rates fall and public punitiveness abates.[5] There are 110,235,200 people in the criminal history files of the 50 states and U.S. territories, an increase of 130% from 1993.[6] Nearly one in every three adults has a record of criminal arrest.[7] While approximately 9% of adults have felony convictions, we generally know that the percentage of adults with misdemeanor convictions is many times larger.[8] Nearly one in 34 Americans is under some form of correctional control.[9] Millions of adults and juveniles who were once under correctional control for criminal convictions are now "off paper" but not necessarily fully (re) integrated into society.

Even when citizens are no longer in the unwanted grasp of carceral government, deep imprints of their criminal justice contact remain. Law enforcement agencies retain custody of, often publicize, and may permit others to monetize all information about criminal justice contact, whether slight or severe. It is contained in a vast assortment of "criminal intelligence databases, police blotters, rap sheets, court records, presentence reports, prosecutors' files, probation files, and jail and prison databases," inclusive of photographs and residential addresses.[10] Thus, the half-life of criminal justice contact is immeasurable. Its effects, however, are not.

Custodial citizenship, whether from short detentions for questioning at police departments and county jails to long stretches in state or federal prisons, produces a range of negative social and labor effects for those who have had criminal justice contact. They include stigma, depression, lost earnings, unemployment, and homelessness.[11] Custodial citizenship also has concomitant negative consequences for the children and families of the citizens whom law enforcement agencies have detained for questioning, arrested, charged, convicted, or placed under some form of correctional control. Examples include weakened family ties and increased behavioral problems for children.[12] Custodial citizenship may even have negative effects on communities with greater residential densities of such citizens, measured for instance by residential churn, social control, and crime.[13]

What about the polis and politics? Custodial citizenship affects government and governance at every rung of the federalist ladder. It shapes the demographics and decisions of the legislative, executive, and judicial branches of localities, states, and the nation.[14] It influences legislative reapportionment and redistricting;[15] juries and electorates;[16] political candidacies;[17] vote margins in elections and referendums;[18] distributive politics (e.g. siting of prisons and allocation of some intergovernmental transfers);[19] mundane matters of public policy (e.g., measuring labor force participation and unemployment);[20] and municipal revenue, particularly when city managers, police, and courts collude for exploitative revenue.[21]

Furthermore, custodial citizenship is consequential to civic voluntarism by adults, particularly political participation.[22] As criminal justice contact increases, intensifies, and lengthens at the individual and community levels, scholars generally observe that custodial citizens and communities with residential concentrations of them participate less in political activities, especially voting.[23] Declines in voting by custodial citizens and their communities are not a function of imprisonment and felony disenfranchisement alone. Citizens who police officers have detained for questioning, for instance, report voting less, too.[24] Because criminal justice contact reduces the number of people participating as voters, as well as possessing positive civic sentiments,[25] it is "an important force in shaping American mass politics."[26]

Rightly, scholars of political behavior, institutions, and normative theory focus on the existence, size, and causal mechanisms of the negative democratic effects of custodial citizenship.[27] The study of the civic consequences of criminal justice contact is valuable—theoretically, empirically, and substantively. It increases, in particular, our understanding of the anti-democratic consequences of custodial citizenship for political attitudes and behaviors. It brings into better focus the "second face of the American state," revealing the punitive profile of "the governing institutions and officials that exercise social control and encompass various modes of coercion, containment, repression, surveillance, regulation, predation, discipline, and violence" that condition civic voluntarism while influencing other political phenomena.[28] Nonetheless, as important, we argue, is the need to identify the set of factors that may attenuate the negative influence of "the state's more controlling 'second face'"[29] on civic voluntarism.

While the study of the negative democratic effects of criminal justice contact invites an assortment of scholarly interventions, we widen here the disciplinary lens of the politics of criminal punishment to give greater attention to civil society. This is necessary. Deliberate consideration of civil society is atypical for political penologists interested in the democratic consequences of the American carceral state. Scholars of punishment and politics—be they Americanists, normative theorists, or comparatists—tend to neglect the potential and limits of civil society organizations (CSOs) to influence political participation by custodial citizens.[30] Even when they do not neglect civil society, studies of the relationship between criminal justice contact and political behavior and attitudes are limited.

For example, they overemphasize "ex-felon serving institutions," which likely lack capacity for political mobilization.[31] Yet there is reason to suspect that civil society and a variety of CSOs may mitigate the negative effects of criminal justice contact on civic voluntarism.

A large body of scholarship exists about the potential of CSOs to shape political behavior through civic skills development, community organizing, services provision, and opportunities for activism and mobilization, inclusive of participation.[32] We leverage it to deduce a proposition about how and why personal connections to CSOs may positively influence political participation by adult custodial citizens, just as personal connections to CSOs routinely do for adult *noncustodial* citizens.[33] Taking what Han calls "an organizational approach to understanding [political] activism"[34] and applying it to custodial citizens, we explore whether personal connections to one set of varied CSOs—formal, tax-exempt nonprofit organizations—are associated with weaker negative effects (or positive ones) of criminal justice contact on political participation. We employ individual-level data from metropolitan Chicago on criminal justice contact, connections to CSOs, and participation and aggregate data on conviction rates, CSO densities, and political participation (i.e., voting and citizen-initiated contact with government) in municipal Chicago. Our data permit us to estimate relationships among custodial citizenship, civil society, and political forms of civic voluntarism.

Four findings are key: 1) independent of personal connections to CSOs, criminal justice contact is neither associated with voting nor non-voting; 2) custodial citizens *without* connections to CSOs participate less in politics via voting *and* nonvoting; 3) personal connections to CSOs are associated with *increased nonvoting political participation* among those who have had the heaviest criminal justice contact (i.e., correctional control via incarceration and community supervision); and 4) however, personal connections to CSOs may only increase *some* forms of political participation among custodial citizens.

Criminal Justice Contact and Political Participation

People, as the aphorism states, "participate when they can, when they want to, and when they are asked."[35] Resources, orientations, and recruitment, along with "rewards, interests, and beliefs," influence political participation.[36] Institutions and policies affect political participation, too. As Mettler and Soss[37] stress, "living under a given policy regime affects citizens' goals, beliefs, and identities—and hence, the possibilities and limits for future political action." However, individual-level factors associated with the likelihood of criminal justice contact build resource, efficacy, and recruitment barriers to political participation by custodial citizens. Also, the American carceral regime, buttressed primarily by white public support for punitive policies,[38] including policies that exclude custodial citizens from the ballot box and public office, supplemented by punitive polices that the state, market, and civil society coproduce,[39] prevents many custodial citizens from thinking and behaving as full political members of society. It is unsurprising then that research on the democratic effects of the American carceral state draws the same conclusion as scholarship on the democratic effects of the American welfare state—"some policies draw citizens into public life and others induce passivity."[40]

Aside from executing the administration of public safety and criminal corrections, criminal justice contact as a "political learning situation"[41] for custodial citizens negatively affects the political attitudes, ambitions, and activities of many custodial citizens, arguably by socializing them to see themselves as citizens with less liberty, equality, dignity, and regard than other citizens.[42] Additionally, scholars observe that the relationship between criminal justice contact and *electoral* participation, particularly voting, is negative and the negative relationship strengthens as the grasp of criminal justice contact tightens.[43] The most cited empirical study of the political attitudes and behavior of custodial citizens in the United States, for instance, estimates the likelihood of decline in voting by persons with arrests as 7%, criminal convictions as 10%, short stints in jail or prison as 17%, and long stints of incarceration at almost one-third.[44] Furthermore, in communities where the residential density of custodial citizens is higher and where more residents are removed from them through imprisonment as "coercive mobility"[45] voting is lower, too.[46]

Yet even when we observe that custodial citizens participate electorally at lower levels than their noncustodial counterparts, their probabilities of voting or participating politically in other ways are never zero. Additionally, some custodial citizens "double down on democratic values and practices,"[47] despite punitive policy designs and negative feedback of the carceral state.[48] Acting as if their political participation matters and to make it so, many custodial citizens participate, defying low expectations of collective action improving their lives.[49] Furthermore, criminal justice contact may reduce voting *without* affecting other political activities (e.g., contacting government officials, signing petitions, and demonstrating).[50] Plus, because elections are infrequent and often noncompetitive—limiting their service as a strong means of democratic accountability and civic engagement—custodial citizens, like noncustodial ones, could perceive participation outside the voting booth as a better means for sharing preferences with policymakers and for achieving policy responsiveness than participation in elections. And some people prefer to participate via nonvoting political activities instead of by electoral ones.[51] Therefore, borrowing Han's caution about political activism by noncustodial citizens, generally, when it comes to our

knowledge about the political participation of custodial citizens, "we cannot assume that findings related to voting import directly to other forms of activism."[52]

Civil Society Organizations and Custodial Citizens

Civil society is "the primary agent of political dialogue and citizen influence" when people participate politically in the United States, particularly in cities and metropolitan areas.[53] It has been since the nineteenth-century travels of Alexis de Tocqueville, who was one of the first empiricists of civil society *and* criminal justice contact in America.[54] CSOs, as de Tocqueville observed then, pave the way for political participation. It is truer in the twenty-first century, where "every day thousands of nonprofit organizations around the country are busy organizing and creating opportunities for new associations" for individual and collective efficacy to solve public problems by (and beyond) voting and nonvoting political participation.[55]

Civil Society Organizations as Hindrances to Participation

Although we expect CSOs to positively affect the political participation of custodial citizens connected to them, reasons exist to be pessimistic about their influence. There has been a steady growth in the number of charitable nonprofit organizations and nonprofit advocacy organizations, which often do not mobilize clients and rely little on memberships to advance their interests. The growth of CSOs focused on charitable purposes and without mass memberships (e.g., American Society for the Prevention of Cruelty to Animals or the American Civil Liberties Union) shrinks stores of social capital for conversion to political capital.[56] Such organizations "focus on maximizing the number of people involved without developing their capacity for civic action."[57] It likely undermines the political utility of CSOs for citizens,[58] be they custodial or noncustodial.

Also, custodial citizens, generally, are likely to reach out to and be contacted by *social services* CSOs that focus on meeting immediate needs (e.g., shelter, substance abuse recovery, employment).[59] Such organizations seek to support their own persistence first and foremost. Fearing that mobilization of clients could negatively affect their finances, and misunderstanding government regulations of political activities by nonprofits, social services CSOs tend to avoid politics, limiting their level of political engagement.[60]

Even when CSOs foster political engagement, many bias their mobilization. CSOs tend to target individuals who demonstrate greater activism[61] and who possess more positive social constructions and political capital.[62] Given the central tendencies of the racial and class demographics of custodial citizens, the political strategies of many CSOs disregard custodial citizens and their communities, preferring to mobilize the less marginalized.[63]

Civil Society Organizations as Pathways to Participation

Those realities notwithstanding, it is plausible that civil society positively affects the participation of custodial citizens. Political participation has associational anchors and "organizational roots" in civil society.[64] Routine functions and incentives of charities, associations, and other forms of CSOs strengthen the anchors and roots for political participation.[65] Moreover, many CSOs engage in a variety of activities consequential for the political behavior of clients, volunteers, members, and other stakeholders (figure 1).[66]

Many CSOs, inclusive of many faith-based/religious CSOs like black churches[67] and secular CSOs like labor unions, educate, train, and socialize individuals for political participation.[68] They teach people to develop opinions and perceive their interests, form group consciousness and identify shared grievances, speak their concerns, and amplify their voices.[69] They cultivate personal commitments to public issues and collective problem solving.[70] They help individuals develop political efficacy, education, and civic skills for participation. Political engagement by individuals connected to charitable CSOs can increase from their participation in the "ordinary and routine" practices and activities of the organizations—"activity that has nothing to do with politics or public issues, can develop organizational and communications skills that are relevant for politics and thus can facilitate political activity."[71] For instance, the one-on-one conversations, opportunities for public speaking, and collective problem solving of sacred and secular CSOs influence civic development, even when they are indirectly political.[72] As a result, connections to CSOs by custodial citizens should reduce barriers to participation, including resource, efficacy, and recruitment barriers.[73]

Beyond dispositional and institutional reasons, people participate politically because others recruit and mobilize them,[74] and CSOs can channel people into opportunities for political participation. Personal connections to CSOs increase the likelihood that "political leaders" will attempt to mobilize them for political influence: "First, organizations mobilize their own members, often explicitly . . . . Second, organizations expose their members to mobilization by sympathetic politicians, activists, and other organizations."[75] Thus, CSOs create bridges that connect the civic and the political spheres, which can positively affect resources, orientations, and recruitment for political participation through mobilization.[76] Hence, "people who belong to associations are more likely to be mobilized and more likely to participate than people who do not belong."[77] As well, some CSOs are capable of activating and mobilizing clients, constituents, and members for political participation because of "reciprocal service

Figure 1
Civil society organizations pave ways for political participation

Political Foundation-Building	Educate for Political Participation	Enable & Organize Political Participation	Lobby, Advocate, & Litigate for Political Change	Electioneer to Influence Votes for Candidates & Referendums
Framing and problem definitions	Notification of political, social, and civil rights (e.g., right to vote or to receive public benefits)	Voter registration	Contact policymakers (elected and appointed) to oppose or support existing or new legislation, laws, regulations, rules, ordinances, services, directives, etc. via direct and grassroots lobbying and advocacy	Recruit candidates
Dialogues to identify shared interests, values, concerns	Voter education guides	Voter mobilization (e.g., Get Out the Vote or "Souls to the Polls" events)	File court cases	Appeal to voters to retain or change who holds public office
Activities to foster identities, group consciousness, solidarity	Candidate forums	Organize or publicize legislative lobby days		Create PACs, parties, and other formal political associations
Participatory skills-building (e.g., public speaking, collective critique, canvassing, etc.)	Policy discussion groups	Organize or publicize petition campaigns		"Express advocacy" and "Issue Advocacy"
Community problem solving activities via committees and associations	Town halls with policymakers	Organize or publicize protests		
Enrollments in public programs	Decennial Census education	Certification as an official polling station for voting		
		Promote referendums		
Perceived as least political	←	→		**Perceived as most political**

provision" that produces patron/client relationships that benefit organizations, their clients, and even political elites.[78]

Evidence is strong and consistent that CSOs, even human services CSOs, can inform, activate, and mobilize *marginalized* people. CSOs help them overcome the greater resource, efficacy, and recruitment barriers to participation that they face relative to people who are not marginalized.[79] The provision and shaping of routine opportunities for engagement often allow CSOs to demonstrate that collective action produces symbolic and substantive rewards for marginalized people.[80] Accordingly, civic voluntarism among lower SES individuals is higher in communities with more and stronger CSOs than in neighborhoods with fewer and weaker ones.[81]

Furthermore, CSOs are central to social welfare delivery in communities with high rates of custodial citizens. Again, it is unusual for human services CSOs to explicitly emphasize political action and mobilization. Nevertheless, some CSOs deliberately enable custodial citizens to develop and practice political resistance.[82] Moreover, some CSOs exist to politically activate and mobilize custodial citizens and their communities.[83] They provide custodial citizens with a greater sense of civic and political worth for fostering "new citizenship" and political participation *through* associational life (see figure 2).[84]

In sum, CSOs can perform multiple roles that bear on political participation. From fostering group consciousness, solidarity, and social capital to spending resources to influencing elections, CSOs can develop the democratic capacities, sentiments, and activities of citizens, custodial or otherwise. Accordingly, there are more reasons than not to expect that personal connections between custodial citizens and CSOs mitigate—and possibly reverse—the negative effects of criminal justice contact on political participation by custodial citizens. Therefore, we predict that *custodial citizens with personal connections to CSOs are more likely to participate by voting and nonvoting political activities than custodial citizens without personal connections to CSOs*.

Data, Measures, and Methods

We test our prediction about the influence of criminal justice contact and CSOs on the political participation of custodial citizens with individual and aggregate-level data from the Chicago metropolitan area. Chicago is more alike than different from many major metropolitan areas and central cities. "Chicago is not absolutely average, to be sure . . . . But Chicago has faced the dynamics that have confronted old major cities in the country—growth, decline, crime, and boom times. In this sense Chicago [is] both unique and broadly representative, grounded in a thoroughly documented history and context that helps us understand key patterns."[85] Moreover, trends in criminal justice contact in Illinois and Chicago "are broadly consistent with trends in crime and incarceration throughout the United States."[86]

Illinois is neither high nor low regarding correctional control: The rate of adults incarcerated, paroled, or on probation is 1:38, placing Illinois thirty-fourth among the fifty states. Chicago, its key metropolitan area and central city, has a large subpopulation of custodial

Figure 2
Redeeming citizenship by/for people with criminal justice contact

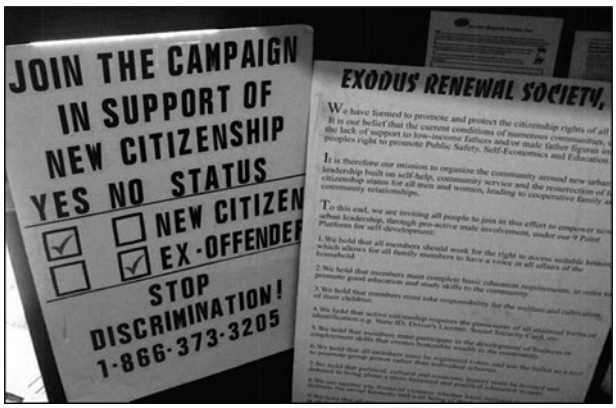


Photo credit: Michael Leo Owens

citizens and is the primary destination for the return of persons released from correctional institutions, inclusive of the local Cook County Jail. For instance, of the approximately 39,000 people annually released from prison in Illinois, 51% of them reside in the city of Chicago, mainly in seven of 77 neighborhoods, marked by "concentrated disadvantage" in terms of poverty and unemployment rates.[87]

Additionally, restrictions on voting by people under correctional control via prison, jail, parole, or probation with felony convictions in Chicago are comparable to those covering custodial citizens in most metropolitan areas (and states) in the United States. Under Illinois law, custodial citizens are only disenfranchised while incarcerated. Like those in fifteen other states and the District of Columbia, custodial citizens in Chicago who are on parole or probation (i.e., most Chicagoans under correctional control) may vote. Custodial citizens in Illinois may vote, too, while *awaiting* trial, be they jailed or bonded.

Most important, because of the 2014 Chicago Area Study (CAS), there is adequate survey data permitting estimates of the relationship among criminal justice contact, personal connections to CSOs, and political participation. The CAS, which our online appendix details, surveyed 1,294 respondents, including an oversample of blacks and Latinos, living in the central city and suburbs of metropolitan Chicago.[88] Of course, we know the statistical limits of self-reported data relative to strengths of administrative data on criminal justice contact and political participation.[89] We lack the latter, however, for Chicago or Illinois, particularly for measures of personal connections to CSOs and participation beyond registering to vote and voting.

In addition to the CAS, we collected aggregate data on criminal justice contact, CSOs, and political participation in the city of Chicago at the level of neighborhood beats of the Chicago Police Department. We matched a set of measures of criminal justice contact, CSO density, and voting and nonvoting political participation to each police beat. Police beats, which are our units of supplemental analysis (N = 270), allowed us to leverage an important form of nonvoting political participation in Chicago, namely attendance at police beat meetings[90] (and to address concerns about selection and response bias associated with surveys like the CAS).[91]

Generally, Chicago is a city of public meetings, as is true of many cities.[92] In particular, it is a city that uses public meetings as vehicles for citizen contact with government officials. The police beat meetings of the Chicago Alternative Policing Strategy (CAPS) are one important set of meetings in Chicago.[93] At least 53,000 police beat meetings were held from 1995 through 2016, with total annual attendance ranging from 21,000 to approximately 60,000 people.[94] The meetings occur at least once each quarter, offering residents opportunities for face-to-face interaction with law enforcement and other government officials, where they make requests related to policing and other municipal services. The meetings allow municipal agencies and citizens to collaborate to coproduce improved police-community relations and greater public safety. "With the exception of elections, it is difficult to identify a municipal activity of any kind attracting similar levels of civic participation—anywhere in the country."[95] Furthermore, "Chicago's policing program has helped to even out the opportunities to participate in community governments, with the greatest increase in collective participation by African-Americans."[96]

CAS Survey—Criminal Justice Contact and Personal Connections to Civil Society Organizations

Our key independent variables are criminal justice contact and personal connections to CSOs. Our measures of criminal justice contact come from a CAS question: *We are interested in how much contact people have had with the police. In the past five years, have you . . . (please select all that apply)—been questioned by the police for any reason, been on probation or parole, served time in jail and/or prison.* Eleven percent of respondents indicated that the police had questioned them and five percent reported being under correctional control in the past. We model self-reported levels of criminal justice contact in the past five years with dummy variables (Yes = 1, 0 = No) for *detained* (i.e., questioned by the police) and *correctional control* (i.e., prison, parole, or probation). The CAS data do not permit a refined assessment of the length of time either under correctional control or length of time since criminal justice contact.

The CAS queried respondents about their personal connections to CSOs: *Some people participate in groups and organizations while others do not. Do you currently belong to,*

volunteer with, attend meetings of, or pay dues for any of the following types of groups? Types of groups included: (1) religious group; (2) neighborhood or community organization; (3) labor union; (4) a professional organization; (5) an ethnic/cultural organization; (6) political organization that focuses on a specific cause; (7) political party; (8) civic organization (e.g., Rotary Club); (9) other; and (10) none of these. Initially, we coded the types of CSOs that respondents identified having personal connections to into six dummy variables: *religious*, *community*, *ethnic*, *labor*, *political*, and *other*. We tested the independent effects of these dichotomous variables. Ultimately, we exclude them because the CAS provided insufficient data for rigorous tests and robust results. Consequently, our measure of personal *CSO connections* is a dichotomous variable, measuring personal or direct participation in any type of group (Yes = 1, No = 0). Forty-two percent of respondents reported connections to CSOs. Although we know that higher levels of personal involvement in organizations produce greater personal involvement "in governmental politics" and other arenas of political participation such as elections,[97] the CAS did not measure the degree of personal involvement in CSOs.

We use two measures of *voting* from the CAS—whether a respondent was registered to vote and whether they reported voting in the 2012 presidential election. Among registered voters in the CAS, 89% reported voting in 2012.[98] We measure *nonvoting political participation* by self-reports of seven political activities, inclusive of a few electoral activities besides voting, respondents performed within 12 months prior to the survey: (1) signed a petition; (2) shared political information via social media; (3) attended a protest; (4) wrote a letter to an elected official; (5) donated to a political cause; (6) volunteered for a political campaign; or (7) issued a political opinion publicly in the form of an op-ed or calling into a radio show. We scaled the items, creating a conventional nonvoting political participation index. It ranges from zero to seven, with a mean of 1.53 activities.[99] The variety of activities in our index raises the possibility that one activity (e.g., protesting) drives observed relationships between criminal justice contact and nonvoting political participation. To evaluate the appropriateness of the use of the index we model the independent effects of each type of criminal justice contact and CSO connections on each item in the index. Figure 3 displays the marginal effects.

There is no evidence that correctional control negatively correlates with any item in the *nonvoting political participation* index. Instead, we observe that criminal justice contact positively correlates with contacting a government official, volunteering, and donating money to a cause. It is otherwise unrelated to nonvoting political participation. Figure 3 also does not reveal that any one activity or type of activity underlies a positive association between police detentions for questioning and nonvoting political participation. Finally, figure 3 illustrates that CSO connections statistically increase participation in all activities but one—sharing opinions on TV, radio, or in a newspaper. Given the general absence of a pattern of criminal justice contact affecting nonvoting political participation, we retain the seven-item scale as our measure of political participation beyond voting and registering to vote.

We control for race, gender, age, education, income, political interest, efficacy, party identification, marriage, and unemployment. The CAS stratified its sample by race. It did not stratify by other characteristics co-occurring with criminal justice contact (e.g., income and education). There may be an underrepresentation of respondents with criminal justice contact because of under-sampling some subpopulations or respondents concealing criminal justice contact. To mitigate potential data biases arising from sampling error, we apply weights to the CAS data where possible, using U.S. Census Bureau estimates of the demographics of the Chicago metropolitan area.[100]

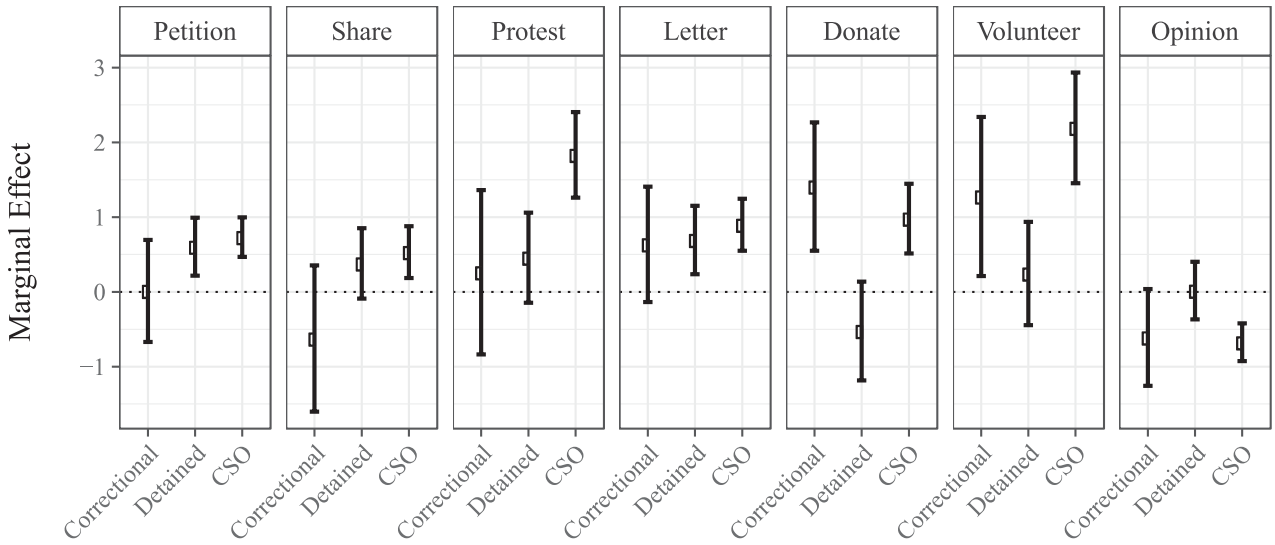
Aggregate Data—Criminal Justice Contact and Density of Civil Society Organizations

We rely on a unique set of public records of criminal convictions to measure criminal justice contact at the community level. Our data from the Chicago Justice Project (CJP), originally collected by the Office of the Chief Judge of the Circuit Court of Cook County (CCCC), includes records of criminal convictions and sentences by the Criminal Division of the CCCC between 2005 and 2009.[101] The records are cases the State's Attorney brought against 173,204 individuals it charged with felonies. For our measure and analysis, we retained felony conviction records for residents of the city of Chicago, relying on physical home address the court provided for each defendant. We successfully geocoded 90% of the 42,200 cases in the dataset (N=37,980). We corrected for an extremely right-skewed raw rate of felony convictions by logging conviction rates (*log(Convictions)*).[102]

We also measure density of CSOs at the community level, which somewhat parallels or proxies for personal connections to CSOs. Extant research on civil society, especially in Chicago, tells us important things about the measure, beyond the fact that it is an indicator of the organizational foundation and milieu of communities.[103] First, CSO densities are relatively stable by decade. Second, CSO density is positively correlated with events for civic engagement and action, especially "charity events, community festivals, public meetings, recreational activities, and workshops," and political protests and rallies.[104] Third, CSO density is a strong predictor of the propensity of "collective action" in or by neighborhoods in Chicago.[105]

We constructed our CSO density measure from the Exempt Organizations Business Master File Extracts[106] of

Figure 3
Marginal effects of criminal justice contact on participation



Notes: The figure reflects the marginal effect of correctional control, being detained by the police, and CSO connections on each item in the nonvoting participation index. Coefficients reflect fully specified models, located in tables A6 and A7 of the online appendix.

the Internal Revenue Service (IRS). The IRS identifies all active, tax-exempt, CSOs in the United States with annual incomes greater than $25,000 that are registered with the federal government and are required to file annual financial disclosure reports. Also, the IRS dataset classifies all nonprofit organizations by missions, describes the types of services they provide, and identifies their physical addresses. We chose all CSOs operating in Chicago that the IRS categorized as 501(c)(3), 501(c)(4), 501(c)(5), 501(c)(7), and 501(c)(9) nonprofit organizations (N=13,932).[107] We aggregated CSOs to police beats, standardizing counts by rates of CSOs per 1,000 people. Like the convictions data, densities of CSOs skewed rightward,[108] requiring logging CSO densities (*log(CSO)*).

We use two measures of nonvoting political participation that involve contacting public officials, either of a community or particularistic bent.[109] The first measure is a multiyear variable of public attendance at police beat meetings, using proprietary CAPS data on the number of civilian attendees per beat per month from 2013 through 2015.[110] We regard attendance at police beat meetings as an aggregate equivalent of survey items measuring attendance at community or political meetings. We calculated both the mean average attendance across all years by police beat and rates of meeting attendance per 1,000 people. Attendance rates ranged from .55 to 36.2, with a mean of 3.6.

Influenced by a resurgence in the study of nonvoting political participation, particularly citizen-initiated contact with government,[111] our second measure of contact operationalizes nonvoting political participation by instances of requests for nonemergency services from the city of Chicago via its 24-hour municipal 311 call system.[112] We treat a 311 call as an analog to the conventional survey measure of contacting a public official. Furthermore, 311 callers demonstrate "custodianship" for the commons, contribute to the maintenance of public goods, and reveal a "civic disposition—that is manifest in a broader pattern of political participation, including behaviors like voting and volunteering."[113] Theoretically, variation in criminal justice contact and CSO densities should influence 311 calls. If higher levels of criminal justice contact, for instance, degrade trust in government, whereby less engagement with political life results, eroded trust should diminish the propensity of communities to contact governments to address neighborhood issues.[114] We geocoded all 311 calls in Chicago in 2014 (N = 584,644) and calculated calls per 1,000 people at the level of police beats. Rates ranged from 1.9 calls to 221.1 calls, averaging 87.5 calls.[115]

Turning to voting participation in the municipality of Chicago, our two measures are turnout by registered voters in the 2014 Illinois general election (*2014 voter turnout*) and voter turnout in the 2015 mayoral election (*2015 voter turnout*), derived from electoral precinct-level data from the municipal Board of Election Commissioners. Estimated mean voter turnout for the 2014 election is 47% and 38% for 2015. Descriptive statistics and correlation matrices for all variables in our individual-level and community-level analyses are available from tables A1–A4 of the online appendix.[116]

Table 1
Effects of criminal justice contact on political participation

	Registered to Vote[a]	Voted in 2012	Nonvoting Political Participation[b]
Correctional control	-0.131	-0.881	0.061
	(0.586)	(0.485)	(0.122)
Detained by police	0.754*	0.099	0.191**
	(0.372)	(0.345)	(0.068)
CSO connection	0.683**	0.549*	0.293***
	(0.234)	(0.245)	(0.050)
Black	0.289	0.439	-0.077
	(0.396)	(0.383)	(0.075)
Latino	-0.599*	-0.120	0.098
	(0.265)	(0.307)	(0.066)
Other race	-0.572	-0.578	-0.078
	(0.342)	(0.395)	(0.098)
Political interest	0.053	0.321**	0.166***
	(0.108)	(0.116)	(0.026)
Political efficacy	0.472**	0.261	0.106**
	(0.151)	(0.161)	(0.037)
Education	-0.009	0.195	0.069*
	(0.130)	(0.136)	(0.030)
Female	0.075	0.111	-0.007
	(0.224)	(0.239)	(0.049)
Age: 18-34	-0.525*	-0.126	0.147*
	(0.249)	(0.272)	(0.061)
Age: 65+	1.273*	0.873*	-0.067
	(0.506)	(0.423)	(0.067)
Democrat	0.308	0.489	-0.014
	(0.332)	(0.335)	(0.066)
Independent	-0.572	-0.463	-0.055
	(0.301)	(0.307)	(0.066)
Income	0.163*	0.267**	-0.015
	(0.079)	(0.089)	(0.017)
Married	-0.347	0.142	0.039
	(0.250)	(0.274)	(0.056)
Unemployed	-0.199	-0.608*	0.132
	(0.275)	(0.289)	(0.074)
Constant	0.546	-0.925	-0.749***
	(0.609)	(0.678)	(0.152)
Observations	1,229	1,140	1,229
Log Likelihood	-335.595	-293.608	-1,699.86
AIC	707.191	623.216	3,435.71

Notes: [a]We model registered to vote and voted in 2012 with logistic regression.

[b]We model nonvoting political participation with Poisson regression. A dispersion test, using the *R* package "AER," yielded an estimate of .662, suggesting the data are not burdened by overdispersion.

*p<.05; **p<.01; ***p<.001.

Empirical Analyses and Results

Individual-Level Analysis

To get a baseline estimate of the relationship between criminal justice contact and political participation, we assess the relationships of criminal justice contact and measures of voting participation and nonvoting participation at the individual level. We would expect, based on extant studies, that voting participation by custodial citizens would be lower than voting participation by noncustodial citizens, with more intense criminal justice contact being associated with greater reductions in voting. The results in table 1 partially support the expectations.

More intense criminal justice contact, measured by correctional control via imprisonment or jailing or community supervision through parole or probation, is negatively associated with individuals being registered to vote and having voted. However, the relationship is not statistically significant. Conversely, and curiously, being detained by the police for questioning is associated with an increased likelihood of voter registration. Yet, like having been under correctional control, we failed to

observe any association between police detentions for questioning and voting in 2012.

Turning to the effect of contact on nonvoting participation, we would expect a positive relationship, as most previous studies conclude. As table 1 shows, the results from Chicago partially support the expectation.[117] Respondents who report that the police had detained them for questioning are likely to have greater levels of nonvoting political participation. The finding confirms results from other studies that show less intense criminal justice contact may increase nonvoting participation.[118] Yet there is no evidence from Chicago that incarceration and community supervision increase or decrease nonvoting participation. This, too, is relatively consistent with prior research.[119]

So far, we have evidence that criminal justice contact may have varied effects on voting and nonvoting political participation. The positive associations we observe for civic voluntarism through personal connections to CSOs—controlling for other factors, including correctional control—are, however, consistent for voting and nonvoting participation (table 1). The relationship achieves statistical significance across all three models. Personal connections to CSOs are associated with increased participation, as we theorized. This strengthens our expectation that personal connections to CSOs are positively associated with voting and nonvoting political participation by custodial citizens.

Turning our attention to examining the moderating effect of personal connections to CSOs on the political participation of individuals with criminal justice contact, we explore the relationship between criminal justice experiences with personal connections to CSOs. The results in table 2 suggest that personal connections to CSOs correlate with a greater propensity of *nonvoting* participation by custodial citizens, relative to those with criminal justice contact who lack CSO connections. The interaction of correctional control and personal connections to CSOs produced results that accord with our hypothesis about political participation beyond registering to vote and voting. Personal connections to CSOs are positively related to greater nonvoting political participation by people who have been under correctional control, after controlling for factors that conventionally correlate with civic voluntarism.

To better interpret the relationships among criminal justice contact, connections to CSOs, and *nonvoting* political participation, we calculated the expected score on the nonvoting political participation index by degree of criminal justice contact. We did this for custodial citizens with and without connections to CSOs. Regardless of the degree of contact, personal connections to CSOs improve nonvoting participation by custodial citizens relative to those lacking connections to CSOs (figure 4). Absent CSO connections, criminal justice contact diminishes the expected level of nonvoting political participation. Those without criminal justice contact and without CSO connections have an expected score of 1.25 activities on the index. The expected score on the index shrinks to one activity for those who have been under correctional control and lack CSO connections. Among similarly situated custodial citizens with CSO connections who have been under correctional control, however, the expected score on the index *increases* to 2.25 activities.[120]

Remarkably, the size of the positive association of personal connections to CSOs on nonvoting political participation is larger for those with criminal justice contact than for those without it. For noncustodial citizens, personal connections to CSOs improve nonvoting political participation by about .3 political activities. Among Chicagoans the police have detained, CSO connections improve the expected score on the index by about .6 political activities. Personal connections to CSOs also increase the expected score by 1.25 political activities among respondents who have experienced some form of correctional control. Moreover, the expected value of nonvoting participation for custodial citizens with personal ties to CSOs *exceeds* that of their counterparts without criminal justice contact.

Nevertheless, personal connections to CSOs appear to *not* moderate the depressive effects of criminal justice contact on voting. Our finding, which is important, may reflect that the material and attitudinal barriers to voting custodial citizens face remain high despite any capacity of CSOs to pave the way for voting. Even in places like metropolitan Chicago, where *all* custodial citizens are eligible to vote, and even as their connections to CSOs may ease participation in other forms of civic engagement, barriers to voting may remain. Lastly, the results reveal that personal connections to CSOs by custodial citizens the police have detained for questioning may not be statistically significant for voting *or* nonvoting political participation.[121]

One implication of our findings is that the empirical claims of the literature about the negative democratic effect of the carceral state are too general to adequately describe civic voluntarism by custodial citizens. Certainly, custodial citizens may withdraw from or neglect voting. Nonetheless, many continue to participate outside the ballot box, especially when they are connected to CSOs. Moreover, some custodial citizens will begin participating beyond voting because they have personal connections to CSOs. Such connections may make their participation more likely and frequent because the CSOs create opportunities for education, activation, and mobilization, as they do for noncustodial citizens.

Aggregate-Level Data

Based on our results from the individual-level analysis, combined with the broader empirical findings in the literature on the political behavior and attitudes of

Table 2
The interactive effects of contact and CSO connections on forms of participation

	Registered to Vote[a]	Voted in 2012	Nonvoting Political Participation[b]
Correctional control	-0.160	-1.565**	-0.213
	(0.662)	(0.574)	(0.196)
CSO connection	0.601*	0.551*	0.255***
	(0.243)	(0.273)	(0.054)
Detained by police	0.533	0.519	0.131
	(0.419)	(0.471)	(0.112)
Correctional control*CSO connection	0.356	2.518	0.519*
	(1.483)	(1.389)	(0.249)
Detained*CSO connection	1.027	-0.911	0.109
	(1.025)	(0.676)	(0.139)
Observations	1,229	1,140	1,229
Log Likelihood	-335.809	-290.046	-1,696.76
AIC	711.619	620.092	3,433.52

Notes: [a] We model registered to vote and voted in 2012 with logistic regression.

[b]We model nonvoting political participation with Poisson regression. A dispersion test, using the *R* package "AER," yielded an estimate of .660, suggesting an absence of overdispersion.

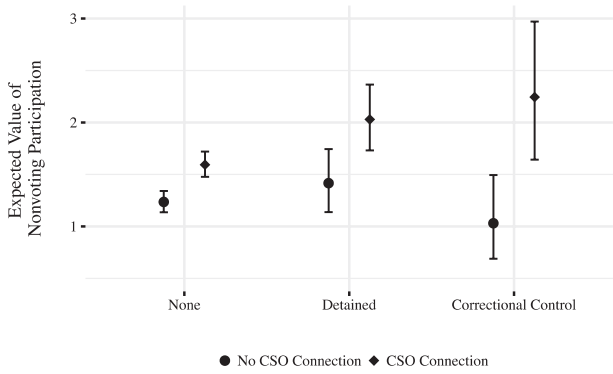
*p<.05; **p<.01; ***p<.001. Reported coefficients are from fully specified models, located in table A8 of the appendix.

custodial citizens, we explore a simple set of predictions about criminal justice contact at the community-level: greater criminal justice contact is associated with decreases in electoral participation, measured by voting and greater criminal justice contact is associated with increases in nonvoting political participation. Recall that our aggregate criminal justice contact measure is felony conviction rate. It is, as table 3 displays, statistically associated with lower turnout in the 2015 mayoral election. We logged the rate of felony convictions such that the coefficient estimate is interpreted as the absolute change in 2015 turnout given a percent change in felony convictions. Thus, a 5% increase in the felony conviction rate decreases expected voter turnout at the community-level in 2015 by approximately four percentage points. Also, while the relationship is not statistically significant, the felony conviction rate is negatively associated with the 2014 general election turnout.

Independent of CSO density, the rate of felony convictions is associated with increased nonvoting political participation, measured by 311 calls. Moving from the minimum value of felony conviction rate (.018) to its mean value (7.5) increases the rate of nonemergency calls in Chicago from 24 calls per 1,000 residents in police beats to just over 100 calls. Similarly, the felony conviction rate positively relates to meeting attendance, with the relationship approaching statistical significance. The positive effect that may exist between the felony conviction rate on both types of nonvoting political participation perhaps indicates neighborhood disorder and maybe lower (or higher) levels of community efficacy.[122] That would mean felony conviction rates co-occur with needs for nonemergency assistance/antagonistic policing practices in need of redress.[123]

Furthermore, one would expect that the scale of CSO presence in communities would particularly influence political participation by custodial citizens, whereby CSOs mitigate the demobilizing effects of criminal justice contact. We test this expectation at the community-level by interacting felony conviction rates and CSO density. Parallel to the results from our individual level analysis, political participation should be greater in communities where conviction rates are higher *and* the presence of CSOs are denser, compared to

Figure 4
The impact of criminal justice contact and CSO connections on participation



Notes: The figure reflects the interactive effect of criminal justice contact and CSO connections on participation among CAS respondents in the Chicago Metropolitan Area. Expected values derived from the nonvoting political participation model (refer to table 2).

Table 3
Effect of conviction rates and CSO densities on voting and nonvoting participation

	2014 Voter Turnout	2015 Voter Turnout	Meeting Attendance	311 Calls
Log (convictions)	-0.006	-0.008*	0.494	11.137***
	(0.003)	(0.003)	(0.306)	(2.662)
Log (CSOs)	0.004	-0.002	0.852**	9.391**
	(0.004)	(0.004)	(0.325)	(3.242)
% 18-34	-0.347***	-0.296***	0.196	10.168
	(0.062)	(0.063)	(4.872)	(48.693)
% 65+	0.297**	0.598***	-1.117	23.671
	(0.108)	(0.109)	(8.442)	(84.266)
% black	0.082***	-0.029	-3.290*	24.780
	(0.018)	(0.019)	(1.438)	(14.350)
% Latino	-0.053*	0.057*	-4.978*	53.152**
	(0.025)	(0.025)	(1.946)	(19.354)
% College graduate	0.287***	0.175***	-7.714*	-78.220*
	(0.039)	(0.040)	(3.190)	(30.894)
% Poor	-0.022	-0.087	5.902	-298.645***
	(0.055)	(0.056)	(4.334)	(43.081)
% Unemployed	-0.019	0.090	-5.752	-9.664
	(0.064)	(0.065)	(5.120)	(50.472)
% Owner occupied	0.226***	0.219***	9.353	-30.243
	(0.062)	(0.063)	(4.881)	(48.655)
Constant	0.263***	0.172*	0.413	166.427**
	(0.068)	(0.069)	(5.375)	(53.611)
Observations	270	270	268	270
Adjusted R2	0.774	0.712	0.087	0.4

Note: All dependent variables are continuous, and are modeled using ordinary least squares regression.

*p<.05; **p<.01; ***p<.001.

communities with lower CSO densities. Comparatively, lesser CSO densities and lower conviction rates should matter less for political participation outcomes at the community-level. While CSO density and conviction rates independently increase requests for nonemergency assistance, we do not observe in table 4 a statistically significant interactive association with nonvoting political participation or with voting.

Figure 5 displays the marginal effects of CSO density, conviction rate, and the interaction between the two on each outcome of interest. These visualizations highlight that, independent of the felony conviction rate, the density of CSOs are positively related to nonvoting political participation. That is true, too, for the felony conviction rate in relation to 311 calls, regardless of CSO density. We interpret those results to mean that CSO density positively

Table 4
Interactive effect of conviction rates and CSO densities on voting and nonvoting political participation

	2014 Voter Turnout	2015 Voter Turnout	Meeting Attendance	311 Calls
Log (convictions)	-0.005	-0.006	0.567	10.046***
	(0.004)	(0.004)	(0.378)	(2.940)
log(CSOs)	0.004	-0.003	0.847**	9.568**
	(0.004)	(0.004)	(0.326)	(3.250)
Convictions*CSOs	-0.001	-0.002	-0.048	1.117
	(0.002)	(0.002)	(0.145)	(1.275)
Observations	270	270	268	270
Adjusted R2	0.773	0.713	0.076	0.4

Notes: All dependent variables are continuous, and are modeled using ordinary least squares regression.

*p<.05; **p<.01; ***p<.001. Coefficients reflect fully specified models, located in table A12 of the online appendix.

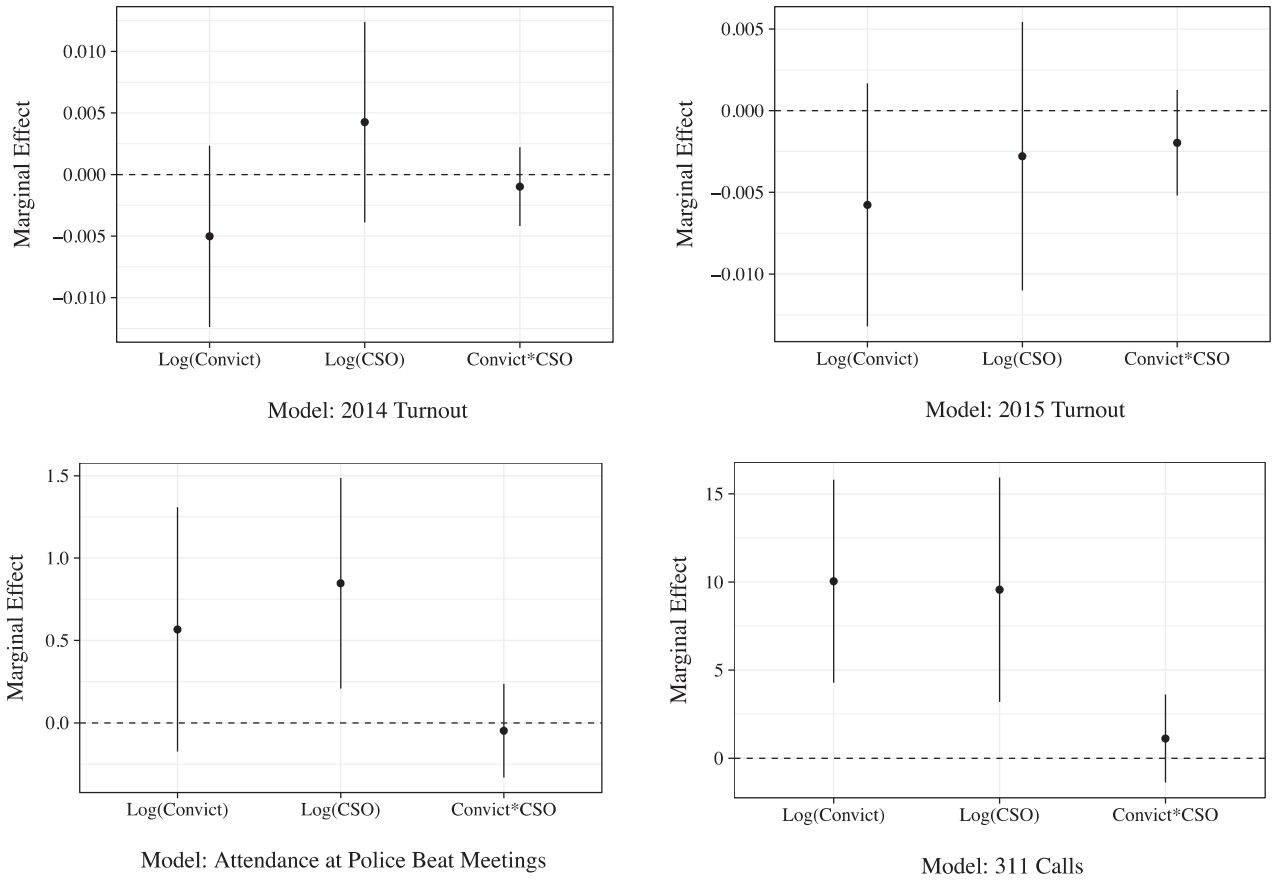
increases requests for nonemergency assistance in communities with either low *or* high felony conviction rates. Our interpretation is plausible, given that "organizational resources predict collective efficacy and [CSOs] produce externalities that foster collective action" in Chicago.[124]

However, we must reiterate two points. First, higher rates of 311 calls may result from greater needs for nonemergency assistance in high criminal justice contact (i.e., high felony conviction rate) communities. Second, higher attendance at police beat meetings may stem from greater degrees of police-community antagonisms, if policing is more concentrated, "hot spot" oriented, and aggressive. Put another way, higher rates of citizen-initiated contact with government in one form or another in communities with more custodial citizens could result from a need in such communities for greater attention from public officials, a need that may be absent in communities with fewer custodial citizens.

To address those potentialities, we employed a matching causal inference strategy that allowed us to compare the impact of CSO density among similarly situated communities that differ primarily by felony conviction rates. The strategy allowed us to compare low conviction rate communities to otherwise similarly situated high conviction rate communities. We describe the matching strategy and report results in full in the online appendix. Results from the matched analysis generally corroborate conclusions we drew from our analysis of the full sample before matching communities by rates of felony convictions. Specifically, greater CSO density is associated with greater requests for nonemergency assistance and attendance at police beat meetings among communities with either low *or* high felony conviction rates (refer to table 5 and figure 6).

To be clear, greater CSO density is associated with greater attendance at police beat meetings and requests for nonemergency assistance among low-conviction communities that are comparable in other ways to their high-conviction counterparts. Neither do conviction rates by themselves appear to impact nonvoting

Figure 5
Conviction rate, CSO density, and participation among Chicago police beats



Notes: The marginal effect of conviction rate, CSOs per 1,000 in the population and their interaction on voting, attendance at police beat meetings, and requests for nonemergency assistance. Coefficient estimates reflect models presented in table 4.

Table 5
Matched analysis: Interactive effect of conviction rates and CSO densities on voting and nonvoting political participation

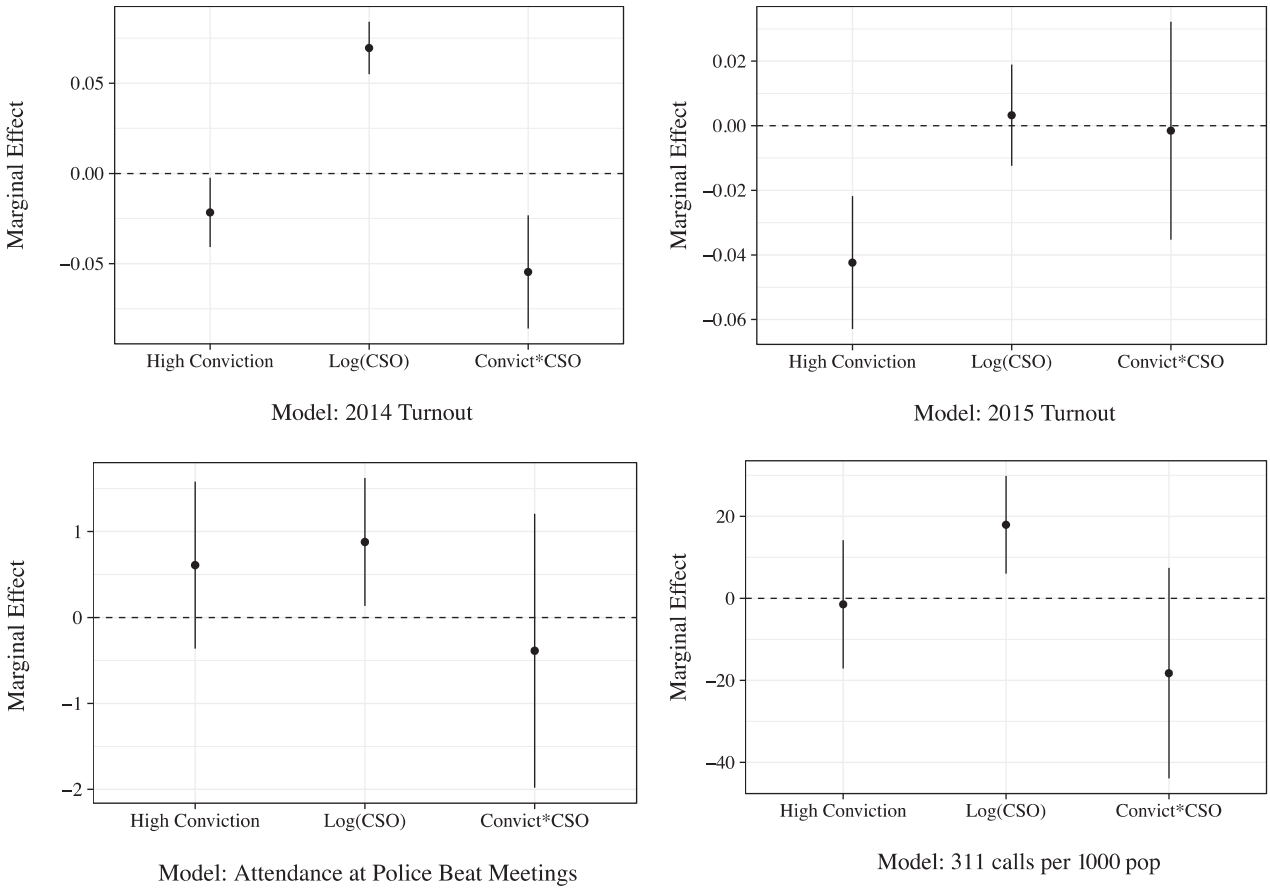
	2014 Voter Turnout	2015 Voter Turnout	Meeting Attendance	311 Calls
Log (convictions per 1000 pop)	-0.022*	-0.042***	0.610	-1.432
	(0.010)	(0.010)	(0.495)	(7.991)
Log (CSO per 1000 pop)	0.070***	0.003	0.880*	17.965**
	(0.007)	(0.008)	(0.380)	(6.087)
Convict*CSOs	-0.055***	-0.002	-0.386	-18.233
	(0.016)	(0.017)	(0.813)	(13.096)
Observations	88	88	88	88
Adjusted R2	0.518	0.192	0.061	0.064

Notes: All dependent variables are continuous, and modeled using ordinary least squares regression.

*p<.05; **p<.01; ***p<.001.

political behavior, nor does CSO density operate differently for low- or high-conviction communities. The overriding factor influencing nonvoting political participation appears to be CSO density. Results from the matching strategy, then, confirm that our broader findings about CSO density and nonvoting political participation are not due to need alone in those communities.

Figure 6
Conviction rate, CSO density, and participation among matched police beats



Notes: The marginal effects of conviction rate, CSOs per 1,000 in the population, and their interaction on voting, attendance at police beat meetings, and requests for nonemergency assistance, among matched police beats. Coefficient estimates reflect models presented in table 5.

Voting, however, is different. While increasing CSO density is associated with increasing voter turnout in high and low criminal justice contact communities in Chicago in 2014, the slope of increase is greater for low conviction communities than for high ones. This illuminates how we might interpret the effects of CSOs on nonvoting political participation in communities. Although the interaction term for convictions rates and CSO density does not achieve statistical significance for either meeting attendance or 311 calls per capita, as is the case with the results of the unmatched analysis presented earlier in table 4 and figure 5, the nature of the relationships are similar: *CSO density increases nonvoting political behavior in high-conviction and low-conviction police beats, even if the size of the effect is larger in low-conviction communities*.

Overall, CSOs are associated with more nonvoting political participation in high conviction communities, which parallels what we observed in the individual-level analysis, whereby personal connections to CSOs were associated with increased nonvoting political participation by custodial citizens. Also, contacting government, either through attendance at police beat meetings or making requests for nonemergency assistance, is about more than need. CSO density matters as there is an association between CSO density and increased nonvoting political participation, regardless of community-level conviction rates. However, as we generally observed in the individual-level analysis, where personal connections to CSOs were not associated with changes in voting, barriers may remain that hinder higher densities of CSOs from yielding greater degrees of voting by communities with high rates of criminal justice contact.[125]

Discussion and Conclusion

Studies of the influence of involuntary criminal justice contact on political participation reveal how unwanted interactions with the carceral state negatively influence political behavior by individuals and communities. Such studies, which mainly report on voting, suggest that criminal justice contact shifts many custodial citizens from political engagement to political quiescence, assuming they ever were politically active. Hence, involuntary criminal justice contact may yield "diluted political engagement,"[126] which reduces the already low political influence of custodial citizens as individuals and collectives.[127] But there is a bifurcation of participation by custodial citizens: custodial citizens may engage less as voters but their nonvoting political participation may not decline. In fact, the nonvoting political participation by custodial citizens may increase.

Nonvoting political participation by people who have had criminal justice contact, as our results suggest, is strongly associated with their personal connections to civil society organizations. This association may result from causal mechanisms inherent in specific forms of organizing and mobilization, but also service provision, by CSOs. When CSOs assist custodial citizens to solve problems arising from criminal justice contact (e.g., unemployment, precarious housing, lack of affordable legal assistance, etc.), they may implicitly or explicitly assist them—and their communities—to overcome efficacy and resource barriers to greater nonvoting (and sometimes voting) participation.[128] Although our study was not designed to identify causality, future research on political participation—including nonvoting political participation—by custodial citizens that applies careful causal identification strategies are warranted. Additionally, it may be the case that particular types of CSOs matter more to increased (or reduced) political participation by custodial citizens and communities where more of them reside. That is undetermined. Insights from qualitative studies of custodial citizenship and participation, however, hint that some types of CSOs may prove more influential than others in shaping the engagement of people who have had criminal justice contact.[129]

Additionally, the observed relationship between personal connections to CSOs and increasing nonvoting political activities by custodial citizens, specifically individuals who experienced correctional control, is important to keep in mind. Nonvoting political participation *is* conventional political participation.[130] Depending on the measure, nonvoting participation is more common than casting a ballot in the United States.[131] Hence, the strength of the association between personal connections to CSOs and increasing nonvoting political participation among custodial citizens reminds us that they—even those whom the state has held tightest and longest via correctional control—are not that much different from noncustodial citizens when it comes to nonvoting political participation. Custodial citizens volunteer with campaigns, attend public meetings, make public-regarding contact with government via nonemergency call systems or letters and emails, recruit others to participate, and engage via a variety of participatory modes.

Accordingly, nonvoting political participation by custodial citizens and its breadth of activities, inclusive of electoral ones (e.g., volunteering with campaigns) and nonelectoral ones (e.g., petitioning), deserves as much attention as registering to vote and voting. To be blunt, social scientists, particularly political scientists, are overly concerned with the effect of criminal justice contact on voting, paying too little attention to political participation beyond voting by custodial citizens. Yet nonvoting political participation is perhaps more likely to strengthen the voice of custodial citizens in relation to distributive politics that condition their full citizenship.

Furthermore, much of the CSO activity in relation to political organizing and mobilizing of custodial citizens is and will be for individual and collective goods, not the ballot. In increasing numbers of cities and states, the

restoration of social and civil rights to custodial citizens without them is the primary attention of CSOs concerned about the democratic effects of criminal justice contact. Their work is marked by advocacy and lobbying campaigns, not voter registration and turnout drives, to remove the bars on access to social welfare benefits (e.g., food stamps and public housing) and to open labor markets through "ban the box" (i.e., removal of screener questions from job applications that may reduce employment of people with criminal records).[132] Additionally, a lot of organizing of custodial citizens is less about individuals and more about their communities in the name of universal improvement and community development.

Are we calling for political scientists and others to abandon the study of voting by custodial citizens? No. Normative, empirical, and substantive reasons remain for us to keep studying custodial citizens as slack resources before, during, and after elections.[133] Certainly, political mobilization of custodial citizens for greater democratic participation obligates attention to the restoration of voting rights and other electoral matters. There are, for example, significant activities underway in Florida to immediately re-enfranchise all custodial citizens without records of violent crime and to return the ballot to prison inmates in California, Massachusetts, and New Jersey.

Nevertheless, political participation of custodial citizens as *voters* may not increase, regardless of the success of those voting-rights restoration campaigns. It also may not increase despite personal connections to civil society organizations as we observed in our Chicago research. The results failed to show statistically significant relationships between criminal justice contact, personal connections to CSOs, and registering to vote and voting at both the individual and aggregate levels. More concretely, the negative relationship between criminal justice contact and voting may endure even by custodial citizens in communities where voting rights restoration happens immediately after incarceration *and* where CSOs are dense and personal connections to them are strong.

Before we conclude, it is worth reiterating the descriptive character of our study. We are not able to draw conclusions about the causal pathways of criminal justice contact, CSO connections, and political participation. Not only do we lack administrative data on individual level connections to CSOs and participatory activities beyond voting, our individual-level data is cross-sectional and from a survey subject to selection bias. It may be, for instance, that individuals who are connected to CSOs are also the sort of people likely to participate at high levels. Previous research suggests otherwise, however, and demonstrates that nonpolitical institutions are instrumental to cultivating the political skills and interests important to participation. Yet we are unsure about the exact nature of this relationship from cross-sectional, observational data. While our use of aggregate data, which ameliorates sampling and response bias, produced results that generally support the claim that CSOs increase participation in all kinds of communities, we observed that the magnitude of the civil society potential for increased civic voluntarism in communities with lower rates of custodial citizens was greater than what we observed in communities with higher rates of custodial citizens. Cumulative disadvantage and institutional barriers to participation, which exacerbate each other, construct obstacles for custodial citizens and their communities to full participation in political life. In the absence of better data, however, we can only postulate about how CSO connections shape civic education, access, and engagement, and whether variation in civic voluntarism by custodial citizens is indicative of relative disempowerment or strength.

Still, our findings disrupt the characterization that communities where criminal justice contact is prevalent are beleaguered, possessing weak capacities for personal and collective efficacy, which undermine engagement of their custodial residents in the polis. For example, our study suggests that citizen-initiated contact with government can be greater in communities with higher rates of residents with criminal convictions than in communities with lower rates of residents with criminal convictions. Thus, communities with high rates of criminal justice contact may not participate less in all forms of action, at least when the civic voluntarism in question includes behaviors beyond the frequency of voting.

Also, our research encourages political scientists to rethink how we understand and measure the political lives of marginalized people and their communities. By widening our theoretical and empirical gazes beyond "the electoral-representative dynamics that have become the taken-for-granted object of our attention"[134] we can better observe how custodial citizens and their communities do politics, as well as better observe how their political behavior may bear on and be shaped by the institutions and distributive politics of the carceral state.

Finally, echoing Majic, "it is . . . imperative that we examine nonprofit organizations more closely and identify the ways they may engage in civic life, especially if we are concerned with expanding inclusion and justice through and in the democratic political process."[135] This is especially true in the age of the carceral state and its expanding custodial citizenry. Research into the broader effects, particularly participatory paradoxes, that the American carceral state produces for civil society must continue, inclusive of the ways civil society organizations foster (or inhibit) the political participation of custodial citizens and their communities.

Notes

1 "Criminal justice contact" means here involuntary contact with the criminal justice system.

2 Gottschalk 2016.
3 Bruch and Soss 2018; Shedd 2015; Rios 2011.
4 Lerman and Weaver 2014a.
5 National Center for Victims of Crime 2016; Enns 2016.
6 U.S. Bureau of Justice Statistics 1993; U.S. Bureau of Justice Statistics 2018.
7 Clark 2018.
8 Jacobs 2015, 1 and n. 4.
9 U.S. Bureau of Justice Statistics 2012.
10 Jacobs 2015, xi.
11 Pager 2007; Travis and Waul 2003.
12 Comfort 2016; Travis and Waul 2003.
13 Clear 2007.
14 Gottschalk 2016.
15 Skocpol 2017.
16 Wheelock 2011; King and Mauer 2004; Smith 2004.
17 Steinacker 2003.
18 Manza and Uggen 2004, 2006.
19 Thorpe 2015; Walker et al. 2017.
20 Petit 2012.
21 Sances and You 2017; Harris 2016; Katzenstein and Waller 2015; U.S. Department of Justice 2015.
22 The democratic effects of juvenile criminal justice contact on the civic voluntarism of youth and during adulthood merit future investigation. Surveillance and policing of youth in the United States (e.g., police in schools) are common and youth interactions with the criminal justice systems for juveniles and adults are widespread; see Shedd 2015, Rios 2011. Juvenile criminal justice contact can affect subsequent adult criminal justice contact. It is plausible that youth contact with punitive institutions of juvenile criminal justice provides "formative political experience" as punitive institutions of schools do for youth; see Bruch and Soss 2018. If so, juvenile criminal justice contact may have negative consequences for juvenile civic voluntarism and subsequent adult civic voluntarism.
23 Weaver and Lerman 2010; Hjalmarsson and Lopez 2010; Lerman and Weaver 2014a; Kang and Dawes 2017; Laniyonu 2018.
24 Weaver and Lerman 2010; Lerman and Weaver 2014a, 2014b; Kang and Dawes 2017; Laniyonu 2018.
25 Some types of vehicle and pedestrian stops by police officers, as well as all types of correctional control, are associated with greater distrust and less confidence in government and lower perceptions of public institutions as legitimate; Clear 2007; Weaver and Lerman 2010; Lerman and Weaver 2014a; Epp, Maynard-Moody, and Haider-Markel 2014.
26 Weaver and Lerman 2010, 818.
27 E.g., Hull 2006; Manza and Uggen 2006; Katzenstein, Ibrahim, and Rubin 2010; Weaver and Lerman 2010; Burch 2013; Lerman and Weaver 2014a; Meredith and Morse 2014; Muller and Shrage 2014; Walker 2014; White 2015; Meredith and Morse 2015; Gerber et al. 2015, 2017; Howard 2017; Kang and Dawes 2017.
28 Soss and Weaver 2017, 567.
29 Ibid, 565.
30 See, e.g., Hull 2006; Howard 2017; Dilts 2014; Weaver and Lerman 2010; Lerman and Weaver 2014a, 2014b; White 2015; Burch 2013; Manza and Uggen 2006; Bruch, Marx Ferree, and Soss 2010; Lee, Porter, and Comfort, 2014; Muller and Schrage 2014; Walker 2014; Gerber et al. 2017; Kang and Dawes 2017; Laniyonu 2018.
31 Burch 2013; Owens 2014.
32 E.g., Cohen and Rodgers 1995; Warren 2001; Putnam 2000; Fung 2003; Majic 2011; LeRoux and Krawczyk, 2014; Han 2016; Fyall and Allard 2017.
33 Personal connections to CSOs by juveniles with criminal justice contact may also mitigate some of the negative political effects of juvenile criminal justice contact and influence civic voluntarism in adulthood. However, that is for future study.
34 Han 2016.
35 Schlozman 2002, 439; Verba, Schlozman, and Brady 1995.
36 Rosenstone and Hansen 2003, 2.
37 Mettler and Soss 2004, 56.
38 Peffley and Hurwitz 2010; Wilson, Owens, and Davis 2015; Enns 2016.
39 Owens and Smith 2012; Kaufman 2015; Miller 2014.
40 Mettler and Soss 2004, 56.
41 Fairchild 1977, 298.
42 Tyler, Fagan, and Geller 2014; Epp, Maynard-Moody, and Haider-Markel 2014; Justice and Meares 2014; Miller 2015.
43 Weaver and Lerman 2010; Lerman and Weaver 2014a; Kang and Dawes 2017; Haselswerdt 2009; Hjalmarsson and Lopez 2010; Meredith and Morse 2014, 2015; Gerber et al., 2015; White 2015. However, a provocative study using administrative data on pre-incarceration and post-release voting in Pennsylvania between 2008 and 2012 concludes "spending time in prison has almost no effect on voting"; Gerber et al. 2017, 1131–32. Nonetheless, as its authors note, "that incarceration per se does not appear to cause a large reduction in [voting] suggests that scholars should follow the path of recent research that examines how citizen preferences and behaviors are shaped by lower-level contact [e.g., detentions for questioning] with these other elements of the state."

44 Lerman and Weaver 2014a, 220–21. Furthermore, there is evidence that noncustodial citizens in romantic relationships with custodial citizens are less likely to vote; Lee, Porter, and Comfort 2014; Sugie 2015.
45 Clear 2007.
46 Burch 2013; Laniyonu 2018.
47 Owens 2014, 258.
48 Lerman and Weaver 2014a; Wildeman, Hacker, and Weaver, 2014; Burch 2013.
49 Owens 2014; Lerman and Weaver 2014a; Muller and Schrage 2014; Justice and Meares 2014.
50 Weaver and Lerman 2010; Lerman and Weaver 2014a; Walker 2014; Lee, Porter, and Comfort 2014.
51 Verba, Schlozman, and Brady 1995.
52 Han 2016, 296.
53 Berry, Portney, and Thomson 1993, 12.
54 De Tocqueville 2002; de Beaumont and de Tocqueville 1979.
55 Sampson 2012, 179.
56 Putnam 2000.
57 Han 2014, 8.
58 Putnam 2000.
59 Kaufman 2015; Miller 2014.
60 Fyall and Allard 2017; Berry 2003.
61 Han 2014; Rosenstone and Hansen 2003; Verba, Schlozman, and Brady 1995. Many individuals, however, involve themselves in organizations without "pressure" from CSOs. Instead of waiting on the organizing and mobilizing of CSOs, they rely on self-motivation. They may have orientations or predispositions to participate regardless of any activities by or engagement with CSOs. For them, recruitment by CSOs in not necessary to their participation, which is something the authors of the classic Civic Voluntarism Model acknowledge.
62 Schneider and Ingram 1997; Cohen 1999; Strolovitch 2007.
63 Burch 2013, ch. 6.
64 De Tocqueville 2002; Putnam 2000; Han 2016.
65 Marwell 2004; Berry, Portney, and Thomson 1993.
66 Harris 1999; Marwell 2004; Owens 2007; Fyall and Allard 2017.
67 Harris 2001; Owens 2007.
68 Levi 2004; Marwell 2004; Owens 2007.
69 Cohen and Rogers 1995; Warren 2000; Putnam 2000.
70 Han 2009, 2014, 2016.
71 Verba, Schlozman, and Brady 1995, 17–18.
72 Harris 2001; Wong 2009; Graauw 2016.
73 Skocpol 1990, 456.
74 Verba, Schlozman, and Brady 1995; Rosenstone and Hansen 2003; Han 2009, 2014.
75 Rosenstone and Hansen 2003, 83-84.
76 Berry, Portney, and Thomson 1993; Verba, Schlozman, and Brady 1995; Han, 2009, 2014, 2016; Harris, 2001.
77 Rosenstone and Hansen 2003, 32; Verba, Schlozman, and Brady 1995.
78 Marwell 2004; Owens 2007.
79 Wong 2006; Barreto et al. 2009; Majic 2011; LeRoux and Krawczyk 2014; Graauw 2016; García Bedolla and Michelson 2012; Warren 2001.
80 Harris 2001; Wong 2009; Majic 2011; García Bedolla and Michelson 2012; LeRoux and Krawczyk 2014; Graauw 2016.
81 Berry, Portney, and Thomson 1993, 95–97.
82 Fung 2003; Cohen 2004; Majic 2011.
83 Examples include EPOCA (Ex-Prisoners and Prisoners Organizing for Community Advancement) in Worcester, MA; V.O.T.E. (Voice of the Ex-Offender) in New Orleans, EXPO (Ex-Prisoners Organizing) in Milwaukee, Wisconsin; and the California, Texas, and North Carolina chapters of All of Us or None; Owens 2014; Kaufman 2015; Flores and Cossyleon 2016.
84 Owens 2014; Williams 2015; Flores and Cossyleon 2016.
85 Sampson 2012, 77.
86 Ibid., 21.
87 Sampson and Loeffler 2010; Visher, Yahner, and La Vigne 2010.
88 Commonly used datasets such as the National Longitudinal Study of Adolescent Health and the Fragile Families and Child Well Being Study are two-decades old and include truncated age cohorts. More recent data from the 2006 African American Men's Survey and the 2016 American National Election Studies include measures of criminal justice contact but the former only includes voter registration as political participation and the latter excludes measures of connections to CSOs.
89 Gerber et al. 2017.
90 Skogan 2016.
91 Gerber et al. 2017; Weaver and Lerman 2010; Lerman and Weaver 2014a; Lee, Porter, and Comfort 2014; Walker 2014.
92 Sampson 2012, 190.
93 Skogan and Hartnett 1997.
94 Skogan 2016.
95 Ibid.
96 Sampson 2012, 208.
97 Rosenstone and Hansen 2003, 86.
98 That is higher than the turnout of registered voters (73%) in Cook County elections that year, according to the Illinois State Board of Elections. CAS respondents may have over-reported voting, which is common in public opinion surveys because of the social desirability associated with voting. Selection bias may also explain the high rate of reported voting political participation in the CAS. Individuals who chose to participate in the CAS could be more

civic-minded—and more likely to vote—than the general population. Either type of bias could skew empirical results in our favor. As we describe in our appendix, we took steps to address issues related to selection bias in survey data. While we cannot correct for response bias, abstaining from other types of political activities, like attending a protest or signing petitions, does not carry with it the stigma of failing in one's duty as a citizen associated with nonvoting; Holbrook et al 2010, Persson and Solevid 2013.

99 Descriptive statistics for all variables in both datasets are in the online appendix, which reports the descriptive statistics for the CAS (tables A1–A2) and the aggregate dataset (tables A4–A5).

100 Sampling bias in surveys leads to samples unrepresentative of the overall population. Sampling weights are constructed to address this issue. However, individuals with criminal justice contact often are unlike the general population, differing, for instance, on dimensions of race, gender, and age. The subsample of Chicago Area Study respondents with criminal justice contact likely differs from the general population under correctional contact in the Chicago metropolitan area. Exact, current and complete demographic information on metropolitan Chicago's custodial citizenry, especially members of the correctional population, is unavailable. In lieu of better demographic data, we compare Chicago Area Study respondents with criminal justice contact to Cook County Jail admissions in 2011 and the Illinois prison population in 2010. The subsample of custodial citizens in the Chicago Area Study is less black, more Latino, more female, slightly older, and more likely to be married than Cook County jailees and Illinois prison inmates. Full comparisons of their characteristics are available in the online appendix. The difference in characteristics likely biases statistical findings in favor of our prediction. This may be a limitation of our analysis. Barring better sampling strategies for social surveys of the behavior of custodial citizens, which we strongly advocate, there is little that political scientists can do to alter the nature of our samples.

101 For more information about the data and its collection, see http://convictions.smartchicagoapps.org/#five-years-of-data. Additionally, the online appendix describes the felony conviction data and other data we considered using to complement or substitute felony convictions as our aggregate measure of criminal justice contact.

102 The distribution of felony convictions had a minimum value of zero and a maximum value of 33. The lower quartile fell below 2.5 felony convictions.

103 Sampson 2012, ch. 8.

104 Ibid.

105 Ibid.

106 See http://nccs-data.urban.org/data.php?ds=bmf and https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf.

107 For more information on the IRS classifications, see https://www.irs.gov/charities-non-profits/types-of-tax-exempt-organizations.

108 The minimum was .032 CSOs and the maximum was 152 CSOs.

109 "More than any kind of activity, contacting [government and public officials] is distinguished by the control the participant can exercise over timing of the activity and the content of the message"; Verba, Schlozman, and Brady 1995, 89.

110 Although the creation of CAPS increased the opportunity structure for political engagement, our time frame corresponded with "the period of the greatest decline in overall attendance levels" at police beat meetings due to municipal budget cuts of CAPS and the redeployment of police officers. Skogan 2016, 7. Thus, the CAPS meeting data provides a hard test for our theory.

111 Lerman and Weaver 2014b; O'Brien 2016; White and Trump, 2016; O'Brien et al. 2017.

112 The 311 call systems are a simple way of citizen-initiated contact with government, especially to report public problems such as potholes and property blight. They provide a "low-transaction-cost access to government that have been shown to instill a sense of trust and offer the promise of increased bureaucratic responsiveness," while fostering individual and collective efficacy; Minkoff 2016, 212.

113 O'Brien et al. 2017, 323.

114 Lerman and Weaver 2014b.

115 The online appendix details our construction of the aggregate dataset.

116 Although our key independent and dependent variables include both conventional and novel ones, some are imperfect. We use voter turnout estimates within police beats, calculated by simple area weighting. Felony convictions exclude criminal justice contact that does not result in arrests, charges without conviction, and convictions for misdemeanors. The CSO density measure includes a variety of nonprofit organizations, inclusive of those that do and do not target custodial citizens. They range from religious congregations like the Chicago Foursquare Church to the local affiliate of federated community organizing groups such as the Gamaliel Foundation, to labor organizations such as Women in Aviation International. The CSO density measure also excludes organizations that possess tax-exempt status but are not required to register with the IRS

(e.g., small religious congregations). While our CSO density measure is blunt, its noise should bias empirical analyses toward null results. To control for various sources of bias that may influence conviction rates, civic engagement, and CSO density, we leverage data on housing tenure, age and racial compositions, educational attainment, poverty, and unemployment from the U.S. Census Bureau.

117 We model nonvoting behavior with Poisson regression, as noted in table 1. If the distribution of the dependent variable is over dispersed, it is appropriate to evaluate the data with an alternative model (e.g., negative binomial regression or a quasi-Poisson model). Tests for dispersion, noted in table 1 and table 2, resulted in no evidence of data overdispersion. For more on this point, refer to the online appendix.

118 Walker 2014; Lee, Porter and Comfort 2014.

119 Lerman and Weaver 2010; Lee, Porter and Comfort 2014; Walker 2014.

120 Tests of the robustness of our models are available from the online appendix; See figure A1 and tables A9–A11.

121 Our null findings may result from our measure of voting, which is self-reported. Because of social desirability, respondents often misreport their voting histories on surveys; Holbrook and Krosnick 2010. Even when self-reported voting is not correlated with criminal justice contact and positively correlated with nonvoting political participation, contact may be negatively associated with voting when measured by validated voter records; Walker 2014. We may also have null findings because voting is modeled among registered voters. Thus, individuals in the sample with connections to the criminal justice system have already overcome a significant barrier to voting. We are cautious in interpreting our null result that criminal justice contact is not associated with voting in Chicago.

122 Sampson and Loeffler 2010.

123 White and Trump 2016; Lerman and Weaver 2014b.

124 Sampson 2012, 208.

125 Burch 2013.

126 Weaver and Lerman 2010, 824; Burch 2013, 2014; Lerman and Weaver 2014a, 2014b; Laniyonu 2018.

127 Owens 2014; Miller and Stuart 2017.

128 Owens 2014; Flores and Cossyleon 2016; Williams 2015; Kaufman 2015; Miller 2014.

129 Maruna 2001; Owens 2014; Flores and Cossyleon 2016; Williams 2015; Kaufman 2015; Miller 2014.

130 Verba, Schlozman, and Brady 1995; Han 2016.

131 Verba, Schlozman, and Brady 1995.

132 Owens 2014; Owens and Smith 2012.

133 E.g., Katzenstein, Ibrahim, and Rubin 2010; Dilts 2014; Lerman and Weaver 2014a; Kang and Dawes 2017; Gerber et al. 2015, 2017.

134 Soss and Weaver 2016, 75.

135 Majic 2011, 832.

Supplementary Materials

Appendix

- Description of the Chicago Area Study Data
- Description of the Aggregate Data
- Analysis of the Chicago Area Study
- Analysis of the Supplemental Aggregate Data

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Ticketing and Turnout: The Participatory Consequences of Low-Level Police Contact

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The American criminal legal system is an important site of political socialization: scholars have shown that criminal legal contact reduces turnout and that criminalization pushes people away from public institutions more broadly. Despite this burgeoning literature, few analyses directly investigate the causal effect of lower-level *police contact on voter turnout. To do so, we leverage individual-level administrative ticketing data from Hillsborough County, Florida. We show that traffic stops materially decrease participation for Black and non-Black residents alike, and we also find temporal variation in the effect for Black voters. Although stops reduce turnout* more *for Black voters in the short term, they are* less *demobilizing over a longer time horizon. Although even low-level contacts with the police can reduce political participation across the board, our results point to a unique process of political socialization vis-à-vis the carceral state for Black Americans.*

INTRODUCTION

Fines and fees are increasingly recognized as a form of racialized revenue extraction connected to marginalized communities' alienation from government (McCoy 2015; Sanders and Conarck 2017; Shaer 2019). After Michael Brown was killed by the Ferguson Police Department in 2014, a US Department of Justice investigation into the city's police and courts demonstrated that the municipality was engaged in a practice that advocates now refer to as "policing for profit." The city's reliance on fines and fees to fund government functions grew from 13% to 23% of the total budget between fiscal years 2012 and 2015. From 2012 to 2014, the Department of Justice found that 85% of vehicle stops, 90% of citations, and 93% of arrests targeted Black people. In contrast, just two-thirds of Ferguson's residents are Black (United States Department of Justice Civil Rights Division 2015).

It wasn't just a Ferguson problem, or even a Missouri problem. American cities' reliance on fines and fees revenue increased significantly following the 2008 recession—as local tax revenues dropped and tax increases became less politically viable, jurisdictions increased the amounts of fines and fees and imposed them more frequently in order to fund government services (Harris, Ash, and Fagan 2020; Harris et al. 2017; Singla, Kirschner, and Stone 2020).

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Given that American jurisdictions are increasing their reliance on fines and fees revenue—and that police are the government officials charged with generating revenue—it stands to reason that more low-level police contact has occurred, and often with blatantly extractive intent. Although scholars have examined the collateral consequences of this increased reliance on fines and fees (Pacewicz and Robinson 2020; Sances and You 2017), comparatively few have explored the moment during which such revenue-raising actually occurs—namely, in the individual interactions between residents and the police via the issuance of a ticket. This "moment" of low-level contact has also been relatively understudied by scholars investigating the participatory consequences of contact with the criminal legal system. Work exploring how criminalization directly and indirectly influences political participation has exploded in recent years. Scholars have found that criminal legal contact (i.e., arrest, conviction, incarceration) consistently discourages voting (Burch 2011; Weaver and Lerman 2010; White 2019b). Such work has largely focused on the effects of highly disruptive contact with the criminal legal system such as incarceration and felony convictions (Burch 2014; Lee, Porter, and Comfort 2014). Although ticketing involves potentially negative interactions with the state, it does not necessarily carry the disruptive consequences of a felony conviction and might thus politicize Americans in unique ways. This paper theorizes how local police practices affect voting behavior among stopped individuals and provides precisely estimated evidence of a causal effect.

Our project represents the first use of individual-level administrative data to identify the causal effect of traffic stops on voter behavior. The use of administrative data marks an important step forward in our understanding of how low-level contact with the criminal legal system

structures political participation. Past work looking at the individual-level effects of low-level contact has relied on survey or interview data (e.g., Walker 2014; Weaver and Lerman 2010). Existing research allows for the testing of specific psychological mechanisms and personal interpretations of criminal legal contact but does not allow us to generalize more broadly. As Weaver and Lerman (2010, 821) note, it may also introduce measurement bias. Our analysis investigates actual voting behavior following actual traffic stops, not reported voting behavior or reported exposure to a traffic stop. The administrative data therefore allow us both to sidestep reporting error and to observe the behavior of a quarter-million individuals stopped over a six-year period—a far larger pool than even the most robust surveys.

We use individual-level traffic stop data from Hillsborough County, Florida, to identify the turnout patterns of voters who were stopped between the 2012 and 2018 elections. By matching individual voters who were stopped to similar voters who were stopped at later points and running a difference-in-differences model, we estimate the causal effect of these stops on turnout. This borrows from the logic of regression discontinuities in time: conditional on observable characteristics *and* unobservable factors associated with being ticketed, the timing of the stop on either side of election day is essentially as-if random. We find that being stopped reduces the chance that an individual will turn out in the subsequent election but that this effect is smaller for Black voters in the long run.

We demonstrate that traffic stops—the most widespread form of police contact in America—substantially reduce the turnout of non-Black American voters but reduce Black voter turnout to a smaller degree. More specifically, we find temporal variation in the effect of stops on Black voter turnout: Black voters stopped shortly before an election are demobilized to a *greater* extent than are non-Black voters, but as more time passes between stops and the election of interest, the treatment effect becomes comparatively smaller for Black voters. Our findings complicate existing theories of how criminalization politically socializes Americans, and Black Americans in particular (Weaver and Lerman 2010). Additionally, although many forms of criminalization have been found to contribute to a well-documented subjective experience of alienation or group-level exclusion among Black Americans (Ang et al. 2021; Bell 2017; Desmond, Papachristos, and Kirk 2016; 2020; Stuart 2016; Zoorob 2020), our contribution emphasizes the need for further research regarding how different forms of criminalization affect group-level perceptions of government and resultant political behaviors. Our findings are relevant for interdisciplinary scholars of crime, race, politics, municipal finance, and policing.

THEORY

How Police Stops Might Influence Turnout

Learning about one's "place in the system" takes place over long periods. Could isolated police stops that do not require sustained contact with the criminal legal system affect the political behavior of Americans? To ground our expectations, we turn first to recent work exploring the effect of high-level contact with the criminal legal system on political behavior. We then consider what this literature can and cannot say about expected effects of police stops on voting.

A growing body of work has explored the effects of criminal legal contact on political participation. Some scholars find large depressive effects from incarceration (Burch 2011), whereas others argue that any negative effects are smaller or mixed (e.g., Gerber et al. 2017; White 2019b). Other work has explored the "spillover" effects of incarceration, finding that the political behavior of family members (Walker 2014; White 2019a) and neighbors (Burch 2014; Morris 2021b) can be influenced by indirect contact with incarceration, and these effects might be quite durable (Morris 2021a). The one project that has used administrative data to explore the political implications of low-level police contact is Laniyonu (2019), which finds mixed effects of the Stop-Question-and-Frisk practice on neighborhood-level turnout in New York City, though the strength of the causal design is limited. Thus, the literature generally agrees that contact with the criminal legal system reduces political participation.

The existing literature broadly groups the depressive mechanisms into two categories: "resource" and "political socialization" (see White 2019b, 312). Classic political science literature indicates that citizens with more resources are more likely to participate (Brady, Verba, and Schlozman 1995); these resources are undermined by the time and financial resources individuals and family members devote to dealing with a felony conviction. Although higher-level contacts come with higher costs than an average police stop, the resource story could extend to some of these less-disruptive contacts with the criminal legal system. If a ticket leads to a suspended driver's license, the initial stop can snowball into a much bigger life event that could jeopardize employment or lead to shorter stints of incarceration. Searches conducted during traffic stops may also lead to arrest if a police officer finds contraband in the vehicle. These cases might have consequences more akin to those associated with a brief period of incarceration that can also threaten employment. Nevertheless, the average traffic stop is certainly less disruptive than the average period of incarceration, likely demanding fewer resources than other forms of contact.

Literature on political socialization argues that citizens' perceptions of and behavior with respect to government are heavily determined by routine interactions with state apparatuses and government officials. As Soss and Weaver (2017) argue, "interviewees have looked, not to City Hall, Congress, or political parties, but rather to their direct experiences with police, jails and prisons, welfare offices, courts, and reentry agencies as they sought to ground their explanations of how government works, what political life is like for them, and how they understand their own

political identities" (Soss and Weaver 2017, 574). To that end, Lerman and Weaver (2014) found that citizens nearly uniformly react negatively to criminal legal contact: trust in government and willingness to vote decrease as individuals progress through increasingly intense levels of contact (questioned by police, arrested, convicted, incarcerated; Weaver and Lerman 2010). This withdrawal is not limited to political participation but extends to other forms of civic life as well (e.g., Brayne 2014; Remster and Kramer 2018; Weaver, Prowse, and Piston 2020). Weaver, Prowse, and Piston (2020) describe this form of self-preserving withdrawal from public institutions as a "strategic retreat."

These findings can be situated in a process that sociologist Monica Bell (2017) calls "legal estrangement," which captures criminalized Americans' negative perceptions of government as well as the historical conditions that produced them. Research on legal cynicism has found that public perceptions of abusive police practices can reduce willingness to report crimes or cooperate with law enforcement (Tyler, Fagan, and Geller 2014). The "hidden curriculum" (Justice and Meares 2014; Meares 2017) of the criminal legal system thus teaches Americans about their identities as citizens—even parts of their identities that have little to do with policing or incarceration.

This literature has given scholars far greater insight into the participatory consequences of incarceration, but it says little about the effects of *lower-level* contact with the criminal legal system on political participation. Yet far more Americans have low-level contact with the police than will ever spend a night behind bars: just under 20 million Americans experience a traffic stop each year, whereas approximately 10 million Americans are arrested and jailed each year (Harrell and Davis 2020; Zeng and Minton 2021). A police stop might be among a voter's first interactions with the criminal legal system; thus, stops may be important for political socialization precisely because they are an early stage in the criminalization process.

Recent work shows that when threats are made newly salient, individuals can update their behavior (Hazlett and Mildenberger 2020; Lujala, Lein, and Rød 2015; Mendoza Aviña and Sevi 2021; Skogan 2006). Thus, although humans are generally bad at incorporating new information into their worldviews (e.g., Lord, Ross, and Lepper 1979), police stops—which are often considered unfair (Snow 2019)—might provoke a rethinking of the police and government and a subsequent updating of political behavior. Gerber et al. (2017) note in their study that the participatory consequences of incarceration might be small because incarceration "is an outcome that often follows a long series of interactions with the criminal justice system" (1145). In other words, much of what the criminal legal system "teaches" might have already been learned by the time an individual is sent to prison. Someone who is stopped by the police, however, might have had fewer negative interactions with the state, resulting in comparatively larger turnout effects relative to the size of the disruption.

Additionally, the fact that traffic stops affect a larger and systematically less marginalized group of Americans compared with incarceration could help explain the relationship between stops and voting.[1] Traffic stops might be the primary way some of these Americans learn about the criminal legal system. If these Americans have not already "learned" about the system from their neighborhoods or family members, the political consequences of such newly gleaned knowledge might be large.

In short, although past work has argued that criminal legal contact influences participation through both "resource" and "socialization" mechanisms, we contend that the latter are particularly important for our study. The relatively small resource disruptions coupled with outsized opportunities for new learning about the state likely means any turnout effects will operate primarily through avenues associated with socialization (that is, legal estrangement and strategic retreat). Unfortunately, our empirical approach cannot formally adjudicate between the relative importance of the mechanisms. Future work should take up this question.

Potential for Racially Disparate Effects

In addition to testing the potentially demobilizing effect of traffic stops on voter turnout, we ask whether this effect is different for Black voters, who are disproportionately subjected to traffic stops (see Table 1) as well as criminal legal contact more broadly.

We propose that two causal mechanisms could distinctly shape the treatment effects for Black voters. First, we expect that due to greater baseline criminal legal contact, Black voters could have "less to learn" from stops in our analysis, thus leading to a weaker overall turnout effect. Separate from this "learning" process, it's possible that a comparatively stronger initial psychological salience of traffic stops could lead to a larger demobilizing effect for Black voters in the short term. Thus, as the short-term demobilizing effect of a stop fades, the treatment effect returns to a baseline of "less learning."

The average Black American knows far more about the criminal legal system than the average non-Black American due to racial disparities in policing and incarceration (Lee et al. 2015). In the previous section, we argued that police stops might reduce turnout because motorists stopped by the police might gain "new" information about the police and government more generally from this stop. Given that Black Americans have higher baseline exposure to the criminal legal system, the modal police stop could result in less new

[1] For instance, whereas Rabuy and Kopf (2015) find that individuals sent to prison make less than $20,000, our analysis of the 2018 Cooperative Election Study indicates that respondents issued a traffic ticket in the preceding year had an average family income in excess of $70,000.

TABLE 1. Balance Table

Variable	Treated voters	Control voters	Never stopped
% White	47.4%	47.4%	62.2%
% Black	24.4%	25.5%	13.1%
% Latino	19.0%	18.7%	16.0%
% Asian	2.1%	2.1%	2.7%
% Male	53.2%	53.4%	42.8%
% Democrat	42.5%	42.6%	37.9%
% Republican	23.7%	23.6%	31.3%
Age	42.5	41.8	51.9
Median income	$62,836	$62,409	$67,897
% with some college	60.3%	60.3%	63.8%
Unemployment rate	6.6%	6.5%	5.9%
Turnout $_{t=-3}$	31.7%	31.7%	
Turnout $_{t=-2}$	29.6%	29.6%	
Turnout $_{t=-1}$	44.6%	44.6%	
Stops in preperiod	2.2	1.9	
Paid money	89.4%	89.4%	
Civil stop	82.6%	82.6%	
Stopped by Tampa PD	47.0%	47.0%	

knowledge and provoke a smaller reduction in political participation.

Still, traffic stops differ in meaningful ways for Black and non-Black Americans. These differences could increase the psychological salience of stops for Black voters, especially in the immediate aftermath of a stop. As Baumgartner, Epp, and Shoub (2018) note, Black Americans are more likely than are whites to receive both "light" (i.e., a warning without a ticket) *and* "severe" (i.e., arrest) outcomes from a traffic stop. Although this may seem paradoxical at first, the authors explain: "while many might rejoice in getting a warning rather than a ticket, the racial differences consistently apparent in the data suggest another interpretation for black drivers: even the officer recognized that there was no infraction" (88). Goncalves and Mello (2021) find that Florida Highway Patrol officers are more likely to give "discounted" tickets to white motorists than to Black or Hispanic motorists, and although Black drivers are also more likely to be searched and arrested, they are less likely to be found with contraband (Baumgartner, Epp, and Shoub 2018). Similarly, Epp, Maynard-Moody, and Haider-Markel (2014) argue that traffic stops are particularly instructive for Black Americans, as pretextual traffic stops politically socialize Black voters to the specific context of discriminatory police ticketing.

The Black Lives Matter movement has increased the salience of structural racism in policing across the country, as have the tragic stories of individuals like Philando Castile who was killed during a police stop. Increasing municipal reliance on fines and fees creates more opportunities for police violence, and routine interactions with the police are also more likely to turn deadly for Black Americans than for others (Brett 2020; Levenson 2021). Indeed, Alang, McAlpine, and McClain (2021) find that Black Americans experience "anticipatory stress of police brutality" (i.e., symptoms of depression and anxiety) to a degree that white Americans do not. Thus, even if an individual police stop for a Black American is relatively unremarkable on its own, the background context that the interaction *could* have turned deadly is likely to increase the psychological salience of traffic stops for Black drivers. We expect that traffic stops that immediately precede an election should be more demobilizing.

These apparently competing mechanisms can be reconciled by examining temporal variation in the effect of traffic stops on voting. We expect to find that the psychological salience of a police stop will disproportionately reduce the turnout of Black Americans in the short-term. Over the longer-term—when the immediacy of the police stop fades—we expect smaller turnout effects for Black Americans, potentially because they have less to learn from a given stop (pushing the treatment effect toward zero).

DATA AND DESIGN

We estimate the causal effect of traffic stops on voter turnout using individual-level administrative data from Hillsborough County, Florida (home to Tampa). The empirical estimand is the turnout gap between registered voters in Hillsborough County who have recently been stopped and voters who will be stopped in a future period, conditional on similar turnout in past elections and similar demographic characteristics. We exploit unusually detailed public data, which allows for a precise causal analysis that cannot be conducted in counties that do not provide ticketing records with personally identifiable information or states that do not include self-reported race data in the voter file.

Replication materials are available in the American Political Science Review Dataverse (Ben-Menachem and Morris 2022). Out of concerns for privacy and due to the use of a proprietary geocoder, we do not post individually identifiable data.

Hillsborough County

The Hillsborough County Clerk makes information publicly available about every traffic stop in the county going back to 2003. These data include the name and date of birth of the individual stopped, the date of the offense, and other information.[2]

Beyond the uniqueness of this dataset, Hillsborough County is a jurisdiction of substantial theoretical interest. The county is home to Tampa, where the Tampa Police Department has maintained "productivity ratios" for officers since the early 2000s (Zayas 2015a). Each officer's number of arrests and tickets was divided by their number of work hours, and this ratio was used in performance evaluations. In 2015, written warnings were added to this ratio, and scrutiny from the *Tampa*

[2] See https://publicrec.hillsclerk.com/Traffic/.

Bay Times may have reduced the importance of the ratio in officer evaluations. Regardless, the department's de facto ticketing quotas were active during our study period, and voters may have been aware of them as well. Earlier that year, the same newspaper reported on the police department's practice of relentlessly ticketing Black bicyclists (Zayas 2015b). This investigation catalyzed a US Department of Justice investigation and report, requested by Tampa's mayor and police chief.

Ticketing has also been expressly politicized in Tampa: Jane Castor, who was elected mayor in 2019, was Tampa's police chief until 2015 and publicly defended her department's disproportionate ticketing of Black bicyclists before retracting her defense ahead of her mayoral campaign (Carlton 2018). Her opponent, banker and philanthropist David Straz, campaigned against red-light cameras and focused his outreach in Tampa's Black communities (Frago 2019).[3]

Design and Identification Strategy

To identify stopped voters, we match the first and last names and dates of birth from the stop data against the Hillsborough County registered voter file. Meredith and Morse (2014) develop a test for assessing the prevalence of false positives in administrative record matching. We present the results of that test in section 1 of the Supplementary Materials (SM). We likely have a false-positive match of around 0.03%, a figure we consider too low to affect our results meaningfully.

Using a single post-treatment snapshot of the voter file can result in conditioning on a post-treatment status (see Nyhan, Skovron, and Titiunik 2017). Instead, we collect snapshots of the voter file following each even-year general election between 2012 and 2018. We thus observe virtually all individuals who were registered to vote at any time during our period of study. Unique voter identification numbers allow us to avoid double-counting voters who are registered in multiple snapshots. We retain each voter's earliest record and geocode voters to their home census block groups. We remove tickets issued by red-light cameras, which Hillsborough County only begins including in the data toward the end of our study period.

By matching the police stop and voter records, we identify all voters who were stopped between the 2012 and 2020 general elections. Voters stopped between the 2018 and 2020 elections serve only as controls. We collect self-reported information regarding the race of each voter from Florida's public voter file rather than the police stop data. Voters are considered "treated" in the general election following their stop. Treated voters are then matched to a control voter using a nearest-neighbor approach, with a genetic algorithm used to determine the best weight for each characteristic (Sekhon 2011).[4] Control voters are individuals who are stopped within the two years following the post-treatment election of the treated voters. Put differently, if a voter is stopped between 2012 and 2014, their control voter must be an individual stopped between the 2014 and 2016 elections. A voter cannot both be a treated and control voter for the same election; therefore, someone stopped between the 2012 and 2014 elections and again between the 2014 and 2016 elections cannot serve as a control for anyone stopped between 2012 and 2014. We limit the target population to voters who are stopped at some point in order to account for unobserved characteristics that might be associated with both the likelihood of being ticketed and propensity to vote.

We match voters on individual-level characteristics (race/ethnicity, gender, party affiliation, age, and number of traffic stops prior to the treatment period) and block group-level characteristics from the 2012 five-year ACS estimates (median income, share of the population with some college, and unemployment rate). We match exactly on the type of ticket (civil/criminal infraction, whether they paid a fine, and whether they were stopped by the Tampa Police Department) to ensure that treated and control voters receive the same treatment. Finally, we match treated and control voters on their turnout in the three pre-treatment elections. Matching is done with replacement, and ties are not broken. This means that some treated voters have multiple controls; the regression weights are calculated to account for this possibility.

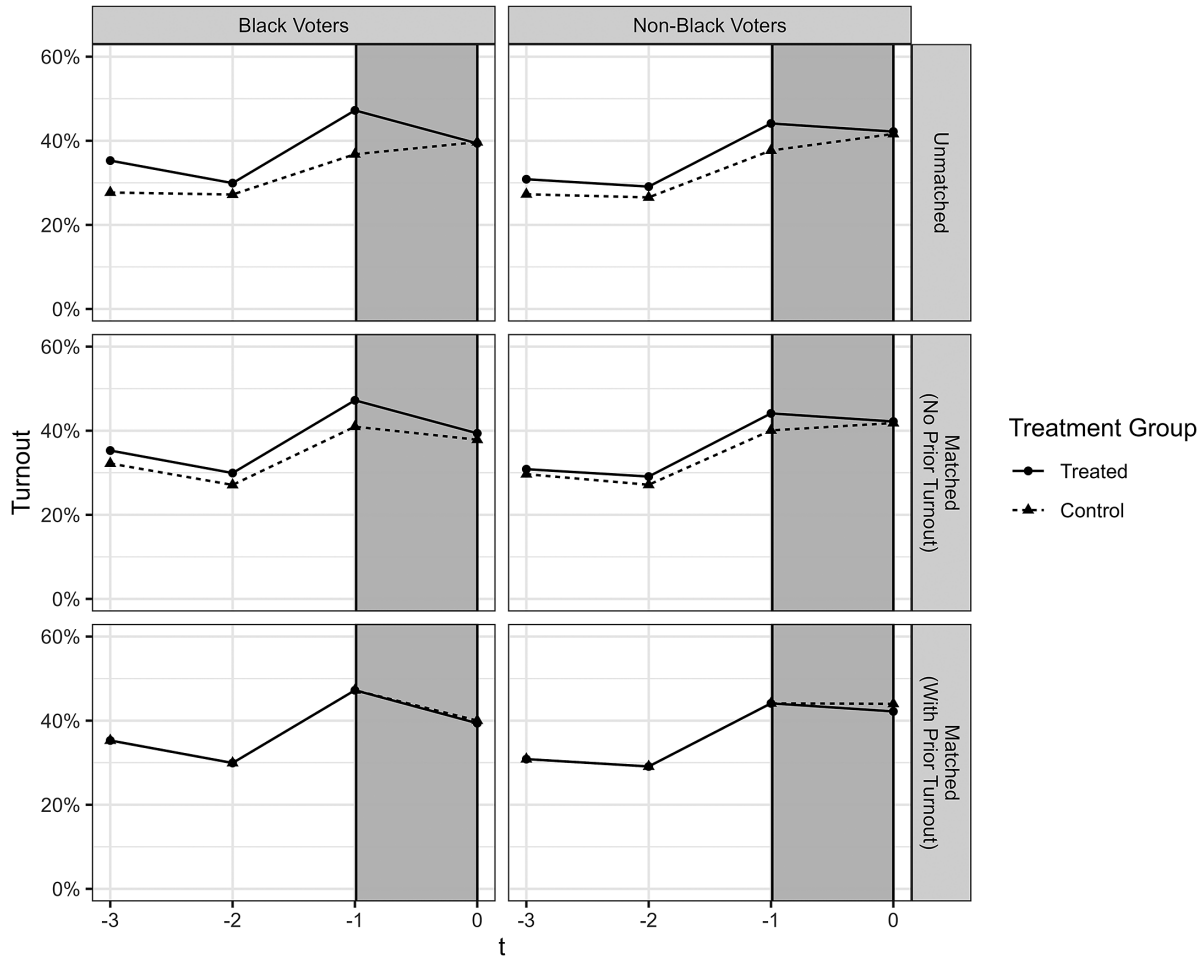
We assume that after controlling for observable characteristics, past turnout, *and* the unobservable characteristics associated with experiencing a traffic stop, the timing of the stop is effectively random. This is conceptually similar to the regression discontinuity in time framework, and we assume that any turnout difference between the treated voters and their controls is the causal effect of a police stop on turnout. Our overall turnout effects are robust to weaker assumptions: as we show, we uncover large, negative turnout effects even when we force voters stopped shortly before the election to match to voters stopped shortly afterwards.

Our analytical design incorporates matching in a traditional difference-in-differences model in order to improve the credibility of our identification assumptions. Leveraging pre-treatment turnout allows us to estimate the difference-in-differences model, and the matching procedure improves the plausibility of the parallel trends assumption by reducing salient observed differences between the treated and control voters. For a more detailed discussion of how matching can improve on traditional difference-in-difference approaches when using panel data, see Imai, Kim, and Wang (2021).

[3] These facts would suggest the potential for a salient effect of ticketing on voter turnout in Tampa mayoral elections. We attempted this analysis, but voter turnout is too low in Tampa mayoral elections for our research design to produce an informative result.

[4] Due to computing constraints, a 5% random sample stratified by treatment status is used to calculate the genetic weights. The full sample is used in the actual matching process.

FIGURE 1. Turnout, Treated and Control Voters



Note: Treatment occurs in the shaded band. The full regression tables are available in section 3 of the SM.

We then estimate the following equation:

$$v_{it} = \beta_{0+}\beta_1 Treated_i + \beta_2 PostTreatment_t + \beta_3 Treated_i \times PostTreatment_t + \beta_4 Year_t + \delta Z_i + \varepsilon_{it.} \quad (1)$$

Individual i's turnout (v) in year t is a function of the year and whether they were stopped by the police. In the equation, β_1 measures the historical difference between treated voters and their controls, β_2 measures whether turnout increased for controls in the first election following the treated voter's stop, and β_3 tests whether turnout changed differently for treated voters than their controls in the election following their police stop. So, β_3 will capture the causal effect of a police stop on voter turnout; it is the unit-specific quantity measured in our empirical estimand (Lundberg, Johnson, and Stewart 2021). The term $\beta_4 Year_t$ captures year fixed-effects depending on the timing of the police stop, and the matrix δZ_i contains the individual- and neighborhood-level characteristics on which the match was performed, included in some of the models. In some models, we also interact the treatment and period variables with a dummy indicating whether the voter is Black to determine race-specific treatment effects.

RESULTS

We begin by plotting the turnout of treated and control voters under different analytical approaches in Figure 1. The first row plots the turnout of all treated and control voters without any matching. In the second row, we plot the turnout of treated voters and matches selected when we exclude pre-treatment turnout from the matching procedure. In the final row, we present the controls selected when pre-treatment turnout is included in the match.[5] The first election following a treated voter's stop is denoted as $t = 0$, and the years in which t is less than zero are the periods prior to the stop.

[5] For a more thorough discussion of the trade-offs involved in including or omitting pre-treatment outcomes in matched difference-in-differences, see Lindner and McConnell (2019).

All three approaches demonstrate the same general treatment effect. In the first two approaches, treated voters consistently have slightly higher turnout rates than do the controls prior to the treatment; the difference between these two groups disappears in the election following the stop of the treated voter (visual indication of a negative treatment effect). Both the "raw" difference-in-differences approach and the approach excluding the pre-treatment outcomes from the match exhibit a potential violation of the parallel trends assumption (particularly for Black voters), so we adopt the final specification as our primary model. However, our negative treatment effects are not simply an artifact of our modeling decisions. The full specification for the first row of Table 1 (with and without matching covariates included) can be found in columns 1 and 2 of Table A7 in the SM, and those corresponding to the approach where prior turnout is not included can be found in columns 3 and 4 of the same table.

In Table 1 we present the results of the matching algorithm using our preferred specification incorporating pre-treatment turnout. As the table demonstrates, the selected control voters are very similar to the treated voters.

It is worth noting that voters who were stopped between 2012 and 2020 were far more likely to be Black and male than the general electorate and live in census block groups with moderately lower incomes.

Table 2 formalizes the final row of Figure 1 into an ordinary least squares regression. The full models from Table 2 with coefficients for the matched covariates can be found in Table A6 of the SM, and full specifications for 2014, 2016, and 2018 individually can be found in Tables A3–A5, respectively. Models 1 and 2 show our overall causal effect, and models 3 and 4 allow for the possibility that a stop differentially mobilizes Black voters. In models 1 and 3, we include only the treatment, timing, and race dummies, whereas the full set of covariates used for the matching procedure are included in models 2 and 4. The empirical estimands are *Treated* × *Post Treatment* and *Treated* × *Post Treatment* × *Black*. In models 1 and 2, the coefficient on *Treated* × *Post Treatment* measures the overall treatment effect, and in models 3 and 4 it measures the treatment effect for non-Black voters. The coefficient on *Treated* × *Post Treatment* × *Black* measures any effect for Black voters beyond the effect measured for non-Black voters. By multiplying the Black dummy through the treatment and timing dummies, models 3 and 4 become triple-difference (or difference-in-difference-in-differences) models. In Figure 2 we plot the coefficients for each of the individual years as well as the overall treatment effect. These models follow the same logic as Table 2, where we show the point estimates with and without the matched covariates included. The full models shown in Figure 2, with coefficients for the matched covariates, can be found in Tables A3–A6 of the SM.

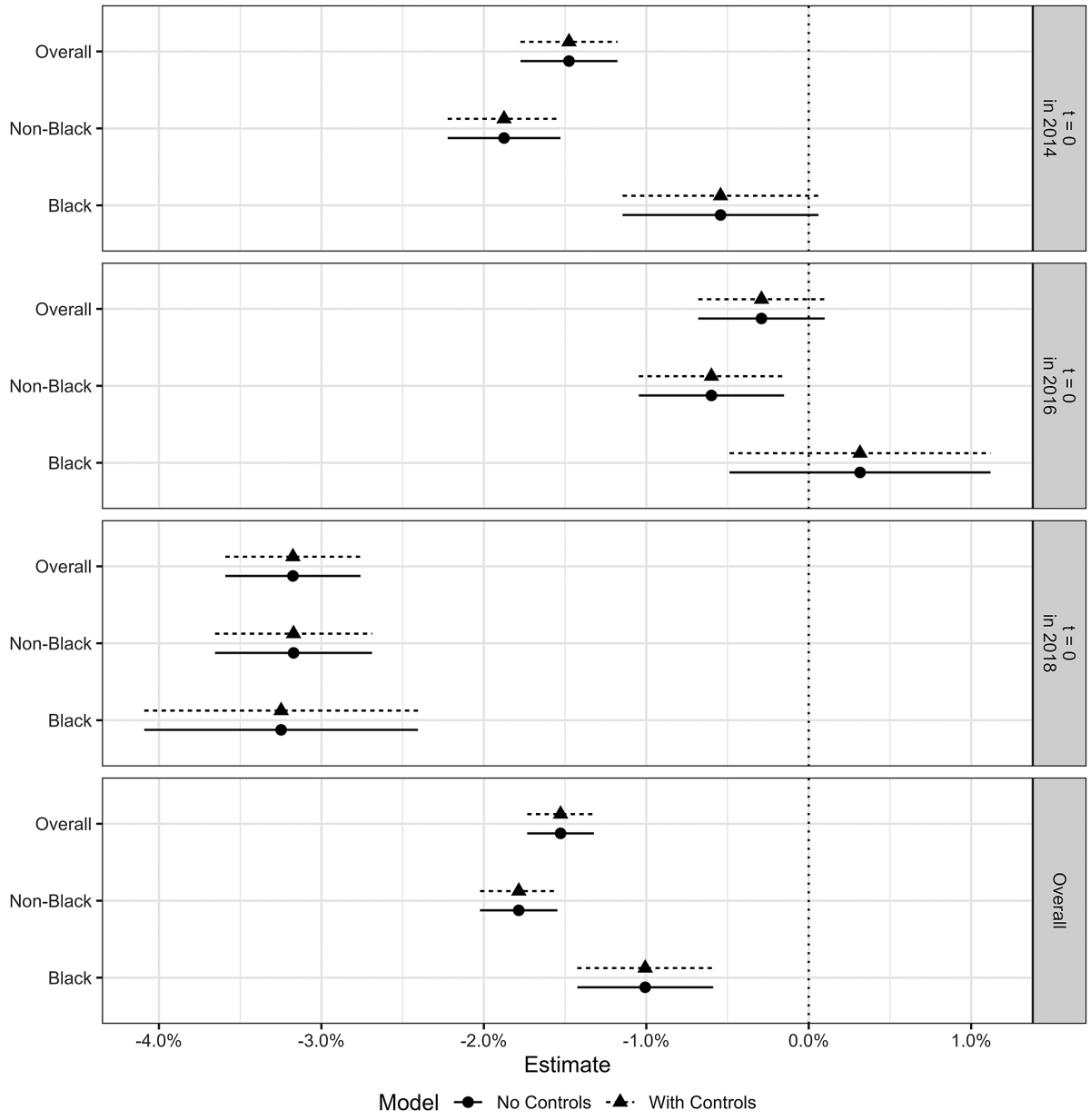
As both Figure 2 and Table 2 make clear, traffic stops meaningfully depressed turnout. In models 1 and 2, the estimated overall treatment effect is -1.5 percentage points (pp). In models 3 and 4, we can see that traffic stops were less demobilizing for Black individuals than for others—non-Black turnout was depressed by 1.8 percentage points, whereas the negative effect was just 1.0 for Black individuals.

TABLE 2. Overall Treatment Effect

	Model 1	Model 2	Model 3	Model 4
Treated × Post-treatment	–0.015***	–0.015***	–0.018***	–0.018***
	(0.001)	(0.001)	(0.001)	2 (0.001)
Treated × Post-treatment × Black			0.008**	0.008**
			(0.002)	1 (0.002)
Treated	0.000***	0.000	0.000	0.000*
	(0.000)	(0.000)	(0.000)	(0.000)
Post-treatment	0.061***	0.051***	0.076***	0.066***
	(0.001)	(0.001)	(0.001)	1 (0.001)
Black		0.006***	0.026***	0.020***
		(0.001)	(0.002)	(0.001)
Treated × Black			0.002	0.000
			(0.001)	(0.000)
Post-treatment × Black			–0.058***	–0.058***
			(0.002)	(0.002)
Intercept	0.393***	–0.015***	0.386***	–0.019***
	(0.001)	(0.001)	(0.001)	(0.001)
Year fixed effects	✓	✓	✓	✓
Matching Covariates Included		✓		✓
Num.Obs.	2,349,808	2,349,808	2,349,808	2,349,808
R^2	0.055	0.554	0.055	0.555
R_2 Adj.	0.055	0.554	0.055	0.555
RMSE	0.47	0.32	0.47	0.32

Note: Dependent variable: individual-level turnout; *$p < 0.05$, **$p < 0.01$, ***$p < 0.001$.

FIGURE 2. Coefficient Plot: Effect of Stops on Turnout (with Matching)



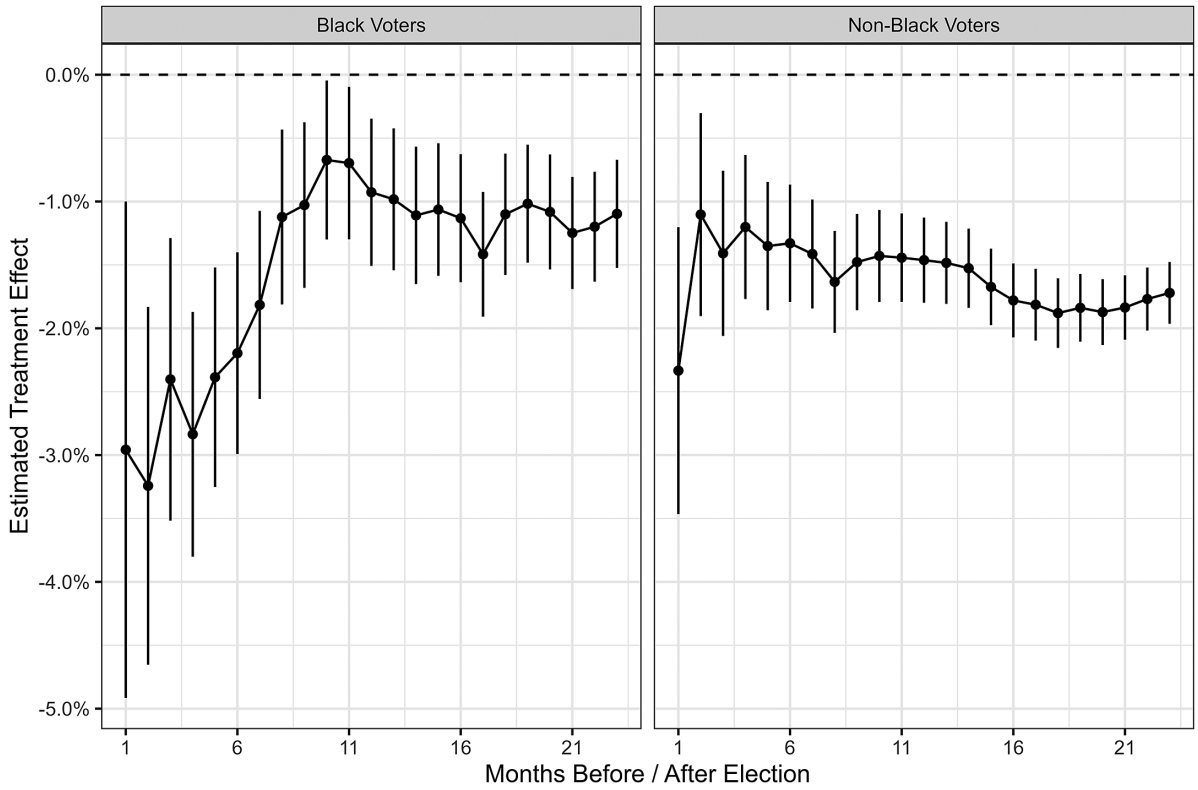
Although the treatment effect is still substantively quite large for Black individuals, Hillsborough County Black voters' turnout in federal elections was not as negatively affected by police contact as that of non-Black individuals. It is also clear that midterm turnout is more affected by these stops. The negative effect is statistically significant in all years for non-Black residents but much smaller in 2016 (-0.6 pp) than in 2014 (-1.9 pp) or 2018 (-3.2 pp).

Testing the Temporal Durability of the Effect

In the section above, we present the average effect of a police stop on turnout for treated voters. This effect is averaged across all voters stopped in the two years prior to a federal election. Although using such a large pool of treated and control voters allows for better covariate balance within pairs, such wide windows around each election give us no insight into the temporal stability or variability of the treatment effect. Moreover, treated and control pairs might have been stopped at very different points; a voter stopped almost two years before an election can be paired with someone stopped two years *after* that election, meaning there were four years between the police stops. These voters might differ in important, unobservable ways.

Here, we explore the temporal component of our primary results by rerunning our matching process on a variety of different windows around the elections. In

FIGURE 3. Treatment Effect over Time



the most conservative approach, we force voters stopped in the month before an election to match with voters stopped in the month after the election; we then gradually expand this window, allowing voters stopped in the two months before the election to match to those stopped in the two months afterwards until we reach the two-year period used in our main model. The left-hand side of Figure 3 plots the treatment effect for Black voters depending on the window used; the right-hand side shows these estimates for non-Black voters. The full regression outputs for these models can be found in Tables A8–A11 in the SM.

The treatment effects for Black voters show strong temporal variability. In fact, when looking at voters stopped shortly before an election, police stops are *more* demobilizing for Black than non-Black voters. This relationship flips by the time the full pool of voters is included. The treatment effect decreases from roughly -3 to -1 pp over the range of windows.

Although the administrative data prevent us from exploring the psychological mechanisms at play, and their temporal durability, this finding is consistent with our theoretical expectations: a police stop might be more psychologically salient—and thus more demobilizing—for Black voters in the *short term.* Once the immediate salience of the stop fades, it's possible that baseline knowledge about the criminal legal system mitigates longer-term effects, thus explaining the smaller effects in the models with longer windows. Of course, future work should explore these possibilities directly.

The right-hand side of the plot shows far less temporal variation in the magnitude of the treatment effect for non-Black voters. Although non-Black voters are most demobilized if stopped in the month before the election, the overall trend is fairly stable (if moderately downward sloping).

DISCUSSION

Although existing sociological and political science literature has examined the rise and collateral consequences of criminalization on political socialization, no study has investigated the causal relationship between traffic stops and voter turnout using individual-level administrative data.

Given how widespread police stops are and their relationship to racial injustice, their political implications demand close study. What we find advances our understanding of how lower-level police contact affects political participation. We find that traffic stops reduce turnout among non-Black voters, with a smaller negative effect for Black voters. We also find substantial temporal variation in the treatment effect for Black voters: in the short term, stops appear to be more demobilizing, but as time passes they become comparatively less demobilizing. We conclude that the political

consequences of police stops are unique for Black Americans—and that they are, on balance, less demobilizing for Black Americans than for others. This joins other recent research finding that small-scale interventions like Get-Out-the-Vote encouragements have smaller effects on Black Americans (Doleac et al. 2022), perhaps because their opinions on the criminal legal system are more firmly set. Scholars ought to explore more specifically when and what sorts of interactions produce larger effects for Black Americans and when these effects are smaller.

Our findings have several implications for political science scholarship. Although existing literature suggests that the most disruptive forms of criminal legal contact (i.e., criminal convictions and incarceration) consistently discourage voting (Burch 2011; Lerman and Weaver 2014; White 2019b), research regarding police stops has produced more mixed results (Laniyonu 2019). We extend political socialization theory to traffic stops, the most common form of police contact in America, and find that police traffic stops generally reduce turnout. For Black voters, however, our findings suggest that traffic stops are less demobilizing, a contrast with existing scholarship wherein more disruptive forms of criminalization discourage Black voters more than non-Black voters. Our findings constitute new evidence in support of our theory that police stops are distinct from other forms of criminal legal contact and therefore catalyze different political behaviors among Black voters, who are disproportionately affected by both ticketing and criminalization in general.

It is worth considering the implications of a study focused only on the behavior of individuals who were registered to vote at some point during the study period. Registration is itself an act of political participation; therefore, our study population is systematically more engaged in electoral politics than the general population. This supports our argument that traffic stops are an important form of political socialization. More specifically, if voters in the target population already understood the ballot box as a tool they could use to change political outcomes or at least make their voices heard, structurally, it stands to reason that the effect of traffic stops is potent enough to overcome longer-term attitudes and behaviors with respect to government. In other words, even if the observed point estimates are small, the fact that registered voters' turnout is depressed by traffic stops justifies our contention that traffic stops are politically salient events. This focus on registered voters likely makes our results conservative: we cannot capture the lost participation of individuals who would have registered and voted if they were not stopped by the police.

Focusing on the turnout of registered voters also misses other important political behavior that future work should explore. As Walker (2020b) suggests, stopped Black individuals may be politically mobilized for activities other than voting not observed in this study, such as contacting elected representatives or volunteering for campaigns. The fact that we find that stops produce a negative turnout effect for Black voters does not rule out the possibility that stopped Black motorists could be more likely to engage in nonvoting political activities. Christiani and Shoub (2022) also find that traffic stops and tickets can catalyze nonvoting political participation, but observe stronger positive effects among people who have better perceptions of police (i.e., white people).

Existing political science theory regarding "injustice narratives" could provide an alternate or complementary framework for interpreting our results. Recent work from Hannah Walker (2020a; 2020b) argues that police contact could lead to a *mobilizing* effect if voters understand criminal legal contact in the context of a narrative of racial injustice. Although she finds that this sense of injustice is especially likely to increase political participation in nonvoting ways (such as attending a protest or signing a petition) and particularly salient following proximal rather than personal contact, the injustice narrative mechanism could also affect voter turnout following personal contact. Thus, the temporal variation we found could occur because the experience of personal contact is eventually incorporated into an "injustice narrative" because Black Americans who are socially proximate to the stopped individual end up also being subjected to criminal legal contact between the stop and the election of interest, or both.

The injustice narrative mechanism could provide another justification for the reversal of the initially more demobilizing effect of stops on Black voter turnout—perhaps some subset of stopped Black voters end up affirmatively mobilized several months after the stop, thus explaining the overall comparatively smaller demobilizing effect observed in our results. Unfortunately, the administrative data do not allow for a compelling test of this hypothesis; most information about voters in our analysis is at the census tract level, not individual level, and we lack information about activities such as participation in community organizations that Walker suggests might mediate the relationship between criminal legal contact and political behavior. Ultimately, we are sensitive to the fact that although administrative data provide real-world evidence of actual behavior, such data limit our ability to understand the causal mechanisms at play. This means that although we demonstrate that police stops are demobilizing, future work must further investigate how stops are interpreted by individuals and translated into political behavior.

Future work should explore these and other questions. Particular attention should be paid to variation *within* the Black community. When is this sort of contact demobilizing? For whom? Can organizers build on this potential for broad-based political action? We were unable to test whether what we observed was simply *decreased* demobilization or whether some subgroups of the Black population were mobilized but others were demobilized. Scholars should also investigate the interactive effects of criminal legal contact, asking whether police stops result in different political behavior for formerly incarcerated

individuals than individuals with no other contact with the system. Finally, this project looks only at voting, so scholars should continue exploring whether low-level contacts also shape other sorts of engagements with the state.

Although we have contributed new evidence suggesting that police stops may not demobilize Black voters to the same extent as they do non-Black voters, we emphasize that this finding does not redeem or justify exploitative ticketing practices. Black Americans already suffer from disproportionate police contact and the racial wealth gap, and revenue-motivated ticketing only increases the burden on Black communities nationwide. Policy makers should work to ensure that Black Americans no longer have to struggle to enjoy the same political power as whites—to that end, the current trend of voting rights restriction policies across the country is especially pernicious. Even if some Black Americans understand the ballot box as one tool they can use to limit the state's power to exploit and harm them, policy makers should still feel an obligation to support voting rights protections and stop disproportionate ticketing in Black communities.

SUPPLEMENTARY MATERIALS

To view supplementary material for this article, please visit http://doi.org/10.1017/S0003055422001265.

DATA AVAILABILITY STATEMENT

Research documentation and data that support the findings of this study are openly available at the American Political Science Review Dataverse: https://doi.org/10.7910/DVN/YGTFBW. Limitations on data availability are discussed in the text.

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CONFLICT OF INTEREST

The authors declare no ethical issues or conflicts of interest in their research.

ETHICAL STANDARDS

The author declares the human subjects research in this article was deemed exempt from review by the Graduate Center, City University of New York.

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Brian J. Feldman, Chair
Cheryl C. Kagan, Vice Chair
Senate Education, Energy, and the Environment Committee
Maryland Senate
February 21, 2024

Testimony of Campaign Legal Center in Support of Senate Bill 660

I. INTRODUCTION

Campaign Legal Center ("CLC") is pleased to offer this testimony in support of Senate Bill 660, the Maryland Voting Rights Act ("SB 660" or the "MDVRA").

CLC is a nonpartisan, nonprofit organization dedicated to advancing democracy through law. Through its extensive work on redistricting and voting rights, CLC seeks to ensure that every United States resident receives fair representation at the federal, state, and local levels. CLC supported the enactment of state voting rights acts in Washington, Oregon, Virginia, and New York, and brought the first-ever litigation under the Washington Voting Rights Act in Yakima County, Washington.

CLC strongly supports SB 660 because it will allow communities of color across Maryland to participate equally in the election of their representatives. The focus of CLC's testimony will be to highlight the various procedural benefits that Subtitle 2 of SB 660 will provide to voters and local governments alike in enforcing voting rights and protecting communities of color.

II. BACKGROUND

States can offer new hope for voters by adopting state voting rights acts that improve upon their federal counterpart. By passing the MDVRA, Maryland can reduce the cost of enforcing voting rights and make it possible for traditionally disenfranchised communities to protect their right to participate equally in local democracy. The state can clarify that government-proposed remedies do not get deference as they might in federal court. Importantly, the state can also

empower state courts and local jurisdictions to apply a wider range of locally tailored remedies that better serve communities of color.

Passage of the MDVRA will mark a new era of voter protections for the people of Maryland, building upon the model of the federal Voting Rights Act (VRA) of 1965 with several key improvements. CLC's testimony will share highlights of how filing a claim under this state voting rights act rather than the federal VRA is an improvement, such as with vote dilution claims and available remedies.

The federal VRA is one of the most transformative pieces of civil rights legislation ever passed. Section 2 of the federal VRA "prohibits voting practices or procedures that discriminate on the basis of race, color, or membership in [a] language minority group." The 1982 amendments to Section 2, which allowed litigants to establish a violation of the VRA without first proving discriminatory intent, created a "sea-change in descriptive representation" across the country.[1]

Despite this success, "litigating Section 2 cases [is still] expensive and unpredictable."[2] Plaintiffs must often collect mountains of evidence to support the totality of circumstances inquiry, which means extended discovery periods and long trials. Given the heavy burden of proving a violation of Section 2 of the federal VRA, states serve a vital role in protecting and expanding the rights to vote and participate fully in American democracy. Maryland should take advantage of this opportunity and join several other states—California, Washington, Oregon, Virginia, New York, and most recently, Connecticut—in ensuring all of its citizens have equal access to the democratic process.

The MDVRA will apply more efficient processes and procedures to enforcing the voting rights of traditionally disenfranchised communities, saving Maryland time and money when going through voting rights litigation. Subtitle 2 of the MDVRA makes it less costly for minority voters and their jurisdictions to collaboratively develop a remedy before resorting to expensive litigation.

III. REASONS TO SUPPORT SB 660

The MDVRA will innovate on the federal VRA, as well as other state VRAs, by streamlining the procedural mechanisms by which voters may state a claim of vote dilution. The private right of action for voting discrimination under Subtitle 2 of the MDVRA is a less costly and less burdensome means of

[1] Michael J. Pitts, The Voting Rights Act and the Era of Maintenance, 59 ALA. L. REV. 903, 920-22 (2008).
[2] Christopher S. Elmendorf & Douglas M. Spencer, Administering Section 2 of the VRA After Shelby County, 115 COLUMBIA L. REV. 2143, 2157 (2015).

enforcing voting rights for communities of color and encourages negotiation between voters and elected governments. As discussed below, the following features of the MDVRA are reasons to support the bill:

- The MDRVA's pre-suit notice provisions allow jurisdictions to proactively remedy potential violations.
- The MDVRA provides express statutory guidance to ensure courts interpret voting-related conflicts of law in favor of the right to vote.
- The MDVRA provides a framework for determining whether vote dilution or vote denials have occurred that is tailored to the barriers to voting communities of color face at the local level.
- The MDVRA prioritizes remedies for voting discrimination that enable communities of color to equally participate in the franchise.

A. SB 660 avoids lengthy litigation by allowing jurisdictions to proactively remedy potential violations.

As set forth in § 15.5-205(A)(2) of the MDVRA, a prospective plaintiff must send a jurisdiction written notice of a violation and wait 60 days before bringing a lawsuit. During that time, both parties must collaborate in good faith to find a solution to the alleged problem. § 15.5-205(A)(2). The jurisdiction may also remedy a potential violation on its own initiative and gain safe harbor from litigation for at least 90 days. § 15.5-205(A)(3). The MDVRA recognizes that many jurisdictions will seek to enfranchise communities of color by remedying potential violations. Such notice and safe-harbor provisions will enable them to do so without the costs and delay of lengthy litigation.

The MDVRA also provides for limited cost reimbursement for pre-suit notices, in recognition of the fact that notice letters often require community members to hire experts to perform statistical analysis, and to ensure that such expenses do not prevent people from enforcing their civil rights. § 15.5-206(A). Similar provisions are already part of voting rights acts in California, Oregon, and New York.

In contrast, no such pre-suit provisions exists in Section 2 of the federal VRA. As a result, voters often spend considerable time and money to investigate potential violations of the federal VRA, the cost of which is later borne by the taxpayer. Indeed, in Maryland, advocates have noted the lack of incentive for counties to negotiate to resolve problems of voting discrimination, stating that the resultant cost of a federal VRA lawsuit is "[a] payment that could have

been avoided if [the Maryland county] had been willing to negotiate, rather than litigate."[3]

B. SB 660 will provide guidance to Maryland judges as they interpret laws, policies, procedures, or practices that govern or affect voting.

The MDVRA specifies that judges should resolve ambiguities in Maryland state and local election laws in favor of protecting the right to vote. § 15.5-102(B). This is essentially a codification of the existing protections of the Maryland Constitution and Declaration of Rights, which recognize that vigorous political participation is the foundation of our democracy and that the right to vote is preservative of all other rights.

Article I, § 1 of the Maryland Constitution states that "[e]very citizen of the United States, of the age of 18 years or upwards, who is a resident of the State as of the time for the closing of registration next preceding the election, shall be entitled to vote . . . ." Article 7 of the Maryland Declaration of Rights expands on this promise and states "[t]hat the right of the People to participate in the Legislature is the best security of liberty and the foundation of all free Government; for this purpose, elections ought to be free and frequent; and every citizen having the qualifications prescribed by the Constitution, ought to have the right of suffrage."

The MDVRA's instruction to courts to construe laws in favor of the right to vote is in line with the spirit of the Maryland Constitution and Declaration of Rights. This clarification provides a default pro-voter rule for judges interpreting laws, policies, procedures, or practices that govern or affect voting, which will reduce litigation costs by avoiding unnecessary arguments over statutory interpretation. Similar provisions are in the New York Voting Rights Act and Connecticut Voting Rights Act.

C. SB 660 provides a framework for determining vote dilution in a way that is efficient and cost-effective for both voters and jurisdictions.

To bring a vote dilution claim under Section 2 of the federal VRA, a plaintiff must show that: (1) the minority group being discriminated against is sufficiently large and geographically compact to constitute the majority of voters in a single-member district; (2) there is racially polarized voting; and (3)

[3] Deja Parker, *Town of Federalsburg sued for voting discrimination, 30 days to respond*, WMDT (Feb. 24, 2023), https://www.wmdt.com/2023/02/town-of-federalsburg-sued-for-voting-discrimination-30-days-to-respond/.

white bloc voting usually prevents minority voters from electing their candidates of choice. *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986). If these three conditions are met, the court then considers whether, under the totality of the circumstances, the practice or procedure in question has "the result of denying a racial or language minority group an equal opportunity to participate in the political process."

The MDVRA improves on the federal VRA in several ways: it ensures that integrated as well as segregated communities of color are able to influence elections and elect their candidates of choice; it provides plaintiffs an alternative to proving racially polarized voting; it sets out practical guidelines for courts to properly assess racially polarized voting; and it clarifies that coalitions made up of two or more protected classes to bring vote dilution claims.

Unlike the federal VRA, the MDVRA does not require communities of color to be segregated residentially to receive protections under the statute. Like the voting rights acts passed in California, Washington, Oregon, Virginia, New York, and Connecticut, the MDVRA does not demand that the minority group being discriminated against prove that it is "sufficiently large and geographically compact" before being able to proceed with its lawsuit. § 15.5-202(D)(2)(IV). Following the passage of civil rights legislation, residential segregation has decreased in some areas of the United States, yet racially polarized voting and underrepresentation of communities of color persist.[4] Thus, many communities of color that do not face residential segregation may still lack equal opportunities to elect candidates of choice to their local government. By not requiring minority communities to be segregated to prove minority vote dilution, the MDVRA takes this reality into account.[5]

Decades of experience litigating cases under Section 2 of the Voting Rights Act have shown that that the numerosity and compactness requirements for vote dilution claims are an unnecessary barrier to remedying significant racial discrimination in voting. The MDVRA will allow violations to be remedied quickly and at much less expense to taxpayers than existing federal law and make it easier for communities of color to vindicate their rights and obtain remedies to resolve racial vote dilution. In previous federal VRA cases in Maryland, voters have had to spend time and money defending against allegations that voters of color were not sufficiently segregated to meet this

[4] ACLU Maryland, *Why Maryland Needs Its Own Voting Rights Act* (2024), https://www.aclu-md.org/sites/default/files/mdvra_need_public_onepager_mdga24.pdf.

[5] Like VRAs in other states, the MDVRA does allow courts to consider whether a community is sufficiently numerous and geographically segregated in determining a remedy to a vote dilution violation. *See* § 15.5-202(D)(2)(IV).

condition, despite evidence making it clear that voters were denied the equal opportunity to elect their candidate of choice.[6]

The next requirement for a vote dilution claim under the federal VRA is for the plaintiffs to show racially polarized voting. Racially polarized voting (RPV) means that there is a significant divergence in the electoral choices or candidate preferences of protected class voters, as compared to other voters. Measuring RPV often depends on election return data, which is sometimes unavailable, especially in smaller jurisdictions and in places with long histories of vote dilution and disenfranchisement where candidates preferred by minority voters simply stop running for office. Thus, the effect of vote dilution itself means that minority communities will often be hard pressed to find "proof" that RPV exists in actual election results.

This is why it is critical that the MDVRA has two paths to prove a vote dilution case, not just a one-size-fits-all approach. The first path allows affected voters to prove vote dilution by showing that a jurisdiction maintains a dilutive at-large or other system of election and RPV is present. §§ 15.5-202(B)(1)(I). The MDVRA also sets out reliable and objective standards for courts to apply in their assessment of RPV. § 15.5-202(D).

But where election results used to assess RPV are unavailable, the MDVRA also allows affected voters to show that they are nevertheless denied equal opportunity to participate in the political process under the totality of the circumstances. §§ 15.5-202(B)(1)(II). This path allows plaintiffs to introduce expert and fact evidence under a range of relevant factors identified by the Supreme Court, Congress, and other courts to demonstrate that the challenged map or method of election, in the words of the United States Supreme Court, "interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by [protected class voters] and white voters to elect their preferred representatives" or influence the outcome of elections.[7]

Finally, the MDVRA allows two or more protected classes of voters within an election district to bring a coalition claim, so long as they can establish that they are politically cohesive. § 15.5-202(D)(1)(VI). Coalition claims reflect the MDVRA's spirit and intent to protect all communities of color from discriminatory voting rules and election systems, whether they impact one or more racial or ethnic groups. If two or more communities vote in a bloc together, organize to elect candidates together, and suffer from vote dilution together, they should be able to work together to prove it and combat it.

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[6] *See Baltimore Cnty. Branch of Nat'l Ass'n for the Advancement of Colored People v. Baltimore Cnty., Maryland,* No. 21-CV-03232-LKG, 2022 WL 657562, at *7 (D. Md. Feb. 22, 2022), modified, No. 21-CV-03232-LKG, 2022 WL 888419 (D. Md. Mar. 25, 2022) (plaintiffs defending against allegations that they could not meet the requirements for vote dilution because the maps they proposed were "irregular.").

[7] *See, e.g.*, *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986)

D. SB 660 provides a framework for determining denials of the right to vote that provides clarity to courts and voters alike.

In addition to combatting vote dilution, the MDVRA strengthens protections against practices that deny or impair a protected class's access to the ballot. Under the federal VRA, voters may challenge practices which "result in a denial or abridgement" of the right to vote because of race or color. 52. U.S.C. 10301. The Supreme Court, however, greatly limited the kinds of claims that voters could make in *Brnovich v. DNC,* 141 S. Ct. 2321 (2021). Specifically, the Supreme Court set forth additional "guideposts" for proving vote denials that will make Section 2 claims even more costly and time consuming to litigate. Furthermore, the lack of clarity provided in *Brnovich* leaves federal courts in the lurch about the appropriate way to interpret vote denial claims under Section 2.

The MDVRA fills in that gap by prohibiting a local government from enacting any voting practice which will "deny" or "impair" the right to vote of communities of color. § 15.5-201(A). A violation is established by showing *either* that that the practice results in a disparity in the ability of voters of color to participate in the electoral process, *or* that, under the totality of circumstances, the practice results in an impairment of the ability of voters of color to participate in the franchise. § 15.5-201(B). Under the federal law, on the other hand, voters have to show (among other things) *both* a statistical disparity *and* an impairment under the totality of the circumstances. This innovation of the MDVRA will allow voters of color to show that voting discrimination has occurred without having to jump over unnecessary burdens of proof. Furthermore, because the standard is more explicit under the MDVRA, state courts will have proper guidance about how to determine whether a violation has occurred.

E. SB 660 expands the remedies that communities of color can seek to ensure their electoral enfranchisement.

Under the MDVRA, if a violation of Subtitle 2 is found, the court shall order appropriate remedies that are tailored to address the violation in the local government and prioritize the full and equitable participation access of voters. The court may only take such action if the remedy will not impair the ability of the protected class of voters to participate in the political process. This part of the bill recognizes that vote denial and vote dilution tactics take many different forms and are not solely limited to traditional methods of voter discrimination. Examples of such remedies from the language of §§ 15.5-204(B)(1)(I) - (XIII) of the MDVRA include replacing a discriminatory at-large system with a district-based or alternative method of election; new or revised

redistricting plans; adjusting the timing of elections to increase turnout; and adding voting hours, days, or polling locations.

The MDVRA also specifies that courts may not defer to a proposed remedy simply because it is proposed by the local government. § 15.5-204(B)(2). This directly responds to an egregious flaw in the federal law, where Section 2 has been interpreted by the federal courts to grant government defendants the "first opportunity to suggest a legally acceptable remedial plan."[8] This often leads to jurisdictions choosing a remedy that only minimally addresses a discriminatory voting practice rather than fully enfranchising those who won the case. For example, in *Cane v. Worcester County*, the Fourth Circuit applying the federal VRA explained that the governmental body has the first chance at developing a remedy and that it is only when the governmental body fails to respond or has "a legally unacceptable remedy" that the district court can step in.[9] In *Baltimore County Branch of the NAACP v. Baltimore County*, the district court likewise accepted the defendant county's proposed map, despite plaintiffs' objections and presentation of an alternative map.[10] This is antithetical to the concept of remedying racial discrimination; courts should not defer to the preferences of a governmental body that has been found to violate anti-discrimination laws in fashioning a remedy for that body's own discriminatory conduct. The MDVRA avoids this problem by allowing the court to consider remedies offered by *any* party to a lawsuit, and prioritizing remedies that will not impair the ability of protected class voters to participate in the political process.

This bill also promotes settlement through this specification that courts must weigh all proposed remedies equally and decide which one is best suited to help the impacted community, instead of giving deference to the remedy proposed by the government body that violated that community's rights.

IV. CONCLUSION

We strongly urge you to enact SB 660 and strengthen voting rights in the state of Maryland. SB 660 signifies a pivotal inflection point for the state of Maryland to lead in protecting voting rights, offering a more efficient and lower cost layer of oversight for communities. Thank you.

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[8] *Cane v. Worcester County*, 35 F.3d 921, 927 (4th Cir. 1994)
[9] *Id.*
[10] *Baltimore Cnty. Branch of Nat'l Ass'n for the Advancement of Colored People v. Baltimore Cnty., Maryland*, No. 21-CV-03232-LKG, 2022 WL 888419, at *1 (D. Md. Mar. 25, 2022).

Respectfully submitted,

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2024.02.20 Testimony of Election Law Clinic at Har

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Position: FAV

Election Law Clinic
HARVARD LAW SCHOOL

Maryland Senate
Education, Energy, and Environment Committee
February 20, 2024

Testimony of Election Law Clinic at Harvard Law School in Support of SB660 of 2024

On behalf of the Election Law Clinic at Harvard Law School ("ELC"), and at the request of regulated lobbyist Common Cause Maryland, we are pleased to offer this testimony in support of Senate Bill 660, the Maryland Voting Rights Act of 2024 – Counties and Municipalities ("SB660").

ELC aims to build power for voters and recognizes that the struggle for voting rights is a struggle for racial justice. Much of ELC's work centers on State Voting Rights Acts ("SVRAs"), and clinical students have developed expertise in the area. ELC staff have written about how State Voting Rights Acts can help achieve the important goal of fair representation at the local level,[1] and have represented plaintiffs in Federal Voting Rights Act ("FVRA") and State Voting Rights Acts litigation.[2] ELC currently represents five Latino voters in the Town of Mount Pleasant, New York in their vote dilution claim under the John R. Lewis New York Voting Rights Act.[3] ELC has also co-authored amicus briefs in a case challenging the constitutionality of the Washington Voting Rights Act.[4]

Maryland needs a Voting Rights Act to counter the erosion of federal protections for voting rights. Historical protections that have allowed people to engage meaningfully in the political process, regardless of race, are dwindling. The U.S. Supreme Court has stripped away the protections of Section 5 of the FVRA[5] and has imposed ever higher bars to successfully prove a claim under Section 2 of the FVRA.[6] Most recently, the Fifth and Eighth Federal Circuit Courts of Appeals have rendered decisions that further undermine the FVRA.[7] SVRAs are a necessary

[1] *See* Ruth Greenwood, *Fair Representation in Local Government*, 5 IND. J. L. & SOC. EQUALITY 197 (2017); Ruth Greenwood & Nicholas Stephanopoulos, *Voting Rights Federalism*, 73 EMORY L. J. 299 (2023).
[2] *See* Holloway v. Virginia Beach, 531 F. Supp. 3d 1015 (E.D. Va. 2021), *vacated and remanded as moot*, 42 F.4th 266 (4th Cir. 2022); Aguilar v. Yakima County, No. 20-2-0018019 (Wash. Superior Ct. for Kittitas Cnty.).
[3] Serratto v. Town of Mount Pleasant, No. 55442/2023 (Sup. Ct. N.Y. for Westchester Cnty).
[4] *See* Brief of Law School Clinics Focused on Civil Rights as Amici Curiae, Portugal v. Franklin Cnty., 530 P.3d 994 (Wash. 2023); Brief for OneAmerica as Amicus Responding to Intervenor-Defendant's Motion for Judgment on the Pleadings, Portugal v. Franklin Cnty, No. 21-2-50210-11 (Wash. Super. Ct. for Franklin Cnty. Dec. 2, 2021).
[5] Shelby County v. Holder 570 U.S. 529 (2013) (finding the pre-clearance formula set out in Section 4 of the FVRA to be unconstitutional as a violation of the equal dignity of the states).
[6] *See, e.g.*, Bartlett v. Strickland, 556 U.S. 1, 14–17 (2009) (requiring that to comply with the *Gingles* 1 prong, plaintiffs must show that a demonstration district exists in which the identified minority comprises 50% plus one vote of the CVAP); and Brnovich v. Dem. Nat'l Comm., 141 S. Ct. 2321, 2338–2340 (2021) (setting out five additional guideposts that courts may consider when reviewing vote denial claims).
[7] Petteway v. Galveston Cnty., Texas, 86 F.4th 214, 217 (5th Cir. 2023), *reh'g en banc granted, opinion vacated*, 86 F.4th 1146 (5th Cir. 2023) ("The text of Section 2 does not support the conclusion that distinct minority groups may be aggregated for purposes of vote-dilution claims"); Arkansas State Conf. NAACP v. Arkansas Bd. of Apportionment, 86 F.4th 1204, 1206–07 (8th Cir. 2023) (hereafter "Arkansas NAACP") (finding that Section 2 of the FVRA does not include a private right of action).

bulwark against vote suppression or dilution on account of race. SB660 includes some of the most expansive language of any SVRA to date to protect voters. In this testimony we focus only on the vote dilution provision of SB660, § 15.5–202, and highlight what we believe are the most important and laudable aspects of those sections. We also briefly review the subpart of 202 that addresses the mechanics of litigation and provide additional explanations for some of the listed factors.

I. SB660's vote dilution provisions go beyond the FVRA to provide meaningful access to the political process for all voters, regardless of race or color.

A. Broad application

Vote dilution occurs when some groups of voters are able to convert their votes into political power while other voters only have access to meaningless ballots.[8] In its first sentence, § 15.5-202(A) recognizes the myriad ways that vote dilution can occur and holds jurisdictions accountable if they engage in the practice. This language sets the tone for a broad and powerful protection of voting rights.

B. Requiring a benchmark for an undiluted vote

The wording of § 15.5-202(B) solves a quandary that has arisen under the FVRA in vote dilution cases: namely, what is an "undiluted vote."[9] Federal courts, including the Supreme Court, have struggled with this question over the years.[10] In one instance, the lack of an agreed upon benchmark to assess alleged vote dilution against led a plurality of the Supreme Court to hold that the FVRA could not be used to allege that the size of a governmental body was racially dilutive.[11]

Section 15.5-202(B)(2) solves this problem for both plaintiffs and courts. It clarifies that plaintiffs cannot prove vote dilution claims unless they provide a benchmark against which to assess vote dilution—specifically, it requires them to show that there exists a method of election that would mitigate the alleged impairment, providing the crucial baseline comparator all parties in a litigation need to assess whether and to what extent dilution exists.[12]

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[8] The term "meaningless ballot" was first applied to explain the problem of vote dilution, as opposed to vote denial, by Justice Marshall in *City of Mobile v. Bolden*, 446 U.S. 55, 104 (1980) (Marshall, J. dissenting) ("A plurality of the Court concludes that, in the absence of proof of intentional discrimination by the State, the right to vote provides the politically powerless with nothing more than the right to cast meaningless ballots.").

[9] See Greenwood & Stephanopoulos, *supra* note 1, at 344–47; *see also* Heather K. Gerken, *Understanding the Right to an Undiluted Vote*, 114 HARV. L. REV. 1663 (2001).

[10] *See, e.g*, Johnson v. De Grandy, 512 U.S. 997, 1013–15 (1994) (adding a proportionality assessment to the *Gingles* framework) and Bartlett, 556 U.S. at 14–17.

[11] Holder v. Hall, 512 U.S. 874, 881 (1994) (plurality opinion).

[12] The California Supreme Court recently read into the California VRA a requirement similar to the proposed § 15.5-202(B)(2) language. *See* Pico Neighborhood Ass'n v. City of Santa Monica, No. S263972, 2023 WL 5440486, at *7 (Cal. Aug. 24, 2023).

The benchmark language is also notable for an additional reason. It works with § 202(B)(1) to make clear that a plaintiff cannot win a claim by proving only the existence of racially polarized voting ("RPV").[13] A plaintiff must show a benchmark, and crucially, that benchmark proposal must "mitigate the impairment of the equal opportunity of protected class members to nominate or elect candidates of their choice." This phrase incorporates two different types of restrictions on plaintiffs. First a plaintiff must be able to show that there is a lack of electoral success by candidates of choice of the protected class (i.e. protected class members do not have an opportunity to elect candidates that is equal to the rest of the voters in the jurisdiction). Second the phrase prevents members of the protected class from seeking outsized influence in a jurisdiction. In some areas where protected class members are highly residentially segregated, it may be possible to offer a single member district plan that provides representation that is far greater than proportional. The "equal opportunity" and "mitigate the impairment" language thus combine to ensure that only those plaintiffs with *un*equal access to meaningful participation can avail themselves of the protections of the vote dilution provision.

C. Allowing non residentially segregated communities to claim vote dilution.

Beyond providing the needed clarification around benchmarks, § 15.5-202(B)(2) also allows more members of protected classes to access meaningful participation,[14] building upon the reach of the FVRA.[15] Sections 15.5-202(B)(2) and 15.5-202(C) provide that members of protected classes need not show they are able to comprise a majority in a district (i.e., that they are sufficiently residentially segregated) to obtain relief under the vote dilution provision.[16] This responds to the realities of modern racial vote dilution: though residential segregation is decreasing, racial polarization in voting remains high,[17] with the consequence that as geographically diffuse protected classes become more common, that very diffusion will cause them to lose the protections of the FVRA.[18]

D. An unambiguous private right of action

[13] This would be an awkward standard because as long as RPV existed in the jurisdiction, any party could keep returning to court to win a vote dilution claim and seek a different remedy each time.
[14] Building on Justice Marshall's language in Mobile v. Bolden, 446 U.S. 55, 104 (1980), Lani Guinier used the term "meaningful participation" to describe what civil rights activists sought in the second generation of voting rights litigation. LANI GUINIER, THE TYRANNY OF THE MAJORITY: FUNDAMENTAL FAIRNESS IN REPRESENTATIVE DEMOCRACY ch. 1 (1994).
[15] Under the FVRA plaintiffs must show, in part, that a minority is sufficiently large and geographically compact to constitute a numerical majority in at least one additional single-member district. *See* Thornburg v. Gingles, 478 U.S. 30, 50 (1986); *Bartlett*, 556 U.S. at 26 ("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.").
[16] *Bartlett*, 556 U.S. at 26.
[17] See Nicholas O. Stephanopoulos, *Race, Place, and Power*, 68 STAN. L. REV. 1323, 1348, 1358 (2016).
[18] *See* Nicholas O. Stephanopoulos, *Civil Rights in a Desegregating America*, 83 U. CHI. L. REV. 1329, 1384–88 (2016).

A few years ago, the language of § 15.5-204 may have gone unheralded, but the particularity with which SB660 identifies a private right of action for harmed individuals or organizations is now notable and important. In 2021, Justice Gorsuch hinted at the lack of a private right of action under Section 2 of the FVRA.[19] And more recently in *Arkansas State Conference of the NAACP v. Arkansas Board of Apportionmen*t, a federal court of appeals denied relief under Section 2 to private individuals, concluding that the FVRA does not provide private individuals or entities a cause of action.[20] If that case holds at the Supreme Court level or if other federal appellate courts follow suit, then SB660 will provide the only hope for members of protected classes in Maryland to access meaningful participation.

E. Specification of Remedies

Two further provisions of SB660 are important to the success of the vote dilution cause of action under the proposed Maryland Voting Rights Act. Section 15.5-205(A)(1)(IV) requires that aggrieved persons send a notice letter to a jurisdiction before suing, in which they must identify their preferred remedy. This notice requirement should allow for productive settlement discussions and may avert the need for litigation in a number of instances. That section will also encourage community members to work together to develop a local system that enfranchises the entire community.

Section 15.5-205(A)(4) is also critical to the success of the Maryland Voting Rights Act because it allows the Attorney General to approve solutions to electoral systems that jurisdictions would otherwise lack authority to implement. This provision offers an efficient non-litigation route for localities to ensure members of protected classes have access to meaningful participation and allows remedies to be highly tailored to local conditions.

II. The mechanics of a proving vote dilution claim under SB660 largely reflect the realities of voting rights litigation.

A. Understanding the factors a court shall consider when adjudicating the existence of racially polarized voting.

Section 15.5–202(D) of SB660 sets out a list of factors that a court shall consider, and a separate list of items that a court shall not require, in determining whether a practice dilutes votes. Many of these provisions reflect the wisdom of hundreds of FVRA Section 2 vote dilution claims litigated over the years. For example, § 15.5-202(D)(1)(I) specifies that evidence from elections held before a case is filed is usually more probative than evidence from those held later. That specification reflects the fact that once a jurisdiction is aware of its possible legal liability, it may strategically encourage certain candidates (specifically, those who are likely to be the candidates

[19] Brnovich v. Dem. Nat'l Comm., 141 S. Ct. 2321, 2350 (2021) (Gorsuch, J., concurring).
[20] Arkansas NAACP, 86 F.4th 1204, 1206–07 (8th Cir. 2023).

of choice of the community represented by plaintiffs) to run for office, and to support their candidacies.[21]

Elsewhere in § 15.5–202(D)(1), SB660's language recognizes the limitations of the most common empirical method courts use to assess the presence of RPV ("King's EI").[22] For example, §15.5–202(D)(1)(VI) allows multiple protected classes to show their electoral preferences are cohesive in the aggregate, without having to separately define the preference choices of each protected class. This direction recognizes that there are many cases where multiple communities will vote together, and thus deserve protection against vote dilution, but where one portion of that community will be a protected class that is so small that they could not use King's EI to accurately demonstrate their preferences alone.[23]

B. Understanding factors a court shall *not* consider when adjudicating the existence of racially polarized voting.

Section 15.5–202(D)(2)(III) prevents a court from considering evidence that subgroups of protected classes have different voting patterns. It bears clarifying that this language is a useful check on the limitations of census categories for races or ethnicities that contain various subgroups within them. If those subgroups all vote differently from each other, then King's EI will not show statistically significant RPV for that larger group, and the protected class as whole could not bring a vote dilution claim. However, if just one small subset of the group votes differently, a defendant may seek to use that fact to sideline evidence from King's EI showing otherwise high levels of RPV for the larger group. For example: Suppose an Asian community is the identified protected class, and King's EI suggests that roughly 70% of voters with a census designation of Asian tend to support the same candidates for local government. But suppose further that there is a consistent group of Asian voters from one national origin that do not support those candidates (and that this fact can be shown with admissible evidence). The fact that a small subset of Asian people vote differently from the larger class should not derail a court from recognizing the otherwise high level of RPV demonstrated by the statistical techniques. Section 15.5–202(D)(2)(III) clarifies that this kind of fact cannot defeat an otherwise strong showing of RPV. In this way, this provision aligns

[21] *See, e.g.*, Collins v. City of Norfolk, Va., 883 F.2d 1232, 1242 (4th Cir. 1989) (After Plaintiffs filed suit under Section 2 of the FVRA, the Mayor supported a Black candidate who was the candidate of choice of the Black community and boasted that the legal action could be mooted if that candidate received sufficient support from white voters).

[22] *See, e.g.*, Baltimore Cnty. Branch of Nat'l Ass'n for the Advancement of Colored People v. Baltimore Cnty., MD, No. 21-CV-03232-LKG, 2022 WL 657562, at *8 & n. 4 (D. Md. Feb. 22, 2022), *modified*, No. 21-CV-03232-LKG, 2022 WL 888419 (D. Md. Mar. 25, 2022) (favorably discussing plaintiffs' EI evidence and noting that "[c]ourts have referred to ecological inference analysis as the 'gold standard' for racially polarized voting analysis").

[23] *See, e.g*, Holloway v. City of Virginia Beach, 531 F. Supp. 3d 1015, 1067 (E.D. Va. 2021) *vacated and remanded as moot*, 42 F. 4th 266 (4th Cir. 2022) ("Determining the aggregate preference for non-white voters was necessary because the City's Asian and Hispanic populations make it difficult to individually ascertain their preferred candidates using election returns by precinct").

with the §15.5–202(D)'s broader goals of streamlining litigation by disqualifying ex-ante certain arguments that are likely to be sideshows or distractions.

C. Weighing the totality of the circumstances

SB660 also gives guidance as to the types of factors that a court may consider for the totality of the circumstances inquiry in § 15.5–203(A)(1). Importantly, §§ 15.5–203(A)(2)-(3) clarify that evidence under every item of the list is not necessary for a violation to be found and direct courts to consider the evidence before them in a holistic fashion. In ELC's experience litigating these cases, this is an appropriate level of discretion to give to trial judges who have expertise in fact finding and weighing evidence in support of a specific inquiry. The kind of evidence available for jurisdictions of different types and sizes will vary enormously and may depend upon the jurisdiction's ability to collect and maintain good records. Plaintiffs should not have their case undermined just because they cannot point to a certain factor due to a jurisdiction falling short with respect to record keeping on that factor. Sections 15.5–203(A)(2)-(3) thus ensure that plaintiffs can still successfully prove their claim under a totality of the circumstances vote dilution claim using other kinds of evidence, even if they cannot collect evidence about one factor.

* * *

Respectfully submitted,

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SB 660 - Maryland Voting Rights Act of 2024 - Coun
Uploaded by: Morgan Drayton
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February 21, 2024

Testimony on SB 660
Voting Rights Act of 2024 – Counties and Municipalities
Ways and Means

Position: Favorable

Common Cause Maryland is in enthusiastic support of SB 660, a landmark piece of legislation that builds on successful Voting Rights Act models enacted recently in Virginia, New York, California, Connecticut, and other states. The bill takes the necessary steps to protect the voting rights of all Marylanders at the state level – but especially Voters of Color who have historically been denied the equal opportunity to participate in the democratic process – regardless of what direction the Supreme Court takes federal law.

Despite our nationally progressive reputation, many of Maryland's counties and cities have a troubling history when it comes to race and voting: English literacy tests, property ownership requirements, grandfather clauses, and entitlements linked to voting are just a few examples of the legal discrimination faced by Voters of Color attempting to exercise their right to vote. Despite the strides towards equality that society has made since the Civil Rights movement, the spirit of many of these discriminatory practices has been carried forward to the present day: for example, some jurisdictions still use at-large elections which can empower a white majority to capture most or all seats, even when there is a substantial population of Black, Indigenous, and other Voters of Color.

The Maryland Voting Rights Act (MDVRA) proposal includes a requirement for local voting changes to receive preapproval, taking from core provisions of the federal Voting Rights Act that was struck down by the Supreme Court ten years ago. As we move forward it's important to note that Maryland was not among the states, mostly in the South, that were covered under federal preclearance provisions – making it even more necessary that these reforms be passed at the state level.

The MDVRA will be a boon for the electoral participation of all historically excluded groups, and increased language access requirements are just one of the ways this legislation seeks to advance that mission.

Studies indicate that translated materials and other forms of language assistance make it easier for populations that don't speak English well to participate in the democratic process. In any election, voters make decisions about whether or not to cast a ballot – with only 27.4% voter turnout in the 2022 Maryland gubernatorial election, many choose not to. Access to translated ballots can help ensure that this decision stays with the voter, rather than a systemic barrier that makes the choice for them.

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Section 203 of the federal Voting Rights Act requires that counties provide election materials to specific language minorities groups that meet the population threshold. The language minority groups in a specific county must be more than 10,000 citizens of voting age or 5% voting age population. As of now, only Montgomery and Prince George's County are required to translate to Spanish.

SB 660 will ensure that non-English speakers across the state are not left out of the voting process by requiring any locality with a language minority population of two percent or 4,000 citizens of voting age citizens to provide all voting materials in that additional language. This will ensure that more voters are accurately informed, resulting in greater participation and an overall healthier democracy. It is our strong belief that no voter should ever be discouraged from voting because the materials were not provided in a language they can understand.

The Maryland Voting Rights Act will ensure that all voters are able to cast a ballot and participate freely in our elections if they so choose. This legislation is a great step towards ensuring that our elections are truly accessible to all eligible voters. SB 660 will make Maryland a national leader on protecting the right to vote, carrying forward momentum from across the nation to become one of the most comprehensive enacted state-level voting rights acts in the country.

For these reasons, we strongly urge a favorable report from the committee.

2-21 SB 660 Voting Rights Act of 2024 - Counties

Uploaded by: Nancy Soreng

Position: FAV

LEAGUE OF WOMEN VOTERS® OF MARYLAND

TESTIMONY TO SENATE EDUCATION, ENERGY, AND THE ENVIRONMENT COMMITTEE

SB 660 – Voting Rights Act of 2024 - Counties and Municipalities

POSITION: Favorable

BY: Linda Kohn, President

Date: February 21, 2024

The League of Women Voters was founded on the concept that voter participation is the essential element of a successful democracy. Our organization has worked for over 100 years to assure the right to vote of every citizen is protected. Last session, we testified in the Senate that while we respected the intention of the national organizations who brought the concept of preserving important elements of the 1965 federal Voting Rights Act to Maryland Law, we had reservations about some aspects of the 2023 VRA. Since then, we have worked with national and state-wide voting rights advocates to modify the bill in significant ways.

One of the major changes in the 2024 version of the VRA is that counties and Baltimore City are no longer subject to pre-clearance by the Attorney General or the Court for changes in election administration. The Maryland Legislature has enacted many laws that aim to achieve an election system that is accessible, fair and accurate and that require oversight by the State Board of Elections. HB 410, that you passed last year, also increases oversight responsibilities of SBE and requires actions that would enhance community input into significant changes in election administration. Eliminating pre-clearance for election administration for Counties and Baltimore City makes this a much better bill.

We now have a greater understanding of the remaining pre-clearance provisions in the VRA of 2024 and how they would work. While counties would not be subject to pre-clearance for voting administration, if they have a history of drawing election districts for county council, county commissioner or Board of Education that have been challenged in court, or have been determined by proven statistical calculations that vote dilution has been taking place, when the time comes to draw new districts after the next census, those districts would have to be approved by the Attorney General's Office or the court. The same would be true of municipalities. In the hearing and written documents, you will be provided with evidence that this has a been a problem in some jurisdictions.

Municipalities have very little oversight for how they run their elections. If there has been no evidence of prior incidence of vote dilution, or vote denial they will continue to operate their elections as they have always done. If the Attorney General determines, based on statistical and legal actions, that there is a problem, they will need to clear changes to election administration through that office or the courts, before being implemented.

Maryland, like many states, has been relying on the 1965 Voting Rights Act as the backbone for litigation to protect voting rights. By having a Maryland Voting Rights Act, our voters will be protected if the federal VRA is even further weakened by a system that is less expensive and more expedient than our current situation. Let's join the states that have enacted a VRA and demonstrate our commitment to protecting voting rights.

We request a favorable report on SB 660.

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Testimony for the Senate Education, Energy, and the Environment Committee

SB660 Voting Rights Act of 2024 – Counties and Municipalities
February 21st, 2024

FAVORABLE

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The ACLU of Maryland urges a favorable report on SB660, a historic bill that seeks to establish strong voting protections for Marylanders across the state. Importantly, SB660 would establish a civil cause of action for Marylanders to bring suit when faced with barriers to casting a ballot, an unfortunate necessity, even in a progressive state like Maryland.

As it currently stands, Section 2 of the federal Voting Rights Act of 1965 creates a civil cause of action to challenge voting rights violations committed by state and local jurisdictions. In Maryland, the ACLU of Maryland has brought three recent Section 2 lawsuits: (1) A challenge in 2021 to Baltimore County's unlawful re-districting scheme that packed a supermajority of Black voters into a single district among seven districts, diluting the Black vote when a second Black opportunity district could be created; (2) A challenge against Federalsburg, a municipality in Caroline County, for diluting the Black and BIPOC vote by maintaining a staggered-term, at-large election system that sustained an all-white government throughout the Town's 200 year history; and (3) a challenge against Wicomico County and its School Board for diluting the voting strength of Black voters through use of a hybrid at-large, district plan that limits Black residents to a single realistic election opportunity, when a second opportunity district could be created.

Last year, the U.S. Supreme Court heard cases that could have undermined Section 2 of the Voting Rights Act, leaving voters with no legal recourse to challenge voting rights violations in court, like was done with Baltimore County, Federalsburg, and Wicomico County.[1] Luckily, Section 2 remains an available mechanism to challenge unlawful voting systems, but having come so close to losing this critical piece of the federal Voting Rights Act leaves Maryland voters vulnerable to future rollbacks of their rights.

[1] https://www.aclu.org/cases/thomas-v-merrill-and-milligan-v-merrill; https://www.npr.org/2023/02/26/1157248572/supreme-court-voting-rights-act-private-right-of-action-arkansas.

Furthermore, the federal VRA – as limited by decades of federal court cutbacks – cannot address the full range of voting rights issues across Maryland that have prevented BIPOC voters from securing equal voting rights. To preserve democracy and ensure true equality for all, **Maryland must enact its own Voting Rights Act and be a leader in protecting citizens' right to vote.**

Recent ACLU of Maryland Voting Cases

Baltimore County NAACP et. al. v. Baltimore County

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In Baltimore County, Black voters filed a federal Voting Rights Act lawsuit challenging the racially discriminatory redistricting plan that the County adopted in December 2021. Despite months of public outcry and warnings about the illegality of its proposed redistricting plan, the County enacted a plan that packed a supermajority of Black voters into a single district, diluting their vote, when a second majority-Black district could have been created among the seven Council districts. The federal judge hearing the case found that the County's plan was racially discriminatory and diluted the Black vote, thus requiring that the plan be redone. Ultimately, the County re-drew their plan in a way that allowed them to continue maintaining a single majority-Black district, without drawing a district map that allowed election of a second Black Council member. The Baltimore County NAACP case exemplifies the necessity of preclearance in Maryland: Had the County been subject to preclearance, more than a million dollars in litigation costs could have been avoided, and an equitable redistricting plan could have been created.

Caroline County NAACP et. al. v. Town of Federalsburg

Beginning in August 2022, residents of the Town of Federalsburg, the Caroline County Branch of the NAACP, the Caucus of African American Leaders, and the ACLU of Maryland called upon Town officials to collaborate in changing the racially discriminatory at-large, staggered term election system that has diluted the Black vote such that no Black person, or any person of color, won election to municipal government in the Town's 200-year history. Such uninterrupted racial exclusion from public office is especially shocking, given that the 2020 Census shows the Town is now majority BIPOC, at 53%, and 47% Black.
After spending months fruitlessly trying to persuade Town officials to reform Federalsburg's election system, on February 22, 2023, Federalsburg residents, Caroline County NAACP, and Caucus of African American Leaders filed suit to take back their right to vote. Notwithstanding this filing, the Town continued to push back against equal voting rights for Federalsburg's Black voters. As a result, on May 9, 2023 the federal district court ordered the Town to produce a plan that would comply with the Voting Rights Act, whereby the Black community could finally have a fair opportunity to elect two out of the four Town Council members in the Town's 2023 elections. On September 26, 2023, Black candidates Brandy James and Darlene Hammond were elected to serve as Town Council members

representing the Black community of Federalsburg, finally ending the centuries long legacy of disenfranchisement for the Black community.
Wicomico County NAACP et. al. v. Wicomico County et. al.

On December 7, 2023, the Wicomico County NAACP, the Caucus of African American Leaders, the Watchmen with One Voice Ministerial Alliance, and individual voters in Wicomico County filed suit against Wicomico County and the Wicomico County Board of Education, for diluting Black voting strength by maintaining an election system that uses an at-large feature to limit Black voters to representation in a single district among seven Council seats, when a second Black opportunity district could be created. This case is currently pending, but reform may nevertheless be possible.

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If we still have a federal VRA, why does Maryland need its own?

Bringing complex Section 2 lawsuits requires enormous resources, specialized legal expertise, and the hiring of expert demographers and political scientists, even to determine whether a voting rights challenge in federal court is possible. If the Maryland VRA is passed, significant resources can be saved – both for residents and the government – while still reforming systems of disenfranchisement that still exist too widely across the state. These include:

- 54% of all the municipalities in Maryland have at least a 20% BIPOC population, but 23% of them have *all-white* governments.
- There are 18 municipalities with BIPOC populations over 80%, and in 7 of them, BIPOC representation make up less than half the municipal government. For example, in Landover Hills, the BIPOC population is 90% but only two representatives out of six are not white.
- 63% of all the municipalities in Maryland have at-large election systems, requiring only a bare majority to win all of the seats to the municipal government, the reason why Federalsburg was able to shut out the Black community for 200 years.

In **Harford County**, the county council is all white, despite having a 28% BIPOC population. A federal VRA challenge is extremely difficult because the BIPOC population is not compact enough to create a majority BIPOC district, which is a necessary component of proof under the federal VRA, as limited by the Supreme Court. However, **under the MDVRA, Harford could reform its election system** under a different voting structure to offer BIPOC residents fair representation.

Maryland has a historic opportunity to secure voting rights for all and ensure every Marylander has legal recourse in the face of deception, obstruction, or intimidation when accessing the ballot.

For these reasons, we urge a favorable report on SB660.

ACLU MD Appendix 1

THE MARYLAND VOTING RIGHTS ACT

*"One year ago today, on my mother's dying bed, at 92 years old – former sharecropper – her last words were, '**Do not let them take our votes away from us**.' They had fought, she had fought, and seen people harmed, beaten, trying to vote. Talk about inalienable rights. Voting is crucial, and I don't give a damn how you look at it . . ."*

"I will fight until the death to make sure every citizen has the right to vote. It is the essence of our democracy."

Congressman Elijah Cummings, February 6, 2019[1]

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[1] U.S. House Oversight Committee Hearing on H.R. 1, a measure to prohibit the purging of voter rolls, create independent re-districting commissions, and enact a host of voting rights protections for every American across the country.

INTRODUCTION

Maryland is now the most diverse state on the East Coast, and one of just two states where people of color have become a majority since the 2020 Census.[2] The Free State has made great strides in building a more open and accessible democracy in recent years, and has the opportunity to become a national leader on voting rights. Yet, substantial voter registration and turnout disparities by race persist; and it is now time to enact strong protections to ensure that Black, Latine, Asian American voters and Marylanders with disabilities can fully participate free from discrimination.

The Maryland Constitution and Declaration of Rights recognize that vigorous political participation is the foundation of our democracy and that the right to vote is preservative of all other rights. A prohibition against disenfranchisement is reinforced through constitutional protections, most expressly through protections for the right of suffrage in Article I of the Maryland Constitution[3] and Article 7 of the Maryland Declaration of Rights.[4] Notably, Maryland constitutional protections for the right to vote have been recognized as more protective than parallel provisions under federal law.[5]

However, even unequivocal constitutional guarantees require strong statutory enforcement mechanisms. The Fifteenth Amendment to the United States Constitution is clear in its terms prohibiting racial discrimination in voting. But state and local governments around the country—including here in Maryland—resisted allowing Black, Indigenous, and People of Color ("BIPOC") citizens an equal opportunity to participate in the political process for a century after its ratification. The Voting Rights Act of 1965 ("federal VRA") was a necessary and effective step toward making good on a constitutional guarantee of equal voting rights. Yet new means of excluding voters of color from the political process have emerged, particularly as federal courts–led by a

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[2] Marissa J. Lang & Ted Mellnik, "Census data shows Maryland is now the East Coast's most diverse state, while D.C. is Whiter," Washington Post (August 12, 2021), https://www.washingtonpost.com/dc-md-va/2021/08/12/dc-virginia-maryland-census-redistricting-2/.

[3] Md. Const. Art. I, § 1 states: "Every citizen of the United States, of the age of 18 years or upwards, who is a resident of the State as of the time for the closing of registration next preceding the election, shall be entitled to vote in the ward or election district in which the citizen resides at all elections to be held in this State. A person once entitled to vote in any election district, shall be entitled to vote there until the person shall have acquired a residence in another election district or ward in this State.")

[4] "That the right of the People to participate in the Legislature is the best security of liberty and the foundation of all free Government; for this purpose, elections ought to be free and frequent; and every citizen having the qualifications prescribed by the Constitution, ought to have the right of suffrage." Art. 7 of the Maryland Decl. Rts.

[5] *Maryland Green Party v. Maryland Bd. of Elections,* 832 A.2d 214, 377 Md. 127, 120 A.L.R.5th 663, *on subsequent appeal* 884 A.2d 789, 165 Md. App. 113, *certiorari denied* 889 A.2d 418, 390 Md. 501 (2003) (Constitutional provision which ensures free and frequent elections and safeguards the right of the People to participate in the legislature and the right of suffrage by every citizen having the constitutional qualifications is more protective of rights of political participation than the provisions of the federal constitution).

conservative U.S. Supreme Court–re-interpret the federal VRA to cut back on its protections and limit its effectiveness.

At the state level, Maryland has both a troubling history of violent racial suppression and an extensive history and ongoing record of discrimination against racial, ethnic, and language minority groups in voting. The state has made significant strides to improve access to the franchise over time, and there are currently a range of solid, pro-voter policies in place to build upon. At the same time, many discriminatory practices remain in place and avenues for discrimination remain widely available.

Laws and practices that have either the purpose or effect of discriminating against BIPOC voters remain prevalent; some of the most common examples include redistricting plans that dilute minority voting strength, use of at-large election systems that maintain dominance by the white majority, polling location plans with too few and/or too inconvenient sites and inadequate equipment, and failures to provide adequate language assistance. This situation undermines democracy, and it persists because Maryland voters currently lack the tools to uncover and address discrimination. BIPOC voters must have equal opportunities to participate in Maryland's political process—but they have too often been disadvantaged by laws and practices that have a discriminatory purpose or discriminatory results.

Through a state-level Maryland Voting Rights Act ("MDVRA"), Maryland can continue its march toward becoming a nationwide leader in promoting equal access to political participation, building on the comprehensive framework of the federal VRA and the efforts of California (2002), Washington (2018), Oregon (2019), Virginia (2021), New York (2022) and Connecticut (2023) to improve state law voting rights protections. This will enable our state to confront evolving barriers to effective participation and to root out longstanding discriminatory practices more effectively. An MDVRA would offer affirmative steps to make our democracy more inclusive and robust by creating a fulsome and transparent basis for data-driven evaluation of our election practices. Such a law would provide a means of ensuring that all voters are able to cast a meaningful ballot, but especially would help to accelerate the participation of BIPOC voters who have been historically denied an equal opportunity to participate in the political process.

I. WHY DOES MARYLAND NEED A VOTING RIGHTS ACT?

While voter suppression has been associated in the public mind with the Jim Crow South, Maryland has its own sordid history of voting discrimination. Starting in the late 18th century, Maryland adopted a series of restrictive voting laws designed to disenfranchise Black and immigrant voters. That history of discrimination is too voluminous to recount here, but its effects still loom large today in the relative disadvantage that BIPOC and immigrant voters experience.

A. A troubling legacy of racial terror linked to voter suppression

Lynchings have been documented in 18 of the state's 24 counties.[6] As the Vice Chair of the Maryland Lynching Truth and Reconciliation Commission noted prior to the 2020 election, "[t]he legacy of lynching is directly connected to voter suppression and attempts to stoke fear in the hearts of Black and brown [people] and allies of every color …"[7] Renowned civil rights lawyer and scholar Sherrilyn Ifill evokes this same sentiment in describing the ugly stain racial violence and discrimination have left across Maryland's Eastern Shore, in her seminal work, "On the Courthouse Lawn: Confronting the Legacy of Lynching in 21st Century America." Discussing her findings about the history and impact of racial violence across the Maryland Shore, Professor Ifill captures the painful legacy Black residents carry with them from their region's gruesome history:

> The terror visited upon African American communities on the Eastern Shore in the 1930s has not just disappeared into thin air. It lives in the deep wells of distrust between blacks and whites in the sense that blacks still must keep their place and that both blacks and whites must remain silent about this history of lynching.
>
> The lynchings made possible the maintenance of all white political control in many counties on the Shore until the 1980s and in some cases the 1990s, decades after blacks had been elected to public office in other parts of the state. Blacks were not elected to the governing bodies in many counties on the Shore until the ACLU filed a series of voting-rights cases in the 1990s.
> …

Id., at xvi.

Three decades ago, a federal court detailed Maryland's concerning history of voting discrimination in a ruling striking down a state legislative redistricting plan as racially discriminatory, noting that this history is marked by a 1904 provision to disenfranchise Black voters, "all-white, but state funded, volunteer fire departments on the Eastern Shore [that] functioned as a kind of unofficial slating organization for white candidates" through the mid-1980s, and a dual registration system that kept many Black voters from the polls until 1988.[8]

Even today, these problems persist, as demonstrated by ongoing legal challenges to race discrimination in redistricting on the Shore, in Baltimore County, and even in the DC suburbs. In the Town of Federalsburg, efforts to maintain all-white rule on their Town Council has led to half-baked measures that would entrench white dominance, all in the name of election reform:

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[6] Jonathan M. Pitts, *Maryland conference on lynchings finds links to voter suppression, social inequality*, BALTIMORE SUN (October 19, 2020), https://www.baltimoresun.com/maryland/bs-md-maryland-lynching-conference-20201019-wqdo2w6xorc3vm73jzmtguisda-story.html.

[7] *Id.*

[8] *Marylanders for Fair Representation v. Schaefer,* 849 F.Supp. 1022, 1061 (D.Md, Jan. 14, 1994).

> Never in my time doing civil rights work in Maryland . . . have I seen this kind of outrageous power grab by white officials. Cancellation of the Federalsburg municipal election amid the Town's celebration of its bicentennial would deny the fundamental right to vote to all Federalsburg voters. But Black voters, who would be denied the opportunity to finally integrate their government in this historic year, would feel this most harshly. Indeed, for the Plaintiffs and other Black residents who have bravely stood up to challenge race discrimination in the existing system, the Town's very proposal feels like retaliation and punishment. It would simply be lawless to allow the incumbent white officials to unilaterally extend their own terms in office, and the notion that they profess to do this in the name of election reform is absurd.
>
> -Carl Snowden of the Caucus of African American Leaders, Decl. ¶ 21 in *NAACP of Caroline County v. Town of Federalsburg*

Maryland courts have found time and again that despite efforts to pass positive reforms, the history of voting rights in Maryland is fraught with discrimination, racial tension, and a society of two worlds; segregated by race.[9]

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[9] *Id.*, 849 F.Supp. at 1061:

> Although on a statewide basis Maryland's voting rights record is in many respects an admirable one, we cannot turn a blind eye to the Eastern Shore's 'history of official discrimination' that impaired blacks' rights to register and to vote. In 1904 Maryland's General Assembly enacted the "Poe amendment" to the state constitution, which would have effectively disenfranchised most black voters. In reviewing the State's history, the defendants make much of the fact that, in a 1905 ratification referendum, Maryland's voters soundly rejected the Poe amendment. The defendants fail to note that the General Assembly enacted the amendment the previous year at the insistence of legislators from the Eastern Shore who agreed to back an oyster-seeding measure in exchange for Western Shore legislators' support for black disenfranchisement. Furthermore, when the Poe amendment was subjected to a statewide referendum, only three counties voted resoundingly in favor of the disenfranchising of Maryland's blacks—and all three were on the lower Shore. Maryland's discriminatory voting practices are not only found in the history books. Until 1988, Maryland law condoned "dual registration," which required voters to register separately for municipal and non-municipal elections. African–American citizens who had been historically excluded from full participation in political life, and hence were unfamiliar with registration procedures, frequently were turned away at the polls because they had only registered for one type of election. The dual registration requirement confused voters, depressed turnout, and—according to a 1985 report by Attorney General Stephen H. Sachs—may have resulted in the dilution of black voting strength on the Eastern Shore. Second, at least until the mid–1980s, some all-white, but state-funded, volunteer fire departments on the Eastern Shore functioned as a kind of unofficial slating organization for white candidates. . . . Only in 1988, upon the Attorney General's written recommendation, did the Governor amend the Code of Fair Practices to prevent racially discriminatory fire departments from receiving state funds. Even today, counties on the lower Shore continue to locate polling places in white dominated volunteer fire companies, a hostile environment that may depress black electoral participation.

Likewise, efforts to suppress the vote in the state continue– at least 16 anti-voter bills were introduced since the Maryland General Assembly's 2021 legislative session, which would have added new barriers or burdens to the right to vote.[10] This concerning and ongoing record of voter suppression and disenfranchisement is a compelling signal that a state VRA would play a critical role in protecting Maryland's voters of color.

B. Racial vote dilution, unlawful election systems, and the need for creative solutions

Over the course of the last four decades, Maryland has seen the investigation and successful legal challenge of infringements on minority voting rights, particularly where counties or cities have drawn voting districts that make it difficult or impossible for voters of color to elect their favored candidates.

Racial vote dilution has been a significant issue in Maryland, where BIPOC citizens' votes are weakened to be less than equal to white citizens' votes. In cases of at-large election systems where racially polarized voting is present, a bare majority is all that is necessary to control a disproportionate number of seats to their local governments.

At large elections are systems in which everyone in a jurisdiction votes for every available office or seat, so a bare majority with aligned preferences can elect every official and lock out other voices. In a racially polarized election, racial groups vote as a bloc, preferring the same candidates. Black people, for example, vote together for their preferred (frequently Black) candidate, and most non-Black voters support the opposing (typically white) candidate. Legal challenges have been necessary to address this toxic combination of at-large elections and racially polarized voting patterns that deny minority voters the opportunity to elect candidates of their choice.[11] Reform of at-large election systems through implementation of single-member districts or other alternatives can counteract the effect of racially polarized voting in drowning out BIPOC voters' voices.

In municipalities and counties where substantial BIPOC populations exist, *i.e.* have a population greater than 20 percent of the total, there is significant racial vote dilution, and overrepresentation of the white population in local government.[12] Fifty four percent of Maryland municipalities have substantial BIPOC populations and 23 percent of those municipalities have all white governments.[13]

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[10] Voting Rights Lab, *State Voting Rights Tracker*, https://tracker.votingrightslab.org/states/maryland.

[11] Jessica Trounstine and Melody E. Valdini, *The Context Matters: The Effects of Single-Member Versus At-Large Districts on City Council Diversity*, 52 American Journal of Political Science 554-569 (2008); Richard L. Engstrom and Michael D. McDonald, "The Effects of At-Large Versus District Elections on Racial Representation in U.S. Municipalities." ELECTORAL LAWS AND THEIR POLITICAL CONSEQUENCES, ed. Bernard Grofman and Arend Lijphart (1986).

[12] For purposes of this paper, "substantial BIPOC populations" means a jurisdiction that has a BIPOC population greater than 20 percent of the total population in that jurisdiction.

[13] *See* appendix 2, Why Maryland Needs Its Own Voting Rights Act, ACLU of Maryland, (Feb 20, 2024).

Some municipalities are particularly egregious: There are 18 municipalities with over 80 percent BIPOC populations, and in 7 of them, BIPOC represnetatives hold less than half of the seats in their municipal governments.[14] For example, in Landover Hills, just 9.7 percent of the population is white, but four out of six of the seats have white representatives.

Similarly at the county level, racial vote dilution is significant. One-third of Maryland counties that have substantial BIPOC populations have all white county governments.[15]

And even in counties that have at least some BIPOC representation, BIPOC voters are still underrepresented. As explained in greater detail below, in Baltimore County, a federal judge found that the county had to re-draw its district lines because the County's election plan packed too many Black voters into a single district. Unfortunately, the County's new plan still fell short of creating a second majority Black district. As a result, the most recent election still led to 6 out of 7 seats being filled by white representatives.

In another example, Wicomico County is also racially diluting votes to disenfranchise Black voters. Wicomico County has a mixed at-large and district system, where white residents are 60% of the population, yet control 6 out of 7 seats on the council. If the County were to re-district, as they must, a second Black opportunity district could be created. The mixed at-large district voting structure has enabled Wicomico County to pack all of the Black voters in the county into a single district, and dilute Black voters' voting strength. The Wicomico County NAACP , the Caucus of African American Leaders, the Watchmen with One Voice Ministerial Alliance, and four individual Black voters recently joined together to legally challenge this unlawful election system under the federal VRA.[16]

At-large election systems have long been criticized for their dilutive effects, especially for Black populations.[17] In Maryland, 84 municipalities have significant BIPOC populations, which is 54 percent of all the municipalities in Maryland. Of the 84 municipalities, 73 percent of them have either at-large, or mixed at-election systems, and 63 percent have fully at-large election systems.[18]

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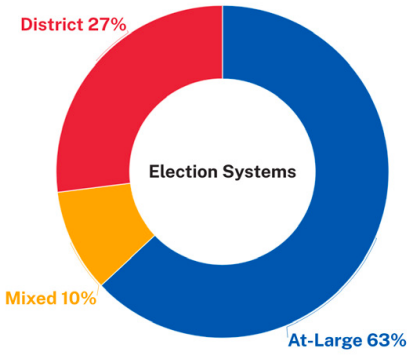
[14] *Id.*

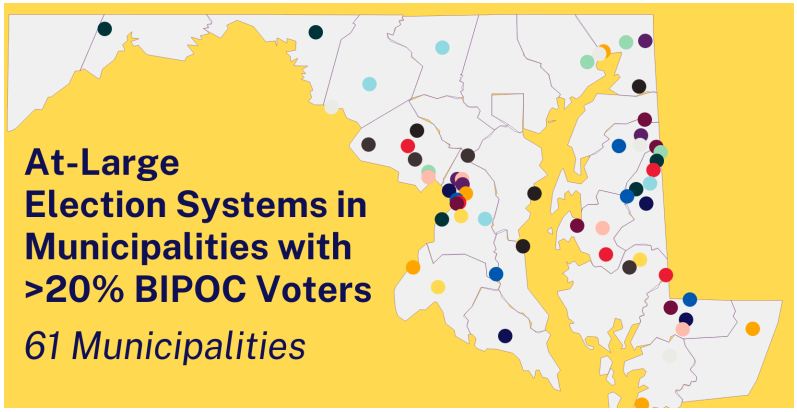
[15] *Id.*

[16] *See Wicomico Cnty. Branch of NAACP v. Wicomico Cnty.*, No. 23-CV-03325-MJM (D. Md. Dec. 7, 2023).

[17] Richard Walawender, *At-large Elections and Vote Dilution: an Empirical Study*, 19 UNIVERSITY OF MICHIGAN LAW SCHOOL JOURNAL OF LAW REFORM, 1221 (1986).

[18] *See* supra 13, appendix 2.





Along the Eastern Shore where the ACLU of Maryland has taken action, recent examples of discriminatory at-large elections featuring racially polarized voting include Worcester and Somerset Counties, Salisbury, Pocomoke City, Berlin, Snow Hill, Hurlock, Easton, and Princess Anne.[19] Through legal challenges filed under the federal Voting Rights Act, Black voters have forced reform of those systems to allow residents there to elect Black candidates to public office, often for the first time in the history of their community.[20] However, as explained more fully below, federal lawsuits cannot adequately address the problem, which remains rampant across the state. A Maryland Voting Rights Act is necessary to fully address the disenfranchisement of Maryland's Black voters and other voters of color.

i. Case Study #1: Advancing the Franchise in Federalsburg

Vote denial and vote dilution remain a significant issue across the state of Maryland, as exemplified by ongoing struggle in the Caroline County Town of Federalsburg, where recently the ACLU of Maryland, the Caroline County branch of the NAACP, and the Caucus of African American Leaders have been working to dismantle the Town's discriminatory at-large election system. Although Black residents make up half the Town's population, until 2023, *never in the Town's 200 year history* has there been a Black candidate elected to office. Black voters working with the NAACP and ACLU

[19] *See Cane v. Worcester Cnty.*, Md., 35 F.3d 921 (4th Cir. 1994); ACLU of Maryland Letter to U.S. Dept. of Justice, available at https://www.aclu-md.org/sites/default/files/field_documents/somerset_perez_letter.pdf; Redistricting, Ensuring Election Fairness, ACLU of Maryland, (Apr. 10, 2012), available at https://www.aclu-md.org/en/cases/redistricting-ensuring-election-fairness; Sam Janesch, *'We want a voice:' Federalsburg's Black residents become latest Eastern Shore voters to get a long-awaited shot at representation*, BALTIMORE SUN (Jun. 21, 2023) available at https://www.baltimoresun.com/politics/bs-md-pol-shore-voting-rights-20230616-xot2c5fehfccblzfy3ilzu6uri-story.html.

[20] *See e.g., NAACP of Carline County v. Town of Federalsburg*, 23-CV-00484-SAG, (D. Md. Feb. 22, 2023).

undertook the enormous burdens of filing and litigating a federal court VRA challenge in order to secure election fairness.[21]

> *"I've been here all my life, 68 years. I haven't seen no African American on the board. But we're not going back. We're going forward. It's time for a change and getting young African Americans on that board."*

-Roberta Butler, a Black, lifelong resident of Federalsburg who ran for Federalsburg Town Council, but was shut out of the political process due to Federalsburg's discriminatory at-large election system.

When initially contacted, Town officials claimed to want to remedy its ongoing voting rights violations. As months dragged on, however, it became clear to Black voters that the Town's white officials would not voluntarily recognize their struggle and adopt a plan that fully complied with the Voting Rights Act. Instead, Town officials attempted a series of inadequate "reforms" designed to hold onto power, including an outrageous proposal to keep all-white government in place by canceling 2023 elections with incumbents holding over in office for more than a year beyond their elected terms. Another proposal would have alternated at-large elections with district elections every two years, so as to continue white domination of government indefinitely, by ensuring that the Black community would only have a single representative of four, even though holding half the population. When these gambits failed, they amended the Town Charter to allow white residents to retain control of all but one Council seat until 2026, through a complicated staggered term election system that required the Black community to wait years before having equal representation. Not until a federal judge ruled that this plan was also unlawful, did the Town finally offer a racially fair plan – just three months before the election. The plan the Town ultimately adopted, was a two district system, with two council members per district, that would be implemented immediately for the September 2023 elections. Therefore, the Black community would be able to elect two representatives from the majority Black district to sit on the four member Town Council.

Dr. Willie Woods, the Caroline County NAACP President stated that at the January 2023 public hearing on election reform where the Town Council backtracked from its previous ameliorative approach, it "was terribly discouraging to members of the African American community," and that "the African American community will not allow the Town, inadvertently or intentionally, to continue diluting their voice or their voting rights."

[21] *See* Sam Janesch, *'We Want A Voice': Federalsburg's Black residents become latest Eastern Shore voters to get a long-awaited shot at representation*, BALTIMORE SUN, June 16, 2023, available at https://www.baltimoresun.com/politics/bs-md-pol-shore-voting-rights-20230616-xot2c5fehfccblzfy3ilzu6uri-story.html.

Rev. James Jones of the Caucus of the African American Leaders, testifying in support of dismantling the at-large election system in Federalsburg to end Black vote dilution

As a result of Black voters' hard-fought victory in Federalsburg, the September 2023 elections moved forward, and two Black candidates ran for office in the newly created majority Black, two member district. Brandy James and plaintiff Darlene Hammond were two candidates who ran for the open seats in the majority Black district, and after a historic voter turnout, won seats on the Town Council. The Town's legacy of shutting out Black representatives finally came to an end once and for all.

Photos of Mayor Abner swearing in Brandy James (left) and Darlene Hammond (right) as new members of the Town Council.

The Federalsburg experience shows how resistant localities can be to implementing change that would shift the power in favor of BIPOC communities – even where the system's unfairness is undeniable. In Federalsburg, it was only due to the immense courage of the Town's BIPOC residents, the resources spent to create a fair system by the plaintiffs, pressure from a federal judge, and the Black community's organizing around Ms. James and Ms. Hammond that a fair system is even a possibility.

It should not take such extreme measures to make an election system fair. With a streamlined cause of action and a mandate to attempt pre-litigation negotiation, the MDVRA could have brought about the same result in a faster, less expensive manner.

ii. Case Study #2: the Battle for Fair Districts in Baltimore County

In another example, during the 2022 redistricting cycle, Black voters in Baltimore County were forced to challenge a racially dilutive redistricting plan that would have created large white majorities in six of seven Council districts, in a County that is nearly a third Black and 48 percent BIPOC.[22] This litigation was both expensive to the taxpayers and highly disruptive to our democracy, requiring extension of filing deadlines and rescheduling of the primary election in order to accommodate changes necessitated by court rulings.

Despite months of warnings and massive outcry from local voters about unfairness inherent in Baltimore County's proposed redistricting plan, and notwithstanding BIPOC population growth in the County to over 47 percent, the County Council unanimously implemented a racially gerrymandered plan packing Black voters into a single super-majority Black district to diminish their influence while maintaining significant white majorities in six of the seven council districts.

As Joanne Antoine, Executive Director of Common Cause-Maryland, noted:

> "*Throughout this year's redistricting process, we and residents across Baltimore County called on Council members to follow the law and put the people above politics. Instead, they chose to ignore the law at the expense of free and fair elections. The county's voting districts don't belong to politicians, they belong to the people. The people, specifically Black voters, have a right to have a voice in choosing their representatives and should not have to live a decade under an illegal map.*"

[22] *Baltimore County Branch of the NAACP v. Baltimore County*, 2022 WL 657562, 2 (D. Md. 2022).

A federal judge ruled in 2022 that the Baltimore County plan violated the Voting Rights Act, [23] but narrowing of federal VRA protections allowed the County to get away with not creating a second *majority*-Black district. Instead, the County's new plan continued to pack one district with Black voters while keeping six others majority white, so as to prevent a second realistic Black opportunity district, continuing to advantage white voters and protecting white incumbents.

As a result, even after costly litigation, every one of the six Black candidates running in majority white districts in 2022 lost, leaving Black voters no better off than they were at the outset – with just one Black Council member, elected without opposition from the packed Black district. Nevertheless, County taxpayers are then on the hook for over $800,000 dollars to pay County lawyers seeking to defend its attempt to implement the unlawful election plan invalidated by the federal court. (This, in addition to yet-to-be determined attorneys' fees due to Black voters in their challenge.).

Given the result of this litigation, and the County's long history of racial discrimination and exclusion, including complete exclusion of any Black candidate from County office until 2002 and continued lack of Black representation beyond a single official among seven Council members to date, the need for an MDVRA is evident. Although the efforts to stop the County's racially discriminatory redistricting plan were ultimately successful, it was only achieved because of the tenacity of BIPOC advocates in the County, coupled with extensive expert analysis and legal resources. And even after successfully stopping the County's redistricting plan, the new plan submitted by the County in the legal proceedings was accepted by the federal district judge, notwithstanding the plaintiffs' reservations, which unfortunately resulted in the Black candidate's defeat in the next election, and once again having a single district where a Black candidate was elected to the County Council. Ensuring the voting rights of Marylanders should not take such Herculean efforts to protect this fundamental part of our democracy.

Black voters in other Maryland jurisdictions such as Harford County and numerous municipalities continue to confront racial vote dilution through gerrymandering and at-large structures that unfairly deny them full representation.

For some Maryland jurisdictions with at-large election systems the federal Voting Rights Act is insufficient to spark change, as a result of the U.S. Supreme Court's curtailing of protections under the federal VRA. For example, in places where the Black community is not geographically compact, challenges to at-large systems are impeded by Supreme Court's *Thornburg v. Gingles* test, which requires plaintiffs to prove that minority voters can make up a majority in a compact electoral district in order for a challenge to succeed.[24] This means in a municipality like Delmar or a county like Harford County, and several

[23] The Baltimore County re-districting case is strikingly similar a recent case before the U.S. Supreme Court, *Allen v. Milligan*, 599 U.S. _ (2023). Both in Baltimore County and in Alabama, substantial Black populations were packed into a single majority-Black district among seven districts, unfairly limiting election opportunities for Black voters.

[24] Thornburg v. Gingles, 478 U.S. 30, 92 L. Ed. 2d 25 (1986).

others, with large, but dispersed Black populations, the federal VRA offers no remedy for vote dilution the Black community has suffered for decades. Because Black voters do not live in geographically compact areas, they are unable to satisfy the test imposed by the Supreme Court to successfully challenge the at-large system. In Harford County, about 26 percent of the population is BIPOC, yet hold no seats on their all-white County Council.

The Maryland VRA would address this issue, removing the geographic compactness requirement, and opening the door to more creative solutions so that Black voters are not powerless. This could offer a remedy for disenfranchisement of BIPOC voters in places with white-dominated governments like Delmar, where Black would-be candidates stand ready to run for elective office, if given a fair opportunity: In Delmar for instance, Black residents have held over 21 percent of the population since 2010,[25] yet currently have an all-white government. [26] However, because the Black community is not segregated to a specific area, the inability to create a district-based system dooms the town's ability to challenge the vote dilution through the federal VRA, a requirement that was created by the U.S. Supreme Court.

Like Baltimore County, Federalsburg and Delmar, numerous racially diverse communities in Maryland lack any semblance of descriptive representation for voters of color on local councils—that is, minority voters make up a significant portion of the citizen voting age population, but few or none of the elected officials are BIPOC, potentially indicating the presence of racial vote dilution. A more efficient private right of action that reduces plaintiffs' burden of proof and cost while also giving defendants greater incentives and opportunities to resolve cases without resort to taxpayer-funded litigation would allow for more fulsome investigation, prosecution, and remedy of vote dilution cases.[27]

C. Barriers to the Ballot

Burdensome barriers to the ballot have a significant effect, especially on BIPOC communities, and are a problem nationwide in scope. We know Maryland is not immune to these barriers because substantial, greater-than-average voter registration and turnout

[25] Data USA, Delmar, MD, available at https://datausa.io/profile/geo/delmar-md/.

[26] Rachel Lord, *Delmar Commission Election to Take Place on Nov. 16*, MORNING STAR PUBLICATIONS, available at, https://starpublications.online/delmar-commission-election-to-take-place-on-nov-16/; Town of Delmar Commission, available at https://www.townofdelmar.us/government/commission-md.htm.

[27] Karen Shanton, *The Problem of African American Underrepresentation on City Councils*, 1 (2014), available at https://www.demos.org/sites/default/files/publications/Underrepresentation_0.pdf. Zoltan Hajnal, *Opinion, Ferguson: No peace without representation*, L.A. TIMES (Aug. 26, 2014), available at http://www.latimes.com/opinion/op-ed/la-oe-hajnal-minority-voters-elections-20140827-story.html ("Across the nation, racial and ethnic minorities are grossly underrepresented in city government. African Americans make up roughly 12% of the national population, but only 4.3% of city councils and 2% of mayors. The figures for Latinos and Asian Americans are even worse.").

disparities persist in Maryland, and the overall diversity of the state means that a significant number of Black and brown potential voters are sidelined each election.

i. Inadequate Voting Infrastructure

Another significant barrier to democracy in Maryland has been the lack of adequate infrastructure to accommodate existing voters. At polling sites, long lines and too few voting machines have repeatedly created backups, particularly in predominantly BIPOC areas of the state, with voters sometimes forced to wait hours to cast a ballot.[28] In the 2020 elections, for example, many polling places in Prince Georges County had long lines, with individuals lining up beginning at 5am in order to vote when the polls opened at 7am.[29] In extreme instances, this lack of infrastructure has been used as a strategy, such as in the 2022 general election when the campaign of a candidate for Attorney General urged supporters to create chaos at the polls by turning out en masse just before closing.[30] And to make matters worse, there is generally little to no data collected to evaluate and determine which polling sites may need more voting machines and staff than others.

There has also been a severe shortage of election judges, exacerbating the long lines at polling places.[31] In the July 2022 primary elections, there was a polling place in White Marsh with only eight of 22 election judges, and in Harford County, officials were short 150 election judges, resulting in understaffed polling sites and delayed poll openings. In 2022 polling places were 300 judges short in Anne Arundel County, and 1,000 short in Baltimore City.[32]

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[28] Bennet Leckrone, *Long Lines at Limited Polling Places Plus Mail-in Ballots Lead to Delays in Results*, MARYLAND MATTERS (Jun 2, 2020) available at https://www.marylandmatters.org/2020/06/02/long-lines-at-limited-polling-places-plus-mail-in-ballots-lead-to-delays-in-results/; *Maryland Primary: Power Outages, Delays Reported At Polls*, WJZ NEWS (Jun 26, 2018) https://www.cbsnews.com/baltimore/news/maryland-primary-polling-issues-2/; Hannah Klain, Kevin Morris, Rebecca Ayala, and Max Feldman, BRENNAN CENTER, *Waiting to Vote*, *available at* https://www.brennancenter.org/our-work/research-reports/waiting-vote#footnoteref6_etr2asr.

[29] Ovetta Wiggins, Rebecca Tan, Rachel Chason, Erin Cox, *Citing a history of voter suppression, Black Marylanders turn out to vote in person*, WASHINGTON POST (Oct. 26, 2020), available at https://www.washingtonpost.com/local/md-politics/maryland-early-voting-prince-georges-trust/2020/10/25/847c5afc-1537-11eb-ad6f-36c93e6e94fb_story.html; Christopher Famighetti, *Long Voting Lines: Explained*, BRENNAN CENTER FOR JUSTICE, available at https://www.brennancenter.org/sites/default/files/analysis/Long_Voting_Lines_Explained.pdf.

[30] Bruce DePuyt, *Top Peroutka aide encouraged supporters to form 'long lines' late on Election Day*, MARYLAND MATTERS (Oct. 31, 2022), available at https://www.marylandmatters.org/2022/10/31/top-peroutka-aide-encouraged-supporters-to-form-long-lines-late-on-election-day/.

[31] Scott Dance & Cassidy Jensen, *As Maryland voters cast in-person ballots Tuesday, election judge shortages punctuate an unusual primary election season*, BALTIMORE SUN, available at https://www.baltimoresun.com/politics/bs-md-pol-election-day-updates-20220719-sh6cvarkofgvzmmx4vdzug2yca-story.html.

[32] *Maryland boards of elections again need to fill many election judge openings*, WBAL TV (Oct. 18, 2022), available at https://www.wbaltv.com/article/maryland-election-judge-openings-poll-worker-shortage/41694906#.

There are numerous reasons for the shortage in election judges, including the politically charged atmosphere surrounding elections and rising threats to safety for poll workers inspired by former President Donald Trump and the election denial movement. Other issues include the pandemic, which deterred many people susceptible to COVID-19 from volunteering, the inadequacy of stipends paid to election judges, and significant shortcomings in local election board efforts to recruit people to volunteer as judges.[33] Judges receive a stipend and paid training, but election judges make only about $200-$275.[34] In addition, local boards of election sometimes have failed to contact people who applied to become election judges, despite the shortage.[35]

Regardless of the reasons, shortages in voting machines, election judges, and other critical election infrastructure often occur disproportionately in facilities serving higher proportions of voters of color (such as Prince Georges and Baltimore counties noted above); and this creates unequal barriers to the ballot.

ii. Inadequate Language Access

Maryland is one of the most diverse states in the country, yet access to voting materials in their primary language remains a significant issue for non-English-speaking Marylanders. According to the Migration Policy Institute, the limited English proficient population increased in Maryland by 100.9% over the last two decades.[36] Of that population, 47.1% of the Spanish speaking population reported speaking English less than "very well".[37] However, the only counties in Maryland required to provide election materials in another language are Montgomery and Prince Georges Counties, and the only other language those two counties are required to provide materials in is Spanish.[38]

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[29] Joel McCord, *Maryland desperately needs election judges for the midterm election*, WYPR NEWS (Oct. 27, 2022), available at https://www.wypr.org/wypr-news/2022-10-27/maryland-desperately-needs-election-judges-for-the-midterm-election; Tim Gaydos, *Stipend is an insult to election judges*, FREDERICK NEWS POST, (Mar 15 2018) available at https://www.fredericknewspost.com/opinion/letter_to_editor/stipend-is-an-insult-to-election-judges/article_2f9d6334-7571-5e8a-9b5c-a630ac6f251b.html

[34] Nicky Zizaza, *Baltimore seeks at least 1,000 election judges amid nationwide shortage*, CBS NEWS BALTIMORE (Oct. 17, 2022), available at https://www.cbsnews.com/baltimore/news/baltimore-seeks-at-least-1000-election-judges-amid-nationwide-shortage/.

[35] Emily Opilo, *Maryland election judge volunteers report slow, sometimes no response to their offers to work pandemic election*, BALTIMORE SUN (Aug. 24, 2020), available at https://www.baltimoresun.com/politics/elections/bs-md-pol-election-judges-not-contacted-20200824-x3tbt2jfzjhyphdjzbxzdcztl4-story.html.

[36] *See Maryland: Immigration Data Profile*, MIGRATION POLICY INSTITUTE, *available at*: https://www.migrationpolicy.org/data/state-profiles/state/language/MD (last visited Feb 20, 2024).

[37] *See id.*

[38] Maryland State Board of Elections, available at https://elections.maryland.gov/voting/index.html.

Federal law requires language assistance be provided only when at least 5% or 10,000 members of a political subdivision's population are (1) citizens of voting age; (2) limited-English proficient; and (3) speak a particular language.[39]

In Frederick County, a member of the RISE Coalition ("Resources for Immigrant Support and Empowerment" Coalition) describes the struggle that many non-English speakers have with voting due to language barriers:

> In the 2022 Primary and General Elections, myself and others from the RISE Immigrant Justice Coalition did voter outreach to the Latino community. We engaged friends and neighbors to encourage them to vote and as a result many voted for the first time. We saw that so many people were nervous to do it, and needed a lot of help navigating the process since they don't speak English. In particular five people sought me out to get help with their mail in ballots, including two couples who had recently become citizens, and another person voting for the first time. They all knew who they wanted to vote for, but without any translation, couldn't understand the positions they were selecting for. I think it'd be very good to consider putting the ballots and voting information in Spanish. These people told me that they preferred doing the early option by mail because they feared going to the polls, and not knowing what to do, and being intimidated. So they all preferred sending it by mail and felt like voting in person was not an option for them.
>
> - Margarita Gallegos, a resident of Frederick, MD and member of the RISE Coalition

Language should not be a barrier to voting, yet it keeps thousands of non-English speakers across the state from the ballot box.

iii. Voter Intimidation

The 2020 and 2022 elections demonstrated once again that voter intimidation is re-emerging as a significant problem across the country. Recent elections have seen armed extremists showing up at polling places; truck caravans driving into Black or Latino neighborhoods to intimidate voters; and police presence at several polling places in communities where the relationship with law enforcement is historically fraught.[40] In

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[39] *Voting Rights Act Amendments of 2006, Determinations Under Section 203*, 86 Fed. Reg. 69611, 69612 (Dec. 8, 2021), available at https://www.govinfo.gov/content/pkg/FR-2021-12-08/pdf/2021-26547.pdf.

[40] Legal Def. and Educ. Fund, Inc., *Democracy Diminished*, 2, 10, 20, 35, 59, available at https://www.naacpldf.org/wp-content/uploads/Democracy-Diminished-State-and-Local_Threats-to-Voting_Post-Shelby-County,Alabama-v.Holder__Political_Participation_.pdf; NAACP Legal Def. and Educ. Fund, Inc., *Democracy Defended* 12-14, 21-22 (Sept. 2, 2021), https://www.naacpldf.org/democracy-defended/.

Michigan cities of Detroit and Flint, Black voters received robocalls with deceptive information about when and where to vote.[41]

Maryland is not immune to this frightening trend. In 2020, for example, election officials in Montgomery County expressed significant concerns over voter intimidation at the county's in-person polling places,[42] and the Maryland Attorney General issued a harsh warning that voter harassment and intimidation are illegal and would not be tolerated.[43] In February 2021, a man in Frederick, Maryland was charged with voter intimidation and sentenced to two years in the Division of Corrections for mailing letters threatening violence to neighbors who displayed lawn signs in support of Joe Biden and Kamala Harris.[44]

On November 8, 2022, the ACLU of Maryland's Election Protection Hotline received a report of voter intimidation at the Edgewood Elementary School in Harford County. The caller reported that her older relative was harassed by a man outside of the polling place. The man was reported to be in the parking lot of the polling place, in a very large military vehicle, and was harassing other voters as well. The ACLU of Maryland sent an on-call investigator, who documented the military vehicle, covered in political signs, and the man, sitting in his chair, and standing up to intimidate people arriving.

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[41] 74 Sam Gringlas, "Far-Right Activists Charged Over Robocalls That Allegedly Targeted Minority Voters," NATIONAL PUBLIC RADIO (October 1, 2020), https://n.pr/3sdlk9D; Ron Fonger, "Attorney general warns of false robocalls targeting Flint voters," MICHIGAN LIVE (Nov. 3, 2020), https://bit.ly/3BHlNnL.

[42] Bennett Leckrone, *Montgomery Election Officials Plan Patrols to Prevent, Stop Voter Intimidation*, MARYLAND MATTERS (October 1, 2020), https://www.marylandmatters.org/2020/10/01/montgomery-election-officials-plan-patrols-to-prevent-stop-voter-intimidation/.

[43] Maryland Attorney General Brian Frosh, *Attorney General Frosh Issues Guidance to Remind Voters of Their Right to Vote Free of Harassment or Intimidation* (October 14, 2020), https://www.marylandattorneygeneral.gov/press/2020/101420a.pdf.

[44] WDMV, *Frederick man charged with voter intimidation* (February 24, 2021), https://www.localdvm.com/news/maryland/frederick-man-charged-for-voter-intimidation/.

Images taken by ACLU of Maryland investigator following complaints of voter intimidation outside of Edgewood Elementary School in Harford County

But while voter intimidation concerns may be on the rise, they are not entirely new in Maryland. In 2011 former Governor Robert Erlich's campaign manager was convicted of conspiracy and fraud for a voter suppression scheme aimed at Black voters through robocalls into Baltimore and Prince George's County on Election Day encouraging voters to stay home.[45]

In Maryland, two criminal statutes are in place to deter voter intimidation. Under Md. Code Ann., Elec. Law § 16-201(a) "a person may not willfully and knowingly:

> (5) influence or attempt to influence a voter's voting decision through the use of force, threat, menace, intimidation, bribery, reward, or offer of reward;
>
> (6) influence or attempt to influence a voter's decision whether to go to the polls to cast a vote through the use of force, fraud, threat, menace, intimidation, bribery, reward, or offer of reward; or
>
> (7) engage in conduct that results or has the intent to result in the denial or abridgement of the right of any citizen of the United States to vote on account of race, color, or disability."

A violation of any of these sections is a misdemeanor that subjects a person "to a fine of not more than $5,000 or imprisonment for not more than 5 years or both." Md. Code

[45] Jason Tomassini, "Jury finds Maryland campaign manager guilty of election fraud," Reuters (December 6, 2011), https://www.reuters.com/article/us-crime-election-maryland/jury-finds-maryland-campaign-manager-guilty-of-election-fraud-idUSTRE7B525I20111206.

Ann., Elec. Law § 16-201(b). Additionally, election judges "may not willfully and knowingly interfere in any way with the casting of a vote by a person who the election judge knows is lawfully entitled to vote at an election." Elec. Law § 16-303(a)(1). A person who violates this section "is guilty of a misdemeanor and subject to imprisonment for not less than 3 months nor more than 2 years." Elec. Law § 16-303(b). However, this criminal law has rarely been used in the last 100 years, and is not an effective tool to discourage incidents of voter intimidation.

A Maryland VRA would supplement these criminal prohibitions with a civil cause of action providing for both injunctive relief (stopping prohibited activity) and damages (compensating victims financially), helping combat the rise in voter intimidation by giving any voter the right to sue a person or group engaging in acts of intimidation, deception, or obstruction that affects the right of voters to access the elective franchise. This would expand upon the protections in the federal VRA and provide a state-court, civil cause of action that is not currently available under Maryland law.

iv. Barriers Rooted in the Discriminatory Criminal Legal System

With origins dating to the Civil War and the passage of the 13th, 14th, and 15th Amendments, a systematic effort across the country was advanced to continue the dehumanization of Black citizens. One shameful method invoked to do this historically was use of the exception to the 13th Amendment – the exception that allows slavery as a punishment for a crime – to begin the systematic criminalization of Black people. In order to block the thousands of newly elected Black officials from taking office, and to disenfranchise the Black population, many states passed laws that prohibited people convicted of a felony from voting.[46] In Maryland, it was not until 2007 that Governor Martin O'Malley signed a law that ended the state's policy of lifetime disenfranchisement for people convicted of felonies, resulting in re-enfranchising upwards of 50,000 people.[47] However, the 2007 law required people to have completed their sentences, making anyone who was incarcerated or on parole or probation unable to vote. In 2016, this changed, extending the right to vote to anyone who was not serving a felony sentence in prison, allowing an additional 40,000 people the chance to register and vote. And finally in 2021, with the passage of the Value My Vote Act, the Department of Public Safety and Correctional Services and the State Board of Elections are now required to provide a voter registration application to each individual being released from jail or prison, as well as to post notices that anyone not incarcerated has the right to vote, offer educational materials to eligible voters on the different methods of voting, and provide frequent opportunities for eligible voters to register to vote.

However, despite all of these incremental steps to address a legacy of racial dehumanization and disenfranchisement, only Maine, Vermont, Washington D.C., and

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[46] Jeffrey Robinson, *The Racist Roots of Denying Incarcerated People Their Right to Vote*, ACLU News and Commentary, available at https://www.aclu.org/news/voting-rights/racist-roots-denying-incarcerated-people-their-right-vote

[47] Andrew Green, Felons gain right to vote, BALTIMORE SUN, (Apr. 25, 2007) available at https://www.baltimoresun.com/news/bs-xpm-2007-04-25-0704250234-story.html.

Puerto Rico do not restrict the voting rights of people convicted of felonies.[48] Maryland, which has the dubious distinction of having one of the nation's worst incarceration rates for Black people,[49] must commit to reject this legacy and remove these conviction-related barriers.

v. Insufficient Voter Education

Voter education remains a significant issue that influences voter turnout. In the 2022 primary elections in Maryland, voter turnout was just 24 percent. In general elections, voter turnout in Maryland was 53.5 percent in the 2018 midterm elections, 69.2 percent in the 2020 general election, and 45.1 percent in the most recent 2022 midterms.[50] And, as noted above, there are significant disparities by race.

In order to counter the confusion and changes in law around voting rules for individuals with criminal convictions, the 2021 Value My Vote Act requires the Maryland State Board of Elections to take affirmative steps to educate Maryland voters on different methods of voting, including absentee voting, absentee ballot applications, as well as to assist in the process of voter registration for people residing in prisons and jails. Additionally, voter education should be undertaken to assist in dispelling the sort of confusion that has occurred around the different methods of casting a ballot that are available to voters. For example, during the COVID-19 pandemic, sample ballots were sent in the 2020 elections, but the ballots were not fully explained, and many people did not realize that the ballot was a sample, and not the actual ballot that the voter must cast.

II. WHY IS THE FEDERAL VOTING RIGHTS ACT NOT ENOUGH TO ENFORCE CRUCIAL CONSTITUTIONAL GUARANTEES?

Historically, the individual and collective provisions of the federal Voting Rights Act of 1965 have been effective at overcoming a wide range of barriers and burdens that have excluded BIPOC voters from the political process.[51] Currently, the primary tool to

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[48] The Sentencing Project, *Voting Rights in the Era of Mass Incarceration: A Primer*, (Jul. 2021), available at https://www.sentencingproject.org/app/uploads/2022/08/Voting-Rights-in-the-Era-of-Mass-Incarceration-A-Primer.pdf

[49]Justice Policy Institute, Rethinking Approaches to Over Incarceration of Black Young Adults in Maryland, available at https://s3.documentcloud.org/documents/6540792/Rethinking-Approaches-to-Over-Incarceration-MD.pdf; The Sentencing Project, The Color of Justice: Racial and Ethnic Disparity in State Prisons, available at https://www.sentencingproject.org/app/uploads/2022/08/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf.

[50] Kati Perry, Luis Melgar, Kate Rabinowitz, Dan Keating, *Where voter turnout exceeded 2018 highs*, WASHINGTON POST (Nov. 9, 2022), available at https://www.washingtonpost.com/politics/interactive/2022/voter-turnout-2022-by-state/

[51] Myrna Pérez, *Voting Rights Act: The Legacy of the 15th Amendment*, BRENNAN CENTER FOR JUSTICE (June 30, 2009), https://bit.ly/3cjDezF.

challenge voting discrimination in court is the federal VRA's Section 2, which provides for Attorney General enforcement and a nationwide private right of action by individual voters and organizations that represent them to challenge all existing forms of racial discrimination in voting, regardless of location.[52] Until 2013, the primary mechanism to prevent voting discrimination from occurring in places with a history of discrimination was preclearance under Section 5, which shifted the advantage of time and inertia from the perpetrators of discrimination to its victims. Section 5 required states and political subdivisions with a history and ongoing record of discrimination to get advanced approval of, or "preclear," changes to their election practices with the U.S. Department of Justice or a federal court in Washington, D.C.[53] The federal VRA also protects the rights of language minority groups and provides means to increase their access to and participation in the political process. Sections (e)[54] and 203[55] of the federal VRA require states and political subdivisions to provide language assistance for voters with limited English proficiency. Section (b) protects all voters against intimidation, regardless of race, ethnicity, or language minority status.[56]

Regrettably, in the decades since its passage, federal courts have eliminated or weakened some of the federal VRA's protections, making it increasingly costly and burdensome for voters of color to vindicate their rights under the law. As a result, despite the importance of the federal VRA, BIPOC voters often still lack an equal opportunity to participate in the political process and elect candidates of their choice, leading to the need for a Maryland-specific Voting Rights Act. Even if Congress acts to restore and strengthen the federal VRA (as it must), a state Voting Rights Act is important to enable voters to vindicate their rights in state court in a way that is better tailored to our local needs.

A. Federal courts have eliminated or weakened some protections in the federal VRA.

In the past decade, the U.S. Supreme Court has undercut both key pillars of the federal VRA: Section 2 and Section 5.

i. Weakening of Federal VRA Section 2

Federal VRA Section 2 facilitates Attorney General enforcement and provides a private right of action—which means that an affected person or organization is legally entitled to

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[52] 52 U.S.C. § 10301.

[53] *See generally Shelby County v. Holder*, 133 S.Ct. 2612 (2013); Perry Grossman, *The Case for State Attorney General Enforcement of the Voting Rights Act Against Local Governments*, 50 U. MICH. J. L. REFORM 565,573 (2017), https://repository.law.umich.edu/mjlr/vol50/iss3/2.

[54] 52 U.S.C. § 10303(e).

[55] 52 U.S.C. § 10503.

[56] 52 U.S.C. § 10101(b).

file a lawsuit—challenging any voting practice or procedure that "results in a denial or abridgment of the right of any citizen of the United States to vote on account of race."[57] Section 2 applies to (i) voting rules that dilute minority voting strength by making it difficult or impossible for voters of color to band together to elect their preferred candidates ("vote dilution" claims) or (ii) voting rules that create barriers to the right to vote for voters of color ("vote denial" claims).[58]

With respect to Section 2 vote dilution claims, in 1986 the Supreme Court adopted an intricate test that requires plaintiffs to satisfy three "preconditions" and prevail under a multi-factor analysis.[59] As noted below, proof under these standards requires extensive expert analysis, making such claims expensive and time-consuming. With respect to Section 2 vote denial claims, in 2021 the Supreme Court put forth a new set of "guideposts" that threatens to severely curtail the broad application that Congress intended.[60] Most recently, in *Allen v. Milligan*, the Supreme Court fortunately required Alabama to draw a second district where Black voters can elect a candidate of choice without further weakening the standard for assessing vote dilution claims.[61] The decision however, did nothing to restore previous rollbacks of the VRA that the Court made to curtail Section 2 lawsuits, and the extreme burdens required of BIPOC plaintiffs to vindicate their voting rights.[62] What is clear, is that if voters' rights are to be protected in a sweeping, unequivocal way, states must implement their own Voting Rights Act to prevent abuses that slip through the federal VRA's protections. Alabama's redistricting process at issue in *Allen v. Milligan* made clear that states are willing to continue rolling back voting rights nationally, and that one key way to proactively improve our democratic

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[57] 52 U.S.C. § 10301. Critically, Section 2 does not require voters to prove they were victims of *intentional* discrimination. In *Thornburg v. Gingles*, 478 U.S. 30 (1986), the Court explained that Congress was overturning *Mobile v. Bolden*, 446 U.S. 55 (1980), when it enacted the 1982 VRA amendments. *Mobile* had declared that minority voters had to prove an election mechanism was "intentionally adopted or maintained by state officials for a discriminatory purpose," in order to satisfy either § 2 of the VRA or the Fourteenth or Fifteenth Amendments. *Thornburg*, 478 U.S. at 35. In response to *Mobile*, Congress revised § 2 to clarify that a violation could be established "by showing discriminatory effect alone…" *Id.*

[58] *See* LDF, *A Primer on Sections 2 and 3(c) of the Voting Rights Act*, NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, 1 (2021), https://bit.ly/39csLUt.

[59] *Thornburg v. Gingles*, 478 U.S. 30, 46–51 (1986). To satisfy the *Gingles* preconditions, *first,* a minority group must be "sufficiently large and geographically compact to constitute a majority in a single-member district." *Id.* at 50. *Second*, a minority group must be "politically cohesive." *Id.* at 51. *Third*, a minority group must demonstrate "that the white majority votes sufficiently as a block usually to defeat the minority's preferred candidate." *Id.* Once the preconditions are met, Section 2 applies only if, "under the totality of the circumstances," the challenged law "result[s] in unequal access to the electoral process." *Id.* at 46.

[60] *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321 (2021).

[61] LDF, *Allen v. Milligan FAQ: LDF's case challenging Alabama's redistricting maps and why it matters*, available at https://www.naacpldf.org/case-issue/merrill-v-milligan-faq/.

[62] Melissa Murray and Steve Vladeck, *Opinion The Supreme Court's Voting Rights Act ruling is no victory for democracy*, WASHINGTON POST (Jun. 8, 2023) available at https://www.washingtonpost.com/opinions/2023/06/08/supreme-court-alabama-redistricting-voting-rights-act/.

institutions is to pass state level voting rights acts that can help insulate states from future potential voting rights rollbacks at the Supreme Court.[63]

ii. Erosion of Preclearance: Section 5 of the VRA

For nearly 50 years, Section 5 of the federal VRA – which is similar to a core provision of our proposed Maryland legislation – protected millions of BIPOC voters from racial discrimination in voting, by requiring certain states and localities with a history of discrimination to obtain approval from the federal government before implementing a voting change.[64] In its 2013 *Shelby County v. Holder* ruling, the Supreme Court rendered Section 5 inoperable by striking down Section 4(b) of the federal VRA, which identified the places in our country where Section 5 applied.[65] The *Shelby County* decision unleashed a wave of voter suppression in states that were previously covered under Section 4(b) ("covered jurisdictions").[66] Backlash against robust participation by voters of color in the 2020 elections has accelerated the drive to erect discriminatory barriers to the ballot both in formerly covered jurisdictions and across the country. In 2021 alone, state lawmakers introduced more than 440 bills with provisions that restrict voting access in 49 states, 34 of which were enacted.[67]

The *Shelby County* decision is also having profound ramifications for redistricting because for the first time in six decades of map drawing people of color in covered jurisdictions are not protected by Section 5. Six of the nine states that were previously required to submit district maps for "preclearance" are facing lawsuits challenging their maps for racial discrimination.[68]

Although Section 2 of the federal VRA remains, there are significant hurdles BIPOC voters must overcome that otherwise would have been prevented by preclearance under Section

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[63] Paul Smith, Campaign Legal Center, *Supreme Court's Impact on Voting Rights is a Threat to Democracy*, BLOOMBERG LAW (Sept. 27, 2023), available at https://news.bloomberglaw.com/us-law-week/supreme-courts-impact-on-voting-rights-is-a-threat-to-democracy.

[64] 52 U.S.C. § 10304.

[65] *See Shelby Cty. v. Holder*, 570 U.S. 529, 557 (2013).

[66] *See LDF Testifies Before Congress on Voter Suppression Crisis Post Shelby*, NAACP LEGAL DEFENSE AND EDUCATIONAL FUND (June 25, 2019), https://bit.ly/2NVvkDe; *see also* NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, DEMOCRACY DIMINISHED: STATE AND LOCAL THREATS TO VOTING POST SHELBY CTY, ALA. V. HOLDER, (last updated Oct. 6, 2021), https://www.naacpldf.org/wp-content/uploads/Democracy- Diminished_-10.06.2021-Final.pdf.

[67] *Voting Laws Roundup December 2021,* BRENNAN CENTER FOR JUSTICE (December 21, 2021) https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-december-2021.

[68] Cases, ALL ABOUT REDISTRICTING, Loyola Law School https://redistricting.lls.edu/cases/?cycles%5B%5D=2020&sortby=-updated page=1 (last visited Apr. 18, 2023) (Click "Alabama", "Alaska", "Arizona", "Georgia", "Louisiana", "Mississippi", "South Carolina", "Texas," and "Virginia" from State filter).

5. While litigation is pending, new discriminatory practices and procedures can remain in effect for years until litigation is resolved.

B. Litigation under Section 2 of the federal VRA is complex, costly, and time intensive.

Following the *Shelby County* decision, BIPOC communities continue to rely upon Section 2 of the federal VRA to ensure that they can participate equally in the political process and elect their preferred candidates. But claims under Section 2 impose a heavy burden on plaintiffs: they are time-consuming and expensive. As a result, some Section 2 violations go unnoticed and unaddressed. Even when voters ultimately win lawsuits, prolonged litigation often permits the offending jurisdiction to continue conducting elections under unfair systems while the litigation is pending, as occurred this year in Alabama, Louisiana, and other southern states.[69]

Courts have recognized that Section 2 litigation is an extremely complex area of law,[70] and that there is a dearth of lawyers who have experience litigating Section 2 claims.[71] Section 2 lawsuits are labor intensive and generally require multiple expert witnesses for both plaintiffs and defendants.[72] As a result of these costs, plaintiffs and their lawyers risk at least six- or seven-figure expenditures in Section 2 lawsuits.[73] Individual plaintiffs, even when supported by civil rights organizations, often lack the resources and expertise to effectively bring Section 2 claims.[74] Due to these challenges, some potential Section 2 violations go unaddressed -- never resolved or litigated in court.[75]

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[69] *See The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation as of September 2021*, NAACP Legal Defense and Educational Fund, https://www.naacpldf.org/wp-content/uploads/Section-2-costs-9.19.21-Final.pdf

[70] *Id.* (citing *Johnson v. Hamrick*, 196 F.3d 1216, 1223 (11th Cir. 1999) ("the resolution of a voting dilution claim requires close analysis of unusually complex factual patterns"); *Williams v. Bd. of Comm'rs of McIntosh Cnty.*, 938 F. Supp. 852, 858 (S.D. Ga. 1996); *Project Vote v. Blackwell*, 1:06-CV- 1628, 2009 WL 917737, *10 (N.D. Ohio Mar. 31, 2009) (calling voting rights "an area of law that [is] anything but simple")).

[71] *Id.* (citing Br. of Joaquin Avila, *Shelby Cnty., Ala. v. Holder*, No. 12-96 (U.S. Feb. 1, 2013)).

[72] *Id.* (citing Mike Faulk, *Big Costs, Heavy Hitters in ACLU Suit Against Yakima*, YAKIMA HERALD (Aug. 10, 2014) https://bit.ly/3ckou3C).

[73] LDF, *supra* note 71, at 3 (citing Br. of Joaquin Avila, *Shelby Cnty., Ala. v. Holder*, No. 12-96 (U.S. Feb. 1, 2013)); *see also Shelby Cnty.*, 570 U.S. at 572 (Ginsburg, J., concurring) (stating that Section 2 "litigation places a heavy financial burden on minority voters").

[74] *See id.*; *see also* supra 69, LDF. *Voting Rights and Election Administration in the Dakotas: Hearing Before the Subcomm. on Elections*, 116th Cong. 64 (2019) (testimony of Jacqueline De León, staff attorney at the Native American Rights Fund) (testifying that Section 2 litigation "is prohibitively expensive for a small organization like NARF to reach every single instance of discrimination that is happening across the country").

[75] *Congressional Authority to Protect Voting Rights After Shelby County v. Holder: Hearing Before the Subcomm. on the Constitution, Civil Rights and Civil Liberties of the H. Comm. on Judiciary*, 116th Cong. 14 (Sept. 24, 2019) (Written Testimony of Professor Justin Levitt) (explaining that, without preclearance,

Section 2 claims are also expensive for the government to defend, as they require specialized legal expertise and often are not covered by insurance, thus regularly costing states and localities considerable amounts in taxpayer money. For example, last year, when faced with a complex Section 2 challenge, the Baltimore County law office found itself unable to defend the case in house, requiring officials to bring in specialized outside litigation counsel to defend the lawsuit. The County Council has authorized payment of just under $1 million for its initial defense, much of which was expended in just the one-year period the case was active. Additionally, as a result of their success, the plaintiffs are seeking reimbursement under the Voting Rights Act for the hundreds of thousands of dollars in attorneys' fees and expert witness fees that they incurred in pursuing the litigation. For cases that extend for longer periods of time, such fees can be several times higher.

Litigation under Section 2 also cannot keep up with the urgency of the political process, meaning that even when voters ultimately prevail, they often suffer violations of their fundamental rights along the way. Because elections are frequent, election-based harms take effect almost immediately after rules are changed. However, on average, Section 2 cases can last two to five years, and unlawful elections often occur before a case is resolved.[76] In Worcester County, for example, private plaintiffs brought Section 2 litigation to challenge the County's at-large election system, and it took almost five years to resolve, even on an expedited schedule. The litigation featured three unsuccessful appeals by the County to the U.S. Court of Appeals for the Fourth Circuit and two further appeals to the U.S. Supreme Court. Due to the County's repeated appeals from rulings favorable to the plaintiffs, elections in the County were suspended for a year, and incumbents were allowed to continue holding office in the meantime.[77] It wasn't until the election stay was finally lifted and elections were held under a racially fair plan pursuant to court order that James Purnell, the first Black person in history was elected to Worcester County office.

In a recent example, the Supreme Court affirmed in *Allen v. Milligan* that the Alabama congressional map drawn after the 2020 Census "packed" Black voters into just one district in violation of the VRA, but because the Court put a favorable lower-court ruling on hold while it considered the case, the state was able to conduct the 2022 election under the discriminatory map.[78] Black voters in Alabama cannot get back the multiple years of fair representation they were illegally denied.

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it is "difficult to learn about and draw appropriate attention to discriminatory policies, so that the few entities with sufficient resources and expertise know where to litigate in the first place.").

[76] *Shelby*, 570 U.S. at 572 (Ginsburg, J., concurring) ("An illegal scheme might be in place for several election cycles before a Section 2 plaintiff can gather sufficient evidence to challenge it.").

[77] *Cane v. Worcester County,* 480 F.Supp. 1081 and 847 F.Supp. 369 (D. Md. 1994), *aff'd in part and rev'd in part*, 35 F.3d 921 (4th Cir. 1994), *cert. denied*, 513 U.S. 1148 (1994), *on remand* 847 F.Supp. 687 (D. Md. 1995), *modification denied by* 874 F. Supp. 695 (D. Md. 1995), *aff'd in part and vacated in part,* 59 F.3d 165 (4th Cir. 1995), *cert. denied by* 516 U.S. 1105 (1996).

[78] *Merrill v. Milligan*, 142 S. Ct. 879 (2022).

III. STATE VOTING RIGHTS ACTS PROVIDE NECESSARY TOOLS TO AUGMENT THE FEDERAL VRA

Given the limitations and challenges of the federal VRA, several states have taken important steps to fill in the gaps by enacting state-level voting rights acts. These innovative statutes will remain important tools for fighting discrimination even after Congress restores the VRA to its full strength, and have been highly successful over the past two decades. For example, in California, at least 140 jurisdictions have voluntarily resolved potential voting rights violations since the CTVA was enacted;[79] and there has been a significant increase in the diversity of city councils in the state.[80] With the enactment and implementation of state VRAs, voting rights of BIPOC citizens can be protected, and more diverse local governments can become a reality.

A. California

The California Voting Rights Act ("CVRA"), adopted in 2002, simplifies vote dilution causes of action against local governments using at-large elections.[81] At-large elections have no districts; everyone votes for every seat. This can deny BIPOC voters an equal voice because a white majority can win every seat, even in a diverse community.[82] CVRA prohibits the use of at-large methods of election "in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class."[83] Unlike the federal VRA, the CVRA does not require plaintiffs to prove that the minority group at issue is sufficiently large and compact to constitute a majority in a potential district.[84]

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[79] Lawyers' Comm. for Civil Rights of the S.F. Bay Area, Voting Rights Barriers & Discrimination In Twenty-First Century California: 2000-2013 7 (2014), https://lccrsf.org/pressroom_posts/voting-rights-barriers-discrimination-twenty-first-century-california-2000-2013/.

[80] Loren Collingwood, *California's city councils are getting more diverse. This law made that happen*, WASHINGTON POST (Jan 19, 2022) available at https://www.washingtonpost.com/politics/2022/01/19/california-voting-rights-fairness-minority-representation/

[81] CAL. ELEC. CODE, California Voting Rights Act of 2001, § 14025 et. seq. (2002). Although called the CVRA of 2001, the legislation was actually enacted into law in 2002. Federal courts in California recently rejected challenges to the constitutionality of the CVRA. *See Higginson v. Becerra*, 363 F. 3d 1118 (S.D. Cal. 2019*), aff'd*, No. 19-55275, 2019 WL 6525204 (9th Cir. Dec. 4, 2019).

[82] LDF, *At-Large Voting: Frequently Asked Questions*, NAACP LEGAL DEFENSE AND EDUCATIONAL FUND https://ippsr.msu.edu/sites/default/files/LLP/Presentations/At_large_voting_faq.pdf.

[83] CAL. ELEC. CODE, California Voting Rights Act of 2001, § 14027 (2002).

[84] Under the federal VRA, this requirement was established by the Supreme Court's decision in *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986); *But compare:* CAL. ELEC. CODE § 14028(c) (2001) ("The fact that

B. Washington

The State of Washington enacted its own state-level VRA in 2018 ("WVRA"), which is modeled on the CVRA but more expansive in that it provides a vote dilution cause of action for voters of color in both at-large and district-based local elections.[85] In April 2023, Washington strengthened the WVRA in several ways, including by more explicitly authorizing "coalition" claims by more than one set of voters, facilitating organizations suing to protect their members' voting rights, and expanding the remedies available for fixing discriminatory voting rules.[86] In June 2023, the Supreme Court of the State of Washington unanimously upheld the WVRA against a constitutional challenge.[87]

C. Oregon

In 2019, the State of Oregon enacted a state-level voting rights act that creates a cause of action against vote dilution that applies just to school district elections (as compared to the California and Washington Acts, which apply to all local governments).[88]

D. Virginia

In 2021, Virginia enacted the Virginia Voting Rights Act, which, among other things, provides: (1) new private rights of action against vote denial and vote dilution (applying to both dilutive at-large and district-based elections); (2) broader language assistance requirements than the federal VRA; and (3) pre-litigation mechanisms mandating public input before municipalities can modify election rules, a notice tool that was required of covered jurisdictions under the federal VRA but was lost with the *Shelby County* decision.[89]

E. New York

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members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027.").

[85] Wash. Rev. Code Ann. § 29A.92.900 et seq.; *see also* ACLU Washington Voting Rights FAQ, https://bit.ly/31ipxun.

[86] HB 1048, 68th Leg. Ch. 56, Voting Rights Act—Various Provisions, (2023) https://lawfilesext.leg.wa.gov/biennium/2023-24/Pdf/Bills/Session%20Laws/House/1048-S.SL.pdf?q=20230807135205.

[87] *Portugal et al. v. Franklin County*, No. 100999-2 Wash. S. Ct. (Jun. 15, 2023), available at https://www.courts.wa.gov/opinions/pdf/1009992.pdf.

[88] Ore. Rev. Stat. § 255.400 et seq.

[89] Virginia House Bill 1890 (2021 Session), https://bit.ly/39dpyEt.

In 2022, the New York Voting Rights Act ("NYVRA") was enacted as the most comprehensive state voting rights act to date, going beyond the protections seen in other states.[90] The NYVRA instituted broad protections, codifying provisions akin to Sections 2,5, 203, and 11(b) of the federal VRA. These protections include a prohibition on voter disenfranchisement, assistance for language minority groups, prohibition of voter intimidation, expedited judicial proceedings to avoid lengthy litigation, and preclearance.

Importantly, the preclearance provision requires jurisdictions with histories of voting rights and civil rights abuses to pre-clear certain changes to voting policy, the first such state-level program in the nation.[91] Therefore, even places that were not originally subject to preclearance under the federal VRA might nevertheless be required to pre-clear any changes to their voting laws or policies. The NYVRA also added specific provisions to reconcile the frequency of elections with the lengthy time it takes to bring a lawsuit alleging voting rights violations, by expediting judicial proceedings and providing for preliminary relief for plaintiffs with strong cases.[92]

Many provisions of the NYVRA are used as a model for the Maryland VRA.

F. Connecticut

Most recently, in June 2023, Connecticut enacted what is now the most comprehensive state VRA in the nation. The John R. Lewis Voting Rights Act of Connecticut ("CTVRA") contains strong versions of all the key elements of a model state VRA: protections against vote denial and dilution; preclearance for jurisdictions with a history of discrimination; expanded language access assistance; protections against voter intimidation, deception, or obstruction; a statewide database of election information; and a "democracy canon" that instructs judges to interpret laws in a pro-voter manner.[93] The CTVRA improves upon the NYVRA by strengthening certain provisions and also adding the statewide database, which was separated into different legislation in New York that has not yet been enacted.

With the CTVRA, Connecticut has set a new standard for protecting voting rights at the state level—a standard Maryland can meet or exceed by enacting the strongest version of the MDVRA.

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[90] Senate Bill S1046E, (2021-2022 Reg. Sess. NY). https://www.nysenate.gov/legislation/bills/2021/S1046#:~:text=This%20act%20shall%20be%20known,%C2%A7%202.

[91] Virginia's VRA includes a form of preclearance, but it is optional for jurisdictions who can choose to submit changes for public comment instead. SB 1395, Discrimination; prohibited in voting and elections administration, Va. Gen. Assemb. (2021-2022 Reg. Sess.); HB 1890, Discrimination; prohibited in voting and elections administration, Va. Gen. Assemb. (2021-2022 Reg. Sess.).

[92] The NYVRA provides for entry of preliminary relief if the "(a) plaintiffs are more likely than not to succeed on the merits, and (b) it is possible to implement an appropriate remedy that would resolve the alleged violation in the upcoming election."

[93] https://www.cga.ct.gov/2023/ACT/PA/PDF/2023PA-00204-R00HB-06941-PA.PDF at 819-848.

IV. WHAT DOES THE MARYLAND VOTING RIGHTS ACT DO?

Enacting a Maryland VRA would be an opportunity for our state to provide strong protections for the franchise at a time when voter suppression is on the rise, vote dilution remains prevalent, and persistent attacks in the courts against the federal VRA leaves voting rights at the whim of a Supreme Court dominated by conservative appointees.[94] A Maryland VRA would build upon the demonstrated track record of success in California, Washington, Oregon, Virginia, New York, and Connecticut, as well as the historic success of the federal VRA, by offering some of the strongest state law protections for the right to vote in the United States. The law will address many long-overlooked infringements on the right to vote, and will make Maryland a national leader in voting rights at a time when too many other states are trying to restrict access to the franchise.

The information below focuses on sections that are particularly important in the MDVRA to ensuring equal opportunity for Marylanders participation in the political process.

A. Prevent Vote Denial & Dilution.

The MDVRA provides a framework to ferret out vote dilution and barriers that deny voting opportunities in a way that is efficient and cost-effective for both voters and local governments within the state. As shown in the case studies above, some Maryland jurisdictions have a record of racial vote dilution, including discriminatory structures and practices necessitating federal court challenges in Baltimore County and across the Eastern Shore. Unfortunately, these jurisdictions are not outliers, but rather extreme examples of a common problem that goes largely uninvestigated. Prosecuting even these few cases has taken years and hundreds of thousands of taxpayer dollars as incumbent officials in these jurisdictions use public funds to defend the discriminatory methods of election that keep them in office.

The Vote Denial and Dilution sections of the MDVRA, patterned on the California and New York Voting Rights Acts, provides a more efficient and effective means of prosecuting cases like in Federalsburg or Baltimore County, where at-large elections or district lines dilute minority voting strength. Much like recently-enacted state voting rights acts in other states, the MDVRA would allow for cases to be investigated and violations remedied more quickly and at much less expense to taxpayers than existing federal law. This is primarily because the MDVRA would not require plaintiffs to prove certain background facts that are difficult to establish but not essential to ensuring nondiscrimination, such as whether a particular group of voters of color can make up a numerical majority in a hypothetical district.

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[94] Sam Levine, *Voting Rights Act faces new wave of dire threats in 2024*, THE GUARDIAN, (Dec 31, 2023) available at https://www.theguardian.com/us-news/2023/dec/31/voting-rights-act-threats-2024-black-voters.

The MDVRA also builds upon both the federal VRA and other state VRAs by providing a clearer and more efficient framework for prosecuting discriminatory barriers to the ballot, including racial gerrymandering claims. Such a law will ensure that voters are better able to hold jurisdictions accountable for maintaining practices that suppress turnout in communities of color such as inconvenient polling locations; inadequate voting hours; off-cycle election dates; wrongful voter purges; and staggered elections, among others.

In addition, the law requires plaintiffs to notify jurisdictions that their election practices may be in violation of the law prior to taking legal action that could run up substantial fees and costs. After receiving notification of a potential violation, the law then offers jurisdictions a safe harbor to cure violations without lengthy and expensive litigation.

In this way, the MDVRA would save all parties the time and cost of securing a court order by permitting any such jurisdiction to propose a remedial change to the Office of the Attorney General for approval of the change. And by providing plaintiffs an easier and more cost effective way to challenge voting rights abuses, it incentivizes localities to meaningfully fix voting rights issues and avoid lawsuits altogether; for example, white Town officials in Federalsburg would be ill-advised to string along the Town's Black voters with half-baked "remedies" that continue to dilute or deny BIPOC votes, if it were easier and more cost effective for Black voters to simply file a lawsuit.

B. Preclearance Program

When it comes to a matter as fundamental as the right to vote, an ounce of prevention is worth a pound of cure; whenever possible it's critical to stop discrimination before it occurs. To that end, the Preclearance section of the MDVRA would bring the heart of the most effective civil rights law in American history to Maryland: a localized version of the federal Voting Rights Act's "preclearance" program.

i. The Benefits of Preclearance

In passing the federal Voting Rights Act, Congress recognized that case-by-case litigation alone was inadequate—too slow and too costly—to eradicate discrimination and to prevent its resurgence.[95] The "unusually onerous" nature of voting rights litigation has always been a key reason for the preclearance remedy and litigation has only become more onerous today because modern voting discrimination is "more subtle than the visible methods used in 1965."[96] The other reason is the shiting nature of discrimination that a singla law or prohibition cannot anticipate.

Preclearance relieves voters facing discrimination of the substantial burdens of litigation by "shifting the advantage of time and inertia" to minority voters by placing a limited duty

[95] *See South Carolina v. Katzenbach*, 383 U.S. 301, 314 (1966).

[96] H.R. Rep. No. 109-478, at 6.

on local jurisdictions to demonstrate that major changes to their election laws have neither the purpose nor effect of making minority voters worse off or otherwise discriminating against them.[97] Thus, instead of voters having to prove that new election laws and practices are discriminatory, jurisdictions have to show that certain significant new laws and practices will not make minority voters worse off. For example, in Maryland, preclearance would ensure that instead of requiring voters to sue when a new redistricting plan threatens to dilute the vote of Black residents, the local government will be responsible for justifying the shift and showing that the change does not discriminate.

Until the Supreme Court's radical action in the *Shelby County* case, preclearance was extremely effective at protecting minority voters and promoting racial fairness in elections for nearly five decades. Some covered jurisdictions appreciated preclearance because the process ensured the use of best practices for fostering political participation, particularly among BIPOC voters. Covered jurisdictions have also made clear that they viewed preclearance as a way to prevent expensive and prolonged litigation; in this way it serves as a form of alternative dispute resolution (ADR). As Travis County, Texas wrote concerning its own preclearance obligations in a brief defending the constitutionality of Section 5 of the Voting Rights Act at the U.S. Supreme Court in 2009: "If ever there were a circumstance where an ounce of prevention is worth a pound of cure, it is in the fundamental democratic event of conducting elections free of racially discriminatory actions."[98] In the same case defending Section 5 before the Supreme Court, the States of New York, North Carolina, and others also expressed that the minimal burdens of preclearance were outweighed by the legal regime's substantial benefits:

> In contrast to the minimal burdens of Section 5, the preclearance process affords covered jurisdictions real and substantial benefits. First, the preclearance process encourages covered jurisdictions to consider the views of minority voters early in the process of making an election law change. This involvement has minimized racial friction in those communities. Second, the preclearance process has helped covered jurisdictions in identifying changes that do in fact have a discriminatory effect, thus allowing them to prevent implementation of discriminatory voting changes. Third, preclearance prevents costly litigation under Section 2. Preclearance provides an objective review of a State's election law changes. That review process tends to diminish litigation challenging election law changes.

[97] *Katzenbach*, 383 U.S. at 328.

[98] *See, e.g.*, Brief of Appellee Travis County, *Northwest Austin Municipal Utility District No. 1 v. Holder*, 08-322 at 11 (2009), https://campaignlegal.org/sites/default/files/FINAL_TRAVIS_COUNTY_BRIEF.pdf.

-Brief for the States of North Carolina, Arizona, California, Louisiana, Mississippi, and New York as Amici Curiae in Support of Eric H. Holder, Jr., et al., *Northwest Austin Municipal Utility District No. 1 v. Holder*, 08-322 at 11 (2009).[99]

Notably, the Court in Shelby only struck down the particular framework that Congress used to determine which jurisdictions would be covered by the preclearance protection; it did not declare preclearance itself to be contrary to the Constitution.[100] This means states are free to pursue their own preclearance programs that are well-targeted to address past and ongoing discrimination.

ii. The Possibilities of a Preclearance Resource in Maryland

The MDVRA contains a framework to determine which local governments come under the preclearance requirement based on a recent history of race-based discrimination in voting or other arenas such as housing or the criminal legal system. For those places in the preclearance program, the legislation provides a streamlined, time-limited administrative procedure to get an expert review of key voting changes by state officials before they go into effect, to ensure they are not discriminatory. Like the federal preclearance program, MDVRA preclearance would place the authority to preclear changes in the Office of the Attorney General. Like the federal preclearance program, MDVRA preclearance also acknowledges the need to provide timely response and advice concerning preclearance submissions in order to administer elections in a consistent and efficient manner with as a little disruption as possible.

And in the spirit of being a resource that is intended to promote best practices and prevent unnecessary litigation, the preclearance program is available to non-covered jurisdictions as well, so that counties and municipalities can make use of the preclearance program and its administrators' expertise to ensure that any changes they make are lawful.

Unlike federal preclearance, which mandated review of *all* election law or practice changes by covered jurisdictions, the MDVRA lowers the burden by specifically enumerating a limited set of changes that must be submitted for preclearance. [101] Because

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[99] Brief for the States of North Carolina, Arizona, California, Louisiana, Mississippi, and New York as Amici Curiae in Support of Eric H. Holder, Jr., et al., *Northwest Austin Municipal Utility District No. 1 v. Holder*, 08-322 at 11 (2009). Brief available at https://campaignlegal.org/sites/default/files/1996.pdf.

[100] *Shelby Cty. v. Holder*, 570 U.S. 529, 557 (2013).

[101] Similarly, the NYVRA enumerated a limited set of changes that would require preclearance, instead of every election law or practice like the federal VRA. 89 S.1046A (creating N.Y. Elec. Code § 17-212) (requiring preclearance for "any new or modified voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy concerning and of the following topics: (a)Districting or redistricting; (b)Method of election; (c)Form of government; (d)Annexation of a political subdivision; (e)Incorporation of a political subdivision; (f)Consolidation or division of political subdivisions; (g)Removal of voters from enrollment lists or other list maintenance activities; (h)Number, location, or hours of any election day or early voting poll site; (i)Dates of elections and the election calendar, except with respect to special elections; (j)Registration of voters; (k)Assignment of election districts to election day

a key purpose of preclearance is to guard against new, inventive ways to discriminate, the Act also allows the Attorney General to add to the list of covered practices any voting rule that causes persistent problems.

The requirements under the preclearance program are easily met by counties and municipalities, and is a cost effective prophylactic measure to prevent voting rights abuses. Even under federal VRA preclearance, it only cost states and localities on average about $500 to make preclearance submissions.[102] The Maryland Attorney General will also have the benefit of not just the federal program to build from, but also New York and Connecticut. The MDVRA also builds in time for localities to become accustomed to their new obligations; the law's long effective date and trigger for implementing preclearance ensures that the program will not be in place before all involved parties are prepared. Importantly, as the preclearance program continues, the covered jurisdictions and the Attorney General will benefit from long-term savings that come with more inclusive, and better-functioning election administration.

Preclearance would be a new feature to Maryland, but unfortunately the need for such a process here has long been evident, as shown during redistricting following the 2020 Census. Due to the lack of legal guidance or an oversight process like preclearance, in several jurisdictions around the state redistricting gave rise to significant public outcry and litigation in which courts were called upon to intervene and overturn problematic redistricting plans. Litigation over Baltimore County's unlawful redistricting plan in *NAACP v. Baltimore County* could have been prevented had the County first submitted the plan to the Attorney General's Office under a preclearance program, and received guidance as to the dilutive effect of their plan.

The MDVRA provides an opportunity that Maryland has never known, where changes to voting practices can be evaluated by the state's Attorney General, and thus provide localities both large and small the resources to ensure that any election and voting change they seek is lawful under our voting rights laws, avoiding situations where extensive resources must be spent in court to establish new and lawful voting systems and practices.

C. Language Access.

The Language Access section of the MDVRA would require more robust language assistance than federal law for limited English proficient voters. Maryland's language diversity is one of its great strengths, but existing law requires very little language assistance to language-minority voters.

The federal threshold requiring at least 5% of the population or 10,000 people to speak a different language leaves unaddressed the needs of many non English-speaking voters across the state, and must be lowered at the state level to reduce the number of people

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or early voting poll sites; (l) Assistance offered to members of a language-minority group; and (m) [additional topics as may be designated by the Attorney General]"); A.6678A (same).

[102] Brief of Joaquin Avila, et al. as *Amici Curiae* in Supp. of Resp'ts at 27, *Shelby Cnty., Ala. v. Holder*, No. 12-96 (U.S. Feb. 1, 2013).

who are excluded from voting.[103] As of now, the federal threshold requires only two counties in Maryland to provide election materials in another language: Montgomery and Prince George's Counties.[104]

The MDVRA would lower the threshold of when a jurisdiction has to provide language assistance to 2% and 4,000 of the citizen voting age population and applies to citizens of voting age who speak English "less than very well" according to the Census Bureau's American Community Survey. This would give thousands of people across the state who need language assistance in voting the chance to participate in choosing who represents them.

In addition, the federal VRA requires bilingual services only for select languages such as Spanish, Asian languages, and Native American languages. The MDVRA would require services in whatever language meets the numerical thresholds set out above. In Maryland, this would likely help people speaking languages such as Amharic in Montgomery County, who otherwise fall outside of federal protections no matter how numerous and concentrated they are.

Maryland is a diverse state, with a wide range of languages. The Language Access section of the MDVRA will provide non-English speakers greater access to the ballot box.

D. Statewide Database[105]

The Statewide database of a full MDVRA offers Maryland an opportunity to bring its elections into the 21st century by providing a central public repository for election and demographic data with the goal of fostering evidence-based practices in election administration and unprecedented transparency.

A critical barrier to voters, civil rights organizations, academics, and others analyzing whether and to what extent Marylanders are able to cast a meaningful ballot is the difficulty of getting election results, voter files, shapefiles, and other key data from election authorities, as well as precinct-level Census data for each jurisdiction. This information is essential to compare and contrast voting practices and outcomes across the state—but right now acquiring it requires approaching each jurisdiction of interest in a piecemeal fashion.

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[103] 52 U.S.C. § 10503.

[104] Voting Rights Act Amendments of 2006, Determinations under Section 203, 86 Fed. Reg. 69611 (Dec. 8, 2021) available at https://www.federalregister.gov/documents/2021/12/08/2021-26547/voting-rights-act-amendments-of-2006-determinations-under-section-203; https://www.govinfo.gov/content/pkg/FR-2021-12-08/pdf/2021-26547.pdf.

[105] Although not a provision in the MDVRA introduced in the 2024 Maryland Legislative Session, like other states, will pursue a separate statewide database to supplement the MDVRA and support its provisions.

Similar to the programs being created in Connecticut and considered in New York, this provision would create a non-partisan statewide database of anonymized information to be available for election administration and voting rights enforcement that would include election results, voter files, shapefiles, and other key data from election authorities, as well as precinct-level Census data for each jurisdiction in the state.[106] Making this data easily and publicly available will improve transparency by allowing voters to scrutinize whether the jurisdictions are providing equitable access to the political process. The statewide database will benefit election administrators and local governments as well by maintaining readily available data and offering technical assistance to research and implement best practices. The creation of a statewide database should also reduce the burden on boards of elections and local governments that currently have to deal with a constant stream of MPIA requests for election data and information that can and should be centrally maintained.

The statewide database would also support other vital sections of the MDVRA, including the language access section. With a comprehensive repository of demographic and election data, the statewide database would help election officials and enforcement authorities determine in what languages jurisdictions should be providing assistance to language minority voters. The MDVRA's lower threshold for providing language assistance combined with the capabilities of the statewide database provide the means to take a more precise and culturally competent approach to effectively enfranchise more historically marginalized groups of voters.

Like in New York, we expect the database to be considered by the Assembly through separate legislation.

E. Making Private Enforcement Feasible

The remaining sections of the MDVRA would ensure that there are adequate incentives for voters, advocacy organizations, and public-minded attorneys to protect voting rights in the courts when monetary damages are otherwise unavailable. This provision permits plaintiffs' recovery of attorneys' fees under a "catalyst theory," i.e., fees may be recovered if a plaintiff's lawsuit was a catalyst motivating defendants to provide the primary relief sought or when the plaintiff vindicates an important right by activating defendants to modify their behavior. [107] By contrast, federal law limits attorneys' fees to instances where the litigation achieves a result with "judicial imprimatur," that is, "an adjudicated

[106] A similar database was part of the original New York Voting Rights Act and was put into separate legislation for jurisdictional issues. The New York Generally Assembly is considering this separate legislation. S 657 / A885, see section 2038 *et seq*., available at (https://www.nysenate.gov/legislation/bills/2023/A885/amendment/A).

[107] Many state VRAs have adopted the "catalyst theory" model of recovering attorneys' fees. *See, e.g*., CAL. ELEC. CODE § 14031 (2001), Wash. Rev. Code Ann. § 29A.92.900, Ore. Rev. Stat. § 255.400 et seq., and Virginia House Bill 1890 (2021 Session).

judgment on the merits or … a consent judgment that provides for some sort of fee award."[108]

This provision for the recovery of attorneys' fees, reasonable expert witness fees, and other reasonable litigation expenses not only encourages enforcement, but also, combined with the notification and safe harbor provisions of Section 2 of the MDVRA, encourages jurisdictions to settle meritorious cases to avoid waste of taxpayer money.

CONCLUSION

The right to vote is one of the most fundamental underpinnings of our civic life, and no one should be denied their right to vote on account of race, color, or language minority status. Despite being a progressive state, Maryland has had its share of voting rights abuses, even to this day. Recent examples of vote dilution in Baltimore County and many parts of the Eastern Shore of Maryland make clear that the promise of an equal vote is not guaranteed, and a Maryland Voting Rights Act is necessary to correct that.

The Maryland VRA will create a streamlined process for individuals across the state to protect themselves from discrimination, while also reducing the costs localities must pay to defend any changes they make to their election laws and practices. It will also create a resource that the U.S. Supreme Court has done away with federally, through a preclearance program that would allow any jurisdiction in Maryland to first check with the state Attorney General's Office to minimize the possibility of having to defend those changes in court against an expensive legal challenge. Having the Attorney General preclear changes gives local governments the comfort and peace of mind to make changes that will benefit minority voters, and have legal review of those changes before they get implemented.

Maryland is positioned to be a national leader in voting rights with the passage of a Maryland-specific Voting Rights Act. Let's make 2024 the year that Maryland leaps forward to protect voters' rights and pass the Maryland Voting Rights Act HB800/SB660.

[108] Pamela S. Karlan, *Disarming the Private Attorney General*, 2003 U. ILL. L. REV. 183, 185 (2003) (citation omitted).

ACLU MD Appendix 2

WHY MARYLAND NEEDS ITS OWN *Voting Rights Act*

The right to vote is a fundamental part of our democracy. Everyone's vote must count equally. But in many Maryland counties, cities, and towns, the local election systems in place dilute votes of Black, Indigenous, and People of Color (BIPOC). The *Maryland Voting Rights Act* (MDVRA) would give counties, cities, and towns the opportunity to make their elections fairer, and give BIPOC voters an equal vote. In 2024, it is high time that we pass the *Maryland Voting Rights Act*.

BIPOC PEOPLE ARE UNDERREPRESENTED IN COUNTY GOVERNMENTS

- 75% of Maryland counties have substantial BIPOC populations.*
- ⅓ of those Maryland counties with substantial BIPOC populations have all-white governments.

Even counties that have some BIPOC representation, vote dilution is still present, and BIPOC people are underrepresented:

- **Baltimore County:** Ordered by a federal judge to re-draw its district lines; but the Federal VRA has allowed the county to implement a plan that continues to dilute the vote, where there remains only a single Black opportunity district. The last Council election resulted in 6 out of 7 seats being occupied by white representatives. (See *Baltimore County Branch of NAACP v. Baltimore County,* No. 21-CV-03232-LKG, 2022 WL 657562, [D. Md. Feb. 22, 2022].)
- **Wicomico County:** Mixed at-large and district system, where the white population holds 60% of the population, and control 6 out of 7 seats on the council. If the County were to re-district, as they must, a second Black opportunity district could be created, and create 2 out of 7 BIPOC opportunity districts. (See *Wicomico County Branch of NAACP v. Wicomico County,* No. 23-CV-03325-MJM [D. Md. Dec. 7, 2023].)

MARYLAND NEEDS A VOTING RIGHTS ACT BECAUSE:

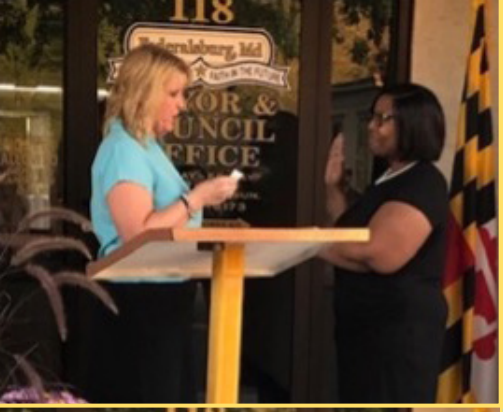
1. BIPOC voters are underrepresented in their local governments.
2. Solving this problem through lawsuits is expensive, slow, and inefficient.
3. The federal Voting Rights Act of 1965 (VRA) cannot comprehensively fix vote dilution like the MDVRA can.

BILLS: SB 660 / HB 800

aclu-md.org/mdga24

ACLU Maryland

* Substantial BIPOC population is defined in this document as a BIPOC population of more than 20 percent.



THE POWER OF FIXING ELECTION SYSTEMS TO MAKE THEM MORE FAIR: A MUNICIPAL EXAMPLE

The town of Federalsburg faced an all-white government for 200 years.

That finally changed in 2023 when 7 Black women from Federalsburg sued the town for diluting their right to vote through the town's at-large system.

The federal lawsuit involved extensive and expensive expert analysis and testimony and a year's worth of advocacy until the court ordered a new election plan be produced. That plan changed the at-large system into a district system.

The people of Federalsburg were finally able to elect two Black women to the Council.

"I've been here all my life, 68 years. I haven't seen no African American on the board. But we're not going back. We're going forward. It's time for a change getting young African Americans on that board."

– Roberta Butler
A Black woman, voter, and lifelong resident of Federalsburg

BIPOC PEOPLE ARE UNDERREPRESENTED IN MUNICIPAL GOVERNMENTS

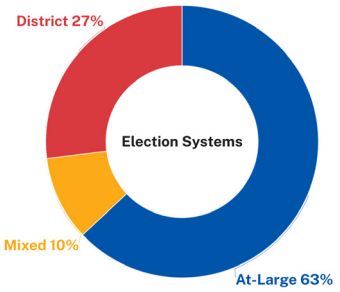
- 54% of the municipalities in Maryland have substantial BIPOC populations.*
- Of the municipalities with substantial BIPOC populations, 23% have all-white governments

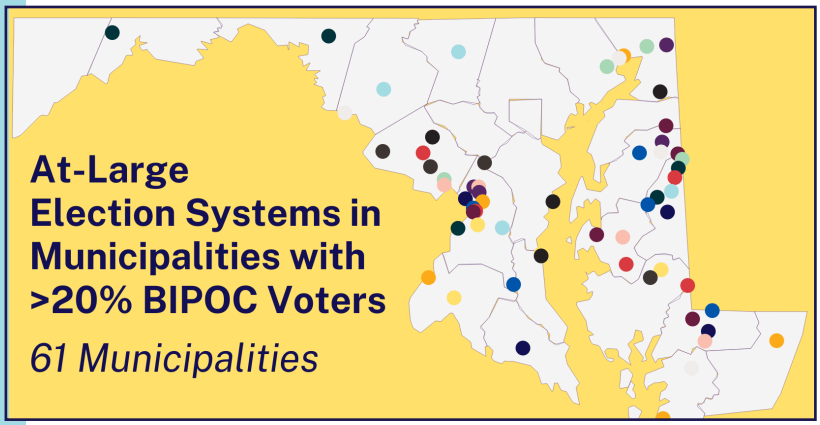
Some municipalities are particularly egregious:

- There are 18 municipalities with over 80% BIPOC populations (less than 20% white).
- In 7 of them, BIPOC representatives hold less than half of the seats in their municipal governments.

AT-LARGE ELECTION SYSTEMS ARE COMMON ACROSS MARYLAND

- In municipalities with a substantial BIPOC population,* 73% of them have a mixed at-large and district-based election system, and 63% have an at-large system only.





GLOSSARY

- **At-Large Election System:** In at-large elections, the entire electorate of a town, city, or county votes for the elected official. At-large systems have been used to dilute BIPOC votes because you only need a bare majority to win the seat. Therefore, a 50% white population could elect all of the seats to the local government, shutting out the possibility of a BIPOC candidate from winning.
- **District-Based Election System:** In a district-based election system, a county, city, or town is divided into separate districts, where voters who live in that district can only vote for a candidate to represent them from that geographic subdivision. Districts are the most common legal remedy that courts use to fix at-large election systems. However, districts can still dilute votes if drawn unfairly.

ACLU Maryland

ACLU MD Appendix 3

141 S.Ct. 2321
Supreme Court of the United States.

Mark BRNOVICH, Attorney General of Arizona, et al., Petitioners
v.
DEMOCRATIC NATIONAL COMMITTEE, et al.;
Arizona Republican Party, et al., Petitioners
v.
Democratic National Committee, et al.

No. 19-1257, No. 19-1258
|
Argued March 2, 2021
|
Decided July 1, 2021

Synopsis

Background: National committee for political party, party's senatorial campaign committee, and state political party brought action against state officials, challenging under Fifteenth Amendment and § 2 of Voting Rights Act (VRA) state statute requiring out-of-precinct (OOP) ballots provisionally cast by in-person voters to be discarded, and state statute making it a felony for a third party to collect and deliver another person's early mail-in ballot. After bench trial, the United States District Court for the District of Arizona, Douglas L. Rayes, J., 329 F.Supp.3d 824, entered judgment for state officials. Plaintiffs appealed. The United States Court of Appeals for the Ninth Circuit, Ikuta, Circuit Judge, 904 F.3d 686, affirmed. On rehearing en banc, the Court of Appeals, Fletcher, Circuit Judge, 948 F.3d 989, reversed and remanded. Certiorari was granted.

Holdings: The Supreme Court, Justice Alito, held that:

out-of-precinct ballot statute did not violate VRA;

ballot-collection statute did not violate VRA; and

district court's finding, that Arizona Legislature did not have discriminatory purpose in adopting ballot-collection statute, was not clearly erroneous.

Reversed and remanded.

Justice Gorsuch filed a concurring opinion, in which Justice Thomas joined.

Justice Kagan filed a dissenting opinion, in which Justices Breyer and Sotomayor joined.

West Codenotes

Negative Treatment Reconsidered
Ariz. Rev. Stat. Ann. §§ 16-122, 16-135, 16-584, 16-1005(H, I)

***2325** *Syllabus*[*]

Arizona law generally makes it very easy to vote. Voters may cast their ballots on election day in person at a traditional precinct or a "voting center" in their county of residence. Ariz. Rev. Stat. § 16–411(B)(4). Arizonans also may cast an "early ballot" by mail up to 27 days before an election, §§ 16–541, 16–542(C), and they also may vote in person at an early voting location in each county, §§ 16–542(A), (E). These cases involve challenges under § 2 of the Voting Rights Act of 1965 (VRA) to aspects of the State's regulations governing precinct-based election-day voting and early mail-in voting. First, Arizonans who vote in person on election day in a county that uses the precinct system must vote in the precinct to which they are assigned based on their address. See § 16–122; see also § 16–135. If a voter votes in the wrong precinct, the vote is not counted. Second, for Arizonans who vote early by mail, Arizona House Bill 2023 (HB 2023) makes it a crime for any person other than a postal worker, an elections official, or a voter's caregiver, family member, or household member to knowingly collect an early ballot—either before or after it has been completed. §§ 16–1005(H)–(I).

The Democratic National Committee and certain affiliates filed suit, alleging that both the State's refusal to count ballots cast in the wrong precinct and its ballot-collection restriction had an adverse and disparate effect on the State's American Indian, Hispanic, and African-American citizens in violation of § 2 of the VRA. Additionally, they alleged that the ballot-collection restriction was "enacted with discriminatory intent" and thus violated both § 2 of the VRA and the Fifteenth Amendment. The District Court rejected all of the plaintiffs' claims. The court found that the out-of-precinct

policy had no "meaningfully disparate impact" on minority voters' opportunities to elect representatives of their choice. Turning to the ballot-collection restriction, the court found that it was unlikely to cause "a meaningful inequality" in minority voters' electoral opportunities and that it had not been enacted with discriminatory intent. A divided panel of the Ninth Circuit affirmed, but the en banc court reversed. It first concluded that both the out-of-precinct policy and the ballot-collection restriction imposed a disparate burden on minority voters because they were more likely to be adversely affected by those rules. The en banc court also held that the District Court had committed clear error in finding that the ballot-collection law was not enacted with discriminatory intent.

Held: Arizona's out-of-precinct policy and HB 2023 do not violate § 2 of the VRA, and HB 2023 was not enacted with a racially discriminatory purpose. Pp. 2336 – 2350.

(a) Two threshold matters require the Court's attention. First, the Court rejects the contention that no petitioner has Article III standing to appeal the decision below as to the out-of-precinct policy. All that is needed to entertain an appeal of that issue is one party with standing. *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 591 U.S. ——, ——, n. 6, 140 S.Ct. 2367, 207 L.Ed.2d 819. Attorney General Brnovich, as an authorized representative of the State (which intervened below) in any action in federal court, fits the bill. See *Virginia House of Delegates v. Bethune-Hill*, 587 U.S. ——, ——, 139 S.Ct. 1945, 204 L.Ed.2d 305. Second, the Court declines in these cases to announce a test to govern all VRA § 2 challenges to rules that specify the time, place, or manner for casting ballots. It is sufficient for present purposes to identify certain guideposts that lead to the Court's decision in these cases. Pp. 2336 – 2337.

(b) The Court's statutory interpretation starts with a careful consideration of the text. Pp. 2336 – 2343.

(1) The Court first construed the current version of § 2 in *Thornburg v. Gingles*, 478 U.S. 30, 106 S.Ct. 2752, 92 L.Ed.2d 25, which was a vote-dilution case where the Court took its cue from § 2's legislative history. The Court's many subsequent vote-dilution cases have followed the path *Gingles* charted. Because the Court here considers for the first time how § 2 applies to generally applicable time, place, or manner voting rules, it is appropriate to take a fresh look at the statutory text. Pp. 2336 – 2337.

(2) In 1982, Congress amended the language in § 2 that had been interpreted to require proof of discriminatory intent by a plurality of the Court in *Mobile v. Bolden*, 446 U.S. 55, 100 S.Ct. 1490, 64 L.Ed.2d 47. In place of that language, § 2(a) now uses the phrase "in a manner which results in a denial or abridgement of the right ... to vote on account of race or color." Section 2(b) in turn explains what must be shown to establish a § 2 violation. Section 2(b) states that § 2 is violated only where "the political processes leading to nomination or election" are not "*equally open* to participation" by members of the relevant protected group "*in that its members have less opportunity* than other members of the electorate to participate in the political process and to elect representatives of their choice." (Emphasis added.) In § 2(b), the phrase "in that" is "used to specify the respect in which a statement is true." New Oxford American Dictionary 851. Thus, equal openness and equal opportunity are not separate requirements. Instead, it appears that the core of § 2(b) is the requirement that voting be "equally open." The statute's reference to equal "opportunity" may stretch that concept to some degree to include consideration of a person's ability to use the means that are equally open. But equal openness remains the touchstone. Pp. 2337 – 2338.

(3) Another important feature of § 2(b) is its "totality of circumstances" requirement. Any circumstance that has a logical bearing on whether voting is "equally open" and affords equal "opportunity" may be considered. Pp. 2337 – 2341.

(i) The Court mentions several important circumstances but does not attempt to compile an exhaustive list. Pp. 2336 – 2340.

(A) The size of the burden imposed by a challenged voting rule is highly relevant. Voting necessarily requires some effort and compliance with some rules; thus, the concept of a voting system that is "equally open" and that furnishes equal "opportunity" to cast a ballot must tolerate the "usual burdens of voting." *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 198, 128 S.Ct. 1610, 170 L.Ed.2d 574. Mere inconvenience is insufficient. P. 2338.

(B) The degree to which a voting rule departs from what was standard practice when § 2 was amended in 1982 is a relevant consideration. The burdens associated with the rules in effect at that time are useful in gauging whether the burdens imposed by a challenged rule are sufficient to prevent voting from being equally "open" or furnishing an equal

"opportunity" to vote in the sense meant by § 2. Widespread current use is also relevant. Pp. 2338 – 2339.

(C) The size of any disparities in a rule's impact on members of different racial or ethnic groups is an important factor to consider. Even neutral regulations may well result in disparities in rates of voting and noncompliance with voting rules. The mere fact that there is some disparity in impact does not necessarily mean that a system is not equally open or that it does not give everyone an equal opportunity to vote. And small disparities should not be artificially magnified. P. 2339.

(D) Consistent with § 2(b)'s reference to a States' "political processes," courts must consider the opportunities provided by a State's entire system of voting when assessing the burden imposed by a challenged provision. Thus, where a State provides multiple ways to vote, any burden associated with one option cannot be evaluated without also taking into account the other available means. P. 2339.

(E) The strength of the state interests—such as the strong and entirely legitimate state interest in preventing election fraud —served by a challenged voting rule is an important factor. Ensuring that every vote is cast freely, without intimidation or undue influence, is also a valid and important state interest. In determining whether a rule goes too far "based on the totality of circumstances," rules that are supported by strong state interests are less likely to violate § 2. Pp. 2339 – 2340.

(ii) Some factors identified in *Thornburg v. Gingles*, 478 U.S. 30, 106 S.Ct. 2752, 92 L.Ed.2d 25, were designed for use in vote-dilution cases and are plainly inapplicable in a case that involves a challenge to a facially neutral time, place, or manner voting rule. While § 2(b)'s "totality of circumstances" language permits consideration of certain other *Gingles* factors, their only relevance in cases involving neutral time, place, and manner rules is to show that minority group members suffered discrimination in the past and that effects of that discrimination persist. The disparate-impact model employed in Title VII and Fair Housing Act cases is not useful here. Pp. 2339 – 2340.

(4) Section 2(b) directs courts to consider "the totality of circumstances," but the dissent would make § 2 turn almost entirely on one circumstance: disparate impact. The dissent also would adopt a least-restrictive means requirement that would force a State to prove that the interest served by its voting rule could not be accomplished in any other less burdensome way. Such a requirement has no footing in the text of § 2 or the Court's precedent construing it and would have the potential to invalidate just about any voting rule a State adopts. Section 2 of the VRA provides vital protection against discriminatory voting rules, and no one suggests that discrimination in voting has been extirpated or that the threat has been eliminated. Even so, § 2 does not transfer the States' authority to set non-discriminatory voting rules to the federal courts. Pp. 2341 – 2343.

(c) Neither Arizona's out-of-precinct policy nor its ballot-collection law violates § 2 of the VRA. Pp. 2343 – 2348.

(1) Having to identify one's polling place and then travel there to vote does not exceed the "usual burdens of voting." *Crawford*, 553 U.S. at 198, 128 S.Ct. 1610. In addition, the State made extensive efforts to reduce the impact of the out-of-precinct policy on the number of valid votes ultimately cast, *e.g.,* by sending a sample ballot to each household that includes a voter's proper polling location. The burdens of identifying and traveling to one's assigned precinct are also modest when considering Arizona's "political processes" as a whole. The State offers other easy ways to vote, which likely explains why out-of-precinct votes on election day make up such a small and apparently diminishing portion of overall ballots cast.

Next, the racial disparity in burdens allegedly caused by the out-of-precinct policy is small in absolute terms. Of the Arizona counties that reported out-of-precinct ballots in the 2016 general election, a little over 1% of Hispanic voters, 1% of African-American voters, and 1% of Native American voters who voted on election day cast an out-of-precinct ballot. For non-minority voters, the rate was around 0.5%. A procedure that appears to work for 98% or more of voters to whom it applies—minority and non-minority alike—is unlikely to render a system unequally open.

Appropriate weight must be given to the important state interests furthered by precinct-based voting. It helps to distribute voters more evenly among polling places; it can put polling places closer to voter residences; and it helps to ensure that each voter receives a ballot that lists only the candidates and public questions on which he or she can vote. Precinct-based voting has a long pedigree in the United States, and the policy of not counting out-of-precinct ballots is widespread.

The Court of Appeals discounted the State's interests because it found no evidence that a less restrictive alternative would threaten the integrity of precinct-based voting. But § 2

does not require a State to show that its chosen policy is absolutely necessary or that a less restrictive means would not adequately serve the State's objectives. Considering the modest burdens allegedly imposed by Arizona's out-of-precinct policy, the small size of its disparate impact, and the State's justifications, the rule does not violate § 2. Pp. 2343 – 2346.

(2) Arizona's HB 2023 also passes muster under § 2. Arizonans can submit early ballots by going to a mailbox, a post office, an early ballot drop box, or an authorized election official's office. These options entail the "usual burdens of voting," and assistance from a statutorily authorized proxy is also available. The State also makes special provision for certain groups of voters who are unable to use the early voting system. See § 16–549(C). And here, the plaintiffs were unable to show the extent to which HB 2023 disproportionately burdens minority voters.

Even if the plaintiffs were able to demonstrate a disparate burden caused by HB 2023, the State's "compelling interest in preserving the integrity of its election procedures" would suffice to avoid § 2 liability. *Purcell v. Gonzalez*, 549 U.S. 1, 4, 127 S.Ct. 5, 166 L.Ed.2d 1. The Court of Appeals viewed the State's justifications for HB 2023 as tenuous largely because there was no evidence of early ballot fraud in Arizona. But prevention of fraud is not the only legitimate interest served by restrictions on ballot collection. Third-party ballot collection can lead to pressure and intimidation. Further, a State may take action to prevent election fraud without waiting for it to occur within its own borders. Pp. 2346 – 2348.

(d) HB 2023 was not enacted with a discriminatory purpose, as the District Court found. Appellate review of that conclusion is for clear error. *Pullman-Standard v. Swint*, 456 U.S. 273, 287–288, 102 S.Ct. 1781, 72 L.Ed.2d 66. The District Court's finding on the question of discriminatory intent had ample support in the record. The court considered the historical background and the highly politicized sequence of events leading to HB 2023's enactment; it looked for any departures from the normal legislative process; it considered relevant legislative history; and it weighed the law's impact on different racial groups. See *Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266–268, 97 S.Ct. 555, 50 L.Ed.2d 450. The court found HB 2023 to be the product of sincere legislative debate over the wisdom of early mail-in voting and the potential for fraud. And it took care to distinguish between racial motives and partisan motives. The District Court's interpretation of the evidence was plausible based on the record, so its permissible view is not clearly erroneous. See *Anderson v. Bessemer City*, 470 U.S. 564, 573–574, 105 S.Ct. 1504, 84 L.Ed.2d 518. The Court of Appeals concluded that the District Court committed clear error by failing to apply a "cat's paw" theory—which analyzes whether an actor was a "dupe" who was "used by another to accomplish his purposes." That theory has its origin in employment discrimination cases and has no application to legislative bodies. Pp. 2348 – 2350.

948 F. 3d 989, reversed and remanded.

ALITO, J., delivered the opinion of the Court, in which ROBERTS, C. J., and THOMAS, GORSUCH, KAVANAUGH, and BARRETT, JJ., joined. GORSUCH, J., filed a concurring opinion, in which THOMAS, J., joined. KAGAN, J., filed a dissenting opinion, in which BREYER and SOTOMAYOR, JJ., joined.

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Opinion

Justice ALITO delivered the opinion of the Court.

***2330** In these cases, we are called upon for the first time to apply § 2 of the Voting Rights Act of 1965 to regulations that govern how ballots are collected and counted. Arizona law generally makes it very easy to vote. All voters may vote by mail or in person for nearly a month before election day, but Arizona imposes two restrictions that are claimed to be unlawful. First, in some counties, voters who choose to cast a ballot in person on election day must vote in their own precincts or else their ballots will not be counted. Second, mail-in ballots cannot be collected by anyone other than an election official, a mail carrier, or a voter's family member, household member, or caregiver. After a trial, a District Court upheld these rules, as did a panel of the United States Court of Appeals for the Ninth Circuit. But an en banc court, by a divided vote, found them to be unlawful. It relied on the rules' small disparate impacts on members of minority groups, as well as past discrimination dating back to the State's territorial days. And it overturned the District Court's finding that the Arizona Legislature did not adopt the ballot-collection restriction for a discriminatory purpose. We now hold that the en banc court misunderstood and misapplied § 2 and that it exceeded its authority in rejecting the District Court's factual finding on the issue of legislative intent.

I

A

Congress enacted the landmark Voting Rights Act of 1965, 79 Stat. 437, as amended, 52 U.S.C. § 10301 *et seq.*, in an effort to achieve at long last what the Fifteenth Amendment had sought to bring about 95 years earlier: an end to the denial of the right to vote based on race. Ratified in 1870, the Fifteenth Amendment provides in § 1 that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." Section 2 of the Amendment then grants Congress the "power to enforce [the Amendment] by appropriate legislation."

Despite the ratification of the Fifteenth Amendment, the right of African-Americans to vote was heavily suppressed for nearly a century. States employed a variety of notorious methods, including poll taxes, literacy tests, property qualifications, " 'white primar[ies],' " and " 'grandfather clause[s].' "[1] Challenges to some blatant efforts reached this Court and were held to violate the Fifteenth Amendment. See, *e.g.*, *Guinn v. United States*, 238 U.S. 347, 360–365, 35 S.Ct. 926, 59 L.Ed. 1340 (1915) (grandfather clause); *Myers v. Anderson*, 238 U.S. 368, 379–380, 35 S.Ct. 932, 59 L.Ed. 1349 (1915) (same); *Lane v. Wilson*, 307 U.S. 268, 275–277, 59 S.Ct. 872, 83 L.Ed. 1281 (1939) (registration scheme predicated on grandfather clause); *Smith v. Allwright*, 321 U.S. 649, 659–666, 64 S.Ct. 757, 88 L.Ed. 987 (1944) (white primaries); *Schnell v. Davis*, 336 U.S. 933, 69 S.Ct. 749, 93 L.Ed. 1093 (1949) (*per curiam*), affirming 81 F.Supp. 872 (S.D. Ala. 1949) (test of constitutional knowledge); *Gomillion v. Lightfoot*, 364 U.S. 339, 347, 81 S.Ct. 125, 5 L.Ed.2d 110 (1960) (racial gerrymander). But as late as the mid-1960s, black registration and voting ***2331** rates in some States were appallingly low. See *South Carolina v. Katzenbach*, 383 U.S. 301, 313, 86 S.Ct. 803, 15 L.Ed.2d 769 (1966).

Invoking the power conferred by § 2 of the Fifteenth Amendment, see 383 U.S. at 308, 86 S.Ct. 803; *City of Rome v. United States*, 446 U.S. 156, 173, 100 S.Ct. 1548, 64 L.Ed.2d 119 (1980), Congress enacted the Voting Rights Act (VRA) to address this entrenched problem. The Act and its amendments in the 1970s specifically forbade some of the practices that had been used to suppress black voting. See §§ 4(a), (c), 79 Stat. 438–439; § 6, 84 Stat. 315; § 102, 89 Stat. 400, as amended, 52 U.S.C. §§ 10303(a), (c), 10501 (prohibiting the denial of the right to vote in any election for failure to pass a test demonstrating literacy, educational achievement or knowledge of any particular subject, or good moral character); see also § 10, 79 Stat. 442, as amended, 52 U.S.C. § 10306 (declaring poll taxes unlawful); § 11, 79 Stat. 443, as amended, 52 U.S.C. § 10307 (prohibiting intimidation and the refusal to allow or count votes). Sections 4 and 5 of the VRA imposed special requirements for States and subdivisions where violations of the right to vote had been severe. And § 2 addressed the denial or abridgment of the right to vote in any part of the country.

As originally enacted, § 2 closely tracked the language of the Amendment it was adopted to enforce. Section 2 stated simply that "[n]o voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color." 79 Stat. 437.

Unlike other provisions of the VRA, § 2 attracted relatively little attention during the congressional debates[2] and was "little-used" for more than a decade after its passage.[3] But during the same period, this Court considered several cases involving "vote-dilution" claims asserted under the Equal Protection Clause of the Fourteenth Amendment. See *Whitcomb v. Chavis*, 403 U.S. 124, 91 S.Ct. 1858, 29 L.Ed.2d 363 (1971); *Burns v. Richardson*, 384 U.S. 73, 86 S.Ct. 1286, 16 L.Ed.2d 376 (1966); *Fortson v. Dorsey*, 379 U.S. 433, 85 S.Ct. 498, 13 L.Ed.2d 401 (1965). In these and later vote-dilution cases, plaintiffs claimed that features of legislative districting plans, including the configuration of legislative districts and the use of multi-member districts, diluted the ability of particular voters to affect the outcome of elections.

One Fourteenth Amendment vote-dilution case, *White v. Regester*, 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314 (1973), came to have outsized importance in the development of our VRA case law. In *White*, the Court affirmed a District Court's judgment that two multi-member electoral districts were "being used invidiously to cancel out or minimize the voting strength of racial groups." *Id.*, at 765, 93 S.Ct. 2332. The Court explained what a vote-dilution plaintiff must prove, and the words the Court chose would later assume great importance in VRA § 2 matters. According to *White*, a vote-dilution plaintiff had to show that "the political processes leading to nomination and election were not *equally open* to participation by the group in question—that its members had *less opportunity* than did other residents in the ***2332** district to participate in the political processes and to elect legislators of their choice." *Id.*, at 766, 93 S.Ct. 2332 (emphasis added). The decision then recited many pieces of evidence the District Court had taken into account, and it found that this evidence sufficed to prove the plaintiffs' claim. See *id.*, at 766–769, 93 S.Ct. 2332. The decision in *White* predated *Washington v. Davis*, 426 U.S. 229, 96 S.Ct. 2040, 48 L.Ed.2d 597 (1976), where the Court held that an equal-protection challenge to a facially neutral rule requires proof of discriminatory purpose or intent, *id.*, at 238–245, 96 S.Ct. 2040, and the *White* opinion said nothing one way or the other about purpose or intent.

A few years later, the question whether a VRA § 2 claim required discriminatory purpose or intent came before this Court in *Mobile v. Bolden*, 446 U.S. 55, 100 S.Ct. 1490, 64 L.Ed.2d 47 (1980). The plurality opinion for four Justices concluded first that § 2 of the VRA added nothing to the protections afforded by the Fifteenth Amendment. *Id.*, at 60–61, 100 S.Ct. 1490. The plurality then observed that prior decisions "ha[d] made clear that action by a State that is racially neutral on its face violates the Fifteenth Amendment only if motivated by a discriminatory purpose." *Id.*, at 62, 100 S.Ct. 1490. The obvious result of those premises was that facially neutral voting practices violate § 2 only if motivated by a discriminatory purpose. The plurality read *White* as consistent with this requirement. *Bolden*, 446 U.S., at 68–70, 100 S.Ct. 1490.

Shortly after *Bolden* was handed down, Congress amended § 2 of the VRA. The oft-cited Report of the Senate Judiciary Committee accompanying the 1982 Amendment stated that the amendment's purpose was to repudiate *Bolden* and establish a new vote-dilution test based on what the Court had said in *White*. See S. Rep. No. 97–417, pp. 2, 15–16, 27. The bill that was initially passed by the House of Representatives included what is now § 2(a). In place of the phrase "to deny or abridge the right ... to vote on account of race or color," the amendment substituted "in a manner which *results in* a denial or abridgement of the right ... to vote on account of race or color." H.R. Rep. No. 97–227, p. 48 (1981) (emphasis added); H.R. 3112, 97th Cong., 1st Sess., § 2, p. 8 (introduced Oct. 7, 1981).

The House bill "originally passed ... under a loose understanding that § 2 would prohibit all discriminatory 'effects' of voting practices, and that intent would be 'irrelevant,' " but "[t]his version met stiff resistance in the Senate." *Mississippi Republican Executive Committee v. Brooks*, 469 U.S. 1002, 1010, 105 S.Ct. 416, 83 L.Ed.2d 343 (1984) (REHNQUIST, J., dissenting) (quoting H.R. Rep. No. 97–227, at 29). The House and Senate compromised, and the final product included language proposed by Senator Dole. 469 U.S. at 1010–1011, 105 S.Ct. 416; S. Rep. No. 97–417, at 3–4; 128 Cong. Rec. 14131–14133 (1982) (Sen. Dole describing his amendment).

What is now § 2(b) was added, and that provision sets out what must be shown to prove a § 2 violation. It requires consideration of "the totality of circumstances" in each case and demands proof that "the political processes leading to nomination or election in the State or political subdivision are not *equally open* to participation" by members of a protected class "*in that its members have less opportunity* than other members of the electorate to participate in the political process and to elect representatives of their choice." 52 U.S.C. § 10301(b) (emphasis added). Reflecting the Senate Judiciary Committee's stated focus on the issue of vote dilution, this ***2333** language was taken almost verbatim from *White*.

This concentration on the contentious issue of vote dilution reflected the results of the Senate Judiciary Committee's extensive survey of what it regarded as Fifteenth Amendment violations that called out for legislative redress. See, *e.g.*, S. Rep. No. 97–417, at 6, 8, 23–24, 27, 29. That survey listed many examples of what the Committee took to be unconstitutional vote dilution, but the survey identified only three isolated episodes involving the outright denial of the right to vote, and none of these concerned the equal application of a facially neutral rule specifying the time, place, or manner of voting. See *id.*, at 30, and n. 119.[4] These sparse results were presumably good news. They likely showed that the VRA and other efforts had achieved a large measure of success in combating the previously widespread practice of using such rules to hinder minority groups from voting.

This Court first construed the amended § 2 in *Thornburg v. Gingles*, 478 U.S. 30, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986)—another vote-dilution case. Justice Brennan's opinion for the Court set out three threshold requirements for proving a § 2 vote-dilution claim, and, taking its cue from the Senate Report, provided a non-exhaustive list of factors to be considered in determining whether § 2 had been violated. *Id.*, at 44–45, 48–51, 80, 106 S.Ct. 2752. "The essence of a § 2 claim," the Court said, "is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities" of minority and non-minority voters to elect their preferred representatives. *Id.*, at 47, 106 S.Ct. 2752.

In the years since *Gingles*, we have heard a steady stream of § 2 vote-dilution cases,[5] but until today, we have not considered how § 2 applies to generally applicable time, place, or manner voting rules. In recent years, however, such claims have proliferated in the lower courts.[6]

B

The present dispute concerns two features of Arizona voting law, which generally makes it quite easy for residents to vote. ***2334** All Arizonans may vote by mail for 27 days before an election using an "early ballot." Ariz. Rev. Stat. Ann. §§ 16–541 (2015), 16–542(C) (Cum. Supp. 2020). No special excuse is needed, §§ 16–541(A), 16–542(A), and any voter may ask to be sent an early ballot automatically in future elections, § 16–544(A) (2015). In addition, during the 27 days before an election, Arizonans may vote in person at an early voting location in each county. See §§ 16–542(A), (E). And they may also vote in person on election day.

Each county is free to conduct election-day voting either by using the traditional precinct model or by setting up "voting centers." § 16–411(B)(4) (Cum. Supp. 2020). Voting centers are equipped to provide all voters in a county with the appropriate ballot for the precinct in which they are registered, and this allows voters in the county to use whichever vote center they prefer. See *ibid*.

The regulations at issue in this suit govern precinct-based election-day voting and early mail-in voting. Voters who choose to vote in person on election day in a county that uses the precinct system must vote in their assigned precincts. See § 16–122 (2015); see also § 16–135. If a voter goes to the wrong polling place, poll workers are trained to direct the voter to the right location. *Democratic Nat. Comm. v. Reagan*, 329 F.Supp.3d 824, 859 (D. Ariz. 2018); see Tr. 1559, 1586 (Oct. 12, 2017); Tr. Exh. 370 (Pima County Elections Inspectors Handbook). If a voter finds that his or her name does not appear on the register at what the voter believes is the right precinct, the voter ordinarily may cast a provisional ballot. Ariz. Rev. Stat. Ann. § 16–584 (Cum. Supp. 2020). That ballot is later counted if the voter's address is determined to be within the precinct. See *ibid.* But if it turns out that the voter cast a ballot at the wrong precinct, that vote is not counted. See § 16–584(E); App. 37–41 (election procedures manual); Ariz. Rev. Stat. Ann. § 16–452(C) (misdemeanor to violate rules in election procedures manual).

For those who choose to vote early by mail, Arizona has long required that "[o]nly the elector may be in possession of that elector's unvoted early ballot." § 16–542(D). In 2016, the state legislature enacted House Bill 2023 (HB 2023), which makes it a crime for any person other than a postal worker, an elections official, or a voter's caregiver, family member, or household member to knowingly collect an early ballot—either before or after it has been completed. §§ 16–1005(H)–(I).

In 2016, the Democratic National Committee and certain affiliates brought this suit and named as defendants (among others) the Arizona attorney general and secretary of state in their official capacities. Among other things, the plaintiffs claimed that both the State's refusal to count ballots cast in the wrong precinct and its ballot-collection restriction "adversely

and disparately affect Arizona's American Indian, Hispanic, and African American citizens," in violation of § 2 of the VRA. *Democratic Nat. Comm. v. Hobbs*, 948 F.3d 989, 998 (C.A.9 2020) (en banc). In addition, they alleged that the ballot-collection restriction was "enacted with discriminatory intent" and thus violated both § 2 of the VRA and the Fifteenth Amendment. *Ibid.*

After a 10-day bench trial, 329 F.Supp.3d at 832, 833–838, the District Court made extensive findings of fact and rejected all the plaintiffs' claims, *id.*, at 838–883. The court first found that the out-of-precinct policy "has no meaningfully disparate impact on the opportunities of minority voters to elect" representatives of their choice. *Id.*, at 872. The percentage of ballots invalidated under this policy was very small (0.15% of all ballots cast in ***2335** 2016) and decreasing, and while the percentages were slightly higher for members of minority groups, the court found that this disparity "does not result in minorities having unequal access to the political process." *Ibid.* The court also found that the plaintiffs had not proved that the policy "causes minorities to show up to vote at the wrong precinct at rates higher than their non-minority counterparts," *id.*, at 873, and the court noted that the plaintiffs had not even challenged "the manner in which Arizona counties allocate and assign polling places or Arizona's requirement that voters re-register to vote when they move," *ibid.*

The District Court similarly found that the ballotcollection restriction is unlikely to "cause a meaningful inequality in the electoral opportunities of minorities." *Id.*, at 871. Rather, the court noted, the restriction applies equally to all voters and "does not impose burdens beyond those traditionally associated with voting." *Ibid.* The court observed that the plaintiffs had presented no records showing how many voters had previously relied on now-prohibited third-party ballot collectors and that the plaintiffs also had "provided no quantitative or statistical evidence" of the percentage of minority and non-minority voters in this group. *Id.*, at 866. "[T]he vast majority" of early voters, the court found, "do not return their ballots with the assistance of a [now-prohibited] third-party collector," *id.*, at 845, and the evidence largely showed that those who had used such collectors in the past "ha[d] done so out of convenience or personal preference, or because of circumstances that Arizona law adequately accommodates in other ways," *id.*, at 847.[7] In addition, the court noted, none of the individual voters called by the plaintiffs had even claimed that the ballot-collection restriction "would make it significantly more difficult to vote." *Id.*, at 871.

Finally, the court found that the ballot-collection law had not been enacted with discriminatory intent. "[T]he majority of H.B. 2023's proponents," the court found, "were sincere in their belief that ballot collection increased the risk of early voting fraud, and that H.B. 2023 was a necessary prophylactic measure to bring early mail ballot security in line with in-person voting." *Id.*, at 879. The court added that "some individual legislators and proponents were motivated in part by partisan interests." *Id.*, at 882. But it distinguished between partisan and racial motives, while recognizing that "racially polarized voting can sometimes blur the lines." *Ibid.*

A divided panel of the Ninth Circuit affirmed, but an en banc court reversed. The en banc court first concluded that both the out-of-precinct policy and the ballot-collection restriction imposed disparate burdens on minority voters because such voters were more likely to be adversely affected by those rules. 948 F.3d at 1014–1016, 1032–1033. Then, based on an assessment of the vote-dilution factors used in *Gingles*, the en banc majority found that these disparate burdens were "in part caused by or linked to 'social and historical conditions' " that produce inequality. 948 F.3d at 1032 (quoting *Gingles*, 478 U.S. at 47, 106 S.Ct. 2752); see 948 F.3d at 1037. Among other things, the court relied on racial discrimination dating back to Arizona's territorial days, current socioeconomic disparities, racially polarized voting, and racial campaign appeals. See *id.*, at 1016–1032, 1033–1037.

The en banc majority also held that the District Court had committed clear error in finding that the ballot-collection law was ***2336** not enacted with discriminatory intent. The en banc court did not claim that a majority of legislators had voted for the law for a discriminatory purpose, but the court held that these lawmakers "were used as 'cat's paws' " by others. *Id.*, at 1041.

One judge in the majority declined to join the court's holding on discriminatory intent, and four others dissented across the board. A petition for a writ of certiorari was filed by the Arizona attorney general on his own behalf and on behalf of the State, which had intervened below; another petition was filed by the Arizona Republican Party and other private parties who also had intervened. We granted the petitions and agreed to review both the Ninth Circuit's understanding and application of VRA § 2 and its holding on discriminatory

intent. 591 U.S. ——, 141 S.Ct. 222, 207 L.Ed.2d 1165 (2020).

II

We begin with two preliminary matters. Secretary of State Hobbs contends that no petitioner has Article III standing to appeal the decision below as to the out-of-precinct policy, but we reject that argument. All that is needed to entertain an appeal of that issue is one party with standing, see *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 591 U.S. ——, ——, n. 6, 140 S.Ct. 2367, 2379, n. 6, 207 L.Ed.2d 819 (2020), and we are satisfied that Attorney General Brnovich fits the bill. The State of Arizona intervened below, see App. 834; there is "[n]o doubt" as an Article III matter that "the State itself c[an] press this appeal," *Virginia House of Delegates v. Bethune-Hill*, 587 U.S. ——, ——, 139 S.Ct. 1945, 1951, 204 L.Ed.2d 305 (2019); and the attorney general is authorized to represent the State in any action in federal court, Ariz. Rev. Stat. Ann. § 41–193(A)(3) (2021); see *Arizonans for Official English v. Arizona*, 520 U.S. 43, 51, n. 4, 117 S.Ct. 1055, 137 L.Ed.2d 170 (1997).

Second, we think it prudent to make clear at the beginning that we decline in these cases to announce a test to govern all VRA § 2 claims involving rules, like those at issue here, that specify the time, place, or manner for casting ballots. Each of the parties advocated a different test, as did many *amici* and the courts below. In a brief filed in December in support of petitioners, the Department of Justice proposed one such test but later disavowed the analysis in that brief.[8] The Department informed us, however, that it did not disagree with its prior conclusion that the two provisions of Arizona law at issue in these cases do not violate § 2 of the Voting Rights Act.[9] All told, no fewer than 10 tests have been proposed. But as this is our first foray into the area, we think it sufficient for present purposes to identify certain guideposts that lead us to our decision in these cases.

III

A

We start with the text of VRA § 2. It now provides:

> "(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in ***2337** section 10303(f)(2) of this title, as provided in subsection (b).
>
> "(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population." 52 U.S.C. § 10301.

In *Gingles*, our seminal § 2 vote-dilution case, the Court quoted the text of amended § 2 and then jumped right to the Senate Judiciary Committee Report, which focused on the issue of vote dilution. 478 U.S. at 36–37, 43, and n. 7, 106 S.Ct. 2752. Our many subsequent vote-dilution cases have largely followed the path that *Gingles* charted. But because this is our first § 2 time, place, or manner case, a fresh look at the statutory text is appropriate. Today, our statutory interpretation cases almost always start with a careful consideration of the text, and there is no reason to do otherwise here.

B

Section 2(a), as noted, omits the phrase "to deny or abridge the right ... to vote on account of race or color," which the *Bolden* plurality had interpreted to require proof of discriminatory intent. In place of that language, § 2(a) substitutes the phrase "in a manner which *results in* a denial or abridgement of the right ... to vote on account of race or color." (Emphasis added.) We need not decide what this text would mean if it stood alone because § 2(b), which was added to win Senate approval, explains what must be shown to establish a § 2 violation. Section 2(b) states that § 2 is violated only where "the political processes leading to nomination or

election" are not "*equally open* to participation" by members of the relevant protected group "*in that its members have less opportunity* than other members of the electorate to participate in the political process and to elect representatives of their choice." (Emphasis added.)

The key requirement is that the political processes leading to nomination and election (here, the process of voting) must be "equally open" to minority and non-minority groups alike, and the most relevant definition of the term "open," as used in § 2(b), is "without restrictions as to who may participate," Random House Dictionary of the English Language 1008 (J. Stein ed. 1966), or "requiring no special status, identification, or permit for entry or participation," Webster's Third New International Dictionary 1579 (1976).

What § 2(b) means by voting that is not "equally open" is further explained by this language: "in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." The phrase "in that" is "used to specify the respect in which a statement is true."[10] Thus, equal openness and equal ***2338** opportunity are not separate requirements. Instead, equal opportunity helps to explain the meaning of equal openness. And the term "opportunity" means, among other things, "a combination of circumstances, time, and place suitable or favorable for a particular activity or action." *Id*., at 1583; see also Random House Dictionary of the English Language, at 1010 ("an appropriate or favorable time or occasion," "a situation or condition favorable for attainment of a goal").

Putting these terms together, it appears that the core of § 2(b) is the requirement that voting be "equally open." The statute's reference to equal "opportunity" may stretch that concept to some degree to include consideration of a person's ability to *use* the means that are equally open. But equal openness remains the touchstone.

C

One other important feature of § 2(b) stands out. The provision requires consideration of "the totality of circumstances." Thus, any circumstance that has a logical bearing on whether voting is "equally open" and affords equal "opportunity" may be considered. We will not attempt to compile an exhaustive list, but several important circumstances should be mentioned.

1

1. First, the size of the burden imposed by a challenged voting rule is highly relevant. The concepts of "open[ness]" and "opportunity" connote the absence of obstacles and burdens that block or seriously hinder voting, and therefore the size of the burden imposed by a voting rule is important. After all, every voting rule imposes a burden of some sort. Voting takes time and, for almost everyone, some travel, even if only to a nearby mailbox. Casting a vote, whether by following the directions for using a voting machine or completing a paper ballot, requires compliance with certain rules. But because voting necessarily requires some effort and compliance with some rules, the concept of a voting system that is "equally open" and that furnishes an equal "opportunity" to cast a ballot must tolerate the "usual burdens of voting." *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 198, 128 S.Ct. 1610, 170 L.Ed.2d 574 (2008) (opinion of STEVENS, J.). Mere inconvenience cannot be enough to demonstrate a violation of § 2.[11]

2. For similar reasons, the degree to which a voting rule departs from what was standard practice when § 2 was amended in 1982 is a relevant consideration. Because every voting rule imposes a burden of some sort, it is useful to have benchmarks with which the burdens imposed by a challenged rule can be compared. The burdens associated with the rules in widespread use when § 2 was adopted are therefore useful in gauging whether the burdens imposed by a challenged ***2339** rule are sufficient to prevent voting from being equally "open" or furnishing an equal "opportunity" to vote in the sense meant by § 2. Therefore, it is relevant that in 1982 States typically required nearly all voters to cast their ballots in person on election day and allowed only narrow and tightly defined categories of voters to cast absentee ballots. See, *e.g.*, 17 N. Y. Elec. Law Ann. § 8–100 *et seq.* (West 1978), § 8–300 *et seq.* (in-person voting), § 8–400 *et seq.* (limited-excuse absentee voting); Pa. Stat. Ann., Tit. 25, § 3045 *et seq.* (Purdon 1963) (in-person voting), § 3149.1 *et seq.* (limited-excuse absentee voting); see § 3146.1 (Purdon Cum. Supp. 1993) (same); Ohio Rev. Code Ann. § 3501.02 *et seq.* (Lexis 1972) (in-person voting), § 3509.01 *et seq.* (limited-excuse absentee voting); see § 3509.02 (Lexis Supp. 1986) (same); Fla. Stat. Ann. § 101.011 *et seq.* (1973) (in-person voting), § 101.62 *et seq.* (limited-excuse absentee voting); see § 97.063 (1982) (same); Ill. Rev. Stat., ch.46, § 17–1 *et seq.* (West 1977) (in-person voting), § 19–1 *et*

seq. (limited-excuse absentee voting); D. C. Code §§ 1–1109, 1–1110 (1973) (in-person voting and limited-excuse absentee voting); see § 1–1313 (1981) (same). As of January 1980, only three States permitted no-excuse absentee voting. See Gronke & Galanes-Rosenbaum, America Votes! 261, 267–269 (B. Griffith ed. 2008); see also J. Sargent et al., Congressional Research Service, The Growth of Early and Nonprecinct Place Balloting, in Election Laws of the Fifty States and the District of Columbia (rev. 1976). We doubt that Congress intended to uproot facially neutral time, place, and manner regulations that have a long pedigree or are in widespread use in the United States. We have no need to decide whether adherence to, or a return to, a 1982 framework is necessarily lawful under § 2, but the degree to which a challenged rule has a long pedigree or is in widespread use in the United States is a circumstance that must be taken into account.

3. The size of any disparities in a rule's impact on members of different racial or ethnic groups is also an important factor to consider. Small disparities are less likely than large ones to indicate that a system is not equally open. To the extent that minority and non-minority groups differ with respect to employment, wealth, and education, even neutral regulations, no matter how crafted, may well result in some predictable disparities in rates of voting and noncompliance with voting rules. But the mere fact there is some disparity in impact does not necessarily mean that a system is not equally open or that it does not give everyone an equal opportunity to vote. The size of any disparity matters. And in assessing the size of any disparity, a meaningful comparison is essential. What are at bottom very small differences should not be artificially magnified. *E.g.*, *Frank v. Walker*, 768 F.3d 744, 752, n. 3 (C.A.7 2014).

4. Next, courts must consider the opportunities provided by a State's entire system of voting when assessing the burden imposed by a challenged provision. This follows from § 2(b)'s reference to the collective concept of a State's "political processes" and its "political process" as a whole. Thus, where a State provides multiple ways to vote, any burden imposed on voters who choose one of the available options cannot be evaluated without also taking into account the other available means.

5. Finally, the strength of the state interests served by a challenged voting rule is also an important factor that must be taken into account. As noted, every voting rule imposes a burden of some sort, and therefore, in determining "based on the totality of circumstances" whether a ***2340** rule goes too far, it is important to consider the reason for the rule. Rules that are supported by strong state interests are less likely to violate § 2.

One strong and entirely legitimate state interest is the prevention of fraud. Fraud can affect the outcome of a close election, and fraudulent votes dilute the right of citizens to cast ballots that carry appropriate weight. Fraud can also undermine public confidence in the fairness of elections and the perceived legitimacy of the announced outcome.

Ensuring that every vote is cast freely, without intimidation or undue influence, is also a valid and important state interest. This interest helped to spur the adoption of what soon became standard practice in this country and in other democratic nations the world round: the use of private voting booths. See *Burson v. Freeman*, 504 U.S. 191, 202–205, 112 S.Ct. 1846, 119 L.Ed.2d 5 (1992) (plurality opinion).

2

While the factors set out above are important, others considered by some lower courts are less helpful in a case like the ones at hand. First, it is important to keep in mind that the *Gingles* or "Senate" factors grew out of and were designed for use in vote-dilution cases. Some of those factors are plainly inapplicable in a case involving a challenge to a facially neutral time, place, or manner voting rule. Factors three and four concern districting and election procedures like "majority vote requirements," "anti-single shot provisions,"[12] and a "candidate slating process."[13] See *Gingles*, 478 U.S. at 37, 106 S.Ct. 2752 (internal quotation marks omitted). Factors two, six, and seven (which concern racially polarized voting, racially tinged campaign appeals, and the election of minority-group candidates), *ibid.*, have a bearing on whether a districting plan affects the opportunity of minority voters to elect their candidates of choice. But in cases involving neutral time, place, and manner rules, the only relevance of these and the remaining factors is to show that minority group members suffered discrimination in the past (factor one) and that effects of that discrimination persist (factor five). *Id.*, at 36–37, 106 S.Ct. 2752. We do not suggest that these factors should be disregarded. After all, § 2(b) requires consideration of "the totality of circumstances." But their relevance is much less direct.

We also do not find the disparate-impact model employed in Title VII and Fair Housing Act cases useful here. The text of the relevant provisions of Title VII and the Fair Housing Act differ from that ***2341** of VRA § 2, and it is not obvious why Congress would conform rules regulating voting to those regulating employment and housing. For example, we think it inappropriate to read § 2 to impose a strict "necessity requirement" that would force States to demonstrate that their legitimate interests can be accomplished only by means of the voting regulations in question. Stephanopoulos, Disparate Impact, Unified Law, 128 Yale L. J. 1566, 1617–1619 (2019) (advocating such a requirement). Demanding such a tight fit would have the effect of invalidating a great many neutral voting regulations with long pedigrees that are reasonable means of pursuing legitimate interests. It would also transfer much of the authority to regulate election procedures from the States to the federal courts. For those reasons, the Title VII and Fair Housing Act models are unhelpful in § 2 cases.

D

The interpretation set out above follows directly from what § 2 commands: consideration of "the totality of circumstances" that have a bearing on whether a State makes voting "equally open" to all and gives everyone an equal "opportunity" to vote. The dissent, by contrast, would rewrite the text of § 2 and make it turn almost entirely on just one circumstance—disparate impact.

That is a radical project, and the dissent strains mightily to obscure its objective. To that end, it spends 20 pages discussing matters that have little bearing on the questions before us. The dissent provides historical background that all Americans should remember, see *post*, at 2351 – 2354 (opinion of KAGAN, J.), but that background does not tell us how to decide these cases. The dissent quarrels with the decision in *Shelby County v. Holder*, 570 U.S. 529, 133 S.Ct. 2612, 186 L.Ed.2d 651 (2013), see *post*, at 2353 – 2355, which concerned §§ 4 and 5 of the VRA, not § 2. It discusses all sorts of voting rules that are not at issue here. See *post*, at 2354 – 2357. And it dwells on points of law that nobody disputes: that § 2 applies to a broad range of voting rules, practices, and procedures; that an "abridgement" of the right to vote under § 2 does not require outright denial of the right; that § 2 does not demand proof of discriminatory purpose; and that a "facially neutral" law or practice may violate that provision. See *post,* at 2356 – 2361.

Only after this extended effort at misdirection is the dissent's aim finally unveiled: to undo as much as possible the compromise that was reached between the House and Senate when § 2 was amended in 1982. Recall that the version originally passed by the House did not contain § 2(b) and was thought to prohibit any voting practice that had "discriminatory effects," loosely defined. See *supra*, at 2332 – 2333. That is the freewheeling disparate-impact regime the dissent wants to impose on the States. But the version enacted into law includes § 2(b), and that subsection directs us to consider "the totality of circumstances," not, as the dissent would have it, the totality of just one circumstance.[14]

***2342** There is nothing to the dissent's charge that we are departing from the statutory text by identifying some of those considerations.

We have listed five relevant circumstances and have explained why they all stem from the statutory text and have a bearing on the determination that § 2 requires. The dissent does not mention a single additional consideration, and it does its best to push aside all but one of the circumstances we discuss. It entirely rejects three of them: the size of the burden imposed by a challenged rule, see *post*, at 2362 – 2363, the landscape of voting rules both in 1982 and in the present, *post,* at 2363 – 2364,[15] and the availability of other ways to vote, *post,* at 2362 – 2363. Unable to bring itself to completely reject consideration of the state interests that a challenged rule serves, the dissent tries to diminish the significance of this circumstance as much as possible. See *post,* at 2364 – 2366. According to the dissent, an interest served by a voting rule, no matter how compelling, cannot support the rule unless a State can prove to the satisfaction of the courts that this interest could not be served by any other means. *Post*, at 2359 – 2360, 2364 – 2366. Such a requirement has no footing in the text of § 2 or our precedent construing it.[16]

***2343** That requirement also would have the potential to invalidate just about any voting rule a State adopts. Take the example of a State's interest in preventing voting fraud. Even if a State could point to a history of serious voting fraud within its own borders, the dissent would apparently strike down a rule designed to prevent fraud unless the State could demonstrate an inability to combat voting fraud in any other way, such as by hiring more investigators and prosecutors, prioritizing voting fraud investigations, and heightening criminal penalties. Nothing about equal openness and equal opportunity dictates such a high bar for States to pursue their legitimate interests.

With all other circumstances swept away, all that remains in the dissent's approach is the size of any disparity in a rule's impact on members of protected groups. As we have noted, differences in employment, wealth, and education may make it virtually impossible for a State to devise rules that do not have some disparate impact. But under the dissent's interpretation of § 2, any "statistically significant" disparity—wherever *that* is in the statute—may be enough to take down even facially neutral voting rules with long pedigrees that reasonably pursue important state interests. *Post*, at 2358, n. 4, 2360 – 2361, 2367 – 2368.[17]

Section 2 of the Voting Rights Act provides vital protection against discriminatory voting rules, and no one suggests that discrimination in voting has been extirpated or that the threat has been eliminated. But § 2 does not deprive the States of their authority to establish non-discriminatory voting rules, and that is precisely what the dissent's radical interpretation would mean in practice. The dissent is correct that the Voting Rights Act exemplifies our country's commitment to democracy, but there is nothing democratic about the dissent's attempt to bring about a wholesale transfer of the authority to set voting rules from the States to the federal courts.

IV

A

In light of the principles set out above, neither Arizona's out-of-precinct rule nor its ballot-collection law violates ***2344** § 2 of the VRA. Arizona's out-of-precinct rule enforces the requirement that voters who choose to vote in person on election day must do so in their assigned precincts. Having to identify one's own polling place and then travel there to vote does not exceed the "usual burdens of voting." *Crawford*, 553 U.S. at 198, 128 S.Ct. 1610 (opinion of STEVENS, J.) (noting the same about making a trip to the department of motor vehicles). On the contrary, these tasks are quintessential examples of the usual burdens of voting.

Not only are these unremarkable burdens, but the District Court's uncontested findings show that the State made extensive efforts to reduce their impact on the number of valid votes ultimately cast. The State makes accurate precinct information available to all voters. When precincts or polling places are altered between elections, each registered voter is sent a notice showing the voter's new polling place. 329 F.Supp.3d at 859. Arizona law also mandates that election officials send a sample ballot to each household that includes a registered voter who has not opted to be placed on the permanent early voter list, Ariz. Rev. Stat. Ann. § 16–510(C) (2015), and this mailing also identifies the voter's proper polling location, 329 F.Supp.3d at 859. In addition, the Arizona secretary of state's office sends voters pamphlets that include information (in both English and Spanish) about how to identify their assigned precinct. *Ibid.*

Polling place information is also made available by other means. The secretary of state's office operates websites that provide voter-specific polling place information and allow voters to make inquiries to the secretary's staff. *Ibid.* Arizona's two most populous counties, Maricopa and Pima, provide online polling place locators with information available in English and Spanish. *Ibid.* Other groups offer similar online tools. *Ibid.* Voters may also identify their assigned polling place by calling the office of their respective county recorder. *Ibid.* And on election day, poll workers in at least some counties are trained to redirect voters who arrive at the wrong precinct. *Ibid.*; see Tr. 1559, 1586; Tr. Exh. 370 (Pima County Elections Inspectors Handbook).

The burdens of identifying and traveling to one's assigned precinct are also modest when considering Arizona's "political processes" as a whole. The Court of Appeals noted that Arizona leads other States in the rate of votes rejected on the ground that they were cast in the wrong precinct, and the court attributed this to frequent changes in polling locations, confusing placement of polling places, and high levels of residential mobility. 948 F.3d at 1000–1004. But even if it is marginally harder for Arizona voters to find their assigned polling places, the State offers other easy ways to vote. Any voter can request an early ballot without excuse. Any voter can ask to be placed on the permanent early voter list so that an early ballot will be mailed automatically. Voters may drop off their early ballots at any polling place, even one to which they are not assigned. And for nearly a month before election day, any voter can vote in person at an early voting location in his or her county. The availability of those options likely explains why out-of-precinct votes on election day make up such a small and apparently diminishing portion of overall ballots cast—0.47% of all ballots in the 2012 general election and just 0.15% in 2016. 329 F.Supp.3d at 872.

Next, the racial disparity in burdens allegedly caused by the out-of-precinct policy is small in absolute terms. The District Court accepted the plaintiffs' evidence that, of the

Arizona counties that reported out-of-precinct ballots in the 2016 general ***2345** election, a little over 1% of Hispanic voters, 1% of African-American voters, and 1% of Native American voters who voted on election day cast an out-of-precinct ballot. *Ibid.* For non-minority voters, the rate was around 0.5%. *Ibid.* (citing Tr. Exh. 97, at 3, 20–21). A policy that appears to work for 98% or more of voters to whom it applies—minority and non-minority alike—is unlikely to render a system unequally open.

The Court of Appeals attempted to paint a different picture, but its use of statistics was highly misleading for reasons that were well explained by Judge Easterbrook in a § 2 case involving voter IDs. As he put it, a distorted picture can be created by dividing one percentage by another. *Frank*, 768 F.3d at 752, n. 3. He gave this example: "If 99.9% of whites had photo IDs, and 99.7% of blacks did," it could be said that " 'blacks are three times as likely as whites to lack qualifying ID' (0.3 ÷ 0.1 = 3), but such a statement would mask the fact that the populations were effectively identical." *Ibid.*

That is exactly what the en banc Ninth Circuit did here. The District Court found that among the counties that reported out-of-precinct ballots in the 2016 general election, roughly 99% of Hispanic voters, 99% of African-American voters, and 99% of Native American voters who voted on election day cast their ballots in the right precinct, while roughly 99.5% of non-minority voters did so. 329 F.Supp.3d at 872. Based on these statistics, the en banc Ninth Circuit concluded that "minority voters in Arizona cast [out-of-precinct] ballots at twice the rate of white voters." 948 F.3d at 1014; see *id.*, at 1004–1005. This is precisely the sort of statistical manipulation that Judge Easterbrook rightly criticized, namely, 1.0 ÷ 0.5 = 2. Properly understood, the statistics show only a small disparity that provides little support for concluding that Arizona's political processes are not equally open.

The Court of Appeals' decision also failed to give appropriate weight to the state interests that the out-of-precinct rule serves. Not counting out-of-precinct votes induces compliance with the requirement that Arizonans who choose to vote in-person on election day do so at their assigned polling places. And as the District Court recognized, precinct-based voting furthers important state interests. It helps to distribute voters more evenly among polling places and thus reduces wait times. It can put polling places closer to voter residences than would a more centralized voting-center model. In addition, precinct-based voting helps to ensure that each voter receives a ballot that lists only the candidates and public questions on which he or she can vote, and this orderly administration tends to decrease voter confusion and increase voter confidence in elections. See 329 F.Supp.3d at 878. It is also significant that precinct-based voting has a long pedigree in the United States. See 948 F.3d at 1062–1063 (BYBEE, J., dissenting) (citing J. Harris, Election Administration in the United States 206–207 (1934)). And the policy of not counting out-of-precinct ballots is widespread. See 948 F.3d at 1072–1088 (collecting and categorizing state laws).

The Court of Appeals discounted the State's interests because, in its view, there was no evidence that a less restrictive alternative would threaten the integrity of precinct-based voting. The court thought the State had no good reason for not counting an out-of-precinct voter's choices with respect to the candidates and issues also on the ballot in the voter's proper precinct. See *id.*, at 1030–1031. We disagree with this reasoning.

Section 2 does not require a State to show that its chosen policy is absolutely ***2346** necessary or that a less restrictive means would not adequately serve the State's objectives. And the Court of Appeals' preferred alternative would have obvious disadvantages. Partially counting out-of-precinct ballots would complicate the process of tabulation and could lead to disputes and delay. In addition, as one of the en banc dissenters noted, it would tend to encourage voters who are primarily interested in only national or state-wide elections to vote in whichever place is most convenient even if they know that it is not their assigned polling place. See *id.*, at 1065–1066 (opinion of BYBEE, J.).

In light of the modest burdens allegedly imposed by Arizona's out-of-precinct policy, the small size of its disparate impact, and the State's justifications, we conclude the rule does not violate § 2 of the VRA.[18]

B

HB 2023 likewise passes muster under the results test of § 2. Arizonans who receive early ballots can submit them by going to a mailbox, a post office, an early ballot drop box, or an authorized election official's office within the 27-day early voting period. They can also drop off their ballots at any polling place or voting center on election day, and in order to do so, they can skip the line of voters waiting to vote in person. 329 F.Supp.3d at 839 (citing ECF Doc. 361,

¶57). Making any of these trips—much like traveling to an assigned polling place—falls squarely within the heartland of the "usual burdens of voting." *Crawford*, 553 U.S. at 198, 128 S.Ct. 1610 (opinion of STEVENS, J.). And voters can also ask a statutorily authorized proxy—a family member, a household member, or a caregiver—to mail a ballot or drop it off at any time within 27 days of an election.

Arizona also makes special provision for certain groups of voters who are unable to use the early voting system. Every county must establish a special election board to serve voters who are "confined as the result of a continuing illness or physical disability," are unable to go to the polls on election day, and do not wish to cast an early vote by mail. Ariz. Rev. Stat. Ann. § 16–549(C) (Cum. Supp. 2020). At the request of a voter in this group, the board will deliver a ballot in person and return it on the voter's behalf. §§ 16–549(C), (E). Arizona law also requires employers to give employees time off to vote when they are otherwise scheduled to work certain shifts on election day. § 16–402 (2015).

The plaintiffs were unable to provide statistical evidence showing that HB 2023 had a disparate impact on minority voters. Instead, they called witnesses who testified that third-party ballot collection tends to be used most heavily in disadvantaged communities and that minorities in Arizona —especially Native Americans—are disproportionately disadvantaged. 329 F.Supp.3d at 868, 870. But from that evidence ***2347** the District Court could conclude only that prior to HB 2023's enactment, "minorities generically were more likely than non-minorities to return their early ballots with the assistance of third parties." *Id.*, at 870. How much more, the court could not say from the record. *Ibid.* Neither can we. And without more concrete evidence, we cannot conclude that HB 2023 results in less opportunity to participate in the political process.[19]

Even if the plaintiffs had shown a disparate burden caused by HB 2023, the State's justifications would suffice to avoid § 2 liability. "A State indisputably has a compelling interest in preserving the integrity of its election process." *Purcell v. Gonzalez*, 549 U.S. 1, 4, 127 S.Ct. 5, 166 L.Ed.2d 1 (2006) (*per curiam*) (internal quotation marks omitted). Limiting the classes of persons who may handle early ballots to those less likely to have ulterior motives deters potential fraud and improves voter confidence. That was the view of the bipartisan Commission on Federal Election Reform chaired by former President Jimmy Carter and former Secretary of State James Baker. The Carter-Baker Commission noted that "[a]bsentee balloting is vulnerable to abuse in several ways: ... Citizens who vote at home, at nursing homes, at the workplace, or in church are more susceptible to pressure, overt and subtle, or to intimidation." Report of the Comm'n on Fed. Election Reform, Building Confidence in U.S. Elections 46 (Sept. 2005).

The Commission warned that "[v]ote buying schemes are far more difficult to detect when citizens vote by mail," and it recommended that "States therefore should reduce the risks of fraud and abuse in absentee voting by prohibiting 'third-party' organizations, candidates, and political party activists from handling absentee ballots." *Ibid.* The Commission ultimately recommended that States limit the classes of persons who may handle absentee ballots to "the voter, an acknowledged family member, the U.S. Postal Service or other legitimate shipper, or election officials." *Id.*, at 47. HB 2023 is even more permissive in that it also authorizes ballot-handling by a voter's household member and ***2348** caregiver. See Ariz. Rev. Stat. Ann. § 16–1005(I)(2). Restrictions on ballot collection are also common in other States. See 948 F.3d at 1068–1069, 1088–1143 (BYBEE, J., dissenting) (collecting state provisions).

The Court of Appeals thought that the State's justifications for HB 2023 were tenuous in large part because there was no evidence that fraud in connection with early ballots had occurred in Arizona. See *id.*, at 1045–1046. But prevention of fraud is not the only legitimate interest served by restrictions on ballot collection. As the Carter-Baker Commission recognized, third-party ballot collection can lead to pressure and intimidation. And it should go without saying that a State may take action to prevent election fraud without waiting for it to occur and be detected within its own borders. Section 2's command that the political processes remain equally open surely does not demand that "a State's political system sustain some level of damage before the legislature [can] take corrective action." *Munro v. Socialist Workers Party*, 479 U.S. 189, 195, 107 S.Ct. 533, 93 L.Ed.2d 499 (1986). Fraud is a real risk that accompanies mail-in voting even if Arizona had the good fortune to avoid it. Election fraud has had serious consequences in other States. For example, the North Carolina Board of Elections invalidated the results of a 2018 race for a seat in the House of Representatives for evidence of fraudulent mail-in ballots.[20] The Arizona Legislature was not obligated to wait for something similar to happen closer to home.[21]

As with the out-of-precinct policy, the modest evidence of racially disparate burdens caused by HB 2023, in light of the State's justifications, leads us to the conclusion that the law does not violate § 2 of the VRA.

V

We also granted certiorari to review whether the Court of Appeals erred in concluding that HB 2023 was enacted with a discriminatory purpose. The District Court found that it was not, 329 F.Supp.3d at 882, and appellate review of that conclusion is for clear error, ***2349** *Pullman-Standard v. Swint*, 456 U.S. 273, 287–288, 102 S.Ct. 1781, 72 L.Ed.2d 66 (1982). If the district court's view of the evidence is plausible in light of the entire record, an appellate court may not reverse even if it is convinced that it would have weighed the evidence differently in the first instance. *Anderson v. Bessemer City*, 470 U.S. 564, 573–574, 105 S.Ct. 1504, 84 L.Ed.2d 518 (1985). "Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *Id.*, at 574, 105 S.Ct. 1504.

The District Court's finding on the question of discriminatory intent had ample support in the record. Applying the familiar approach outlined in *Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266–268, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977), the District Court considered the historical background and the sequence of events leading to HB 2023's enactment; it looked for any departures from the normal legislative process; it considered relevant legislative history; and it weighed the law's impact on different racial groups. See 329 F.Supp.3d at 879.

The court noted, among other things, that HB 2023's enactment followed increased use of ballot collection as a Democratic get-out-the-vote strategy and came "on the heels of several prior efforts to restrict ballot collection, some of which were spearheaded by former Arizona State Senator Don Shooter." *Id.*, at 879. Shooter's own election in 2010 had been close and racially polarized. Aiming in part to frustrate the Democratic Party's get-out-the-vote strategy, Shooter made what the court termed "unfounded and often far-fetched allegations of ballot collection fraud." *Id.*, at 880. But what came after the airing of Shooter's claims and a "racially-tinged" video created by a private party was a serious legislative debate on the wisdom of early mail-in voting. *Ibid.*[22]

That debate, the District Court concluded, was sincere and led to the passage of HB 2023 in 2016. Proponents of the bill repeatedly argued that mail-in ballots are more susceptible to fraud than in-person voting. *Ibid.* The bill found support from a few minority officials and organizations, one of which expressed concern that ballot collectors were taking advantage of elderly Latino voters. *Ibid.* And while some opponents of the bill accused Republican legislators of harboring racially discriminatory motives, that view was not uniform. See *ibid.* One Democratic state senator pithily described the " 'problem' " HB 2023 aimed to " 'solv[e]' " as the fact that " 'one party is better at collecting ballots than the other one.' " *Id.*, at 882 (quoting Tr. Exh. 25, at 35).

We are more than satisfied that the District Court's interpretation of the evidence is permissible. The spark for the debate over mail-in voting may well have been provided by one Senator's enflamed partisanship, but partisan motives are not the same as racial motives. See *Cooper v. Harris*, 581 U.S. ——, —— – ——, 137 S.Ct. 1455, 1473–1474, 197 L.Ed.2d 837 (2017). The District Court noted that the voting preferences of members of a racial group may make the former look like the latter, but it carefully distinguished between the two. See 329 F.Supp.3d at 879, 882. And while the District Court recognized that the "racially-tinged" video ***2350** helped spur the debate about ballot collection, it found no evidence that the legislature as a whole was imbued with racial motives. *Id.*, at 879–880.

The Court of Appeals did not dispute the District Court's assessment of the sincerity of HB 2023's proponents. It even agreed that some members of the legislature had a "sincere, though mistaken, non-race-based belief that there had been fraud in third-party ballot collection, and that the problem needed to be addressed." 948 F.3d at 1040. The Court of Appeals nevertheless concluded that the District Court committed clear error by failing to apply a " 'cat's paw' " theory sometimes used in employment discrimination cases. *Id.*, at 1040–1041. A "cat's paw" is a "dupe" who is "used by another to accomplish his purposes." Webster's New International Dictionary 425 (2d ed. 1934). A plaintiff in a "cat's paw" case typically seeks to hold the plaintiff 's employer liable for "the animus of a supervisor who was not charged with making the ultimate [adverse] employment decision." *Staub v. Proctor Hospital*, 562 U.S. 411, 415, 131 S.Ct. 1186, 179 L.Ed.2d 144 (2011).

The "cat's paw" theory has no application to legislative bodies. The theory rests on the agency relationship that exists

between an employer and a supervisor, but the legislators who vote to adopt a bill are not the agents of the bill's sponsor or proponents. Under our form of government, legislators have a duty to exercise their judgment and to represent their constituents. It is insulting to suggest that they are mere dupes or tools.

* * *

Arizona's out-of-precinct policy and HB 2023 do not violate § 2 of the VRA, and HB 2023 was not enacted with a racially discriminatory purpose. The judgment of the Court of Appeals is reversed, and the cases are remanded for further proceedings consistent with this opinion.

It is so ordered.

Justice GORSUCH, with whom Justice THOMAS joins, concurring.

I join the Court's opinion in full, but flag one thing it does not decide. Our cases have assumed—without deciding—that the Voting Rights Act of 1965 furnishes an implied cause of action under § 2. See *Mobile v. Bolden*, 446 U.S. 55, 60, and n. 8, 100 S.Ct. 1490, 64 L.Ed.2d 47 (1980) (plurality opinion). Lower courts have treated this as an open question. *E.g., Washington v. Finlay*, 664 F.2d 913, 926 (C.A.4 1981). Because no party argues that the plaintiffs lack a cause of action here, and because the existence (or not) of a cause of action does not go to a court's subject-matter jurisdiction, see *Reyes Mata v. Lynch*, 576 U.S. 143, 150, 135 S.Ct. 2150, 192 L.Ed.2d 225 (2015), this Court need not and does not address that issue today.

Justice KAGAN, with whom Justice BREYER and Justice SOTOMAYOR join, dissenting.

If a single statute represents the best of America, it is the Voting Rights Act. It marries two great ideals: democracy and racial equality. And it dedicates our country to carrying them out. Section 2, the provision at issue here, guarantees that members of every racial group will have equal voting opportunities. Citizens of every race will have the same shot to participate in the political process and to elect representatives of their choice. They will all own our democracy together—no one more and no one less than any other.

If a single statute reminds us of the worst of America, it is the Voting Rights Act. Because it was—and remains—so necessary. Because a century after the Civil War was fought, at the time of the Act's ***2351** passage, the promise of political equality remained a distant dream for African American citizens. Because States and localities continually "contriv[ed] new rules," mostly neutral on their face but discriminatory in operation, to keep minority voters from the polls. *South Carolina v. Katzenbach*, 383 U.S. 301, 335, 86 S.Ct. 803, 15 L.Ed.2d 769 (1966). Because "Congress had reason to suppose" that States would "try similar maneuvers in the future"—"pour[ing] old poison into new bottles" to suppress minority votes. *Ibid.*; *Reno v. Bossier Parish School Bd.*, 528 U.S. 320, 366, 120 S.Ct. 866, 145 L.Ed.2d 845 (2000) (SOUTER, J., concurring in part and dissenting in part). Because Congress has been proved right.

The Voting Rights Act is ambitious, in both goal and scope. When President Lyndon Johnson sent the bill to Congress, ten days after John Lewis led marchers across the Edmund Pettus Bridge, he explained that it was "carefully drafted to meet its objective—the end of discrimination in voting in America." H.R. Doc. No. 120, 89th Cong., 1st Sess., 1–2 (1965). He was right about how the Act's drafting reflected its aim. "The end of discrimination in voting" is a far-reaching goal. And the Voting Rights Act's text is just as far-reaching. A later amendment, adding the provision at issue here, became necessary when this Court construed the statute too narrowly. And in the last decade, this Court assailed the Act again, undoing its vital Section 5. See *Shelby County v. Holder*, 570 U.S. 529, 133 S.Ct. 2612, 186 L.Ed.2d 651 (2013). But Section 2 of the Act remains, as written, as expansive as ever—demanding that every citizen of this country possess a right at once grand and obvious: the right to an equal opportunity to vote.

Today, the Court undermines Section 2 and the right it provides. The majority fears that the statute Congress wrote is too "radical"—that it will invalidate too many state voting laws. See *ante*, at 2341, 2343. So the majority writes its own set of rules, limiting Section 2 from multiple directions. See *ante*, at 2338 – 2340. Wherever it can, the majority gives a cramped reading to broad language. And then it uses that reading to uphold two election laws from Arizona that discriminate against minority voters. I could say—and will in the following pages—that this is not how the Court is supposed to interpret and apply statutes. But that ordinary critique woefully undersells the problem. What is tragic here is that the Court has (yet again) rewritten—in order to weaken

—a statute that stands as a monument to America's greatness, and protects against its basest impulses. What is tragic is that the Court has damaged a statute designed to bring about "the end of discrimination in voting." I respectfully dissent.

I

The Voting Rights Act of 1965 is an extraordinary law. Rarely has a statute required so much sacrifice to ensure its passage. Never has a statute done more to advance the Nation's highest ideals. And few laws are more vital in the current moment. Yet in the last decade, this Court has treated no statute worse. To take the measure of today's harm, a look to the Act's past must come first. The idea is not to recount, as the majority hurriedly does, some bygone era of voting discrimination. See *ante*, at 2330 – 2331. It is instead to describe the electoral practices that the Act targets—and to show the high stakes of the present controversy.

A

Democratic ideals in America got off to a glorious start; democratic practice not so much. The Declaration of Independence made an awe-inspiring promise: to institute ***2352** a government "deriving [its] just powers from the consent of the governed." But for most of the Nation's first century, that pledge ran to white men only. The earliest state election laws excluded from the franchise African Americans, Native Americans, women, and those without property. See A. Keyssar, The Right To Vote: The Contested History of Democracy in the United States 8–21, 54–60 (2000). In 1855, on the precipice of the Civil War, only five States permitted African Americans to vote. *Id.*, at 55. And at the federal level, our Court's most deplorable holding made sure that no black people could enter the voting booth. See *Dred Scott v. Sandford*, 19 How. 393, 15 L.Ed. 691 (1857).

But the "American ideal of political equality ... could not forever tolerate the limitation of the right to vote" to whites only. *Mobile v. Bolden*, 446 U.S. 55, 103–104, 100 S.Ct. 1490, 64 L.Ed.2d 47 (1980) (MARSHALL, J., dissenting). And a civil war, dedicated to ensuring "government of the people, by the people, for the people," brought constitutional change. In 1870, after a hard-fought battle over ratification, the Fifteenth Amendment carried the Nation closer to its founding aspirations. "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." Those words promised to enfranchise millions of black citizens who only a decade earlier had been slaves. Frederick Douglass held that the Amendment "means that we are placed upon an equal footing with all other men"—that with the vote, "liberty is to be the right of all." 4 The Frederick Douglass Papers 270–271 (J. Blassingame & J. McKivigan eds. 1991). President Grant had seen much blood spilled in the Civil War; now he spoke of the fruits of that sacrifice. In a self-described "unusual" message to Congress, he heralded the Fifteenth Amendment as "a measure of grander importance than any other one act of the kind from the foundation of our free Government"—as "the most important event that has occurred since the nation came into life." Ulysses S. Grant, Message to the Senate and House of Representatives (Mar. 30, 1870), in 7 Compilation of the Messages and Papers of the Presidents 1789–1897, pp. 55–56 (J. Richardson ed. 1898).

Momentous as the Fifteenth Amendment was, celebration of its achievements soon proved premature. The Amendment's guarantees "quickly became dead letters in much of the country." Foner, The Strange Career of the Reconstruction Amendments, 108 Yale L. J. 2003, 2007 (1999). African Americans daring to go to the polls often "met with coordinated intimidation and violence." *Northwest Austin Municipal Util. Dist. No. One v. Holder*, 557 U.S. 193, 218–219, 129 S.Ct. 2504, 174 L.Ed.2d 140 (2009) (THOMAS, J., concurring in judgment in part and dissenting in part). And almost immediately, legislators discovered that bloodless actions could also suffice to limit the electorate to white citizens. Many States, especially in the South, suppressed the black vote through a dizzying array of methods: literacy tests, poll taxes, registration requirements, and property qualifications. See *Katzenbach*, 383 U.S. at 310–312, 86 S.Ct. 803. Most of those laws, though facially neutral, gave enough discretion to election officials to prevent significant effects on poor or uneducated whites. The idea, as one Virginia representative put it, was "to disfranchise every negro that [he] could disfranchise," and "as few white people as possible." Keyssar 113. Decade after decade after decade, election rules blocked African Americans—and in some States, Hispanics and Native Americans too—from making use of the ballot. See ***2353** *Oregon v. Mitchell*, 400 U.S. 112, 132, 91 S.Ct. 260, 27 L.Ed.2d 272 (1970) (opinion of BLACK, J.) (discussing treatment of non-black groups). By 1965, only 27% of black Georgians, 19% of black Alabamians, and 7%—yes, 7%—of black Mississippians

were registered to vote. See C. Bullock, R. Gaddie, & J. Wert, The Rise and Fall of the Voting Rights Act 23 (2016).

The civil rights movement, and the events of a single Bloody Sunday, created pressure for change. Selma was the heart of an Alabama county whose 15,000 black citizens included, in 1961, only 156 on the voting rolls. See D. Garrow, Protest at Selma 31 (1978). In the first days of 1965, the city became the epicenter of demonstrations meant to force Southern election officials to register African American voters. As weeks went by without results, organizers announced a march from Selma to Montgomery. On March 7, some 600 protesters, led by future Congressman John Lewis, sought to cross the Edmund Pettus Bridge. State troopers in riot gear responded brutally: "Turning their nightsticks horizontally, they rushed into the crowd, knocking people over like bowling pins." G. May, Bending Toward Justice 87 (2013). Then came men on horseback, "swinging their clubs and ropes like cowboys driving cattle to market." *Ibid*. The protestors were beaten, knocked unconscious, and bloodied. Lewis's skull was fractured. "I thought I was going to die on this bridge," he later recalled. Rojas, Selma Helped Define John Lewis's Life, N. Y. Times, July 28, 2020.

A galvanized country responded. Ten days after the Selma march, President Johnson wrote to Congress proposing legislation to "help rid the Nation of racial discrimination in every aspect of the electoral process and thereby insure the right of all to vote." H.R. Doc. No. 120, at 1. (To his attorney general, Johnson was still more emphatic: "I want you to write the goddamnedest toughest voting rights act that you can devise." H. Raines, My Soul Is Rested 337 (1983).) And in August 1965, after the bill's supporters overcame a Senate filibuster, Johnson signed the Voting Rights Act into law. Echoing Grant's description of the Fifteenth Amendment, Johnson called the statute "one of the most monumental laws in the entire history of American freedom." Public Papers of the Presidents, Lyndon B. Johnson, Vol. 2, Aug. 6, 1965, p. 841 (1966) (Johnson Papers).

"After a century's failure to fulfill the promise" of the Fifteenth Amendment, "passage of the VRA finally led to signal improvement." *Shelby County*, 570 U.S. at 562, 133 S.Ct. 2612 (GINSBURG, J., dissenting). In the five years after the statute's passage, almost as many African Americans registered to vote in six Southern States as in the entire century before 1965. See Davidson, The Voting Rights Act: A Brief History, in Controversies in Minority Voting 21 (B. Grofman & C. Davidson eds. 1992). The crudest attempts to block voting access, like literacy tests and poll taxes, disappeared. Legislatures often replaced those vote denial schemes with new measures—mostly to do with districting—designed to dilute the impact of minority votes. But the Voting Rights Act, operating for decades at full strength, stopped many of those measures too. See, *e.g.*, *Chisom v. Roemer*, 501 U.S. 380, 111 S.Ct. 2354, 115 L.Ed.2d 348 (1991); *Allen v. State Bd. of Elections*, 393 U.S. 544, 89 S.Ct. 817, 22 L.Ed.2d 1 (1969). As a famed dissent assessed the situation about a half-century after the statute's enactment: The Voting Rights Act had become "one of the most consequential, efficacious, and amply justified exercises of federal legislative power in our Nation's history." *Shelby County*, 570 U.S. at 562, 133 S.Ct. 2612 ***2354** (GINSBURG, J., dissenting).[1]

B

Yet efforts to suppress the minority vote continue. No one would know this from reading the majority opinion. It hails the "good news" that legislative efforts had mostly shifted by the 1980s from vote denial to vote dilution. *Ante*, at 2333. And then it moves on to other matters, as though the Voting Rights Act no longer has a problem to address—as though once literacy tests and poll taxes disappeared, so too did efforts to curb minority voting. But as this Court recognized about a decade ago, "racial discrimination and racially polarized voting are not ancient history." *Bartlett v. Strickland*, 556 U.S. 1, 25, 129 S.Ct. 1231, 173 L.Ed.2d 173 (2009). Indeed, the problem of voting discrimination has become worse since that time—in part because of what this Court did in *Shelby County*. Weaken the Voting Rights Act, and predictable consequences follow: yet a further generation of voter suppression laws.

Much of the Voting Rights Act's success lay in its capacity to meet ever-new forms of discrimination. Experience showed that "[w]henever one form of voting discrimination was identified and prohibited, others sprang up in its place." *Shelby County*, 570 U.S. at 560, 133 S.Ct. 2612 (GINSBURG, J., dissenting). Combating those efforts was like "battling the Hydra"—or to use a less cultured reference, like playing a game of whack-a-mole. *Ibid*. So Congress, in Section 5 of the Act, gave the Department of Justice authority to review all new rules devised by jurisdictions with a history of voter suppression—and to block any that would have discriminatory effects. See 52 U.S.C. §§ 10304(a)–(b). In that way, the Act would prevent the use of new, more nuanced methods to restrict the voting opportunities of non-white citizens.

And for decades, Section 5 operated as intended. Between 1965 and 2006, the Department stopped almost 1200 voting laws in covered areas from taking effect. See *Shelby County*, 570 U.S. at 571, 133 S.Ct. 2612 (GINSBURG, J., dissenting). Some of those laws used districting to dilute minority voting strength—making sure that the votes of minority citizens would carry less weight than the votes of whites in electing candidates. Other laws, even if facially neutral, disproportionately curbed the ability of non-white citizens to cast a ballot at all. So, for example, a jurisdiction might require forms of identification that those voters were less likely to have; or it might limit voting places and times convenient for those voters; or it might purge its voter rolls through mechanisms especially likely to ensnare them. See *id*., at 574–575, 133 S.Ct. 2612. In reviewing mountains of such evidence in 2006, Congress saw a continuing need for Section 5. Although "discrimination today is more subtle than the visible methods used in 1965," Congress found, it still produces "the same [effects], namely a diminishing of the minority community's ability to fully participate in the electoral process." H.R. Rep. No. 109–478, p. 6 (2006). Congress thus reauthorized the preclearance scheme for 25 years.

But this Court took a different view. Finding that "[o]ur country has changed," the Court saw only limited instances of voting discrimination—and so no further need for preclearance. ***2355** *Shelby County*, 570 U.S. at 547–549, 557, 133 S.Ct. 2612. Displacing Congress's contrary judgment, the Court struck down the coverage formula essential to the statute's operation. The legal analysis offered was perplexing: The Court based its decision on a "principle of equal [state] sovereignty" that a prior decision of ours had rejected—and that has not made an appearance since. *Id*., at 544, 133 S.Ct. 2612 (majority opinion); see *id*., at 587–588, 133 S.Ct. 2612 (GINSBURG, J., dissenting). Worse yet was the Court's blithe confidence in assessing what was needed and what was not. "[T]hings have changed dramatically," the Court reiterated, *id*., at 547, 133 S.Ct. 2612: The statute that was once a necessity had become an imposition. But how did the majority know there was nothing more for Section 5 to do—that the (undoubted) changes in the country went so far as to make the provision unnecessary? It didn't, as Justice Ginsburg explained in dissent. The majority's faith that discrimination was almost gone derived, at least in part, from the success of Section 5—from its record of blocking discriminatory voting schemes. Discarding Section 5 because those schemes had diminished was "like throwing away your umbrella in a rainstorm because you are not getting wet." *Id*., at 590, 133 S.Ct. 2612.

The rashness of the act soon became evident. Once Section 5's strictures came off, States and localities put in place new restrictive voting laws, with foreseeably adverse effects on minority voters. On the very day *Shelby County* issued, Texas announced that it would implement a strict voter-identification requirement that had failed to clear Section 5. See Elmendorf & Spencer, Administering Section 2 of the Voting Rights Act After *Shelby County*, 115 Colum. L. Rev. 2143, 2145–2146 (2015). Other States—Alabama, Virginia, Mississippi—fell like dominoes, adopting measures similarly vulnerable to preclearance review. See *ibid*. The North Carolina Legislature, starting work the day after *Shelby County*, enacted a sweeping election bill eliminating same-day registration, forbidding out-of-precinct voting, and reducing early voting, including souls-to-the-polls Sundays. (That law went too far even without Section 5: A court struck it down because the State's legislators had a racially discriminatory purpose. *North Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204 (C.A.4 2016).) States and localities redistricted—drawing new boundary lines or replacing neighborhood-based seats with at-large seats—in ways guaranteed to reduce minority representation. See Elmendorf, 115 Colum. L. Rev., at 2146. And jurisdictions closed polling places in mostly minority areas, enhancing an already pronounced problem. See Brief for Leadership Conference on Civil and Human Rights et al. as *Amici Curiae* 14–15 (listing closure schemes); Pettigrew, The Racial Gap in Wait Times, 132 Pol. Sci. Q. 527, 527 (2017) (finding that lines in minority precincts are twice as long as in white ones, and that a minority voter is six times more likely to wait more than an hour).[2]

***2356** And that was just the first wave of post-*Shelby County* laws. In recent months, State after State has taken up or enacted legislation erecting new barriers to voting. See Brennan Center for Justice, Voting Laws Roundup: May 2021 (online source archived at www.supremecourt.gov) (compiling legislation). Those laws shorten the time polls are open, both on Election Day and before. They impose new prerequisites to voting by mail, and shorten the windows to apply for and return mail ballots. They make it harder to register to vote, and easier to purge voters from the rolls. Two laws even ban handing out food or water to voters standing in line. Some of those restrictions may be lawful under the Voting Rights Act. But chances are that some have the kind of

impact the Act was designed to prevent—that they make the political process less open to minority voters than to others.

So the Court decides this Voting Rights Act case at a perilous moment for the Nation's commitment to equal citizenship. It decides this case in an era of voting-rights retrenchment—when too many States and localities are restricting access to voting in ways that will predictably deprive members of minority groups of equal access to the ballot box. If "any racial discrimination in voting is too much," as the *Shelby County* Court recited, then the Act still has much to do. 570 U.S. at 557, 133 S.Ct. 2612. Or more precisely, the fraction of the Act remaining—the Act as diminished by the Court's hand. Congress never meant for Section 2 to bear all of the weight of the Act's commitments. That provision looks to courts, not to the Executive Branch, to restrain discriminatory voting practices. And litigation is an after-the-fact remedy, incapable of providing relief until an election—usually, more than one election—has come and gone. See *id*., at 572, 133 S.Ct. 2612 (GINSBURG, J., dissenting). So Section 2 was supposed to be a back-up, for all its sweep and power. But after *Shelby County*, the vitality of Section 2—a "permanent, nationwide ban on racial discrimination in voting"—matters more than ever. *Id*., at 557, 133 S.Ct. 2612 (majority opinion). For after *Shelby County*, Section 2 is what voters have left.

II

Section 2, as drafted, is well-equipped to meet the challenge. Congress meant to eliminate all "discriminatory election systems or practices which operate, designedly or otherwise, to minimize or cancel out the voting strength and political effectiveness of minority groups." S. Rep. No. 97–417, p. 28 (1982) (S. Rep.). And that broad intent is manifest in the provision's broad text. As always, this Court's task is to read that language as Congress wrote it—to give the section all the scope and potency Congress drafted it to have. So I start by showing how Section 2's text requires courts to eradicate voting practices that make it harder for members of some races than of others to cast a vote, unless such a practice is necessary to support a strong state interest. I then show how far from that text the majority strays. Its analysis permits exactly the kind of vote suppression that Section 2, by its terms, rules out of bounds.

A

Section 2, as relevant here, has two interlocking parts. Subsection (a) states the law's basic prohibition:

> "No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." 52 U.S.C. § 10301(a).

***2357** Subsection (b) then tells courts how to apply that bar—or otherwise said, when to find that an infringement of the voting right has occurred:

> "A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of [a given race] in that [those] members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." § 10301(b).[3]

Those provisions have a great many words, and I address them further below. But their essential import is plain: Courts are to strike down voting rules that contribute to a racial disparity in the opportunity to vote, taking all the relevant circumstances into account.

The first thing to note about Section 2 is how far its prohibitory language sweeps. The provision bars any "voting qualification," any "prerequisite to voting," or any "standard, practice, or procedure" that "results in a denial or abridgement of the right" to "vote on account of race." The overlapping list of covered state actions makes clear that Section 2 extends to every kind of voting or election rule. Congress carved out nothing pertaining to "voter qualifications or the manner in which elections are conducted." *Holder v. Hall*, 512 U.S. 874, 922, 114 S.Ct. 2581, 129 L.Ed.2d 687 (1994) (THOMAS, J., concurring in judgment). So, for example, the provision "covers all manner of registration requirements, the practices surrounding registration," the "locations of polling places, the times polls are open, the use of paper ballots as opposed to voting machines, and other similar aspects of the voting process that might be manipulated to deny any citizen the right to cast a ballot and have it properly counted." *Ibid*. All those rules and more come within the statute—so long as they result in a race-based "denial or abridgement" of the voting right. And the "denial or abridgement" phrase speaks broadly too. "[A]bridgment necessarily means something more subtle

and less drastic than the complete denial of the right to cast a ballot, denial being separately forbidden." *Bossier*, 528 U.S. at 359, 120 S.Ct. 866 (SOUTER, J., concurring in part and dissenting in part). It means to "curtail," rather than take away, the voting right. American Heritage Dictionary 4 (1969).

The "results in" language, connecting the covered voting rules to the prohibited voting abridgement, tells courts that they are to focus on the law's effects. Rather than hinge liability on state officials' motives, Congress made it ride on their actions' consequences. That decision was as considered as considered comes. This Court, as the majority notes, had construed the original Section 2 to apply to facially neutral voting practices "only if [they were] motivated by a discriminatory purpose." *Bolden*, 446 U.S., at 62, 100 S.Ct. 1490; see *ante*, at 2332. Congress enacted the current Section 2 to reverse that outcome—to make clear that "results" alone could lead to liability. An intent test, the Senate Report explained, "asks the wrong question." S. Rep., at 36. If minority citizens "are denied a fair opportunity to participate," then "the system should be changed, regardless of " what "motives were in an official's mind." *Ibid*. Congress also saw an intent test as imposing "an ***2358** inordinately difficult burden for plaintiffs." *Ibid*. Even if state actors had purposefully discriminated, they would likely be "ab[le] to offer a non-racial rationalization," supported by "a false trail" of "official resolutions" and "other legislative history eschewing any racial motive." *Id*., at 37. So only a results-focused statute could prevent States from finding ways to abridge minority citizens' voting rights.

But when to conclude—looking to effects, not purposes—that a denial or abridgment has occurred? Again, answering that question is subsection (b)'s function. See *supra*, at 2356 – 2357. It teaches that a violation is established when, "based on the totality of circumstances," a State's electoral system is "not equally open" to members of a racial group. And then the subsection tells us what that means. A system is not equally open if members of one race have "less opportunity" than others to cast votes, to participate in politics, or to elect representatives. The key demand, then, is for equal political opportunity across races.

That equal "opportunity" is absent when a law or practice makes it harder for members of one racial group, than for others, to cast ballots. When Congress amended Section 2, the word "opportunity" meant what it also does today: "a favorable or advantageous combination of circumstances" for some action. See American Heritage Dictionary, at 922. In using that word, Congress made clear that the Voting Rights Act does not demand equal outcomes. If members of different races have the same opportunity to vote, but go to the ballot box at different rates, then so be it—that is their preference, and Section 2 has nothing to say. But if a law produces different voting opportunities across races—if it establishes rules and conditions of political participation that are less favorable (or advantageous) for one racial group than for others—then Section 2 kicks in. It applies, in short, whenever the law makes it harder for citizens of one race than of others to cast a vote.[4]

And that is so even if (as is usually true) the law does not single out any race, but instead is facially neutral. Suppose, as Justice Scalia once did, that a county has a law limiting "voter registration [to] only three hours one day a week." *Chisom*, 501 U.S. at 408, 111 S.Ct. 2354 (dissenting opinion). And suppose that policy makes it "more difficult for blacks to register than whites"—say, because the jobs African Americans disproportionately hold make it harder to take time off in that window. *Ibid*. Those citizens, Justice Scalia concluded, would then "have less opportunity 'to participate in the political process' than whites, and § 2 would therefore be violated." *Ibid*. (emphasis deleted). In enacting Section 2, Congress documented many similar (if less extreme) facially neutral rules—"registration requirements," "voting and registration hours," voter "purging" policies, and so forth —that create disparities in voting opportunities. S. Rep., at ***2359** 10, n. 22; H.R. Rep. No. 97–227, pp. 11–17 (1981) (H.R. Rep.). Those laws, Congress thought, would violate Section 2, though they were not facially discriminatory, because they gave voters of different races unequal access to the political process.

Congress also made plain, in calling for a totality-of-circumstances inquiry, that equal voting opportunity is a function of both law and background conditions—in other words, that a voting rule's validity depends on how the rule operates in conjunction with facts on the ground. "[T]otality review," this Court has explained, stems from Congress's recognition of "the demonstrated ingenuity of state and local governments in hobbling minority voting power." *Johnson v. De Grandy*, 512 U.S. 997, 1018, 114 S.Ct. 2647, 129 L.Ed.2d 775 (1994). Sometimes, of course, state actions overtly target a single race: For example, Congress was acutely aware, in amending Section 2, of the elimination of polling places in African American neighborhoods. See S. Rep., at 10, 11, and n. 22; H.R. Rep., at 17, 35. But sometimes government officials enact facially neutral laws

that leverage—and become discriminatory by dint of—pre-existing social and economic conditions. The classic historical cases are literacy tests and poll taxes. A more modern example is the one Justice Scalia gave, of limited registration hours. Congress knew how those laws worked: It saw that "inferior education, poor employment opportunities, and low incomes"—all conditions often correlated with race—could turn even an ordinary-seeming election rule into an effective barrier to minority voting in certain circumstances. *Thornburg v. Gingles*, 478 U.S. 30, 69, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986) (plurality opinion). So Congress demanded, as this Court has recognized, "an intensely local appraisal" of a rule's impact—"a searching practical evaluation of the 'past and present reality.' " *Id.*, at 79, 106 S.Ct. 2752; *De Grandy*, 512 U.S. at 1018, 114 S.Ct. 2647 (quoting S. Rep., at 30). "The essence of a § 2 claim," we have said, is that an election law "interacts with social and historical conditions" in a particular place to cause race-based inequality in voting opportunity. *Gingles*, 478 U.S. at 47, 106 S.Ct. 2752 (majority opinion). That interaction is what the totality inquiry is mostly designed to discover.

At the same time, the totality inquiry enables courts to take into account strong state interests supporting an election rule. An all-things-considered inquiry, we have explained, is by its nature flexible. See *De Grandy*, 512 U.S. at 1018, 114 S.Ct. 2647. On the one hand, it allows no "safe harbor[s]" for election rules resulting in discrimination. *Ibid.* On the other hand, it precludes automatic condemnation of those rules. Among the "balance of considerations" a court is to weigh is a State's need for the challenged policy. *Houston Lawyers' Assn. v. Attorney General of Tex.*, 501 U.S. 419, 427, 111 S.Ct. 2376, 115 L.Ed.2d 379 (1991). But in making that assessment of state interests, a court must keep in mind—just as Congress did—the ease of "offer[ing] a non-racial rationalization" for even blatantly discriminatory laws. S. Rep., at 37; see *supra*, at 2357 – 2358. State interests do not get accepted on faith. And even a genuine and strong interest will not suffice if a plaintiff can prove that it can be accomplished in a less discriminatory way. As we have put the point before: When a less racially biased law would not "significantly impair[ ] the State's interest," the discriminatory election rule must fall. *Houston Lawyers' Assn.*, 501 U.S. at 428, 111 S.Ct. 2376.[5]

***2360** So the text of Section 2, as applied in our precedents, tells us the following, every part of which speaks to the ambition of Congress's action. Section 2 applies to any voting rule, of any kind. The provision prohibits not just the denial but also the abridgment of a citizen's voting rights on account of race. The inquiry is focused on effects: It asks not about why state officials enacted a rule, but about whether that rule results in racial discrimination. The discrimination that is of concern is inequality of voting opportunity. That kind of discrimination can arise from facially neutral (not just targeted) rules. There is a Section 2 problem when an election rule, operating against the backdrop of historical, social, and economic conditions, makes it harder for minority citizens than for others to cast ballots. And strong state interests may save an otherwise discriminatory rule, but only if that rule is needed to achieve them—that is, only if a less discriminatory rule will not attain the State's goal.

That is a lot of law to apply in a Section 2 case. Real law—the kind created by Congress. (A strange thing, to hear about it all only in a dissent.)[6] None of this law threatens to "take down," as the majority ***2361** charges, the mass of state and local election rules. *Ante*, at 2343. Here is the flipside of what I have said above, now from the plaintiff's perspective: Section 2 demands proof of a statistically significant racial disparity in electoral opportunities (not outcomes) resulting from a law not needed to achieve a government's legitimate goals. That showing is hardly insubstantial; and as a result, Section 2 vote denial suits do not often succeed (even with lower courts applying the law as written, not the majority's new, concocted version). See Brief for State and Local Election Officials as *Amici Curiae* 15 (finding only nine winning cases since *Shelby County*, each involving "an intensely local appraisal" of a "controversial polic[y] in specific places"). But Section 2 was indeed meant to do something important—crucial to the operation of our democracy. The provision tells courts—however "radical" the majority might find the idea, *ante*, at 2343—to eliminate facially neutral (as well as targeted) electoral rules that unnecessarily create inequalities of access to the political process. That is the very project of the statute, as conceived and as written—and now as damaged by this Court.

B

The majority's opinion mostly inhabits a law-free zone. It congratulates itself in advance for giving Section 2's text "careful consideration." *Ante*, at 2338. And then it leaves that language almost wholly behind. See *ante*, at 2338 – 2341. (Every once in a while, when its lawmaking threatens to leap off the page, it thinks to sprinkle in a few random statutory words.) So too the majority barely mentions this Court's precedents construing Section 2's text. On both those counts,

you can see why. As just described, Section 2's language is broad. See *supra*, at 2356 – 2361. To read it fairly, then, is to read it broadly. And to read it broadly is to do much that the majority is determined to avoid. So the majority ignores the sweep of Section 2's prohibitory language. It fails to note Section 2's application to every conceivable kind of voting rule. It neglects to address the provision's concern with how those rules may "abridge[ ]," not just deny, minority citizens' voting rights. It declines to consider Congress's use of an effects test, rather than a purpose test, to assess the rules' legality. Nor does the majority acknowledge the force of Section 2's implementing provision. The majority says as little as possible about what it means for voting to be "equally open," or for voters to have an equal "opportunity" to cast a ballot. See *ante*, at 2337 – 2338. It only grudgingly accepts —and then apparently forgets—that the provision applies to facially neutral laws with discriminatory consequences. Compare *ante*, at 2341 – 2342, with *ante*, at 2343. And it hints that as long as a voting system is sufficiently "open," it need not be equally so. See *ante*, at 2338, 2339. In sum, the majority skates over the strong words Congress drafted to accomplish its equally strong purpose: ensuring that minority citizens can access the electoral system as easily as whites.[7]

***2362** The majority instead founds its decision on a list of mostly made-up factors, at odds with Section 2 itself. To excuse this unusual free-form exercise, the majority notes that Section 2 authorizes courts to conduct a "totality of circumstances" analysis. *Ante*, at 2336. But as described above, Congress mainly added that language so that Section 2 could protect against "the demonstrated ingenuity of state and local governments in hobbling minority voting power." *De Grandy*, 512 U.S. at 1018, 114 S.Ct. 2647; see *supra*, at 2358 – 2359. The totality inquiry requires courts to explore how ordinary-seeming laws can interact with local conditions —economic, social, historical—to produce race-based voting inequalities. That inquiry hardly gives a court the license to devise whatever limitations on Section 2's reach it would have liked Congress to enact. But that is the license the majority takes. The "important circumstances" it invents all cut in one direction—toward limiting liability for race-based voting inequalities. *Ante*, at 2338. (Indeed, the majority gratuitously dismisses several factors that point the opposite way. See *ante*, at 2339 – 2341.) Think of the majority's list as a set of extra-textual restrictions on Section 2—methods of counteracting the law Congress actually drafted to achieve the purposes *Congress* thought "important." The list—not a test, the majority hastens to assure us, with delusions of modesty—stacks the deck against minority citizens' voting rights. Never mind that Congress drafted a statute to protect those rights—to prohibit any number of schemes the majority's non-test test makes it possible to save.

Start with the majority's first idea: a "[m]ere inconvenience[ ]" exception to Section 2. *Ante*, at 2338. Voting, the majority says, imposes a set of "usual burdens": Some time, some travel, some rule compliance. *Ibid*. And all of that is beneath the notice of Section 2—even if those burdens fall highly unequally on members of different races. See *ibid*. But that categorical exclusion, for seemingly small (or "[un]usual" or "[un]serious") burdens, is nowhere in the provision's text. To the contrary (and as this Court has recognized before), Section 2 allows no "safe harbor[s]" for election rules resulting in disparate voting opportunities. *De Grandy*, 512 U.S. at 1018, 114 S.Ct. 2647; see *supra*, at 2359. The section applies to *any* discriminatory "voting qualification," "prerequisite to voting," or "standard, practice, or procedure"—even the kind creating only (what the majority thinks of as) an ordinary burden. And the section cares about *any* race-based "abridgments" of voting, not just measures that come near to preventing that activity. Congress, recall, was intent on eradicating the "subtle, as well as the obvious," ways of suppressing minority voting. *Allen*, 393 U.S. at 565, 89 S.Ct. 817; see *supra*, at 2357 – 2359. One of those more subtle ways is to impose "inconveniences," especially a collection of them, differentially affecting members of one race. The certain result—because every inconvenience makes voting both somewhat more difficult and somewhat less likely—will be to deter minority votes. In countenancing such an election system, the majority departs from Congress's vision, set down in text, of ensuring equal voting opportunity. It chooses equality-lite.

***2363** And what is a "mere inconvenience" or "usual burden" anyway? The drafters of the Voting Rights Act understood that "social and historical conditions," including disparities in education, wealth, and employment, often affect opportunities to vote. *Gingles*, 478 U.S. at 47, 106 S.Ct. 2752; see *supra*, at 2358 – 2359. What does not prevent one citizen from casting a vote might prevent another. How is a judge supposed to draw an "inconvenience" line in some reasonable place, taking those differences into account? Consider a law banning the handing out of water to voters. No more than—or not even—an inconvenience when lines are short; but what of when they are, as in some neighborhoods, hours-long? The point here is that judges lack an objective way to decide which voting obstacles are "mere" and which are not, for all voters at all times. And so Section 2 does not ask the question.

The majority's "multiple ways to vote" factor is similarly flawed. *Ante*, at 2359. True enough, a State with three ways to vote (say, on Election Day; early in person; or by mail) may be more "open" than a State with only one (on Election Day). And some other statute might care about that. But Section 2 does not. What it cares about is that a State's "political processes" are "*equally* open" to voters of all races. And a State's electoral process is not equally open if, for example, the State "only" makes Election Day voting by members of one race peculiarly difficult. The House Report on Section 2 addresses that issue. It explains that an election system would violate Section 2 if minority citizens had a lesser opportunity than white citizens to use absentee ballots. See H.R. Rep., at 31, n. 106. Even if the minority citizens could just as easily vote in person, the scheme would "result in unequal access to the political process." *Id.*, at 31. That is not some piece of contestable legislative history. It is the only reading of Section 2 possible, given the statute's focus on equality. Maybe the majority does not mean to contest that proposition; its discussion of this supposed factor is short and cryptic. But if the majority does intend to excuse so much discrimination, it is wrong. Making one method of voting less available to minority citizens than to whites necessarily means giving the former "less opportunity than other members of the electorate to participate in the political process." § 10301(b).

The majority's history-and-commonality factor also pushes the inquiry away from what the statute demands. The oddest part of the majority's analysis is the idea that "what was standard practice when § 2 was amended in 1982 is a relevant consideration." *Ante*, at 2338. The 1982 state of the world is no part of the Section 2 test. An election rule prevalent at that time may make voting harder for minority than for white citizens; Section 2 then covers such a rule, as it covers any other. And contrary to the majority's unsupported speculation, Congress "intended" exactly that. *Ante*, at 2338 – 2339; see H.R. Rep., at 14 (explaining that the Act aimed to eradicate the "numerous practices and procedures which act as continued barriers to registration and voting").[8] Section 2 was meant to disrupt the status quo, not to preserve it—to eradicate then-current discriminatory ***2364** practices, not to set them in amber. See *Bossier*, 528 U.S. at 334, 120 S.Ct. 866 (under Section 2, "[i]f the *status quo*" abridges the right to vote "relative to what the right to vote *ought to be*, the status quo itself must be changed").[9] And as to election rules common now, the majority oversimplifies. Even if those rules are unlikely to violate Section 2 everywhere, they may easily do so somewhere. That is because the demographics and political geography of States vary widely and Section 2's application depends on place-specific facts. As we have recognized, the statute calls for "an intensely local appraisal," not a count-up-the-States exercise. *Gingles*, 478 U.S. at 79, 106 S.Ct. 2752; see *supra*, at 2359. This case, as I'll later discuss, offers a perfect illustration of how the difference between those two approaches can matter. See *infra*, at 2366 – 2372.

That leaves only the majority's discussion of state interests, which is again skewed so as to limit Section 2 liability. No doubt that under our precedent, a state interest in an election rule "is a legitimate factor to be considered." *Houston Lawyers' Assn.*, 501 U.S. at 426, 111 S.Ct. 2376. But the majority wrongly dismisses the need for the closest possible fit between means and end—that is, between the terms of the rule and the State's asserted interest. *Ante*, at 2341. In the past, this Court has stated that a discriminatory election rule must fall, no matter how weighty the interest claimed, if a less biased law would not "significantly impair[that] interest." *Houston Lawyers' Assn.*, 501 U.S. at 428, 111 S.Ct. 2376; see *supra*, at 2359 – 2360, and n. 5. And as the majority concedes, we apply that kind of means-end standard in every other context—employment, housing, banking—where the law addresses racially discriminatory effects: There, the rule must be "strict[ly] necess[ary]" to the interest. *Ante*, at ——; see, *e.g.*, *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 425, 95 S.Ct. 2362, 45 L.Ed.2d 280 (1975) (holding that an employment policy cannot stand if another policy, "without a similarly undesirable racial effect, would also serve the employer's legitimate interest"). The majority argues that "[t]he text of [those] provisions" differs from Section 2's. *Ante*, at 2340 – 2341. But if anything, Section 2 gives less weight to competing interests: Unlike in most discrimination laws, they enter the inquiry only through the provision's reference to the "totality of circumstances"—through, then, a statutory backdoor. So the majority falls back on the idea that "[d]emanding such a tight fit would have the effect of invalidating a great many neutral voting regulations." *Ante*, at 2341; see *ante*, at 2343. But a state interest becomes relevant only when a voting rule, even if neutral on its face, is found *not* neutral in operation—only, that is, when the rule provides unequal access to the political process. Apparently, the majority does not want to "invalidate [too] many" of those actually discriminatory rules. But Congress had a different goal in enacting Section 2.

***2365** The majority's approach, which would ask only whether a discriminatory law "*reasonably* pursue[s] important state interests," gives election officials too easy

an escape from Section 2. *Ante*, at 2343 (emphasis added). Of course preventing voter intimidation is an important state interest. And of course preventing election fraud is the same. But those interests are also easy to assert groundlessly or pretextually in voting discrimination cases. Congress knew that when it passed Section 2. Election officials can all too often, the Senate Report noted, "offer a non-racial rationalization" for even laws that "purposely discriminate[ ]." S. Rep., at 37; see *supra*, at 2357 – 2358, 2359 – 2360, and n. 5. A necessity test filters out those offerings. See, *e.g.*, *Albemarle*, 422 U.S. at 425, 95 S.Ct. 2362. It thereby prevents election officials from flouting, circumventing, or discounting Section 2's command not to discriminate.

In that regard, the past offers a lesson to the present. Throughout American history, election officials have asserted anti-fraud interests in using voter suppression laws. Poll taxes, the classic mechanism to keep black people from voting, were often justified as "preserv[ing] the purity of the ballot box [and] facilitat[ing] honest elections." J. Kousser, The Shaping of Southern Politics 111, n. 9 (1974). A raft of election regulations—including "elaborate registration procedures" and "early poll closings"—similarly excluded white immigrants (Irish, Italians, and so on) from the polls on the ground of "prevent[ing] fraud and corruption." Keyssar 159; see *ibid*. (noting that in those times "claims of widespread corruption" were backed "almost entirely" by "anecdotes [with] little systematic investigation or evidence"). Take even the majority's example of a policy advancing an "important state interest": "the use of private voting booths," in which voters marked their own ballots. *Ante*, at 2339 – 2340. In the majority's high-minded account, that innovation—then known as the Australian voting system, for the country that introduced it—served entirely to prevent undue influence. But when adopted, it also prevented many illiterate citizens—especially African Americans—from voting. And indeed, that was partly the point. As an 1892 Arkansas song went:

> The Australian Ballot works like a charm,
>
> It makes them think and scratch,
>
> And when a Negro gets a ballot
>
> He has certainly got his match.

Kousser 54. Across the South, the Australian ballot decreased voter participation among whites by anywhere from 8% to 28% but among African Americans by anywhere from 15% to 45%. See *id*., at 56. Does that mean secret ballot laws violate Section 2 today? Of course not. But should the majority's own example give us all a bit of pause? Yes, it should. It serves as a reminder that States have always found it natural to wrap discriminatory policies in election-integrity garb.

Congress enacted Section 2 to prevent those maneuvers from working. It knew that States and localities had over time enacted measure after measure imposing discriminatory voting burdens. And it knew that governments were proficient in justifying those measures on non-racial grounds. So Congress called a halt. It enacted a statute that would strike down all unnecessary laws, including facially neutral ones, that result in members of a racial group having unequal access to the political process.

But the majority is out of sympathy with that measure. The majority thinks a statute that would remove those laws is not, as Justice Ginsburg once called it, "consequential, efficacious, and amply justified." *Shelby County*, 570 U.S. at 562, 133 S.Ct. 2612 (dissenting opinion). Instead, the majority ***2366** thinks it too "radical" to stomach. *Ante*, at 2341, 2343. The majority objects to an excessive "transfer of the authority to set voting rules from the States to the federal courts." *Ante*, at 2343. It even sees that transfer as "[un]democratic." *Ibid*. But maybe the majority should pay more attention to the "historical background" that it insists "does not tell us how to decide this case." *Ante*, at 2341. That history makes clear the incongruity, in interpreting this statute, of the majority's paean to state authority—and conversely, its denigration of federal responsibility for ensuring non-discriminatory voting rules. The Voting Rights Act was meant to replace state and local election rules that needlessly make voting harder for members of one race than for others. The text of the Act perfectly reflects that objective. The "democratic" principle it upholds is not one of States' rights as against federal courts. The democratic principle it upholds is the right of every American, of every race, to have equal access to the ballot box. The majority today undermines that principle as it refuses to apply the terms of the statute. By declaring some racially discriminatory burdens inconsequential, and by refusing to subject asserted state interests to serious means-end scrutiny, the majority enables voting discrimination.

III

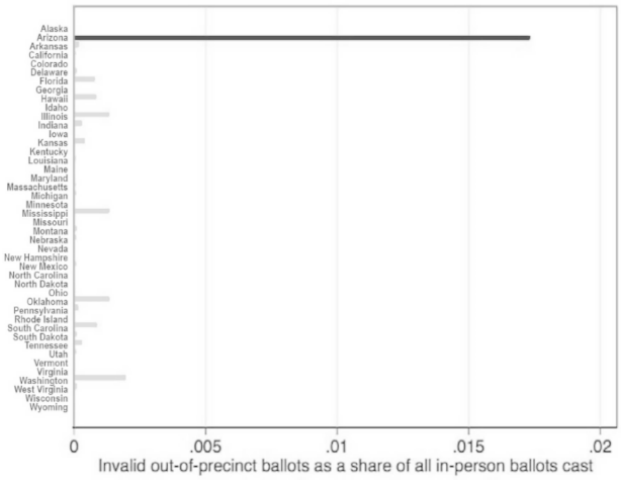
Just look at Arizona. Two of that State's policies disproportionately affect minority citizens' opportunity to vote. The first—the out-of-precinct policy—results in Hispanic and African American voters' ballots being thrown out at a statistically higher rate than those of whites. And whatever the majority might say about the ordinariness of such a rule, Arizona applies it in extra-ordinary fashion: Arizona is *the* national outlier in dealing with out-of-precinct votes, with the next-worst offender nowhere in sight. The second rule—the ballot-collection ban—makes voting meaningfully more difficult for Native American citizens than for others. And nothing about how that ban is applied is "usual" either—this time because of how many of the State's Native American citizens need to travel long distances to use the mail. Both policies violate Section 2, on a straightforward application of its text. Considering the "totality of circumstances," both "result in" members of some races having "less opportunity than other members of the electorate to participate in the political process and to elect a representative of their choice." § 10301(b). The majority reaches the opposite conclusion because it closes its eyes to the facts on the ground.[10]

A

Arizona's out-of-precinct policy requires discarding any Election Day ballot cast elsewhere than in a voter's assigned precinct. Under the policy, officials throw out every choice in every race—including national or statewide races (*e.g.*, for President or Governor) that appear identically on every precinct's ballot. The question is whether that policy unequally affects minority citizens' opportunity to cast a vote.

Although the majority portrays Arizona's use of the rule as "unremarkable," *ante*, at 2344, the State is in fact a national aberration when it comes to discarding out-of-precinct ballots. In 2012, about 35,000 ballots across the country were thrown out because they were cast at the wrong precinct. See U.S. Election Assistance Commission, 2012 Election Administration and Voting Survey 53 (2013). Nearly one in ***2367** three of those discarded votes—10,979—was cast in Arizona. *Id.*, at 52. As the Court of Appeals concluded, and the chart below indicates, Arizona threw away ballots in that year at 11 times the rate of the second-place discarder (Washington State). *Democratic Nat. Committee v. Hobbs*, 948 F.3d 989, 1001 (C.A.9 2020); see App. 72. Somehow the majority labels that difference "marginal[ ]," *ante*, at 2344 – 2345, but it is anything but. More recently, the number of discarded ballots in the State has gotten smaller: Arizona counties have increasingly abandoned precinct-based voting (in favor of county-wide "vote centers"), so the out-of-precinct rule has fewer votes to operate on. And the majority primarily relies on those latest (2016) numbers. But across the five elections at issue in this litigation (2008–2016), Arizona threw away far more out-of-precinct votes—almost 40,000—than did any other State in the country.

Figure 6: Rejected out-of-precinct ballots as a share of in-person ballots cast according to 2012 EAC Report



Votes in such numbers can matter—enough for Section 2 to apply. The majority obliquely suggests not, comparing the smallish number of thrown-out votes (minority and non-minority alike) to the far larger number of votes cast and counted. See *ante*, at 2344 – 2345. But elections are often fought and won at the margins—certainly in Arizona. Consider the number of votes separating the two presidential candidates in the most recent election: 10,457. That is fewer votes than Arizona discarded under the out-of-precinct policy in two of the prior three presidential elections. This Court previously rejected the idea—the "erroneous assumption"—"that a small group of voters can never influence the outcome of an election." *Chisom*, 501 U.S. at 397, n. 24, 111 S.Ct. 2354. For that reason, we held that even "a small minority" group can claim Section 2 protection. See *ibid.* Similarly here, the out-of-precinct policy—which discards thousands upon thousands of ballots in every election —affects ***2368** more than sufficient votes to implicate Section 2's guarantee of equal electoral opportunity.

And the out-of-precinct policy operates unequally: Ballots cast by minorities are more likely to be discarded. In 2016, Hispanics, African Americans, and Native Americans were

about twice as likely—or said another way, 100% more likely—to have their ballots discarded than whites. See App. 122. And it is possible to break that down a bit. Sixty percent of the voting in Arizona is from Maricopa County. There, Hispanics were 110% more likely, African Americans 86% more likely, and Native Americans 73% more likely to have their ballots tossed. See *id*., at 153. Pima County, the next largest county, provides another 15% of the statewide vote. There, Hispanics were 148% more likely, African Americans 80% more likely, and Native Americans 74% more likely to lose their votes. See *id*., at 157. The record does not contain statewide figures for 2012. But in Maricopa and Pima Counties, the percentages were about the same as in 2016. See *id*., at 87, 91. Assessing those disparities, the plaintiffs' expert found, and the District Court accepted, that the discriminatory impact of the out-of-precinct policy was statistically significant—meaning, again, that it was highly unlikely to occur by chance. See *Democratic Nat. Committee v. Reagan*, 329 F.Supp.3d 824, 871 (D. Ariz. 2018); *supra*, at 2358, n. 4.

The majority is wrong to assert that those statistics are "highly misleading." *Ante*, at 2345. In the majority's view, they can be dismissed because the great mass of voters are unaffected by the out-of-precinct policy. See *ibid*. But Section 2 is less interested in "absolute terms" (as the majority calls them) than in relative ones. *Ante*, at 2344 – 2345; see *supra*, at 2357 – 2358. Arizona's policy creates a statistically significant disparity between minority and white voters: Because of the policy, members of different racial groups do not in fact have an equal likelihood of having their ballots counted. Suppose a State decided to throw out 1% of the Hispanic vote each election. Presumably, the majority would not approve the action just because 99% of the Hispanic vote is unaffected. Nor would the majority say that Hispanics in that system have an equal shot of casting an effective ballot. Here, the policy is not so overt; but under Section 2, that difference does not matter. Because the policy "results in" statistically significant inequality, it implicates Section 2. And the kind of inequality that the policy produces is not the kind only a statistician could see. A rule that throws out, each and every election, thousands of votes cast by minority citizens is a rule that can affect election outcomes. If you were a minority vote suppressor in Arizona or elsewhere, you would want that rule in your bag of tricks. You would not think it remotely irrelevant.

And the case against Arizona's policy grows only stronger the deeper one digs. The majority fails to conduct the "searching practical evaluation" of "past and present reality" that Section 2's "totality of circumstances" inquiry demands. *De Grandy*, 512 U.S. at 1018, 114 S.Ct. 2647. Had the majority done so, it would have discovered why Arizona's out-of-precinct policy has such a racially disparate impact on voting opportunity. Much of the story has to do with the siting and shifting of polling places. Arizona moves polling places at a startling rate. Maricopa County (recall, Arizona's largest by far) changed 40% or more of polling places before both the 2008 and the 2012 elections. See 329 F.Supp.3d at 858 (noting also that changes "continued to occur in 2016"). In 2012 (the election with the best data), voters affected by those changes had an out-of-precinct voting rate that was 40% higher than other voters did. See *ibid*. And, critically, Maricopa's ***2369** relocations hit minority voters harder than others. In 2012, the county moved polling stations in African American and Hispanic neighborhoods 30% more often than in white ones. See App. 110–111. The odds of those changes leading to mistakes increased yet further because the affected areas are home to citizens with relatively low education and income levels. See *id*., at 170–171. And even putting relocations aside, the siting of polling stations in minority areas caused significant out-of-precinct voting. Hispanic and Native American voters had to travel further than white voters did to their assigned polling places. See *id*., at 109. And all minority voters were disproportionately likely to be assigned to polling places other than the ones closest to where they lived. See *id*., at 109, and n. 30, 175–176. Small wonder, given such siting decisions, that minority voters found it harder to identify and get to their correct precincts. But the majority does not address these matters.[11]

Facts also undermine the State's asserted interests, which the majority hangs its hat on. A government interest, as even the majority recognizes, is "merely one factor to be considered" in Section 2's totality analysis. *Houston Lawyers' Assn.*, 501 U.S. at 427, 111 S.Ct. 2376; see *ante*, at 2339 – 2340. Here, the State contends that it needs the out-of-precinct policy to support a precinct-based voting system. But 20 other States combine precinct-based systems with mechanisms for partially counting out-of-precinct ballots (that is, counting the votes for offices like President or Governor). And the District Court found that it would be "administratively feasible" for Arizona to join that group. 329 F.Supp.3d at 860. Arizona—echoed by the majority—objects that adopting a partial-counting approach would decrease compliance with the vote-in-your-precinct rule (by reducing the penalty for a voter's going elsewhere). But there is more than a little paradox in that response. We know from the extraordinary number of ballots Arizona discards that its current system fails utterly to

"induce[ ] compliance." *Ante*, at 2345 – 2346; see *supra*, at 2366 – 2367. Presumably, that is because the system—most notably, its placement and shifting of polling places—sows an unparalleled level of voter confusion. A State that makes compliance with an election rule so unusually hard is in no position to claim that its interest in "induc[ing] compliance" outweighs the need to remedy the race-based discrimination that rule has caused.

B

Arizona's law mostly banning third-party ballot collection also results in a significant race-based disparity in voting opportunities. The problem with that law again lies in facts nearly unique to Arizona—here, the presence of rural Native American communities that lack ready access to mail service. Given that circumstance, the Arizona statute discriminates in just the way Section 2 proscribes. The majority once more comes to a different conclusion ***2370** only by ignoring the local conditions with which Arizona's law interacts.

The critical facts for evaluating the ballot-collection rule have to do with mail service. Most Arizonans vote by mail. But many rural Native American voters lack access to mail service, to a degree hard for most of us to fathom. Only 18% of Native voters in rural counties receive home mail delivery, compared to 86% of white voters living in those counties. See 329 F.Supp.3d at 836. And for many or most, there is no nearby post office. Native Americans in rural Arizona "often must travel 45 minutes to 2 hours just to get to a mailbox." 948 F.3d at 1006; see 329 F.Supp.3d at 869 ("Ready access to reliable and secure mail service is nonexistent" in some Native American communities). And between a quarter to a half of households in these Native communities do not have a car. See *ibid*. So getting ballots by mail and sending them back poses a serious challenge for Arizona's rural Native Americans.[12]

For that reason, an unusually high rate of Native Americans used to "return their early ballots with the assistance of third parties." *Id*., at 870.[13] As the District Court found: "[F]or many Native Americans living in rural locations," voting "is an activity that requires the active assistance of friends and neighbors." *Ibid*. So in some Native communities, third-party collection of ballots—mostly by fellow clan members—became "standard practice." *Ibid*. And stopping it, as one tribal election official testified, "would be a huge devastation." *Ibid*.; see Brief for Navajo Nation as *Amicus Curiae* 19–20 (explaining that ballot collection is how Navajo voters "have historically handled their mail-in ballots").

Arizona has always regulated these activities to prevent fraud. State law makes it a felony offense for a ballot collector to fail to deliver a ballot. See Ariz. Rev. Stat. Ann. § 16–1005 (Cum. Supp. 2020). It is also a felony for a ballot collector to tamper with a ballot in any manner. See *ibid*. And as the District Court found, "tamper evident envelopes and a rigorous voter signature verification procedure" protect against any such attempts. 329 F.Supp.3d at 854. For those reasons and others, no fraud involving ballot collection has ever come to light in the State. *Id*., at 852.

Still, Arizona enacted—with full knowledge of the likely discriminatory consequences—the near-blanket ballot-collection ban challenged here. The first version of the law—much less stringent than the current one—passed the Arizona Legislature in 2011. But the Department of Justice, in its Section 5 review, expressed skepticism about the statute's compliance with the Voting Rights Act, and the legislature decided to repeal the law rather than see it blocked (and thereby incur statutory penalties). See 329 F.Supp.3d at 880; 52 U.S.C. § 10303(a)(1)(E) (providing that if a state law fails Section 5 review, the State may not escape the preclearance process for another 10 years). Then, this Court ***2371** decided *Shelby County*. With Section 5 gone, the State Legislature felt free to proceed with a new ballot-collection ban, despite the potentially discriminatory effects that the preclearance process had revealed. The enacted law contains limited exceptions for family members and caregivers. But it includes no similar exceptions for clan members or others with Native kinship ties. They and anyone else who picks up a neighbor's ballot and takes it to a post office, or delivers it to an election site, is punishable as a felon. See Ariz. Rev. Stat. § 16–1005(H).

Put all of that together, and Arizona's ballot-collection ban violates Section 2. The ban interacts with conditions on the ground—most crucially, disparate access to mail service—to create unequal voting opportunities for Native Americans. Recall that only 18% of rural Native Americans in the State have home delivery; that travel times of an hour or more to the nearest post office are common; that many members of the community do not have cars. See *supra*, at 2369 – 2370. Given those facts, the law prevents many Native Americans from making effective use of one of the principal means of voting in Arizona.[14] What is an inconsequential burden for others is for these citizens a severe hardship. And the State

has shown no need for the law to go so far. Arizona, as noted above, already has statutes in place to deter fraudulent collection practices. See *supra*, at 2370 – 2371. Those laws give every sign of working. Arizona has not offered any evidence of fraud in ballot collection, or even an account of a harm threatening to happen. See 329 F.Supp.3d at 852 ("[T]here has never been a case of voter fraud associated with ballot collection charged in Arizona"). And anyway, Arizona did not have to entirely forego a ballot-collection restriction to comply with Section 2. It could, for example, have added an exception to the statute for Native clan or kinship ties, to accommodate the special, "intensely local" situation of the rural Native American community. *Gingles*, 478 U.S. at 79, 106 S.Ct. 2752. That Arizona did not do so shows, at best, selective indifference to the voting opportunities of its Native American citizens.

The majority's opinion fails to acknowledge any of these facts. It quotes extensively from the District Court's finding that the ballot-collection ban does not interfere with the voting opportunities of minority groups generally. See *ante*, at 2347, n. 19. But it never addresses the court's separate finding that the ban poses a unique burden for Native Americans. See *supra*, at 2369 – 2371. Except in a pair of footnotes responding to this dissent, the term "Native American" appears once (count it, once) in the majority's five-page discussion of Arizona's ballot-collection ban. So of course that community's strikingly limited access to mail service is not addressed.[15] In the majority's alternate ***2372** world, the collection ban is just a "usual burden[ ] of voting" for everyone. *Ante*, at 2346. And in that world, "[f]raud is a real risk" of ballot collection—as to every community, in every circumstance—just because the State in litigation asserts that it is. *Ante*, at 2347 – 2348. The State need not even show that the discriminatory rule it enacted is necessary to prevent the fraud it purports to fear. So the State has no duty to substitute a non-discriminatory rule that would adequately serve its professed goal. Like the rest of today's opinion, the majority's treatment of the collection ban thus flouts what Section 2 commands: the eradication of election rules resulting in unequal opportunities for minority voters.

IV

Congress enacted the Voting Rights Act to address a deep fault of our democracy—the historical and continuing attempt to withhold from a race of citizens their fair share of influence on the political process. For a century, African Americans had struggled and sacrificed to wrest their voting rights from a resistant Nation. The statute they and their allies at long last attained made a promise to all Americans. From then on, Congress demanded, the political process would be equally open to every citizen, regardless of race.

One does not hear much in the majority opinion about that promise. One does not hear much about what brought Congress to enact the Voting Rights Act, what Congress hoped for it to achieve, and what obstacles to that vision remain today. One would never guess that the Act is, as the President who signed it wrote, "monumental." Johnson Papers 841. For all the opinion reveals, the majority might be considering any old piece of legislation—say, the Lanham Act or ERISA.

But then, at least, the majority should treat the Voting Rights Act as if it were ordinary legislation. The Court always says that it must interpret a statute according to its text—that it has no warrant to override congressional choices. But the majority today flouts those choices with abandon. The language of Section 2 is as broad as broad can be. It applies to any policy that "results in" disparate voting opportunities for minority citizens. It prohibits, without any need to show bad motive, even facially neutral laws that make voting harder for members of one race than of another, given their differing life circumstances. That is the expansive statute Congress wrote, and that our prior decisions have recognized. But the majority today lessens the law—cuts Section 2 down to its own preferred size. The majority creates a set of extra-textual exceptions ***2373** and considerations to sap the Act's strength, and to save laws like Arizona's. No matter what Congress wanted, the majority has other ideas.

This Court has no right to remake Section 2. Maybe some think that vote suppression is a relic of history—and so the need for a potent Section 2 has come and gone. Cf. *Shelby County*, 570 U.S. at 547, 133 S.Ct. 2612 ("[T]hings have changed dramatically"). But Congress gets to make that call. Because it has not done so, this Court's duty is to apply the law as it is written. The law that confronted one of this country's most enduring wrongs; pledged to give every American, of every race, an equal chance to participate in our democracy; and now stands as the crucial tool to achieve that goal. That law, of all laws, deserves the sweep and power Congress gave it. That law, of all laws, should not be diminished by this Court.

All Citations

141 S.Ct. 2321, 210 L.Ed.2d 753, 21 Cal. Daily Op. Serv. 6570, 2021 Daily Journal D.A.R. 6673, 28 Fla. L. Weekly Fed. S 1052

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

1 H.R. Rep. No. 439, 89th Cong., 1st Sess., 8, 11–13 (1965); S. Rep. No. 162, 89th Cong., 1st Sess., pt. 3, pp. 4–5 (1965); see *South Carolina v. Katzenbach*, 383 U.S. 301, 309–315, 86 S.Ct. 803, 15 L.Ed.2d 769 (1966).

2 See *Mobile v. Bolden*, 446 U.S. 55, 60–61, 100 S.Ct. 1490, 64 L.Ed.2d 47 (1980) (plurality opinion) (describing § 2's "sparse" legislative history).

3 Boyd & Markman, The 1982 Amendments to the Voting Rights Act: A Legislative History, 40 Wash. & Lee L. Rev. 1347, 1352–1353 (1983).

4 See *Brown v. Post*, 279 F.Supp. 60, 63 (W.D. La. 1968) (parish clerks discriminated with respect to absentee voting); *United States v. Post*, 297 F.Supp. 46, 51 (W.D. La. 1969) (election official induced blacks to vote in accordance with outdated procedures and made votes ineffective); *Toney v. White*, 488 F.2d 310, 312 (C.A.5 1973) (registrar discriminated in purging voting rolls).

5 See *Chisom v. Roemer*, 501 U.S. 380, 111 S.Ct. 2354, 115 L.Ed.2d 348 (1991) (multi-member district); *Houston Lawyers' Assn. v. Attorney General of Tex.*, 501 U.S. 419, 111 S.Ct. 2376, 115 L.Ed.2d 379 (1991) (at-large elections); *Voinovich v. Quilter*, 507 U.S. 146, 113 S.Ct. 1149, 122 L.Ed.2d 500 (1993) (districting); *Growe v. Emison*, 507 U.S. 25, 113 S.Ct. 1075, 122 L.Ed.2d 388 (1993) (same); *Holder v. Hall*, 512 U.S. 874, 114 S.Ct. 2581, 129 L.Ed.2d 687 (1994) (single-member commission); *Johnson v. De Grandy*, 512 U.S. 997, 114 S.Ct. 2647, 129 L.Ed.2d 775 (1994) (districting); *Abrams v. Johnson*, 521 U.S. 74, 117 S.Ct. 1925, 138 L.Ed.2d 285 (1997) (same); *League of United Latin American Citizens v. Perry*, 548 U.S. 399, 126 S.Ct. 2594, 165 L.Ed.2d 609 (2006) (same); *Abbott v. Perez*, 585 U.S. ——, 138 S.Ct. 2305, 201 L.Ed.2d 714 (2018) (same).

6 See Brief for Sen. Ted Cruz et al. as *Amici Curiae* 22–24 (describing § 2 challenges to laws regulating absentee voting, precinct voting, early voting periods, voter identification (ID), election observer zones, same-day registration, durational residency, and straight-ticket voting); Brief for State of Ohio et al. as *Amici Curiae* 23–25 (describing various § 2 challenges); Brief for Liberty Justice Center as *Amicus Curiae* 1–3, 7–11 (describing long-running § 2 challenges to Wisconsin voter ID law).

7 An ill or disabled voter may have a ballot delivered by a special election board, and curbside voting at polling places is also allowed. 329 F.Supp.3d at 848.

8 Letter from E. Kneedler, Deputy Solicitor General, to S. Harris, Clerk of Court (Feb. 16, 2021).

9 *Ibid.*

10 The New Oxford American Dictionary 851 (2d ed. 2005); see 7 Oxford English Dictionary 763 (2d ed. 1989) ("in presence, view, or consequence of the fact that"); Webster's New International Dictionary 1253 (2d ed. 1934) ("Because; for the reason that").

11 There is a difference between openness and opportunity, on the one hand, and the absence of inconvenience, on the other. For example, suppose that an exhibit at a museum in a particular city is open to everyone free of charge every day of the week for several months. Some residents of the city who have the opportunity to view the exhibit may find it

inconvenient to do so for many reasons—the problem of finding parking, dislike of public transportation, anticipation that the exhibit will be crowded, a plethora of weekend chores and obligations, etc. Or, to take another example, a college course may be open to all students and all may have the opportunity to enroll, but some students may find it inconvenient to take the class for a variety of reasons. For example, classes may occur too early in the morning or on Friday afternoon; too much reading may be assigned; the professor may have a reputation as a hard grader; etc.

12 Where voters are allowed to vote for multiple candidates in a race for multiple seats, single-shot voting is the practice of voting for only one candidate. " ' "Single-shot voting enables a minority group to win some at-large seats if it concentrates its vote behind a limited number of candidates and if the vote of the majority is divided among a number of candidates." ' " *Gingles*, 478 U.S. at 38–39, n. 5, 106 S.Ct. 2752 (quoting *City of Rome v. United States*, 446 U.S. 156, 184, n. 19, 100 S.Ct. 1548, 64 L.Ed.2d 119 (1980)); see also United States Commission on Civil Rights, The Voting Rights Act: Ten Years After 206–207 (1975).

13 Slating has been described as "a process in which some influential non-governmental organization selects and endorses a group or 'slate' of candidates, rendering the election little more than a stamp of approval for the candidates selected." *Westwego Citizens for Better Govt. v. Westwego*, 946 F.2d 1109, 1116, n. 5 (C.A.5 1991). Exclusion from such a system can make it difficult for minority groups to elect their preferred candidates. See, *e.g.*, *White v. Regester*, 412 U.S. 755, 766–767, and n. 11, 93 S.Ct. 2332, 37 L.Ed.2d 314 (1973) (describing one example).

14 The dissent erroneously claims that the Senate-House compromise was only about proportional representation and not about "the equalaccess right" at issue in the present cases. *Post*, at 2360, n. 6. The text of the bill initially passed by the House had no equal-access right. See H.R. Rep. No. 97–227, p. 48 (1981); H.R. 3112, 97th Cong., 1st Sess., § 2, p. 8 (introduced Oct. 7, 1981). Section 2(b) was the Senate's creation, and that provision is what directed courts to look beyond mere "results" to whether a State's "political processes" are "equally open," considering "the totality of circumstances." See *Mississippi Republican Executive Committee v. Brooks*, 469 U.S. 1002, 1010, 105 S.Ct. 416, 83 L.Ed.2d 343 (1984) (REHNQUIST, J., dissenting) ("The compromise bill retained the 'results' language but also incorporated language directly from this Court's opinion in *White v. Regester*"). And while the proviso on proportional representation may not apply as directly in this suit, it is still a signal that § 2 imposes something other than a pure disparate-impact regime.

15 The dissent objects to consideration of the 1982 landscape because even rules that were prevalent at that time are invalid under § 2 if they, well, violate § 2. *Post,* at 2363. We of course agree with that tautology. But the question is what it *means* to provide equal opportunity, and given that every voting rule imposes some amount of burden, rules that were and are commonplace are useful comparators when considering the totality of circumstances. Unlike the dissent, Congress did not set its sights on every facially neutral time, place, or manner voting rule in existence. See, *e.g.,* S. Rep. No. 97–417, at 10, n. 22 (describing what the Senate Judiciary Committee viewed as "blatant direct impediments to voting").

16 For support, the dissent offers a baseless reading of one of our vote-dilution decisions. In *Houston Lawyers' Assn.*, 501 U.S. 419, 111 S.Ct. 2376, we considered a § 2 challenge to an electoral scheme wherein all trial judges in a judicial district were elected on a district-wide basis. *Id.,* at 422, 111 S.Ct. 2376. The State asserted that it had a strong interest in district-wide judicial elections on the theory that they make every individual judge at least partly accountable to minority voters in the jurisdiction. *Id.,* at 424, 426, 111 S.Ct. 2376. That unique interest, the State contended, should have "automatically" exempted the electoral scheme from § 2 scrutiny altogether. *Id.,* at 426, 111 S.Ct. 2376. We disagreed, holding that the State's interest was instead "a legitimate factor to be considered by courts among the 'totality of circumstances' in determining whether a § 2 violation has occurred." *Ibid.* To illustrate why an "automati[c]" exemption from § 2's coverage was inappropriate, the Court hypothesized a case involving an "uncouth" district shaped like the one in *Gomillion v. Lightfoot*, 364 U.S. 339, 340, 81 S.Ct. 125, 5 L.Ed.2d 110 (1960), for which an inquiry under § 2 "would at least arguably be required." 501 U.S. at 427, 111 S.Ct. 2376. The Court then wrote the language upon which the dissent seizes: "Placing elections for single-member offices entirely beyond the scope of coverage of § 2 would preclude such an inquiry, even if the State's interest in maintaining the 'uncouth' electoral system was trivial or illusory and even if any resulting impairment of a minority group's voting strength could be remedied without significantly impairing the State's interest in electing judges on a district-wide basis." *Id.,* at 427–428, 111 S.Ct. 2376.

That *reductio ad absurdum*, used to demonstrate only why an automatic exemption from § 2 scrutiny was inappropriate, did not announce an "inquiry" at all—much less the least-burdensome-means requirement the dissent would have us

smuggle in from materially different statutory regimes. *Post*, at 2359 – 2360, n. 5, 2364 – 2365. Perhaps that is why *no one*—not the parties, not the United States, not the 36 other *amici*, not the courts below, and certainly not this Court in subsequent decisions—has advanced the dissent's surprising reading of a single phrase in *Houston Lawyers Assn*. The dissent apparently thinks that in 1991 we silently abrogated the principle that the nature of a State's interest is but one of many factors to consider, see *Thornburg v. Gingles*, 478 U.S. 30, 44–45, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986), and that our subsequent cases have erred by failing simply to ask whether a less burdensome measure would suffice. Who knew?

17 We do not think § 2 is so procrustean. Statistical significance may provide "evidence that something besides random error is at work," Federal Judicial Center, Reference Manual on Scientific Evidence 252 (3d ed. 2011), but it does not necessarily determine causes, and as the dissent acknowledges, *post,* at 2358, n. 4, it is not the be-all and end-all of disparate-impact analysis. See Federal Judicial Center, Reference Manual, at 252 ("[S]ignificant differences ... are not evidence that [what is at work] is legally or practically important. Statisticians distinguish between statistical and practical significance to make the point. When practical significance is lacking—when the size of a disparity is negligible—there is no reason to worry about statistical significance"); *ibid.*, n. 102 (citing authorities). Moreover, whatever might be "standard" in other contexts, *post,* at 2358, n. 4, we have explained that VRA § 2's focus on equal "open[ness]" and equal "opportunity" does not impose a standard disparate-impact regime.

18 In arguing that Arizona's out-of-precinct policy violates § 2, the dissent focuses on the State's decisions about the siting of polling places and the frequency with which voting precincts are changed. See *post*, at 2368 ("Much of the story has to do with the siting and shifting of polling places"). But the plaintiffs did not challenge those practices. See 329 F.Supp.3d at 873 ("Plaintiffs ... do not challenge the manner in which Arizona counties allocate and assign polling places or Arizona's requirement that voters re-register to vote when they move"). The dissent is thus left with the unenviable task of explaining how something like a 0.5% disparity in discarded ballots between minority and non-minority groups suffices to render Arizona's political processes not equally open to participation. See *supra,* at 2344 – 2345. A voting rule with that effect would not be—to use the dissent's florid example—one that a "minority vote suppressor in Arizona" would want in his or her "bag of tricks." *Post*, at 2368.

19 Not one to let the absence of a key finding get in the way, the dissent concludes from its own review of the evidence that HB 2023 "prevents many Native Americans from making effective use of one of the principal means of voting in Arizona," and that "[w]hat is an inconsequential burden for others is for these citizens a severe hardship." *Post*, at 2374. What is missing from those statements is any evidence about the actual size of the disparity. (For that matter, by the time the dissent gets around to assessing HB 2023, it appears to have lost its zeal for statistical significance, which is nowhere to be seen. See *post*, at 2369 – 2372, and n. 13.) The reader will search in vain to discover where the District Court "found" to what extent HB 2023 would make it " 'significantly more difficult' " for Native Americans to vote. *Post,* at 2371 – 2372, n. 15 (citing 329 F.Supp.3d at 868, 870). Rather, "[b]ased on" the very same evidence the dissent cites, the District Court could find only that minorities were "generically" more likely than non-minorities to make use of third-party ballot-collection. *Id.,* at 870. The District Court's explanation as to why speaks for itself:

"Although there are significant socioeconomic disparities between minorities and non-minorities in Arizona, these disparities are an imprecise proxy for disparities in ballot collection use. Plaintiffs do not argue that all or even most socioeconomically disadvantaged voters use ballot collection services, nor does the evidence support such a finding. Rather, the anecdotal estimates from individual ballot collectors indicate that a relatively small number of voters have used ballot collection services in past elections." *Ibid.*; see also *id.,* at 881 ("[B]allot collection was used as a [get-out-the-vote] strategy in mostly low-efficacy minority communities, though the Court cannot say how often voters used ballot collection, *nor can it measure the degree or significance of any disparities in its usage*" (emphasis added)).

20 See Blinder, Election Fraud in North Carolina Leads to New Charges for Republican Operative, N. Y. Times, July 30, 2019, https://www.nytimes.com/2019/07/30/us/mccrae-dowless-indictment.html; Graham, North Carolina Had No Choice, The Atlantic, Feb. 22, 2019, https://www.theatlantic.com/politics/archive/2019/02/north-carolina-9thfraud-board-orders-new-election/583369/.

21 The dissent's primary argument regarding HB 2023 concerns its effect on Native Americans who live on remote reservations. The dissent notes that many of these voters do not receive mail delivery at home, that the nearest post office may be some distance from their homes, and that they may not have automobiles. *Post,* at 2369 – 2370. We do not

dismiss these problems, but for a number of reasons, they do not provide a basis for invalidating HB 2023. The burdens that fall on remote communities are mitigated by the long period of time prior to an election during which a vote may be cast either in person or by mail and by the legality of having a ballot picked up and mailed by family or household members. And in this suit, no individual voter testified that HB 2023 would make it significantly more difficult for him or her to vote. 329 F.Supp.3d at 871. Moreover, the Postal Service is required by law to "provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining." 39 U.S.C. § 101(b); see also § 403(b)(3). Small post offices may not be closed "solely for operating at a deficit," § 101(b), and any decision to close or consolidate a post office may be appealed to the Postal Regulatory Commission, see § 404(d)(5). An alleged failure by the Postal Service to comply with its statutory obligations in a particular location does not in itself provide a ground for overturning a voting rule that applies throughout an entire State.

22 The District Court also noted prior attempts on the part of the Arizona Legislature to regulate or limit third-party ballot collection in 2011 and 2013. It reasonably concluded that any procedural irregularities in those attempts had less probative value for inferring the purpose behind HB 2023 because the bills were passed "during different legislative sessions by a substantially different composition of legislators." 329 F.Supp.3d at 881.

1 The majority brands this historical account part of an "extended effort at misdirection." *Ante*, at 2341 – 2342. I am tempted merely to reply: Enough said about the majority's outlook on the statute before us. But I will add what should be obvious—that no one can understand the Voting Rights Act without recognizing what led Congress to enact it, and what Congress wanted it to change.

2 Although causation is hard to establish definitively, those post*Shelby County* changes appear to have reduced minority participation in the next election cycle. The most comprehensive study available found that in areas freed from Section 5 review, white turnout remained the same, but "minority participation dropped by 2.1 percentage points"—a stark reversal in direction from prior elections. Ang, Do 40-Year-Old Facts Still Matter?, 11 Am. Econ. J.: Applied Economics, No. 3, pp. 1, 35 (2019). The results, said the scholar who crunched the numbers, "provide early evidence that the Shelby ruling may jeopardize decades of voting rights progress." *Id*., at 36. The election laws passed in *Shelby County*'s wake "may have negated many of the gains made under preclearance." *Ibid*.

3 A final sentence, not at issue here, specifies that the voting right provided does not entitle minority citizens to proportional representation in electoral offices. See *infra*, at 2360, n. 6.

4 I agree with the majority that "very small differences" among racial groups do not matter. *Ante*, at 2339. Some racial disparities are too small to support a finding of unequal access because they are not statistically significant—that is, because they might have arisen from chance alone. See *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 39, 131 S.Ct. 1309, 179 L.Ed.2d 398 (2011). The statistical significance test is standard in all legal contexts addressing disparate impact. See *Ricci v. DeStefano*, 557 U.S. 557, 587, 129 S.Ct. 2658, 174 L.Ed.2d 490 (2009). In addition, there may be some threshold of what is sometimes called "practical significance"—a level of inequality that, even if statistically meaningful, is just too trivial for the legal system to care about. See Federal Judicial Center, Reference Manual on Scientific Evidence 252 (3d ed. 2011) (discussing differences that are not "practically important").

5 The majority pretends that *Houston Lawyers' Assn.* did not ask about the availability of a less discriminatory means of serving the State's end, see *ante*, at 2342 – 2343, n. 16—but the inquiry is right there on page 428 (examining "if [the] impairment of a minority group's voting strength could be remedied without significantly impairing the State's interest in electing judges on a district-wide basis"). In posing that question, the Court did what Congress wanted, because absent a necessity test, States could too easily get away with offering "non-racial" but pretextual "rationalization[s]." S. Rep., at 37; see *supra*, at 2357 – 2358. And the Court did what it always does in applying laws barring discriminatory effects—ask whether a challenged policy is necessary to achieve the asserted goal. See *infra*, at 2364 – 2365.

Contrary to the majority's view, that kind of inquiry would not result in "invalidat[ing] just about any voting rule a State adopts." *Ante*, at 2345. A plaintiff bears the burden of showing that a less discriminatory law would be "at least as effective in achieving the [State's] legitimate purpose." *Reno v. American Civil Liberties Union*, 521 U.S. 844, 874, 117 S.Ct. 2329, 138 L.Ed.2d 874 (1997). And "cost may be an important factor" in that analysis, so the plaintiff could not (as the majority proposes) say merely that the State can combat fraud by "hiring more investigators and prosecutors." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 730, 134 S.Ct. 2751, 189 L.Ed.2d 675 (2014); *ante*, at 2343. Given those features of

the alternative-means inquiry, a State that tries both to serve its electoral interests and to give its minority citizens equal electoral access will rarely have anything to fear from a Section 2 suit.

6 Contra the majority, see *ante*, at 2332 – 2333, 2341 – 2342, and n. 14, the House-Senate compromise reached in amending Section 2 has nothing to do with the law relevant here. The majority is hazy about the content of this compromise for a reason: It was about proportional representation. As then-Justice Rehnquist explained, members of the Senate expressed concern that the "results in" language of the House-passed bill would provide not "merely for equal 'access' to the political process" but also "for proportional representation" of minority voters. *Mississippi Republican Executive Committee v. Brooks*, 469 U.S. 1002, 1010, 105 S.Ct. 416, 83 L.Ed.2d 343 (1984) (dissenting opinion). Senator Dole's solution was to add text making clear that minority voters had a right to equal voting opportunities, but no right to elect minority candidates "in numbers equal to their proportion in the population." 52 U.S.C. § 10301(b). The Dole Amendment, as Justice Rehnquist noted, ensured that under the "results in" language equal " 'access' only was required." 469 U.S. at 1010–1011, 105 S.Ct. 416; see 128 Cong. Rec. 14132 (1982) (Sen. Dole explaining that as amended "the focus of the standard is on whether there is equal access to the political process, not on whether members of a particular minority group have achieved proportional election results"). Nothing—literally nothing—suggests that the Senate wanted to water down the equal-access right that everyone agreed the House's language covered. So the majority is dead wrong to say that I want to "undo" the House-Senate compromise. *Ante*, at 2341 – 2342. It is the majority that wants to transform that compromise to support a view of Section 2 held in neither the House nor the Senate.

7 In a single sentence, the majority huffs that "nobody disputes" various of these "points of law." *Ante*, at 2341. Excellent! I only wish the majority would take them to heart, both individually and in combination. For example, the majority says it agrees that Section 2 reaches beyond denials of voting to any "abridgement." But then, as I'll later discuss, it insists that Section 2 has an interest only in rules that "block or seriously hinder voting"—which appears to create a "denial or *serious* abridgement" standard. *Ante*, at 2338; see *infra*, at 2362 – 2363. Or, for example, the majority says it accepts that Section 2 may prohibit facially neutral election rules. But the majority takes every opportunity of casting doubt on those applications. Each facially neutral rule it mentions is one that it "doubt[s]" Congress could have "intended to uproot." *Ante*, at 2339; see *ante*, at 2332 – 2333, 2339, 2341, 2343. And it criticizes this dissent for understanding the statute (but how could anyone understand it differently?) as focusing on the racially "disparate impact" of neutral election rules on the opportunity to vote. *Ante*, at ——. Most fundamentally, the majority refuses to acknowledge how all the "points of law" it professes to agree with work in tandem to signal a statute of significant power and scope.

8 The House Report listed some of those offensive, even though facially neutral and then-prevalent, practices: "inconvenient location and hours of registration, dual registration for county and city elections," "frequent and unnecessary purgings and burdensome registration requirements, and failure to provide ... assistance to illiterates." H.R. Rep., at 14. So too the Senate Report complained of "inconvenient voting and registration hours" and "reregistration requirements and purging of voters." S. Rep., at 10, n. 22; see *supra*, at 2358 – 2359.

9 Even setting aside Section 2's status-quo-disrupting lean, this Court has long rejected—including just last Term—the majority's claim that the state of the world at the time of a statute's enactment provides a useful "benchmark[ ]" when applying a broadly written law. *Ante*, at 2338 – 2339. Such a law will typically come to encompass applications—even "important" ones—that were not "foreseen at the time of enactment." *Bostock v. Clayton County*, 590 U.S. ——, ——, 140 S.Ct. 1731, 1750, 207 L.Ed.2d 218 (2020). To prevent that from happening—as the majority does today, on the ground that Congress simply must have "intended" it—is "to displace the plain meaning of the law in favor of something lying behind it." *Ibid*.; see *id*., at ——, 140 S.Ct. 1731, 1753 (When a law is "written in starkly broad terms," it is "virtually guaranteed that unexpected applications [will] emerge over time").

10 Because I would affirm the Court of Appeals' holding that the effects of these policies violate Section 2, I need not pass on that court's alternative holding that the laws were enacted with discriminatory intent.

11 The majority's excuse for failing to consider the plaintiffs' evidence on Arizona's siting of polling places is that the plaintiffs did not bring a separate claim against those practices. See *ante*, at 2346, n. 18. If that sounds odd, it is. The majority does not contest that the evidence on polling-place siting is relevant to the plaintiffs' challenge to the out-of-precinct policy. Nor could the majority do so. The siting practices are one of the background conditions against which the out-of-precinct policy operates—exactly the kind of thing that a totality-of-circumstances analysis demands a court take into account. To

refuse to think about those practices because the plaintiffs might have brought a freestanding claim against them is to impose an out-of-thin-air pleading requirement that operates to exclude exactly the evidence that most strongly signals a Section 2 violation.

12 Certain Hispanic communities in Arizona confront similar difficulties. For example, in the border town of San Luis, which is 98% Hispanic, "[a]lmost 13,000 residents rely on a post office located across a major highway" for their mail service. 329 F.Supp.3d at 869. The median income in San Luis is $22,000, so "many people [do] not own[ ] cars"—making it "difficult" to "receiv[e] and send[ ] mail." *Ibid*.

13 The majority faults the plaintiffs for failing to provide "concrete" statistical evidence on this point. See *ante*, at 2346 – 2347. But no evidence of that kind exists: Arizona has never compiled data on third-party ballot collection. And the witness testimony the plaintiffs offered in its stead allowed the District Court to conclude that minority voters, and especially Native Americans, disproportionately needed third-party assistance to vote. See 329 F.Supp.3d at 869–870.

14 To make matters worse, in-person voting does not provide a feasible alternative for many rural Native voters. Given the low population density on Arizona's reservations, the distance to an assigned polling place—like that to a post office—is usually long. Again, many Native citizens do not own cars. And the State's polling-place siting practices cause some voters to go to the wrong precincts. Respecting the last factor, the District Court found that because Navajo voters "lack standard addresses[,] their precinct assignments" are "based upon guesswork." *Democratic Nat. Committee v. Reagan*, 329 F.Supp.3d 824, 873 (D. Ariz. 2018). As a result, there is frequent "confusion about the voter's correct polling place." *Ibid*.

15 In one of those footnotes, the majority defends its omission by saying that "no individual [Native American] voter testified that [the collection ban] would make it significantly more difficult for him or her to vote." *Ante*, at 2348, n. 21. But as stated above, the District Court found, based on the testimony of "lawmakers, elections officials[,] community advocates," and tribal representatives, that the ban would have that effect for many Native American voters. 329 F.Supp.3d at 868; see *id*., at 870 ("[F]or many Native Americans living in rural locations," voting "is an activity that requires the active assistance of friends and neighbors"); *supra*, at 2369 – 2371. The idea that the claim here fails because the plaintiffs did not produce *less* meaningful evidence (a single person's experience) does not meet the straight-face standard. And the majority's remaining argument is, if anything, more eccentric. Here, the majority assures us that the Postal Service has a "statutory obligation[ ]" to provide "effective and regular postal services to rural areas." *Ante*, at 2348, n. 21. But the record shows what the record shows—once again, in the Court of Appeals' words, that Native Americans in rural Arizona "often must travel 45 minutes to 2 hours just to get to a mailbox." *Democratic Nat. Committee v. Hobbs*, 948 F.3d 989, 1006 (C.A.9 2020). That kind of background circumstance is central to Section 2's totality-of-circumstances analysis—and here produces a significant racial disparity in the opportunity to vote. The majority's argument to the contrary is no better than if it condoned a literacy test on the ground that a State had long had a statutory obligation to teach all its citizens to read and write.

ACLU MD Appendix 4

133 S.Ct. 2612
Supreme Court of the United States

SHELBY COUNTY, ALABAMA, Petitioner
v.
Eric H. HOLDER, Jr., Attorney General, et al.

No. 12–96.
|
Argued Feb. 27, 2013.
|
Decided June 25, 2013.

Synopsis

Background: County brought declaratory judgment action against United States Attorney General, seeking determination that Voting Rights Act's coverage formula and preclearance requirement, under which covered jurisdictions were required to demonstrate that proposed voting law changes were not discriminatory, was unconstitutional. United States and civil rights organization intervened. After intervenors' motion for additional discovery was denied, 270 F.R.D. 16, parties cross-moved for summary judgment. The United States District Court for the District of Columbia, John D. Bates, J., 811 F.Supp.2d 424, entered summary judgment for Attorney General. County appealed. The United States Court of Appeals for the District of Columbia Circuit, Tatel, Circuit Judge, 679 F.3d 848, affirmed. Certiorari was granted.

The Supreme Court, Chief Justice Roberts, held that Voting Rights Act provision setting forth coverage formula was unconstitutional.

Reversed.

Justice Thomas filed concurring opinion.

Justice Ginsburg filed dissenting opinion in which Justices Breyer, Sotomayor, and Kagan joined.

West Codenotes

Held Unconstitutional

42 U.S.C.A. § 1973b(b), transferred to 52 U.S.C.A. § 10303

****2615** *Syllabus* [*]

***529** The Voting Rights Act of 1965 was enacted to address entrenched racial discrimination in voting, "an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution." *South Carolina v. Katzenbach,* 383 U.S. 301, 309, 86 S.Ct. 803, 15 L.Ed.2d 769. Section 2 of the Act, which bans any "standard, practice, or procedure" that "results in a denial or abridgement of the right of any citizen ... to vote on account of race or color," 42 U.S.C. § 1973(a), applies nationwide, is permanent, and is not at issue in this case. Other sections apply only to some parts of the country. Section 4 of the Act provides the "coverage formula," defining the " covered jurisdictions" as States or political subdivisions that maintained tests or devices as prerequisites to voting, and had low voter registration or turnout, in the 1960s and early 1970s. § 1973b(b). In those covered jurisdictions, § 5 of the Act provides that no change in voting procedures can take effect until approved by specified federal authorities in Washington, D.C. § 1973c(a). Such approval is known as "preclearance."

The coverage formula and preclearance requirement were initially set to expire after five years, but the Act has been reauthorized several times. In 2006, the Act was reauthorized for an additional 25 years, but the coverage formula was not changed. Coverage still turned on whether a jurisdiction had a voting test in the 1960s or 1970s, and had low voter registration or turnout at that time. Shortly after the 2006 reauthorization, a Texas utility district sought to bail out from the Act's coverage and, in the alternative, challenged the Act's constitutionality. This Court resolved the challenge on statutory grounds, but expressed serious doubts about the Act's continued constitutionality. See *Northwest Austin Municipal Util. Dist. No. One v. Holder,* 557 U.S. 193, 129 S.Ct. 2504, 174 L.Ed.2d 140.

Petitioner Shelby County, in the covered jurisdiction of Alabama, sued the Attorney General in Federal District Court in Washington, D.C., seeking a declaratory judgment that sections 4(b) and 5 are facially unconstitutional, as well as a permanent injunction against their enforcement. The District Court upheld the Act, finding that the evidence before Congress in 2006 was sufficient to justify reauthorizing § 5 and continuing ***530** § 4(b)'s coverage formula. The D.C. Circuit affirmed. After surveying the evidence in the record, that court accepted Congress's conclusion that § 2 litigation remained inadequate in the covered jurisdictions to protect the

rights of minority voters, that § 5 was therefore still necessary, and that the coverage formula continued to pass constitutional muster.

Held : Section 4 of the Voting Rights Act is unconstitutional; its formula can no longer be used as a basis for subjecting jurisdictions to preclearance. Pp. 2622 – 2628.

(a) In *Northwest Austin*, this Court noted that the Voting Rights Act "imposes current burdens and must be justified by current needs" and concluded that "a departure ****2616** from the fundamental principle of equal sovereignty requires a showing that a statute's disparate geographic coverage is sufficiently related to the problem that it targets." 557 U.S., at 203, 129 S.Ct. 2504. These basic principles guide review of the question presented here. Pp. 2622 – 2627.

(1) State legislation may not contravene federal law. States retain broad autonomy, however, in structuring their governments and pursuing legislative objectives. Indeed, the Tenth Amendment reserves to the States all powers not specifically granted to the Federal Government, including "the power to regulate elections." *Gregory v. Ashcroft,* 501 U.S. 452, 461–462, 111 S.Ct. 2395, 115 L.Ed.2d 410. There is also a "fundamental principle of equal sovereignty" among the States, which is highly pertinent in assessing disparate treatment of States. *Northwest Austin, supra,* at 203, 129 S.Ct. 2504.

The Voting Rights Act sharply departs from these basic principles. It requires States to beseech the Federal Government for permission to implement laws that they would otherwise have the right to enact and execute on their own. And despite the tradition of equal sovereignty, the Act applies to only nine States (and additional counties). That is why, in 1966, this Court described the Act as "stringent" and "potent," *Katzenbach,* 383 U.S., at 308, 315, 337, 86 S.Ct. 803. The Court nonetheless upheld the Act, concluding that such an "uncommon exercise of congressional power" could be justified by "exceptional conditions." *Id.,* at 334, 86 S.Ct. 803. Pp. 2622 – 2625.

(2) In 1966, these departures were justified by the "blight of racial discrimination in voting" that had "infected the electoral process in parts of our country for nearly a century," *Katzenbach,* 383 U.S., at 308, 86 S.Ct. 803. At the time, the coverage formula—the means of linking the exercise of the unprecedented authority with the problem that warranted it —made sense. The Act was limited to areas where Congress found "evidence of actual voting discrimination," and the covered jurisdictions shared two characteristics: "the use of tests and devices for voter registration, and a voting rate in the 1964 presidential election at least 12 points ***531** below the national average." *Id.,* at 330, 86 S.Ct. 803. The Court explained that "[t]ests and devices are relevant to voting discrimination because of their long history as a tool for perpetrating the evil; a low voting rate is pertinent for the obvious reason that widespread disenfranchisement must inevitably affect the number of actual voters." *Ibid.* The Court therefore concluded that "the coverage formula [was] rational in both practice and theory." *Ibid.* Pp. 2624 – 2625.

(3) Nearly 50 years later, things have changed dramatically. Largely because of the Voting Rights Act, "[v]oter turnout and registration rates" in covered jurisdictions "now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels." *Northwest Austin, supra,* at 202, 129 S.Ct. 2504. The tests and devices that blocked ballot access have been forbidden nationwide for over 40 years**.** Yet the Act has not eased § 5's restrictions or narrowed the scope of § 4's coverage formula along the way. Instead those extraordinary and unprecedented features have been reauthorized as if nothing has changed, and they have grown even stronger. Because § 5 applies only to those jurisdictions singled out by § 4, the Court turns to consider that provision. Pp. 2625 – 2627.

(b) Section 4's formula is unconstitutional in light of current conditions. Pp. 2627 – 2631.

****2617** (1) In 1966, the coverage formula was "rational in both practice and theory." *Katzenbach, supra,* at 330, 86 S.Ct. 803. It looked to cause (discriminatory tests) and effect (low voter registration and turnout), and tailored the remedy (preclearance) to those jurisdictions exhibiting both. By 2009, however, the "coverage formula raise[d] serious constitutional questions." *Northwest Austin, supra,* at 204, 129 S.Ct. 2504. Coverage today is based on decades-old data and eradicated practices. The formula captures States by reference to literacy tests and low voter registration and turnout in the 1960s and early 1970s. But such tests have been banned for over 40 years. And voter registration and turnout numbers in covered States have risen dramatically. In 1965, the States could be divided into those with a recent history of voting tests and low voter registration and turnout and those without those characteristics. Congress based its coverage formula on that distinction. Today the Nation is no

longer divided along those lines, yet the Voting Rights Act continues to treat it as if it were. Pp. 2627 – 2628.

(2) The Government attempts to defend the formula on grounds that it is "reverse-engineered"—Congress identified the jurisdictions to be covered and *then* came up with criteria to describe them. *Katzenbach* did not sanction such an approach, reasoning instead that the coverage formula was rational because the "formula ... was relevant to the problem." 383 U.S., at 329, 330, 86 S.Ct. 803. The Government has a fallback ***532** argument—because the formula was relevant in 1965, its continued use is permissible so long as any discrimination remains in the States identified in 1965. But this does not look to "current political conditions," *Northwest Austin, supra,* at 203, 129 S.Ct. 2504, instead relying on a comparison between the States in 1965. But history did not end in 1965. In assessing the "current need[ ]" for a preclearance system treating States differently from one another today, history since 1965 cannot be ignored. The Fifteenth Amendment is not designed to punish for the past; its purpose is to ensure a better future. To serve that purpose, Congress—if it is to divide the States—must identify those jurisdictions to be singled out on a basis that makes sense in light of current conditions. Pp. 2627 – 2629.

(3) Respondents also rely heavily on data from the record compiled by Congress before reauthorizing the Act. Regardless of how one looks at that record, no one can fairly say that it shows anything approaching the "pervasive," "flagrant," "widespread," and "rampant" discrimination that clearly distinguished the covered jurisdictions from the rest of the Nation in 1965. *Katzenbach, supra,* at 308, 315, 331, 86 S.Ct. 803. But a more fundamental problem remains: Congress did not use that record to fashion a coverage formula grounded in current conditions. It instead re-enacted a formula based on 40–year–old facts having no logical relation to the present day. Pp. 2629 – 2630.

679 F.3d 848, reversed.

ROBERTS, C.J., delivered the opinion of the Court, in which SCALIA, KENNEDY, THOMAS, and ALITO, JJ., joined. THOMAS, J., filed a concurring opinion. GINSBURG, J., filed a dissenting opinion, in which BREYER, SOTOMAYOR, and KAGAN, JJ., joined.

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Opinion

Chief Justice ROBERTS delivered the opinion of the Court.

***534** The Voting Rights Act of 1965 employed extraordinary measures to address an extraordinary problem. Section 5 ***535** of the Act required States to obtain federal permission before enacting any law related to voting—a

drastic departure from basic principles of federalism. And § 4 of the Act applied that requirement only to some States —an equally dramatic departure from the principle that all States enjoy equal sovereignty. This was strong medicine, but Congress determined it was needed to address entrenched racial discrimination in voting, "an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution." *South Carolina v. Katzenbach,* 383 U.S. 301, 309, 86 S.Ct. 803, 15 L.Ed.2d 769 (1966). As we explained in upholding the law, "exceptional conditions can justify legislative measures not otherwise appropriate." *Id.,* at 334, 86 S.Ct. 803. Reflecting the unprecedented nature of these measures, they were scheduled to expire after five years. See Voting Rights Act of 1965, § 4(a), 79 Stat. 438.

Nearly 50 years later, they are still in effect; indeed, they have been made more stringent, and are now scheduled to last until 2031. There is no denying, however, that the conditions that originally justified these measures no longer characterize voting in the covered jurisdictions. By 2009, "the racial gap in voter registration and turnout [was] lower in the States originally ****2619** covered by § 5 than it [was] nationwide." *Northwest Austin Municipal Util. Dist. No. One v. Holder,* 557 U.S. 193, 203–204, 129 S.Ct. 2504, 174 L.Ed.2d 140 (2009). Since that time, Census Bureau data indicate that African–American voter turnout has come to exceed white voter turnout in five of the six States originally covered by § 5, with a gap in the sixth State of less than one half of one percent. See Dept. of Commerce, Census Bureau, Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States (Nov. 2012) (Table 4b).

***536** At the same time, voting discrimination still exists; no one doubts that. The question is whether the Act's extraordinary measures, including its disparate treatment of the States, continue to satisfy constitutional requirements. As we put it a short time ago, "the Act imposes current burdens and must be justified by current needs." *Northwest Austin,* 557 U.S., at 203, 129 S.Ct. 2504.

I

A

The Fifteenth Amendment was ratified in 1870, in the wake of the Civil War. It provides that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude," and it gives Congress the "power to enforce this article by appropriate legislation."

"The first century of congressional enforcement of the Amendment, however, can only be regarded as a failure." *Id.,* at 197, 129 S.Ct. 2504. In the 1890s, Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia began to enact literacy tests for voter registration and to employ other methods designed to prevent African–Americans from voting. *Katzenbach,* 383 U.S., at 310, 86 S.Ct. 803. Congress passed statutes outlawing some of these practices and facilitating litigation against them, but litigation remained slow and expensive, and the States came up with new ways to discriminate as soon as existing ones were struck down. Voter registration of African–Americans barely improved. *Id.,* at 313–314, 86 S.Ct. 803.

Inspired to action by the civil rights movement, Congress responded in 1965 with the Voting Rights Act. Section 2 was enacted to forbid, in all 50 States, any "standard, practice, or procedure ... imposed or applied ... to deny or abridge the right of any citizen of the United States to vote on account of race or color." 79 Stat. 437. The current ***537** version forbids any " standard, practice, or procedure" that "results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." 42 U.S.C. § 1973(a). Both the Federal Government and individuals have sued to enforce § 2, see, *e.g., Johnson v. De Grandy,* 512 U.S. 997, 114 S.Ct. 2647, 129 L.Ed.2d 775 (1994), and injunctive relief is available in appropriate cases to block voting laws from going into effect, see 42 U.S.C. § 1973j(d). Section 2 is permanent, applies nationwide, and is not at issue in this case.

Other sections targeted only some parts of the country. At the time of the Act's passage, these "covered" jurisdictions were those States or political subdivisions that had maintained a test or device as a prerequisite to voting as of November 1, 1964, and had less than 50 percent voter registration or turnout in the 1964 Presidential election. § 4(b), 79 Stat. 438. Such tests or devices included literacy and knowledge tests, good moral character requirements, the need for vouchers from registered voters, and the like. § 4(c), *id.*, at 438–439. A ****2620** covered jurisdiction could "bail out" of coverage if it had not used a test or device in the preceding five years "for the purpose or with the effect of denying or abridging the right to vote on account of race or color." § 4(a), *id.,* at 438. In 1965, the covered States included Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia. The

additional covered subdivisions included 39 counties in North Carolina and one in Arizona. See 28 C.F.R. pt. 51, App. (2012).

In those jurisdictions, § 4 of the Act banned all such tests or devices. § 4(a), 79 Stat. 438. Section 5 provided that no change in voting procedures could take effect until it was approved by federal authorities in Washington, D.C.—either the Attorney General or a court of three judges. *Id.,* at 439. A jurisdiction could obtain such "preclearance" only by proving that the change had neither "the purpose [nor] the effect of denying or abridging the right to vote on account of race or color." *Ibid*.

***538** Sections 4 and 5 were intended to be temporary; they were set to expire after five years. See § 4(a), *id.,* at 438; *Northwest Austin, supra,* at 199, 129 S.Ct. 2504. In *South Carolina v. Katzenbach,* we upheld the 1965 Act against constitutional challenge, explaining that it was justified to address "voting discrimination where it persists on a pervasive scale." 383 U.S., at 308, 86 S.Ct. 803.

In 1970, Congress reauthorized the Act for another five years, and extended the coverage formula in § 4(b) to jurisdictions that had a voting test and less than 50 percent voter registration or turnout as of 1968. Voting Rights Act Amendments of 1970, §§ 3–4, 84 Stat. 315. That swept in several counties in California, New Hampshire, and New York. See 28 C.F.R. pt. 51, App. Congress also extended the ban in § 4(a) on tests and devices nationwide. § 6, 84 Stat. 315.

In 1975, Congress reauthorized the Act for seven more years, and extended its coverage to jurisdictions that had a voting test and less than 50 percent voter registration or turnout as of 1972. Voting Rights Act Amendments of 1975, §§ 101, 202, 89 Stat. 400, 401. Congress also amended the definition of "test or device" to include the practice of providing English-only voting materials in places where over five percent of voting-age citizens spoke a single language other than English. § 203, *id.,* at 401–402. As a result of these amendments, the States of Alaska, Arizona, and Texas, as well as several counties in California, Florida, Michigan, New York, North Carolina, and South Dakota, became covered jurisdictions. See 28 C.F.R. pt. 51, App. Congress correspondingly amended sections 2 and 5 to forbid voting discrimination on the basis of membership in a language minority group, in addition to discrimination on the basis of race or color. §§ 203, 206, 89 Stat. 401, 402. Finally, Congress made the nationwide ban on tests and devices permanent. § 102, *id*., at 400.

In 1982, Congress reauthorized the Act for 25 years, but did not alter its coverage formula. See Voting Rights Act ***539** Amendments, 96 Stat. 131. Congress did, however, amend the bailout provisions, allowing political subdivisions of covered jurisdictions to bail out. Among other prerequisites for bailout, jurisdictions and their subdivisions must not have used a forbidden test or device, failed to receive preclearance, or lost a § 2 suit, in the ten years prior to seeking bailout. § 2, *id.,* at 131–133.

We upheld each of these reauthorizations against constitutional challenge. See *Georgia v. United States,* 411 U.S. 526, 93 S.Ct. 1702, 36 L.Ed.2d 472 (1973); *City of* ****2621** *Rome v. United States,* 446 U.S. 156, 100 S.Ct. 1548, 64 L.Ed.2d 119 (1980); *Lopez v. Monterey County,* 525 U.S. 266, 119 S.Ct. 693, 142 L.Ed.2d 728 (1999).

In 2006, Congress again reauthorized the Voting Rights Act for 25 years, again without change to its coverage formula. Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act, 120 Stat. 577. Congress also amended § 5 to prohibit more conduct than before. § 5, *id.,* at 580–581; see *Reno v. Bossier Parish School Bd.,* 528 U.S. 320, 341, 120 S.Ct. 866, 145 L.Ed.2d 845 (2000) (*Bossier II*); *Georgia v. Ashcroft,* 539 U.S. 461, 479, 123 S.Ct. 2498, 156 L.Ed.2d 428 (2003). Section 5 now forbids voting changes with "any discriminatory purpose" as well as voting changes that diminish the ability of citizens, on account of race, color, or language minority status, "to elect their preferred candidates of choice." 42 U.S.C. §§ 1973c(b)-(d).

Shortly after this reauthorization, a Texas utility district brought suit, seeking to bail out from the Act's coverage and, in the alternative, challenging the Act's constitutionality. See *Northwest Austin,* 557 U.S., at 200–201, 129 S.Ct. 2504. A three-judge District Court explained that only a State or political subdivision was eligible to seek bailout under the statute, and concluded that the utility district was not a political subdivision, a term that encompassed only "counties, parishes, and voter-registering subunits." *Northwest Austin Municipal Util. Dist. No. One v. Mukasey,* 573 F.Supp.2d 221, 232 (D.D.C.2008). The District Court also rejected the constitutional challenge. *Id.,* at 283.

***540** We reversed. We explained that " 'normally the Court will not decide a constitutional question if there is some other ground upon which to dispose of the case.' " *Northwest Austin, supra,* at 205, 129 S.Ct. 2504 (quoting *Escambia County v. McMillan,* 466 U.S. 48, 51, 104 S.Ct. 1577, 80 L.Ed.2d 36 (1984) (*per curiam*)). Concluding that "underlying constitutional concerns," among other things, "compel[led] a broader reading of the bailout provision," we construed the statute to allow the utility district to seek bailout. *Northwest Austin,* 557 U.S., at 207, 129 S.Ct. 2504. In doing so we expressed serious doubts about the Act's continued constitutionality.

We explained that § 5 "imposes substantial federalism costs" and "differentiates between the States, despite our historic tradition that all the States enjoy equal sovereignty." *Id.,* at 202, 203, 129 S.Ct. 2504 (internal quotation marks omitted). We also noted that "[t]hings have changed in the South. Voter turnout and registration rates now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels." *Id.,* at 202, 129 S.Ct. 2504. Finally, we questioned whether the problems that § 5 meant to address were still "concentrated in the jurisdictions singled out for preclearance." *Id.,* at 203, 129 S.Ct. 2504.

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

B

Shelby County is located in Alabama, a covered jurisdiction. It has not sought bailout, as the Attorney General has recently objected to voting changes proposed from within the county. See App. 87a–92a. Instead, in 2010, the county sued the Attorney General in Federal District Court in Washington, D.C., seeking a declaratory judgment that sections 4(b) and 5 ****2622** of the Voting Rights Act are facially unconstitutional, as well as a permanent injunction against their ***541** enforcement. The District Court ruled against the county and upheld the Act. 811 F.Supp.2d 424, 508 (2011). The court found that the evidence before Congress in 2006 was sufficient to justify reauthorizing § 5 and continuing the § 4(b) coverage formula.

The Court of Appeals for the D.C. Circuit affirmed. In assessing § 5, the D.C. Circuit considered six primary categories of evidence: Attorney General objections to voting changes, Attorney General requests for more information regarding voting changes, successful § 2 suits in covered jurisdictions, the dispatching of federal observers to monitor elections in covered jurisdictions, § 5 preclearance suits involving covered jurisdictions, and the deterrent effect of § 5. See 679 F.3d 848, 862–863 (2012). After extensive analysis of the record, the court accepted Congress's conclusion that § 2 litigation remained inadequate in the covered jurisdictions to protect the rights of minority voters, and that § 5 was therefore still necessary. *Id.,* at 873.

Turning to § 4, the D.C. Circuit noted that the evidence for singling out the covered jurisdictions was "less robust" and that the issue presented "a close question." *Id.,* at 879. But the court looked to data comparing the number of successful § 2 suits in the different parts of the country. Coupling that evidence with the deterrent effect of § 5, the court concluded that the statute continued "to single out the jurisdictions in which discrimination is concentrated," and thus held that the coverage formula passed constitutional muster. *Id.,* at 883.

Judge Williams dissented. He found "no positive correlation between inclusion in § 4(b)'s coverage formula and low black registration or turnout." *Id.,* at 891. Rather, to the extent there was any correlation, it actually went the other way: "condemnation under § 4(b) is a marker of *higher* black registration and turnout." *Ibid.* (emphasis added). Judge Williams also found that "[c]overed jurisdictions have *far more* black officeholders as a proportion of the black ***542** population than do uncovered ones." *Id.,* at 892. As to the evidence of successful § 2 suits, Judge Williams disaggregated the reported cases by State, and concluded that "[t]he five worst uncovered jurisdictions ... have worse records than eight of the covered jurisdictions." *Id.,* at 897. He also noted that two covered jurisdictions—Arizona and Alaska—had not had any successful reported § 2 suit brought against them during the entire 24 years covered by the data. *Ibid.* Judge Williams would have held the coverage formula of § 4(b) "irrational" and unconstitutional. *Id.,* at 885.

We granted certiorari. 568 U.S. ——, 133 S.Ct. 594, 184 L.Ed.2d 389 (2012).

II

In *Northwest Austin,* we stated that "the Act imposes current burdens and must be justified by current needs." 557 U.S., at 203, 129 S.Ct. 2504. And we concluded that "a departure from the fundamental principle of equal sovereignty requires a showing that a statute's disparate geographic coverage is sufficiently related to the problem that it targets." *Ibid.* These basic principles guide our review of the question before us.[1]

****2623** A

The Constitution and laws of the United States are "the supreme Law of the Land." U.S. Const., Art. VI, cl. 2. State legislation may not contravene federal law. The Federal Government does not, however, have a general right to review and veto state enactments before they go into effect. A proposal to grant such authority to "negative" state laws was considered at the Constitutional Convention, but rejected in favor of allowing state laws to take effect, subject to later challenge under the Supremacy Clause. See 1 ***543** Records of the Federal Convention of 1787, pp. 21, 164–168 (M. Farrand ed. 1911); 2 *id.,* at 27–29, 390–392.

Outside the strictures of the Supremacy Clause, States retain broad autonomy in structuring their governments and pursuing legislative objectives. Indeed, the Constitution provides that all powers not specifically granted to the Federal Government are reserved to the States or citizens. Amdt. 10. This "allocation of powers in our federal system preserves the integrity, dignity, and residual sovereignty of the States." *Bond v. United States,* 564 U.S. ——, ——, 131 S.Ct. 2355, 2364, 180 L.Ed.2d 269 (2011). But the federal balance "is not just an end in itself: Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power." *Ibid.* (internal quotation marks omitted).

More specifically, " 'the Framers of the Constitution intended the States to keep for themselves, as provided in the Tenth Amendment, the power to regulate elections.' " *Gregory v. Ashcroft,* 501 U.S. 452, 461–462, 111 S.Ct. 2395, 115 L.Ed.2d 410 (1991) (quoting *Sugarman v. Dougall,* 413 U.S. 634, 647, 93 S.Ct. 2842, 37 L.Ed.2d 853 (1973); some internal quotation marks omitted). Of course, the Federal Government retains significant control over federal elections. For instance, the Constitution authorizes Congress to establish the time and manner for electing Senators and Representatives. Art. I, § 4, cl. 1; see also *Arizona v. Inter Tribal Council of Ariz., Inc.,* —— U.S., at —— – ——, 133 S.Ct., at 2253 – 2254. But States have "broad powers to determine the conditions under which the right of suffrage may be exercised." *Carrington v. Rash,* 380 U.S. 89, 91, 85 S.Ct. 775, 13 L.Ed.2d 675 (1965) (internal quotation marks omitted); see also *Arizona, ante,* at —— U.S., at —— – ——, 133 S.Ct., at 2257 – 2259. And "[e]ach State has the power to prescribe the qualifications of its officers and the manner in which they shall be chosen." *Boyd v. Nebraska ex rel. Thayer,* 143 U.S. 135, 161, 12 S.Ct. 375, 36 L.Ed. 103 (1892). Drawing lines for congressional districts is likewise "primarily the duty and responsibility of the State." *Perry v. Perez,* 565 U.S. ——, ——, 132 S.Ct. 934, 940, 181 L.Ed.2d 900 (2012) (*per curiam*) (internal quotation marks omitted).

***544** Not only do States retain sovereignty under the Constitution, there is also a "fundamental principle of *equal* sovereignty" among the States. *Northwest Austin, supra,* at 203, 129 S.Ct. 2504 (citing *United States v. Louisiana,* 363 U.S. 1, 16, 80 S.Ct. 961, 4 L.Ed.2d 1025 (1960); *Lessee of Pollard v. Hagan,* 3 How. 212, 223, 11 L.Ed. 565 (1845); and *Texas v. White,* 7 Wall. 700, 725–726, 19 L.Ed. 227 (1869); emphasis added). Over a hundred years ago, this Court explained that our Nation "was and is a union of States, equal in power, dignity and authority." *Coyle v. Smith,* 221 U.S. 559, 567, 31 S.Ct. 688, 55 L.Ed. 853 (1911). Indeed, "the constitutional equality of the States is essential to the harmonious operation of the scheme upon which the Republic was organized." *Id.,* at 580, 31 S.Ct. 688. *Coyle* concerned the admission of new States, and *Katzenbach* rejected the notion that the principle ****2624** operated as a *bar* on differential treatment outside that context. 383 U.S., at 328–329, 86 S.Ct. 803. At the same time, as we made clear in *Northwest Austin,* the fundamental principle of equal sovereignty remains highly pertinent in assessing subsequent disparate treatment of States. 557 U.S., at 203, 129 S.Ct. 2504.

The Voting Rights Act sharply departs from these basic principles. It suspends "*all* changes to state election law —however innocuous—until they have been precleared by federal authorities in Washington, D.C." *Id.,* at 202, 129 S.Ct. 2504. States must beseech the Federal Government for permission to implement laws that they would otherwise have the right to enact and execute on their own, subject of course to any injunction in a § 2 action. The Attorney General has 60 days to object to a preclearance request, longer if he requests more information. See 28 C.F.R. §§ 51.9, 51.37. If a State seeks preclearance from a three-judge court, the process can take years.

And despite the tradition of equal sovereignty, the Act applies to only nine States (and several additional counties). While

one State waits months or years and expends funds to implement a validly enacted law, its neighbor can typically put the same law into effect immediately, through the normal ***545** legislative process. Even if a noncovered jurisdiction is sued, there are important differences between those proceedings and preclearance proceedings; the preclearance proceeding "not only switches the burden of proof to the supplicant jurisdiction, but also applies substantive standards quite different from those governing the rest of the nation." 679 F.3d, at 884 (Williams, J., dissenting) (case below).

All this explains why, when we first upheld the Act in 1966, we described it as "stringent" and "potent." *Katzenbach,* 383 U.S., at 308, 315, 337, 86 S.Ct. 803. We recognized that it "may have been an uncommon exercise of congressional power," but concluded that "legislative measures not otherwise appropriate" could be justified by "exceptional conditions." *Id.,* at 334, 86 S.Ct. 803. We have since noted that the Act "authorizes federal intrusion into sensitive areas of state and local policymaking," *Lopez,* 525 U.S., at 282, 119 S.Ct. 693, and represents an "extraordinary departure from the traditional course of relations between the States and the Federal Government," *Presley v. Etowah County Comm'n,* 502 U.S. 491, 500–501, 112 S.Ct. 820, 117 L.Ed.2d 51 (1992). As we reiterated in *Northwest Austin,* the Act constitutes "extraordinary legislation otherwise unfamiliar to our federal system." 557 U.S., at 211, 129 S.Ct. 2504.

B

In 1966, we found these departures from the basic features of our system of government justified. The "blight of racial discrimination in voting" had "infected the electoral process in parts of our country for nearly a century." *Katzenbach,* 383 U.S., at 308, 86 S.Ct. 803. Several States had enacted a variety of requirements and tests "specifically designed to prevent" African–Americans from voting. *Id.,* at 310, 86 S.Ct. 803. Case-by-case litigation had proved inadequate to prevent such racial discrimination in voting, in part because States "merely switched to discriminatory devices not covered by the federal decrees," "enacted difficult new tests," or simply "defied and evaded court orders." *Id.,* at 314, 86 S.Ct. 803. Shortly before ***546** enactment of the Voting Rights Act, only 19.4 percent of African–Americans of voting age were registered to vote in Alabama, only 31.8 percent in Louisiana, and only 6.4 percent in Mississippi. *Id.,* at 313, 86 S.Ct. 803. Those figures were roughly ****2625** 50 percentage points or more below the figures for whites. *Ibid.*

In short, we concluded that "[u]nder the compulsion of these unique circumstances, Congress responded in a permissibly decisive manner." *Id.,* at 334, 335, 86 S.Ct. 803. We also noted then and have emphasized since that this extraordinary legislation was intended to be temporary, set to expire after five years. *Id.,* at 333, 86 S.Ct. 803; *Northwest Austin, supra,* at 199, 129 S.Ct. 2504.

At the time, the coverage formula—the means of linking the exercise of the unprecedented authority with the problem that warranted it—made sense. We found that "Congress chose to limit its attention to the geographic areas where immediate action seemed necessary." *Katzenbach,* 383 U.S., at 328, 86 S.Ct. 803. The areas where Congress found "evidence of actual voting discrimination" shared two characteristics: "the use of tests and devices for voter registration, and a voting rate in the 1964 presidential election at least 12 points below the national average." *Id.,* at 330, 86 S.Ct. 803. We explained that "[t]ests and devices are relevant to voting discrimination because of their long history as a tool for perpetrating the evil; a low voting rate is pertinent for the obvious reason that widespread disenfranchisement must inevitably affect the number of actual voters." *Ibid.* We therefore concluded that "the coverage formula [was] rational in both practice and theory." *Ibid.* It accurately reflected those jurisdictions uniquely characterized by voting discrimination "on a pervasive scale," linking coverage to the devices used to effectuate discrimination and to the resulting disenfranchisement. *Id.,* at 308, 86 S.Ct. 803. The formula ensured that the "stringent remedies [were] aimed at areas where voting discrimination ha[d] been most flagrant." *Id.,* at 315, 86 S.Ct. 803.

***547** C

Nearly 50 years later, things have changed dramatically. Shelby County contends that the preclearance requirement, even without regard to its disparate coverage, is now unconstitutional. Its arguments have a good deal of force. In the covered jurisdictions, "[v]oter turnout and registration rates now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels." *Northwest Austin,* 557 U.S., at 202, 129 S.Ct. 2504. The tests and devices that blocked

access to the ballot have been forbidden nationwide for over 40 years. See § 6, 84 Stat. 315; § 102, 89 Stat. 400.

Those conclusions are not ours alone. Congress said the same when it reauthorized the Act in 2006, writing that "[s]ignificant progress has been made in eliminating first generation barriers experienced by minority voters, including increased numbers of registered minority voters, minority voter turnout, and minority representation in Congress, State legislatures, and local elected offices." § 2(b)(1), 120 Stat. 577. The House Report elaborated that "the number of African–Americans who are registered and who turn out to cast ballots has increased significantly over the last 40 years, particularly since 1982," and noted that "[i]n some circumstances, minorities register to vote and cast ballots at levels that surpass those of white voters." H.R.Rep. 109–478, at 12 (2006), 2006 U.S.C.C.A.N. 618, 627. That Report also explained that there have been "significant increases in the number of African–Americans serving in elected offices"; more specifically, there has been approximately a 1,000 percent increase since 1965 in the number of African–American elected officials in the six States originally covered by the Voting Rights Act. *Id.,* at 18.

****2626** The following chart, compiled from the Senate and House Reports, compares voter registration numbers from 1965 to those from 2004 in the six originally covered States. These ***548** are the numbers that were before Congress when it reauthorized the Act in 2006:

	1965			2004		
	White	Black	Gap	White	Black	Gap
Alabama	69.2	19.3	49.9	73.8	72.9	0.9
Georgia	62.[6]	27.4	35.2	63.5	64.2	-0.7
Louisiana	80.5	31.6	48.9	75.1	71.1	4.0
Mississippi	69.9	6.7	63.2	72.3	76.1	-3.8
South Carolina	75.7	37.3	38.4	74.4	71.1	3.3
Virginia	61.1	38.3	22.8	68.2	57.4	10.8

See S.Rep. No. 109–295, p. 11 (2006); H.R.Rep. No. 109–478, at 12. The 2004 figures come from the Census Bureau. Census Bureau data from the most recent election indicate that African–American voter turnout exceeded white voter turnout in five of the six States originally covered by § 5, with a gap in the sixth State of less than one half of one percent. See Dept. of Commerce, Census Bureau, Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States (Table 4b). The preclearance statistics are also illuminating. In the first decade after enactment of § 5, the Attorney General objected to 14.2 percent of proposed voting changes. H. R Rep. No. 109–478, at 22. In the last decade before reenactment, the Attorney General objected to a mere 0.16 percent. S.Rep. No. 109–295, at 13.

There is no doubt that these improvements are in large part *because of* the Voting Rights Act. The Act has proved immensely successful at redressing racial discrimination and integrating the voting process. See § 2(b)(1), 120 Stat. 577. During the "Freedom Summer" of 1964, in Philadelphia, Mississippi, three men were murdered while working in the area to register African–American voters. See *United States v.* ***549** *Price,* 383 U.S. 787, 790, 86 S.Ct. 1152, 16 L.Ed.2d 267 (1966). On "Bloody Sunday" in 1965, in Selma, Alabama, police beat and used tear gas against hundreds marching in support of African–American enfranchisement. See *Northwest Austin, supra,* at 220, n. 3, 129 S.Ct. 2504 (THOMAS, J., concurring in judgment in part and dissenting in part). Today both of those towns are governed by African–American mayors. Problems remain in these States and others, but there is no denying that, due to the Voting Rights Act, our Nation has made great strides.

Yet the Act has not eased the restrictions in § 5 or narrowed the scope of the coverage formula in § 4(b) along the way. Those extraordinary and unprecedented features were reauthorized—as if nothing had changed. In fact, the Act's unusual remedies have grown even stronger. When Congress reauthorized the Act in 2006, it did so for another 25 years on top of the previous 40—a far cry from the initial five-year period. See 42 U.S.C. § 1973b(a)(8). Congress also expanded the prohibitions in § 5. We had previously interpreted § 5 to prohibit only those redistricting plans that would have the purpose or effect of worsening the position of minority groups. See *Bossier II,* 528 U.S., at 324, 335–336, 120 S.Ct. 866. In 2006, Congress amended § 5 to prohibit laws that could have favored such groups ****2627** but did not do so because of a discriminatory purpose, see 42 U.S.C. § 1973c(c), even though we had stated that such broadening of § 5 coverage would "exacerbate the substantial federalism costs that the preclearance procedure already exacts, perhaps to the extent of raising concerns about § 5's constitutionality," *Bossier II, supra,* at 336, 120 S.Ct. 866 (citation and internal quotation marks omitted). In addition, Congress expanded § 5 to prohibit any voting law "that has the purpose of or will have the effect of diminishing the ability of any citizens of the United States," on account of race, color, or language minority status, "to elect their preferred candidates of choice." § 1973c(b). In light of those two amendments, the bar that covered jurisdictions ***550** must clear has been

raised even as the conditions justifying that requirement have dramatically improved.

We have also previously highlighted the concern that "the preclearance requirements in one State [might] be unconstitutional in another." *Northwest Austin,* 557 U.S., at 203, 129 S.Ct. 2504; see *Georgia v. Ashcroft,* 539 U.S., at 491, 123 S.Ct. 2498 (KENNEDY, J., concurring) ("considerations of race that would doom a redistricting plan under the Fourteenth Amendment or § 2 [of the Voting Rights Act] seem to be what save it under § 5"). Nothing has happened since to alleviate this troubling concern about the current application of § 5.

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

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

III

A

When upholding the constitutionality of the coverage formula in 1966, we concluded that it was "rational in both practice and theory." *Katzenbach,* 383 U.S., at 330, 86 S.Ct. 803. The formula looked to cause (discriminatory tests) and effect (low voter registration and turnout), and tailored the remedy (preclearance) to those jurisdictions exhibiting both.

By 2009, however, we concluded that the "coverage formula raise[d] serious constitutional questions." *Northwest Austin,* 557 U.S., at 204, 129 S.Ct. 2504. As we explained, a statute's "current burdens" must be justified by "current needs," and ***551** any "disparate geographic coverage" must be " sufficiently related to the problem that it targets." *Id.,* at 203, 129 S.Ct. 2504. The coverage formula met that test in 1965, but no longer does so.

Coverage today is based on decades-old data and eradicated practices. The formula captures States by reference to literacy tests and low voter registration and turnout in the 1960s and early 1970s. But such tests have been banned nationwide for over 40 years. § 6, 84 Stat. 315; § 102, 89 Stat. 400. And voter registration and turnout numbers in the covered States have risen dramatically in the years since. H.R.Rep. No. 109–478, at 12. Racial disparity in those numbers was compelling evidence justifying the preclearance remedy and the coverage formula. See, *e.g.,* ****2628** *Katzenbach, supra,* at 313, 329–330, 86 S.Ct. 803. There is no longer such a disparity.

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

B

The Government's defense of the formula is limited. First, the Government contends that the formula is "reverse-engineered": Congress identified the jurisdictions to be covered and *then* came up with criteria to describe them. Brief for Federal Respondent 48–49. Under that reasoning, there need not be any logical relationship between the criteria in the formula and the reason for coverage; all that is necessary is that the formula happen to capture the jurisdictions Congress wanted to single out.

The Government suggests that *Katzenbach* sanctioned such an approach, but the analysis in *Katzenbach* was quite different. *Katzenbach* reasoned that the coverage formula was rational because the "formula ... was relevant to the ***552** problem": "Tests and devices are relevant to voting discrimination because of their long history as a tool for perpetrating the evil; a low voting rate is pertinent for the obvious reason that widespread disenfranchisement must inevitably affect the number of actual voters." 383 U.S., at 329, 330, 86 S.Ct. 803.

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

Austin, supra, at 211, 129 S.Ct. 2504—that failure to establish even relevance is fatal.

The Government falls back to the argument that because the formula was relevant in 1965, its continued use is permissible so long as any discrimination remains in the States Congress identified back then—regardless of how that discrimination compares to discrimination in States unburdened by coverage. Brief for Federal Respondent 49–50. This argument does not look to "current political conditions," *Northwest Austin, supra,* at 203, 129 S.Ct. 2504, but instead relies on a comparison between the States in 1965. That comparison reflected the different histories of the North and South. It was in the South that slavery was upheld by law until uprooted by the Civil War, that the reign of Jim Crow denied African–Americans the most basic freedoms, and that state and local governments worked tirelessly to disenfranchise citizens on the basis of race. The Court invoked that history —rightly so—in sustaining the disparate coverage of the Voting Rights Act in 1966. See *Katzenbach, supra,* at 308, 86 S.Ct. 803 ("The constitutional propriety of the Voting Rights Act of 1965 must be judged with reference to the historical experience which it reflects.").

But history did not end in 1965. By the time the Act was reauthorized in 2006, there had been 40 more years of it. In assessing the "current need [ ]" for a preclearance system ***553** that treats States differently from one another today, that history cannot be ignored. During that time, largely because of the Voting Rights Act, voting tests were abolished, disparities in voter registration and turnout due to race were erased, and African–Americans attained political office in record numbers. And yet the coverage formula that Congress ****2629** reauthorized in 2006 ignores these developments, keeping the focus on decades-old data relevant to decades-old problems, rather than current data reflecting current needs.

The Fifteenth Amendment commands that the right to vote shall not be denied or abridged on account of race or color, and it gives Congress the power to enforce that command. The Amendment is not designed to punish for the past; its purpose is to ensure a better future. See *Rice v. Cayetano,* 528 U.S. 495, 512, 120 S.Ct. 1044, 145 L.Ed.2d 1007 (2000) ("Consistent with the design of the Constitution, the [Fifteenth] Amendment is cast in fundamental terms, terms transcending the particular controversy which was the immediate impetus for its enactment."). To serve that purpose, Congress—if it is to divide the States—must identify those jurisdictions to be singled out on a basis that makes sense in light of current conditions. It cannot rely simply on the past. We made that clear in *Northwest Austin,* and we make it clear again today.

C

In defending the coverage formula, the Government, the intervenors, and the dissent also rely heavily on data from the record that they claim justify disparate coverage. Congress compiled thousands of pages of evidence before reauthorizing the Voting Rights Act. The court below and the parties have debated what that record shows—they have gone back and forth about whether to compare covered to noncovered jurisdictions as blocks, how to disaggregate the data State by State, how to weigh § 2 cases as evidence of ongoing discrimination, and whether to consider evidence not before Congress, among other issues. Compare, *e.g.,* ***554** 679 F.3d, at 873–883 (case below), with *id.,* at 889–902 (Williams, J., dissenting). Regardless of how to look at the record, however, no one can fairly say that it shows anything approaching the "pervasive," "flagrant," "widespread," and "rampant" discrimination that faced Congress in 1965, and that clearly distinguished the covered jurisdictions from the rest of the Nation at that time. *Katzenbach, supra,* at 308, 315, 331, 86 S.Ct. 803; *Northwest Austin,* 557 U.S., at 201, 129 S.Ct. 2504.

But a more fundamental problem remains: Congress did not use the record it compiled to shape a coverage formula grounded in current conditions. It instead reenacted a formula based on 40–year–old facts having no logical relation to the present day. The dissent relies on "second-generation barriers," which are not impediments to the casting of ballots, but rather electoral arrangements that affect the weight of minority votes. That does not cure the problem. Viewing the preclearance requirements as targeting such efforts simply highlights the irrationality of continued reliance on the § 4 coverage formula, which is based on voting tests and access to the ballot, not vote dilution. We cannot pretend that we are reviewing an updated statute, or try our hand at updating the statute ourselves, based on the new record compiled by Congress. Contrary to the dissent's contention, see *post,* at 2644, we are not ignoring the record; we are simply recognizing that it played no role in shaping the statutory formula before us today.

The dissent also turns to the record to argue that, in light of voting discrimination in Shelby County, the county cannot

complain about the provisions that subject it to preclearance. *Post,* at 2644 – 2648. But that is like saying that a driver pulled over pursuant to a policy of stopping all redheads cannot complain about that policy, if it turns out his license has expired. Shelby ****2630** County's claim is that the coverage formula here is unconstitutional in all its applications, because of how it selects the jurisdictions subjected to preclearance. The ***555** county was selected based on that formula, and may challenge it in court.

D

The dissent proceeds from a flawed premise. It quotes the famous sentence from *McCulloch v. Maryland,* 4 Wheat. 316, 421, 4 L.Ed. 579 (1819), with the following emphasis: "Let the end be legitimate, let it be within the scope of the constitution, and *all means which are appropriate, which are plainly adapted to that end,* which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." *Post,* at 2637 (emphasis in dissent). But this case is about a part of the sentence that the dissent does not emphasize—the part that asks whether a legislative means is "consist[ent] with the letter and spirit of the constitution." The dissent states that "[i]t cannot tenably be maintained" that this is an issue with regard to the Voting Rights Act, *post,* at 2637, but four years ago, in an opinion joined by two of today's dissenters, the Court expressly stated that "[t]he Act's preclearance requirement and its coverage formula raise serious constitutional questions." *Northwest Austin, supra,* at 204, 129 S.Ct. 2504. The dissent does not explain how those "serious constitutional questions" became untenable in four short years.

The dissent treats the Act as if it were just like any other piece of legislation, but this Court has made clear from the beginning that the Voting Rights Act is far from ordinary. At the risk of repetition, *Katzenbach* indicated that the Act was "uncommon" and "not otherwise appropriate," but was justified by "exceptional" and "unique" conditions. 383 U.S., at 334, 335, 86 S.Ct. 803. Multiple decisions since have reaffirmed the Act's "extraordinary" nature. See, *e.g., Northwest Austin, supra,* at 211, 129 S.Ct. 2504. Yet the dissent goes so far as to suggest instead that the preclearance requirement and disparate treatment of the States should be upheld into the future "unless there [is] no or almost no evidence of unconstitutional action by States." *Post,* at 2650.

***556** In other ways as well, the dissent analyzes the question presented as if our decision in *Northwest Austin* never happened. For example, the dissent refuses to consider the principle of equal sovereignty, despite *Northwest Austin* 's emphasis on its significance. *Northwest Austin* also emphasized the "dramatic" progress since 1965, 557 U.S., at 201, 129 S.Ct. 2504, but the dissent describes current levels of discrimination as " flagrant," "widespread," and "pervasive," *post,* at 2636, 2641 (internal quotation marks omitted). Despite the fact that *Northwest Austin* requires an Act's "disparate geographic coverage" to be "sufficiently related" to its targeted problems, 557 U.S., at 203, 129 S.Ct. 2504, the dissent maintains that an Act's limited coverage actually eases Congress's burdens, and suggests that a fortuitous relationship should suffice. Although *Northwest Austin* stated definitively that "current burdens" must be justified by "current needs," *ibid.*, the dissent argues that the coverage formula can be justified by history, and that the required showing can be weaker on reenactment than when the law was first passed.

There is no valid reason to insulate the coverage formula from review merely because it was previously enacted 40 years ago. If Congress had started from scratch in 2006, it plainly could not have enacted the present coverage formula. It would have been irrational for Congress to distinguish ****2631** between States in such a fundamental way based on 40–year–old data, when today's statistics tell an entirely different story. And it would have been irrational to base coverage on the use of voting tests 40 years ago, when such tests have been illegal since that time. But that is exactly what Congress has done.

* * *

Striking down an Act of Congress "is the gravest and most delicate duty that this Court is called on to perform." *Blodgett v. Holden,* 275 U.S. 142, 148, 48 S.Ct. 105, 72 L.Ed. 206 (1927) (Holmes, J., concurring). We do not do so lightly. That is why, in 2009, we took care to avoid ruling on the constitutionality of the ***557** Voting Rights Act when asked to do so, and instead resolved the case then before us on statutory grounds. But in issuing that decision, we expressed our broader concerns about the constitutionality of the Act. Congress could have updated the coverage formula at that time, but did not do so. Its failure to act leaves us today with no choice but to declare § 4(b) unconstitutional. The formula in that section can no longer be used as a basis for subjecting jurisdictions to preclearance.

Our decision in no way affects the permanent, nationwide ban on racial discrimination in voting found in § 2. We issue no holding on § 5 itself, only on the coverage formula. Congress may draft another formula based on current conditions. Such a formula is an initial prerequisite to a determination that exceptional conditions still exist justifying such an "extraordinary departure from the traditional course of relations between the States and the Federal Government." *Presley,* 502 U.S., at 500–501, 112 S.Ct. 820. Our country has changed, and while any racial discrimination in voting is too much, Congress must ensure that the legislation it passes to remedy that problem speaks to current conditions.

The judgment of the Court of Appeals is reversed.

It is so ordered.

Justice THOMAS, concurring.
I join the Court's opinion in full but write separately to explain that I would find § 5 of the Voting Rights Act unconstitutional as well. The Court's opinion sets forth the reasons.

"The Voting Rights Act of 1965 employed extraordinary measures to address an extraordinary problem." *Ante,* at 2618. In the face of "unremitting and ingenious defiance" of citizens' constitutionally protected right to vote, § 5 was necessary to give effect to the Fifteenth Amendment in particular regions of the country. *South Carolina v. Katzenbach,* 383 U.S. 301, 309, 86 S.Ct. 803, 15 L.Ed.2d 769 (1966). Though § 5's preclearance ***558** requirement represented a "shar[p] depart[ure]" from "basic principles" of federalism and the equal sovereignty of the States, *ante,* at 2622, 2623, the Court upheld the measure against early constitutional challenges because it was necessary at the time to address "voting discrimination where it persist[ed] on a pervasive scale." *Katzenbach, supra,* at 308, 86 S.Ct. 803.

Today, our Nation has changed. "[T]he conditions that originally justified [§ 5] no longer characterize voting in the covered jurisdictions." *Ante,* at 2618. As the Court explains: " '[V]oter turnout and registration rates now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels.' " *Ante,* at 2625 (quoting ****2632** *Northwest Austin Municipal Util. Dist. No. One v. Holder,* 557 U.S. 193, 202, 129 S.Ct. 2504, 174 L.Ed.2d 140 (2009)).

In spite of these improvements, however, Congress *increased* the already significant burdens of § 5. Following its reenactment in 2006, the Voting Rights Act was amended to "prohibit more conduct than before." *Ante,* at 2621. "Section 5 now forbids voting changes with 'any discriminatory purpose' as well as voting changes that diminish the ability of citizens, on account of race, color, or language minority status, 'to elect their preferred candidates of choice.' " *Ante,* at 2621. While the pre–2006 version of the Act went well beyond protection guaranteed under the Constitution, see *Reno v. Bossier Parish School Bd.,* 520 U.S. 471, 480–482, 117 S.Ct. 1491, 137 L.Ed.2d 730 (1997), it now goes even further.

It is, thus, quite fitting that the Court repeatedly points out that this legislation is "extraordinary" and "unprecedented" and recognizes the significant constitutional problems created by Congress' decision to raise "the bar that covered jurisdictions must clear," even as "the conditions justifying that requirement have dramatically improved." *Ante,* at 2627. However one aggregates the data compiled by Congress, it cannot justify the considerable burdens created by § 5. As the Court aptly notes: "[N]o one can fairly say that [the record] shows anything approaching the 'pervasive,' 'flagrant,' 'widespread,' and 'rampant' discrimination ***559** that faced Congress in 1965, and that clearly distinguished the covered jurisdictions from the rest of the Nation at that time." *Ante,* at 2629. Indeed, circumstances in the covered jurisdictions can no longer be characterized as "exceptional" or "unique." "The extensive pattern of discrimination that led the Court to previously uphold § 5 as enforcing the Fifteenth Amendment no longer exists." *Northwest Austin, supra,* at 226, 129 S.Ct. 2504 (THOMAS, J., concurring in judgment in part and dissenting in part). Section 5 is, thus, unconstitutional.

While the Court claims to "issue no holding on § 5 itself," *ante,* at 2631, its own opinion compellingly demonstrates that Congress has failed to justify " 'current burdens' " with a record demonstrating " 'current needs.' " See *ante,* at 2622 (quoting *Northwest Austin, supra,* at 203, 129 S.Ct. 2504). By leaving the inevitable conclusion unstated, the Court needlessly prolongs the demise of that provision. For the reasons stated in the Court's opinion, I would find § 5 unconstitutional.

Justice GINSBURG, with whom Justice BREYER, Justice SOTOMAYOR, and Justice KAGAN join, dissenting.
In the Court's view, the very success of § 5 of the Voting Rights Act demands its dormancy. Congress was of another

mind. Recognizing that large progress has been made, Congress determined, based on a voluminous record, that the scourge of discrimination was not yet extirpated. The question this case presents is who decides whether, as currently operative, § 5 remains justifiable,[1] this Court, or a Congress charged with the obligation to enforce the post-Civil War Amendments "by appropriate legislation." With overwhelming support in both Houses, Congress concluded that, for two prime reasons, § 5 should continue in force, unabated. First, continuance would facilitate completion of the impressive gains thus far made; and second, continuance would ***560** guard against backsliding. Those assessments were well within Congress' province to make and ****2633** should elicit this Court's unstinting approbation.

I

"[V]oting discrimination still exists; no one doubts that." *Ante,* at 2619. But the Court today terminates the remedy that proved to be best suited to block that discrimination. The Voting Rights Act of 1965 (VRA) has worked to combat voting discrimination where other remedies had been tried and failed. Particularly effective is the VRA's requirement of federal preclearance for all changes to voting laws in the regions of the country with the most aggravated records of rank discrimination against minority voting rights.

A century after the Fourteenth and Fifteenth Amendments guaranteed citizens the right to vote free of discrimination on the basis of race, the "blight of racial discrimination in voting" continued to "infec[t] the electoral process in parts of our country." *South Carolina v. Katzenbach,* 383 U.S. 301, 308, 86 S.Ct. 803, 15 L.Ed.2d 769 (1966). Early attempts to cope with this vile infection resembled battling the Hydra. Whenever one form of voting discrimination was identified and prohibited, others sprang up in its place. This Court repeatedly encountered the remarkable "variety and persistence" of laws disenfranchising minority citizens. *Id.,* at 311, 86 S.Ct. 803. To take just one example, the Court, in 1927, held unconstitutional a Texas law barring black voters from participating in primary elections, *Nixon v. Herndon,* 273 U.S. 536, 541, 47 S.Ct. 446, 71 L.Ed. 759; in 1944, the Court struck down a "reenacted" and slightly altered version of the same law, *Smith v. Allwright,* 321 U.S. 649, 658, 64 S.Ct. 757, 88 L.Ed. 987; and in 1953, the Court once again confronted an attempt by Texas to "circumven[t]" the Fifteenth Amendment by adopting yet another variant of the all-white primary, *Terry v. Adams,* 345 U.S. 461, 469, 73 S.Ct. 809, 97 L.Ed. 1152.

***561** During this era, the Court recognized that discrimination against minority voters was a quintessentially political problem requiring a political solution. As Justice Holmes explained: If "the great mass of the white population intends to keep the blacks from voting," "relief from [that] great political wrong, if done, as alleged, by the people of a State and the State itself, must be given by them or by the legislative and political department of the government of the United States." *Giles v. Harris,* 189 U.S. 475, 488, 23 S.Ct. 639, 47 L.Ed. 909 (1903).

Congress learned from experience that laws targeting particular electoral practices or enabling case-by-case litigation were inadequate to the task. In the Civil Rights Acts of 1957, 1960, and 1964, Congress authorized and then expanded the power of "the Attorney General to seek injunctions against public and private interference with the right to vote on racial grounds." *Katzenbach,* 383 U.S., at 313, 86 S.Ct. 803. But circumstances reduced the ameliorative potential of these legislative Acts:

> "Voting suits are unusually onerous to prepare, sometimes requiring as many as 6,000 man-hours spent combing through registration records in preparation for trial. Litigation has been exceedingly slow, in part because of the ample opportunities for delay afforded voting officials and others involved in the proceedings. Even when favorable decisions have finally been obtained, some of the States affected have merely switched to discriminatory devices not covered by the federal decrees or have enacted difficult new tests designed to prolong the existing disparity between white and Negro registration. Alternatively, certain local officials have defied ****2634** and evaded court orders or have simply closed their registration offices to freeze the voting rolls." *Id.,* at 314, 86 S.Ct. 803 (footnote omitted).

Patently, a new approach was needed.

***562** Answering that need, the Voting Rights Act became one of the most consequential, efficacious, and amply justified exercises of federal legislative power in our Nation's history. Requiring federal preclearance of changes in voting laws in the covered jurisdictions—those States and localities where opposition to the Constitution's commands were most virulent—the VRA provided a fit solution for minority voters as well as for States. Under the preclearance regime established by § 5 of the VRA, covered jurisdictions must

submit proposed changes in voting laws or procedures to the Department of Justice (DOJ), which has 60 days to respond to the changes. 79 Stat. 439, codified at 42 U.S.C. § 1973c(a). A change will be approved unless DOJ finds it has "the purpose [or] ... the effect of denying or abridging the right to vote on account of race or color." *Ibid.* In the alternative, the covered jurisdiction may seek approval by a three-judge District Court in the District of Columbia.

After a century's failure to fulfill the promise of the Fourteenth and Fifteenth Amendments, passage of the VRA finally led to signal improvement on this front. "The Justice Department estimated that in the five years after [the VRA's] passage, almost as many blacks registered [to vote] in Alabama, Mississippi, Georgia, Louisiana, North Carolina, and South Carolina as in the entire century before 1965." Davidson, The Voting Rights Act: A Brief History, in Controversies in Minority Voting 7, 21 (B. Grofman & C. Davidson eds. 1992). And in assessing the overall effects of the VRA in 2006, Congress found that "[s]ignificant progress has been made in eliminating first generation barriers experienced by minority voters, including increased numbers of registered minority voters, minority voter turnout, and minority representation in Congress, State legislatures, and local elected offices. This progress is the direct result of the Voting Rights Act of 1965." Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and ***563** Amendments Act of 2006 (hereinafter 2006 Reauthorization), § 2(b) (1), 120 Stat. 577. On that matter of cause and effects there can be no genuine doubt.

Although the VRA wrought dramatic changes in the realization of minority voting rights, the Act, to date, surely has not eliminated all vestiges of discrimination against the exercise of the franchise by minority citizens. Jurisdictions covered by the preclearance requirement continued to submit, in large numbers, proposed changes to voting laws that the Attorney General declined to approve, auguring that barriers to minority voting would quickly resurface were the preclearance remedy eliminated. *City of Rome v. United States,* 446 U.S. 156, 181, 100 S.Ct. 1548, 64 L.Ed.2d 119 (1980). Congress also found that as "registration and voting of minority citizens increas[ed], other measures may be resorted to which would dilute increasing minority voting strength." *Ibid.* (quoting H.R.Rep. No. 94–196, p. 10 (1975)). See also *Shaw v. Reno,* 509 U.S. 630, 640, 113 S.Ct. 2816, 125 L.Ed.2d 511 (1993) ("[I]t soon became apparent that guaranteeing equal access to the polls would not suffice to root out other racially discriminatory voting practices" such as voting dilution). Efforts to reduce the impact of minority votes, in contrast to direct attempts to block access to the ballot, are aptly described as "second-generation barriers" to minority voting.

****2635** Second-generation barriers come in various forms. One of the blockages is racial gerrymandering, the redrawing of legislative districts in an "effort to segregate the races for purposes of voting." *Id.,* at 642, 113 S.Ct. 2816. Another is adoption of a system of at-large voting in lieu of district-by-district voting in a city with a sizable black minority. By switching to at-large voting, the overall majority could control the election of each city council member, effectively eliminating the potency of the minority's votes. Grofman & Davidson, The Effect of Municipal Election Structure on Black Representation in Eight Southern States, in Quiet Revolution in the ***564** South 301, 319 (C. Davidson & B. Grofman eds. 1994) (hereinafter Quiet Revolution). A similar effect could be achieved if the city engaged in discriminatory annexation by incorporating majority-white areas into city limits, thereby decreasing the effect of VRA-occasioned increases in black voting. Whatever the device employed, this Court has long recognized that vote dilution, when adopted with a discriminatory purpose, cuts down the right to vote as certainly as denial of access to the ballot. *Shaw,* 509 U.S., at 640–641, 113 S.Ct. 2816; *Allen v. State Bd. of Elections,* 393 U.S. 544, 569, 89 S.Ct. 817, 22 L.Ed.2d 1 (1969); *Reynolds v. Sims,* 377 U.S. 533, 555, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964). See also H.R.Rep. No. 109–478, p. 6 (2006) (although "[d]iscrimination today is more subtle than the visible methods used in 1965," "the effect and results are the same, namely a diminishing of the minority community's ability to fully participate in the electoral process and to elect their preferred candidates").

In response to evidence of these substituted barriers, Congress reauthorized the VRA for five years in 1970, for seven years in 1975, and for 25 years in 1982. *Ante,* at 2620 – 2621. Each time, this Court upheld the reauthorization as a valid exercise of congressional power. *Ante,* at 2620. As the 1982 reauthorization approached its 2007 expiration date, Congress again considered whether the VRA's preclearance mechanism remained an appropriate response to the problem of voting discrimination in covered jurisdictions.

Congress did not take this task lightly. Quite the opposite. The 109th Congress that took responsibility for the renewal started early and conscientiously. In October 2005, the House began extensive hearings, which continued into November

and resumed in March 2006. S.Rep. No. 109–295, p. 2 (2006). In April 2006, the Senate followed suit, with hearings of its own. *Ibid.* In May 2006, the bills that became the VRA's reauthorization were introduced in both Houses. *Ibid.* The House held further hearings of considerable length, as did the Senate, which continued to hold hearings into June and July. H.R. Rep. 109–478, at 5; ***565** S. Rep. 109–295, at 3–4. In mid-July, the House considered and rejected four amendments, then passed the reauthorization by a vote of 390 yeas to 33 nays. 152 Cong. Rec. H5207 (July 13, 2006); Persily, The Promise and Pitfalls of the New Voting Rights Act, 117 Yale L.J. 174, 182–183 (2007) (hereinafter Persily). The bill was read and debated in the Senate, where it passed by a vote of 98 to 0. 152 Cong. Rec. S8012 (July 20, 2006). President Bush signed it a week later, on July 27, 2006, recognizing the need for "further work ... in the fight against injustice," and calling the reauthorization "an example of our continued commitment to a united America where every person is valued and treated with dignity and respect." 152 Cong. Rec. S8781 (Aug. 3, 2006).

In the long course of the legislative process, Congress "amassed a sizable record." ****2636** *Northwest Austin Municipal Util. Dist. No. One v. Holder,* 557 U.S. 193, 205, 129 S.Ct. 2504, 174 L.Ed.2d 140 (2009). See also 679 F.3d 848, 865–873 (C.A.D.C.2012) (describing the "extensive record" supporting Congress' determination that "serious and widespread intentional discrimination persisted in covered jurisdictions"). The House and Senate Judiciary Committees held 21 hearings, heard from scores of witnesses, received a number of investigative reports and other written documentation of continuing discrimination in covered jurisdictions. In all, the legislative record Congress compiled filled more than 15,000 pages. H.R. Rep. 109–478, at 5, 11–12; S. Rep. 109–295, at 2–4, 15. The compilation presents countless "examples of flagrant racial discrimination" since the last reauthorization; Congress also brought to light systematic evidence that "intentional racial discrimination in voting remains so serious and widespread in covered jurisdictions that section 5 preclearance is still needed." 679 F.3d, at 866.

After considering the full legislative record, Congress made the following findings: The VRA has directly caused significant progress in eliminating first-generation barriers to ballot access, leading to a marked increase in minority ***566** voter registration and turnout and the number of minority elected officials. 2006 Reauthorization § 2(b)(1). But despite this progress, "second generation barriers constructed to prevent minority voters from fully participating in the electoral process" continued to exist, as well as racially polarized voting in the covered jurisdictions, which increased the political vulnerability of racial and language minorities in those jurisdictions. §§ 2(b)(2)-(3), 120 Stat. 577. Extensive "[e]vidence of continued discrimination," Congress concluded, "clearly show[ed] the continued need for Federal oversight" in covered jurisdictions. §§ 2(b)(4)-(5), *id.,* at 577–578. The overall record demonstrated to the federal lawmakers that, "without the continuation of the Voting Rights Act of 1965 protections, racial and language minority citizens will be deprived of the opportunity to exercise their right to vote, or will have their votes diluted, undermining the significant gains made by minorities in the last 40 years." § 2(b)(9), *id.,* at 578.

Based on these findings, Congress reauthorized preclearance for another 25 years, while also undertaking to reconsider the extension after 15 years to ensure that the provision was still necessary and effective. 42 U.S.C. § 1973b(a)(7), (8) (2006 ed., Supp. V). The question before the Court is whether Congress had the authority under the Constitution to act as it did.

II

In answering this question, the Court does not write on a clean slate. It is well established that Congress' judgment regarding exercise of its power to enforce the Fourteenth and Fifteenth Amendments warrants substantial deference. The VRA addresses the combination of race discrimination and the right to vote, which is "preservative of all rights." *Yick Wo v. Hopkins,* 118 U.S. 356, 370, 6 S.Ct. 1064, 30 L.Ed. 220 (1886). When confronting the most constitutionally invidious form of discrimination, and the most fundamental right in our democratic system, Congress' power to act is at its height.

***567** The basis for this deference is firmly rooted in both constitutional text and precedent. The Fifteenth Amendment, which targets precisely and only racial discrimination in voting rights, states that, in this domain, "Congress shall have power to enforce this article by appropriate legislation."[2] In choosing this language, the ****2637** Amendment's framers invoked Chief Justice Marshall's formulation of the scope of Congress' powers under the Necessary and Proper Clause:

> "Let the end be legitimate, let it be within the scope of the constitution, and *all means which are appropriate, which are plainly adapted to that end,* which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." *McCulloch v. Maryland,* 4 Wheat. 316, 421, 4 L.Ed. 579 (1819) (emphasis added).

It cannot tenably be maintained that the VRA, an Act of Congress adopted to shield the right to vote from racial discrimination, is inconsistent with the letter or spirit of the Fifteenth Amendment, or any provision of the Constitution read in light of the Civil War Amendments. Nowhere in today's opinion, or in *Northwest Austin,*[3] is there clear recognition of the transformative effect the Fifteenth Amendment aimed to achieve. Notably, "the Founders' first successful amendment told Congress that it could 'make no law' over a ***568** certain domain"; in contrast, the Civil War Amendments used " language [that] authorized transformative new federal statutes to uproot all vestiges of unfreedom and inequality" and provided "sweeping enforcement powers ... to enact 'appropriate' legislation targeting state abuses." A. Amar, America's Constitution: A Biography 361, 363, 399 (2005). See also McConnell, Institutions and Interpretation: A Critique of *City of Boerne v. Flores,* 111 Harv. L.Rev. 153, 182 (1997) (quoting Civil War-era framer that "the remedy for the violation of the fourteenth and fifteenth amendments was expressly not left to the courts. The remedy was legislative.").

The stated purpose of the Civil War Amendments was to arm Congress with the power and authority to protect all persons within the Nation from violations of their rights by the States. In exercising that power, then, Congress may use "all means which are appropriate, which are plainly adapted" to the constitutional ends declared by these Amendments. *McCulloch,* 4 Wheat., at 421. So when Congress acts to enforce the right to vote free from racial discrimination, we ask not whether Congress has chosen the means most wise, but whether Congress has rationally selected means appropriate to a legitimate end. "It is not for us to review the congressional resolution of [the need for its chosen remedy]. It is enough that we be able to perceive a basis upon which the Congress might resolve the conflict as it did." *Katzenbach v. Morgan,* 384 U.S. 641, 653, 86 S.Ct. 1717, 16 L.Ed.2d 828 (1966).

Until today, in considering the constitutionality of the VRA, the Court has accorded Congress the full measure of respect its ****2638** judgments in this domain should garner. *South Carolina v. Katzenbach* supplies the standard of review: "As against the reserved powers of the States, Congress may use any rational means to effectuate the constitutional prohibition of racial discrimination in voting." 383 U.S., at 324, 86 S.Ct. 803. Faced with subsequent reauthorizations of the VRA, the ***569** Court has reaffirmed this standard. *E.g., City of Rome,* 446 U.S., at 178, 100 S.Ct. 1548. Today's Court does not purport to alter settled precedent establishing that the dispositive question is whether Congress has employed "rational means."

For three reasons, legislation *re*authorizing an existing statute is especially likely to satisfy the minimal requirements of the rational-basis test. First, when reauthorization is at issue, Congress has already assembled a legislative record justifying the initial legislation. Congress is entitled to consider that preexisting record as well as the record before it at the time of the vote on reauthorization. This is especially true where, as here, the Court has repeatedly affirmed the statute's constitutionality and Congress has adhered to the very model the Court has upheld. See *id.,* at 174, 100 S.Ct. 1548 ("The appellants are asking us to do nothing less than overrule our decision in *South Carolina v. Katzenbach* ..., in which we upheld the constitutionality of the Act."); *Lopez v. Monterey County,* 525 U.S. 266, 283, 119 S.Ct. 693, 142 L.Ed.2d 728 (1999) (similar).

Second, the very fact that reauthorization is necessary arises because Congress has built a temporal limitation into the Act. It has pledged to review, after a span of years (first 15, then 25) and in light of contemporary evidence, the continued need for the VRA. Cf. *Grutter v. Bollinger,* 539 U.S. 306, 343, 123 S.Ct. 2325, 156 L.Ed.2d 304 (2003) (anticipating, but not guaranteeing, that, in 25 years, "the use of racial preferences [in higher education] will no longer be necessary").

Third, a reviewing court should expect the record supporting reauthorization to be less stark than the record originally made. Demand for a record of violations equivalent to the one earlier made would expose Congress to a catch–22. If the statute was working, there would be less evidence of discrimination, so opponents might argue that Congress should not be allowed to renew the statute. In contrast, if the statute was not working, there would be plenty of evidence of discrimination, but scant reason to renew a failed regulatory regime. See Persily 193–194.

***570** This is not to suggest that congressional power in this area is limitless. It is this Court's responsibility to ensure that

Congress has used appropriate means. The question meet for judicial review is whether the chosen means are "adapted to carry out the objects the amendments have in view." *Ex parte Virginia,* 100 U.S. 339, 346, 25 L.Ed. 676 (1880). The Court's role, then, is not to substitute its judgment for that of Congress, but to determine whether the legislative record sufficed to show that "Congress could rationally have determined that [its chosen] provisions were appropriate methods." *City of Rome,* 446 U.S., at 176–177, 100 S.Ct. 1548.

In summary, the Constitution vests broad power in Congress to protect the right to vote, and in particular to combat racial discrimination in voting. This Court has repeatedly reaffirmed Congress' prerogative to use any rational means in exercise of its power in this area. And both precedent and logic dictate that the rational-means test should be easier to satisfy, and the burden on the statute's challenger should be higher, when what is at issue is the reauthorization of a remedy that the Court has previously affirmed, and that Congress found, from contemporary evidence, ****2639** to be working to advance the legislature's legitimate objective.

III

The 2006 reauthorization of the Voting Rights Act fully satisfies the standard stated in *McCulloch,* 4 Wheat., at 421: Congress may choose any means "appropriate" and "plainly adapted to" a legitimate constitutional end. As we shall see, it is implausible to suggest otherwise.

A

I begin with the evidence on which Congress based its decision to continue the preclearance remedy. The surest way to evaluate whether that remedy remains in order is to see if preclearance is still effectively preventing discriminatory changes to voting laws. See *City of Rome,* 446 U.S., at 181, 100 S.Ct. 1548 (identifying "information on the number and types of ***571** submissions made by covered jurisdictions and the number and nature of objections interposed by the Attorney General" as a primary basis for upholding the 1975 reauthorization). On that score, the record before Congress was huge. In fact, Congress found there were *more* DOJ objections between 1982 and 2004 (626) than there were between 1965 and the 1982 reauthorization (490). 1 Voting Rights Act: Evidence of Continued Need, Hearing before the Subcommittee on the Constitution of the House Committee on the Judiciary, 109th Cong., 2d Sess., p. 172 (2006) (hereinafter Evidence of Continued Need).

All told, between 1982 and 2006, DOJ objections blocked over 700 voting changes based on a determination that the changes were discriminatory. H.R.Rep. No. 109–478, at 21. Congress found that the majority of DOJ objections included findings of discriminatory intent, see 679 F.3d, at 867, and that the changes blocked by preclearance were "calculated decisions to keep minority voters from fully participating in the political process." H.R. Rep. 109–478, at 21 (2006), 2006 U.S.C.C.A.N. 618, 631. On top of that, over the same time period the DOJ and private plaintiffs succeeded in more than 100 actions to enforce the § 5 preclearance requirements. 1 Evidence of Continued Need 186, 250.

In addition to blocking proposed voting changes through preclearance, DOJ may request more information from a jurisdiction proposing a change. In turn, the jurisdiction may modify or withdraw the proposed change. The number of such modifications or withdrawals provides an indication of how many discriminatory proposals are deterred without need for formal objection. Congress received evidence that more than 800 proposed changes were altered or withdrawn since the last reauthorization in 1982. H.R.Rep. No. 109–478, at 40–41.[4] Congress also received empirical studies ***572** finding that DOJ's requests for more information had a significant effect on the degree to which covered ****2640** jurisdictions "compl[ied] with their obligatio[n]" to protect minority voting rights. 2 Evidence of Continued Need 2555.

Congress also received evidence that litigation under § 2 of the VRA was an inadequate substitute for preclearance in the covered jurisdictions. Litigation occurs only after the fact, when the illegal voting scheme has already been put in place and individuals have been elected pursuant to it, thereby gaining the advantages of incumbency. 1 Evidence of Continued Need 97. An illegal scheme might be in place for several election cycles before a § 2 plaintiff can gather sufficient evidence to challenge it. 1 Voting Rights Act: Section 5 of the Act—History, Scope, and Purpose: Hearing before the Subcommittee on the Constitution of the House Committee on the Judiciary, 109th Cong., 1st Sess., p. 92 (2005) (hereinafter Section 5 Hearing). And litigation places a heavy financial burden on minority voters. See *id.,* at 84. Congress also received evidence that preclearance lessened the litigation burden on covered jurisdictions themselves, because the preclearance process is far less costly than

defending against a § 2 claim, and clearance by DOJ substantially reduces the likelihood that a § 2 claim will be mounted. Reauthorizing the Voting Rights Act's Temporary Provisions: Policy Perspectives and Views From the Field: Hearing before the Subcommittee on the Constitution, Civil Rights and Property Rights of the Senate Committee on the Judiciary, 109th Cong., 2d Sess., ***573** pp. 13, 120–121 (2006). See also Brief for States of New York, California, Mississippi, and North Carolina as *Amici Curiae* 8–9 (Section 5 "reduc[es] the likelihood that a jurisdiction will face costly and protracted Section 2 litigation").

The number of discriminatory changes blocked or deterred by the preclearance requirement suggests that the state of voting rights in the covered jurisdictions would have been significantly different absent this remedy. Surveying the type of changes stopped by the preclearance procedure conveys a sense of the extent to which § 5 continues to protect minority voting rights. Set out below are characteristic examples of changes blocked in the years leading up to the 2006 reauthorization:

- In 1995, Mississippi sought to reenact a dual voter registration system, "which was initially enacted in 1892 to disenfranchise Black voters," and for that reason, was struck down by a federal court in 1987. H.R.Rep. No. 109–478, at 39.

- Following the 2000 census, the City of Albany, Georgia, proposed a redistricting plan that DOJ found to be "designed with the purpose to limit and retrogress the increased black voting strength ... in the city as a whole." *Id.,* at 37 (internal quotation marks omitted).

- In 2001, the mayor and all-white five-member Board of Aldermen of Kilmichael, Mississippi, abruptly canceled the town's election after "an unprecedented number" of African–American candidates announced they were running for office. DOJ required an election, and the town elected its first black mayor and three black aldermen. *Id.,* at 36–37.

- In 2006, this Court found that Texas' attempt to redraw a congressional district to reduce the strength of Latino voters bore "the mark of intentional discrimination that could give rise to an equal protection violation," and ordered the district redrawn in compliance with the VRA. ***574** *League of United Latin American Citizens v. Perry,* 548 U.S. 399, 440 [126 S.Ct. 2594, 165 L.Ed.2d 609] (2006). In response, ****2641** Texas sought to undermine this Court's order by curtailing early voting in the district, but was blocked by an action to enforce the § 5 preclearance requirement. See Order in *League of United Latin American Citizens v. Texas,* No. 06–cv–1046 (WD Tex.), Doc. 8.

- In 2003, after African–Americans won a majority of the seats on the school board for the first time in history, Charleston County, South Carolina, proposed an at-large voting mechanism for the board. The proposal, made without consulting any of the African–American members of the school board, was found to be an " 'exact replica' " of an earlier voting scheme that, a federal court had determined, violated the VRA. 811 F.Supp.2d 424, 483 (D.D.C.2011). See also S.Rep. No. 109–295, at 309. DOJ invoked § 5 to block the proposal.

- In 1993, the City of Millen, Georgia, proposed to delay the election in a majority-black district by two years, leaving that district without representation on the city council while the neighboring majority-white district would have three representatives. 1 Section 5 Hearing 744. DOJ blocked the proposal. The county then sought to move a polling place from a predominantly black neighborhood in the city to an inaccessible location in a predominantly white neighborhood outside city limits. *Id.,* at 816.

- In 2004, Waller County, Texas, threatened to prosecute two black students after they announced their intention to run for office. The county then attempted to reduce the availability of early voting in that election at polling places near a historically black university. 679 F.3d, at 865–866.

- In 1990, Dallas County, Alabama, whose county seat is the City of Selma, sought to purge its voter rolls of many black voters. DOJ rejected the purge as discriminatory, ***575** noting that it would have disqualified many citizens from voting "simply because they failed to pick up or return a voter update form, when there was no valid requirement that they do so." 1 Section 5 Hearing 356.

These examples, and scores more like them, fill the pages of the legislative record. The evidence was indeed sufficient to support Congress' conclusion that "racial discrimination in voting in covered jurisdictions [remained] serious and pervasive." 679 F.3d, at 865.[5]

Congress further received evidence indicating that formal requests of the kind set out above represented only the tip of the iceberg. There was what one commentator described as an "avalanche of case studies of voting rights violations in the covered jurisdictions," ranging from "outright intimidation and violence against minority voters" to "more subtle forms of voting rights deprivations." Persily 202 ****2642** (footnote omitted). This evidence gave Congress ever more reason to conclude that the time had not yet come for relaxed vigilance against the scourge of race discrimination in voting.

True, conditions in the South have impressively improved since passage of the Voting Rights Act. Congress noted this improvement and found that the VRA was the driving force behind it. 2006 Reauthorization § 2(b)(1). But Congress also found that voting discrimination had evolved into ***576** subtler second-generation barriers, and that eliminating preclearance would risk loss of the gains that had been made. §§ 2(b)(2), (9). Concerns of this order, the Court previously found, gave Congress adequate cause to reauthorize the VRA. *City of Rome,* 446 U.S., at 180–182, 100 S.Ct. 1548 (congressional reauthorization of the preclearance requirement was justified based on "the number and nature of objections interposed by the Attorney General" since the prior reauthorization; extension was "necessary to preserve the limited and fragile achievements of the Act and to promote further amelioration of voting discrimination") (internal quotation marks omitted). Facing such evidence then, the Court expressly rejected the argument that disparities in voter turnout and number of elected officials were the only metrics capable of justifying reauthorization of the VRA. *Ibid.*

B

I turn next to the evidence on which Congress based its decision to reauthorize the coverage formula in § 4(b). Because Congress did not alter the coverage formula, the same jurisdictions previously subject to preclearance continue to be covered by this remedy. The evidence just described, of preclearance's continuing efficacy in blocking constitutional violations in the covered jurisdictions, itself grounded Congress' conclusion that the remedy should be retained for those jurisdictions.

There is no question, moreover, that the covered jurisdictions have a unique history of problems with racial discrimination in voting. *Ante,* at 2624 – 2625. Consideration of this long history, still in living memory, was altogether appropriate. The Court criticizes Congress for failing to recognize that "history did not end in 1965." *Ante,* at 2628. But the Court ignores that "what's past is prologue." W. Shakespeare, The Tempest, act 2, sc. 1. And "[t]hose who cannot remember the past are condemned to repeat it." 1 G. Santayana, The Life of Reason 284 (1905). Congress was ***577** especially mindful of the need to reinforce the gains already made and to prevent backsliding. 2006 Reauthorization § 2(b)(9).

Of particular importance, even after 40 years and thousands of discriminatory changes blocked by preclearance, conditions in the covered jurisdictions demonstrated that the formula was still justified by "current needs." *Northwest Austin,* 557 U.S., at 203, 129 S.Ct. 2504.

Congress learned of these conditions through a report, known as the Katz study, that looked at § 2 suits between 1982 and 2004. To Examine the Impact and Effectiveness of the Voting Rights Act: Hearing before the Subcommittee on the Constitution of the House Committee on the Judiciary, 109th Cong., 1st Sess., pp. 964–1124 (2005) (hereinafter Impact and Effectiveness). Because the private right of action authorized by § 2 of the VRA applies nationwide, a comparison of § 2 lawsuits in covered and noncovered jurisdictions provides an appropriate yardstick for measuring differences between covered and noncovered jurisdictions. If differences in the risk of voting discrimination between covered and noncovered jurisdictions had disappeared, one would ****2643** expect that the rate of successful § 2 lawsuits would be roughly the same in both areas.[6] The study's findings, however, indicated that racial discrimination in voting remains "concentrated in the jurisdictions singled out for preclearance." *Northwest Austin,* 557 U.S., at 203, 129 S.Ct. 2504.

Although covered jurisdictions account for less than 25 percent of the country's population, the Katz study revealed that they accounted for 56 percent of successful § 2 litigation since 1982. Impact and Effectiveness 974. Controlling for population, there were nearly *four* times as many successful § 2 cases in covered jurisdictions as there were in noncovered ***578** jurisdictions. 679 F.3d, at 874. The Katz study further found that § 2 lawsuits are more likely to succeed when they are filed in covered jurisdictions than in noncovered jurisdictions. Impact and Effectiveness 974. From these findings—ignored by the Court—Congress reasonably concluded that the coverage formula continues to identify the jurisdictions of greatest concern.

The evidence before Congress, furthermore, indicated that voting in the covered jurisdictions was more racially polarized than elsewhere in the country. H.R.Rep. No. 109–478, at 34–35. While racially polarized voting alone does not signal a constitutional violation, it is a factor that increases the vulnerability of racial minorities to discriminatory changes in voting law. The reason is twofold. First, racial polarization means that racial minorities are at risk of being systematically outvoted and having their interests underrepresented in legislatures. Second, "when political preferences fall along racial lines, the natural inclinations of incumbents and ruling parties to entrench themselves have predictable racial effects. Under circumstances of severe racial polarization, efforts to gain political advantage translate into race-specific disadvantages." Ansolabehere, Persily, & Stewart, Regional Differences in Racial Polarization in the 2012 Presidential Election: Implications for the Constitutionality of Section 5 of the Voting Rights Act, 126 Harv. L.Rev. Forum 205, 209 (2013).

In other words, a governing political coalition has an incentive to prevent changes in the existing balance of voting power. When voting is racially polarized, efforts by the ruling party to pursue that incentive "will inevitably discriminate against a racial group." *Ibid.* Just as buildings in California have a greater need to be earthquake-proofed, places where there is greater racial polarization in voting have a greater need for prophylactic measures to prevent purposeful race discrimination. This point was understood by Congress and is well recognized in the academic ***579** literature. See 2006 Reauthorization § 2(b)(3), 120 Stat. 577 ("The continued evidence of racially polarized voting in each of the jurisdictions covered by the [preclearance requirement] demonstrates that racial and language minorities remain politically vulnerable"); H.R.Rep. No. 109–478, at 35 (2006), 2006 U.S.C.C.A.N. 618; Davidson, The Recent Evolution of Voting Rights Law Affecting Racial and Language Minorities, in Quiet Revolution 21, 22.

The case for retaining a coverage formula that met needs on the ground was therefore solid. Congress might have been charged with rigidity had it afforded covered ****2644** jurisdictions no way out or ignored jurisdictions that needed superintendence. Congress, however, responded to this concern. Critical components of the congressional design are the statutory provisions allowing jurisdictions to "bail out" of preclearance, and for court-ordered "bail ins." See *Northwest Austin,* 557 U.S., at 199, 129 S.Ct. 2504. The VRA permits a jurisdiction to bail out by showing that it has complied with the Act for ten years, and has engaged in efforts to eliminate intimidation and harassment of voters. 42 U.S.C. § 1973b(a) (2006 ed. and Supp. V). It also authorizes a court to subject a noncovered jurisdiction to federal preclearance upon finding that violations of the Fourteenth and Fifteenth Amendments have occurred there. § 1973a(c) (2006 ed.).

Congress was satisfied that the VRA's bailout mechanism provided an effective means of adjusting the VRA's coverage over time. H.R.Rep. No. 109–478, at 25 (the success of bailout "illustrates that: (1) covered status is neither permanent nor over-broad; and (2) covered status has been and continues to be within the control of the jurisdiction such that those jurisdictions that have a genuinely clean record and want to terminate coverage have the ability to do so"). Nearly 200 jurisdictions have successfully bailed out of the preclearance requirement, and DOJ has consented to every bailout application filed by an eligible jurisdiction since the current bailout procedure became effective in 1984. Brief for Federal Respondent 54. The bail-in mechanism has also ***580** worked. Several jurisdictions have been subject to federal preclearance by court orders, including the States of New Mexico and Arkansas. App. to Brief for Federal Respondent 1a–3a.

This experience exposes the inaccuracy of the Court's portrayal of the Act as static, unchanged since 1965. Congress designed the VRA to be a dynamic statute, capable of adjusting to changing conditions. True, many covered jurisdictions have not been able to bail out due to recent acts of noncompliance with the VRA, but that truth reinforces the congressional judgment that these jurisdictions were rightfully subject to preclearance, and ought to remain under that regime.

IV

Congress approached the 2006 reauthorization of the VRA with great care and seriousness. The same cannot be said of the Court's opinion today. The Court makes no genuine attempt to engage with the massive legislative record that Congress assembled. Instead, it relies on increases in voter registration and turnout as if that were the whole story. See *supra,* at 2641 – 2642. Without even identifying a standard of review, the Court dismissively brushes off arguments based on "data from the record," and declines to enter the "debat [e about] what [the] record shows." *Ante,* at 2629. One would

expect more from an opinion striking at the heart of the Nation's signal piece of civil-rights legislation.

I note the most disturbing lapses. First, by what right, given its usual restraint, does the Court even address Shelby County's facial challenge to the VRA? Second, the Court veers away from controlling precedent regarding the "equal sovereignty" doctrine without even acknowledging that it is doing so. Third, hardly showing the respect ordinarily paid when Congress acts to implement the Civil War Amendments, and as just stressed, the Court does not even deign to grapple with the legislative record.

***581** A

Shelby County launched a purely facial challenge to the VRA's 2006 reauthorization. ****2645** "A facial challenge to a legislative Act," the Court has other times said, "is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." *United States v. Salerno,* 481 U.S. 739, 745, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987).

"[U]nder our constitutional system[,] courts are not roving commissions assigned to pass judgment on the validity of the Nation's laws." *Broadrick v. Oklahoma,* 413 U.S. 601, 610–611, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973). Instead, the "judicial Power" is limited to deciding particular "Cases" and "Controversies." U.S. Const., Art. III, § 2. "Embedded in the traditional rules governing constitutional adjudication is the principle that a person to whom a statute may constitutionally be applied will not be heard to challenge that statute on the ground that it may conceivably be applied unconstitutionally to others, in other situations not before the Court." *Broadrick,* 413 U.S., at 610, 93 S.Ct. 2908. Yet the Court's opinion in this case contains not a word explaining why Congress lacks the power to subject to preclearance the particular plaintiff that initiated this lawsuit—Shelby County, Alabama. The reason for the Court's silence is apparent, for as applied to Shelby County, the VRA's preclearance requirement is hardly contestable.

Alabama is home to Selma, site of the "Bloody Sunday" beatings of civil-rights demonstrators that served as the catalyst for the VRA's enactment. Following those events, Martin Luther King, Jr., led a march from Selma to Montgomery, Alabama's capital, where he called for passage of the VRA. If the Act passed, he foresaw, progress could be made even in Alabama, but there had to be a steadfast national commitment to see the task through to completion. In King's words, "the arc of the moral universe is long, but it bends toward justice." G. May, Bending Toward Justice: ***582** The Voting Rights Act and the Transformation of American Democracy 144 (2013).

History has proved King right. Although circumstances in Alabama have changed, serious concerns remain. Between 1982 and 2005, Alabama had one of the highest rates of successful § 2 suits, second only to its VRA-covered neighbor Mississippi. 679 F.3d, at 897 (Williams, J., dissenting). In other words, even while subject to the restraining effect of § 5, Alabama was found to have "deni[ed] or abridge[d]" voting rights "on account of race or color" more frequently than nearly all other States in the Union. 42 U.S.C. § 1973(a). This fact prompted the dissenting judge below to concede that "a more narrowly tailored coverage formula" capturing Alabama and a handful of other jurisdictions with an established track record of racial discrimination in voting "might be defensible." 679 F.3d, at 897 (opinion of Williams, J.). That is an understatement. Alabama's sorry history of § 2 violations alone provides sufficient justification for Congress' determination in 2006 that the State should remain subject to § 5's preclearance requirement.[7]

****2646** A few examples suffice to demonstrate that, at least in Alabama, the "current burdens" imposed by § 5's preclearance requirement are "justified by current needs." *Northwest Austin,* 557 U.S., at 203, 129 S.Ct. 2504. In the interim between the VRA's 1982 and 2006 reauthorizations, this Court twice confronted purposeful racial discrimination in Alabama. In *Pleasant Grove v. United States,* 479 U.S. 462, 107 S.Ct. 794, 93 L.Ed.2d 866 (1987), the Court held that Pleasant Grove—a city in Jefferson County, Shelby County's neighbor—engaged in purposeful ***583** discrimination by annexing all-white areas while rejecting the annexation request of an adjacent black neighborhood. The city had "shown unambiguous opposition to racial integration, both before and after the passage of the federal civil rights laws," and its strategic annexations appeared to be an attempt "to provide for the growth of a monolithic white voting block" for "the impermissible purpose of minimizing future black voting strength." *Id.,* at 465, 471–472, 107 S.Ct. 794.

Two years before *Pleasant Grove,* the Court in *Hunter v. Underwood,* 471 U.S. 222, 105 S.Ct. 1916, 85 L.Ed.2d 222 (1985), struck down a provision of the Alabama Constitution

that prohibited individuals convicted of misdemeanor offenses "involving moral turpitude" from voting. *Id.,* at 223, 105 S.Ct. 1916 (internal quotation marks omitted). The provision violated the Fourteenth Amendment's Equal Protection Clause, the Court unanimously concluded, because "its original enactment was motivated by a desire to discriminate against blacks on account of race[,] and the [provision] continues to this day to have that effect." *Id.,* at 233, 105 S.Ct. 1916.

Pleasant Grove and *Hunter* were not anomalies. In 1986, a Federal District Judge concluded that the at-large election systems in several Alabama counties violated § 2. *Dillard v. Crenshaw Cty.,* 640 F.Supp. 1347, 1354–1363 (M.D.Ala.1986). Summarizing its findings, the court stated that "[f]rom the late 1800's through the present, [Alabama] has consistently erected barriers to keep black persons from full and equal participation in the social, economic, and political life of the state." *Id.,* at 1360.

The *Dillard* litigation ultimately expanded to include 183 cities, counties, and school boards employing discriminatory at-large election systems. *Dillard v. Baldwin Cty. Bd. of Ed.,* 686 F.Supp. 1459, 1461 (M.D.Ala.1988). One of those defendants was Shelby County, which eventually signed a consent decree to resolve the claims against it. See *Dillard v. Crenshaw Cty.,* 748 F.Supp. 819 (M.D.Ala.1990).

Although the *Dillard* litigation resulted in overhauls of numerous electoral systems tainted by racial discrimination, concerns about backsliding persist. In 2008, for example, ***584** the city of Calera, located in Shelby County, requested preclearance of a redistricting plan that "would have eliminated the city's sole majority-black district, which had been created pursuant to the consent decree in *Dillard*." 811 F.Supp.2d 424, 443 (D.D.C.2011). Although DOJ objected to the plan, Calera forged ahead with elections based on the unprecleared voting changes, resulting in the defeat of the incumbent African–American councilman who represented the former majority-black district. *Ibid.* The city's defiance required DOJ to bring a § 5 enforcement action that ultimately yielded appropriate redress, including restoration of the majority-black district. *Ibid.*; Brief for Respondent–Intervenors Earl Cunningham et al. 20.

A recent FBI investigation provides a further window into the persistence of racial discrimination in state politics. See ****2647** *United States v. McGregor,* 824 F.Supp.2d 1339, 1344–1348 (M.D.Ala.2011). Recording devices worn by state legislators cooperating with the FBI's investigation captured conversations between members of the state legislature and their political allies. The recorded conversations are shocking. Members of the state Senate derisively refer to African–Americans as "Aborigines" and talk openly of their aim to quash a particular gambling-related referendum because the referendum, if placed on the ballot, might increase African–American voter turnout. *Id.,* at 1345–1346 (internal quotation marks omitted). See also *id.,* at 1345 (legislators and their allies expressed concern that if the referendum were placed on the ballot, " '[e]very black, every illiterate' would be 'bused [to the polls] on HUD financed buses' "). These conversations occurred not in the 1870's, or even in the 1960's, they took place in 2010. *Id.,* at 1344–1345. The District Judge presiding over the criminal trial at which the recorded conversations were introduced commented that the "recordings represent compelling evidence that political exclusion through racism remains a real and enduring problem" in Alabama. ***585** *Id.,* at 1347. Racist sentiments, the judge observed, "remain regrettably entrenched in the high echelons of state government." *Ibid.*

These recent episodes forcefully demonstrate that § 5's preclearance requirement is constitutional as applied to Alabama and its political subdivisions.[8] And under our case law, that conclusion should suffice to resolve this case. See *United States v. Raines,* 362 U.S. 17, 24–25, 80 S.Ct. 519, 4 L.Ed.2d 524 (1960) ("[I]f the complaint here called for an application of the statute clearly constitutional under the Fifteenth Amendment, that should have been an end to the question of constitutionality."). See also *Nevada Dept. of Human Resources v. Hibbs,* 538 U.S. 721, 743, 123 S.Ct. 1972, 155 L.Ed.2d 953 (2003) (SCALIA, J., dissenting) (where, as here, a state or local government raises a facial challenge to a federal statute on the ground that it exceeds Congress' enforcement powers under the Civil War Amendments, the challenge fails if the opposing party is able to show that the statute "could constitutionally be applied to *some* jurisdictions").

This Court has consistently rejected constitutional challenges to legislation enacted pursuant to Congress' enforcement powers under the Civil War Amendments upon finding that the legislation was constitutional as applied to the particular set of circumstances before the Court. See *United States v. Georgia,* 546 U.S. 151, 159, 126 S.Ct. 877, 163 L.Ed.2d 650 (2006) (Title II of the Americans with Disabilities Act of 1990 (ADA) validly abrogates state sovereign immunity "insofar as [it] creates a private cause of action ... for conduct that

actually violates the Fourteenth Amendment"); *Tennessee v. Lane,* 541 U.S. 509, 530–534, 124 S.Ct. 1978, 158 L.Ed.2d 820 (2004) (Title II of the ADA is constitutional "as it applies to the class of cases implicating the fundamental right of access to the courts"); ***586** *Raines,* 362 U.S., at 24–26, 80 S.Ct. 519 (federal statute proscribing deprivations of the right to vote based on race was constitutional as applied to the state officials before the Court, even if it could not constitutionally be applied to other parties). A similar approach is warranted here.[9]

****2648** The VRA's exceptionally broad severability provision makes it particularly inappropriate for the Court to allow Shelby County to mount a facial challenge to §§ 4(b) and 5 of the VRA, even though application of those provisions to the county falls well within the bounds of Congress' legislative authority. The severability provision states:

> "If any provision of [this Act] or the application thereof to any person or circumstances is held invalid, the remainder of [the Act] and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby." 42 U.S.C. § 1973p.

In other words, even if the VRA could not constitutionally be applied to certain States—*e.g.,* Arizona and Alaska, see *ante,* at 2622 —§ 1973p calls for those unconstitutional applications to be severed, leaving the Act in place for juris-dictions as to which its application does not transgress constitutional limits.

Nevertheless, the Court suggests that limiting the jurisdictional scope of the VRA in an appropriate case would be "to try our hand at updating the statute." *Ante,* at 2629. ***587** Just last Term, however, the Court rejected this very argument when addressing a materially identical severability provision, explaining that such a provision is "Congress' explicit textual instruction to leave unaffected the remainder of [the Act]" if any particular " application is unconstitutional." *National Federation of Independent Business v. Sebelius,* 567 U.S. ——, ——, 132 S.Ct. 2566, 2639, 183 L.Ed.2d 450 (2012) (plurality opinion) (internal quotation marks omitted); *id.,* at ——, 132 S.Ct., at 2641–2642 (GINSBURG, J., concurring in part, concurring in judgment in part, and dissenting in part) (slip op., at 60) (agreeing with the plurality's severability analysis). See also *Raines,* 362 U.S., at 23, 80 S.Ct. 519 (a statute capable of some constitutional applications may nonetheless be susceptible to a facial challenge only in "that rarest of cases where this Court can justifiably think itself able confidently to discern that Congress would not have desired its legislation to stand at all unless it could validly stand in its every application"). Leaping to resolve Shelby County's facial challenge without considering whether application of the VRA to Shelby County is constitutional, or even addressing the VRA's severability provision, the Court's opinion can hardly be described as an exemplar of restrained and moderate decisionmaking. Quite the opposite. Hubris is a fit word for today's demolition of the VRA.

B

The Court stops any application of § 5 by holding that § 4(b)'s coverage formula is unconstitutional. It pins this result, in large measure, to "the fundamental principle of equal sovereignty." *Ante,* at 2623 – 2624, 2630. In *Katzenbach,* however, the Court held, in no uncertain terms, that the principle "*applies only to the terms upon which States are admitted to the Union,* and not to the remedies for local evils which have subsequently appeared." 383 U.S., at 328–329, 86 S.Ct. 803 (emphasis added).

****2649** *Katzenbach,* the Court acknowledges, "rejected the notion that the [equal sovereignty] principle operate[s] as a bar on ***588** differential treatment outside [the] context [of the admission of new States]." *Ante,* at 2623 – 2624 (citing 383 U.S., at 328–329, 86 S.Ct. 803) (emphasis omitted). But the Court clouds that once clear understanding by citing dictum from *Northwest Austin* to convey that the principle of equal sovereignty "remains highly pertinent in assessing subsequent disparate treatment of States." *Ante,* at 2624 (citing 557 U.S., at 203, 129 S.Ct. 2504). See also *ante,* at 2630 (relying on *Northwest Austin* 's "emphasis on [the] significance" of the equal-sovereignty principle). If the Court is suggesting that dictum in *Northwest Austin* silently overruled *Katzenbach* 's limitation of the equal sovereignty doctrine to "the admission of new States," the suggestion is untenable. *Northwest Austin* cited *Katzenbach* 's holding in the course of *declining to decide* whether the VRA was constitutional or even what standard of review applied to the question. 557 U.S., at 203–204, 129 S.Ct. 2504. In today's decision, the Court ratchets up what was pure dictum in *Northwest Austin,* attributing breadth to the equal sovereignty principle in flat contradiction of *Katzenbach*. The Court does so with nary an explanation of why it finds *Katzenbach* wrong, let alone any discussion of whether *stare decisis* nonetheless counsels adherence to *Katzenbach* 's ruling on the limited "significance" of the equal sovereignty principle.

Today's unprecedented extension of the equal sovereignty principle outside its proper domain—the admission of new States—is capable of much mischief. Federal statutes that treat States disparately are hardly novelties. See, *e.g.,* 28 U.S.C. § 3704 (no State may operate or permit a sports-related gambling scheme, unless that State conducted such a scheme "at any time during the period beginning January 1, 1976, and ending August 31, 1990"); 26 U.S.C. § 142(*l*) (EPA required to locate green building project in a State meeting specified population criteria); 42 U.S.C. § 3796bb (at least 50 percent of rural drug enforcement assistance funding must be allocated to States with "a population density of fifty-two or fewer persons per ***589** square mile or a State in which the largest county has fewer than one hundred and fifty thousand people, based on the decennial census of 1990 through fiscal year 1997"); §§ 13925, 13971 (similar population criteria for funding to combat rural domestic violence); § 10136 (specifying rules applicable to Nevada's Yucca Mountain nuclear waste site, and providing that " [n]o State, other than the State of Nevada, may receive financial assistance under this subsection after December 22, 1987"). Do such provisions remain safe given the Court's expansion of equal sovereignty's sway?

Of gravest concern, Congress relied on our pathmarking *Katzenbach* decision in each reauthorization of the VRA. It had every reason to believe that the Act's limited geographical scope would weigh in favor of, not against, the Act's constitutionality. See, *e.g., United States v. Morrison,* 529 U.S. 598, 626–627, 120 S.Ct. 1740, 146 L.Ed.2d 658 (2000) (confining preclearance regime to States with a record of discrimination bolstered the VRA's constitutionality). Congress could hardly have foreseen that the VRA's limited geographic reach would render the Act constitutionally suspect. See Persily 195 ("[S]upporters of the Act sought to develop an evidentiary record for the principal purpose of explaining why the covered jurisdictions should remain covered, rather than justifying the coverage of certain jurisdictions but not others.").

In the Court's conception, it appears, defenders of the VRA could not prevail ****2650** upon showing what the record overwhelmingly bears out, *i.e.,* that there is a need for continuing the preclearance regime in covered States. In addition, the defenders would have to disprove the existence of a comparable need elsewhere. See Tr. of Oral Arg. 61–62 (suggesting that proof of egregious episodes of racial discrimination in covered jurisdictions would not suffice to carry the day for the VRA, unless such episodes are shown to be absent elsewhere). I am aware of no precedent for imposing such a double burden on defenders of legislation.

***590** C

The Court has time and again declined to upset legislation of this genre unless there was no or almost no evidence of unconstitutional action by States. See, *e.g., City of Boerne v. Flores,* 521 U.S. 507, 530, 117 S.Ct. 2157, 138 L.Ed.2d 624 (1997) (legislative record "mention[ed] no episodes [of the kind the legislation aimed to check] occurring in the past 40 years"). No such claim can be made about the congressional record for the 2006 VRA reauthorization. Given a record replete with examples of denial or abridgment of a paramount federal right, the Court should have left the matter where it belongs: in Congress' bailiwick.

Instead, the Court strikes § 4(b)'s coverage provision because, in its view, the provision is not based on "current conditions." *Ante,* at 2627. It discounts, however, that one such condition was the preclearance remedy in place in the covered jurisdictions, a remedy Congress designed both to catch discrimination before it causes harm, and to guard against return to old ways. 2006 Reauthorization § 2(b)(3), (9). Volumes of evidence supported Congress' determination that the prospect of retrogression was real. Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.

But, the Court insists, the coverage formula is no good; it is based on "decades-old data and eradicated practices." *Ante,* at 2627. Even if the legislative record shows, as engaging with it would reveal, that the formula accurately identifies the jurisdictions with the worst conditions of voting discrimination, that is of no moment, as the Court sees it. Congress, the Court decrees, must "star[t] from scratch." *Ante,* at 2630. I do not see why that should be so.

Congress' chore was different in 1965 than it was in 2006. In 1965, there were a "small number of States ... which in most instances were familiar to Congress by name," on which Congress fixed its attention. ***591** *Katzenbach,* 383 U.S., at 328, 86 S.Ct. 803. In drafting the coverage formula, " Congress began work with reliable evidence of actual voting discrimination in a great majority of the States" it sought to target. *Id.,* at 329, 86 S.Ct. 803. "The formula [Congress]

eventually evolved to describe these areas" also captured a few States that had not been the subject of congressional factfinding. *Ibid.* Nevertheless, the Court upheld the formula in its entirety, finding it fair "to infer a significant danger of the evil" in all places the formula covered. *Ibid.*

The situation Congress faced in 2006, when it took up *re* authorization of the coverage formula, was not the same. By then, the formula had been in effect for many years, and *all* of the jurisdictions covered by it were "familiar to Congress by name." *Id.,* at 328, 86 S.Ct. 803. The question before Congress: Was there still a sufficient basis to support continued application of the preclearance remedy in each of those already-identified places? There was at that point no chance that the ****2651** formula might inadvertently sweep in new areas that were not the subject of congressional findings. And Congress could determine from the record whether the jurisdictions captured by the coverage formula still belonged under the preclearance regime. If they did, there was no need to alter the formula. That is why the Court, in addressing prior reauthorizations of the VRA, did not question the continuing "relevance" of the formula.

Consider once again the components of the record before Congress in 2006. The coverage provision identified a known list of places with an undisputed history of serious problems with racial discrimination in voting. Recent evidence relating to Alabama and its counties was there for all to see. Multiple Supreme Court decisions had upheld the coverage provision, most recently in 1999. There was extensive evidence that, due to the preclearance mechanism, conditions in the covered jurisdictions had notably improved. And there was evidence that preclearance was still having a substantial real-world effect, having stopped hundreds of ***592** discriminatory voting changes in the covered jurisdictions since the last reauthorization. In addition, there was evidence that racial polarization in voting was higher in covered jurisdictions than elsewhere, increasing the vulnerability of minority citizens in those jurisdictions. And countless witnesses, reports, and case studies documented continuing problems with voting discrimination in those jurisdictions. In light of this record, Congress had more than a reasonable basis to conclude that the existing coverage formula was not out of sync with conditions on the ground in covered areas. And certainly Shelby County was no candidate for release through the mechanism Congress provided. See *supra,* at 2643 – 2645, 2646 – 2647.

The Court holds § 4(b) invalid on the ground that it is "irrational to base coverage on the use of voting tests 40 years ago, when such tests have been illegal since that time." *Ante,* at 2631. But the Court disregards what Congress set about to do in enacting the VRA. That extraordinary legislation scarcely stopped at the particular tests and devices that happened to exist in 1965. The grand aim of the Act is to secure to all in our polity equal citizenship stature, a voice in our democracy undiluted by race. As the record for the 2006 reauthorization makes abundantly clear, second-generation barriers to minority voting rights have emerged in the covered jurisdictions as attempted *substitutes* for the first-generation barriers that originally triggered preclearance in those jurisdictions. See *supra,* at 2634 – 2635, 2636, 2640 – 2641.

The sad irony of today's decision lies in its utter failure to grasp why the VRA has proven effective. The Court appears to believe that the VRA's success in eliminating the specific devices extant in 1965 means that preclearance is no longer needed. *Ante,* at 2629 – 2630, 2630 – 2631. With that belief, and the argument derived from it, history repeats itself. The same assumption—that the problem could be solved when particular methods of voting discrimination are ***593** identified and eliminated—was indulged and proved wrong repeatedly prior to the VRA's enactment. Unlike prior statutes, which singled out particular tests or devices, the VRA is grounded in Congress' recognition of the "variety and persistence" of measures designed to impair minority voting rights. *Katzenbach,* 383 U.S., at 311, 86 S.Ct. 803; *supra,* at 2633. In truth, the evolution of voting discrimination into more subtle second-generation barriers is powerful evidence that a remedy as effective as preclearance remains vital to protect minority voting rights and prevent backsliding.

Beyond question, the VRA is no ordinary legislation. It is extraordinary because ****2652** Congress embarked on a mission long delayed and of extraordinary importance: to realize the purpose and promise of the Fifteenth Amendment. For a half century, a concerted effort has been made to end racial discrimination in voting. Thanks to the Voting Rights Act, progress once the subject of a dream has been achieved and continues to be made.

The record supporting the 2006 reauthorization of the VRA is also extraordinary. It was described by the Chairman of the House Judiciary Committee as "one of the most extensive considerations of any piece of legislation that the United States Congress has dealt with in the 27 &

half; years" he had served in the House. 152 Cong. Rec. H5143 (July 13, 2006) (statement of Rep. Sensenbrenner). After exhaustive evidence-gathering and deliberative process, Congress reauthorized the VRA, including the coverage provision, with overwhelming bipartisan support. It was the judgment of Congress that "40 years has not been a sufficient amount of time to eliminate the vestiges of discrimination following nearly 100 years of disregard for the dictates of the 15th amendment and to ensure that the right of all citizens to vote is protected as guaranteed by the Constitution." 2006 Reauthorization § 2(b)(7), 120 Stat. 577. That determination of the body empowered to enforce the Civil War Amendments "by appropriate legislation" merits this Court's ***594** utmost respect. In my judgment, the Court errs egregiously by overriding Congress' decision.

* * *

For the reasons stated, I would affirm the judgment of the Court of Appeals.

All Citations

570 U.S. 529, 133 S.Ct. 2612, 186 L.Ed.2d 651, 81 USLW 4572, 13 Cal. Daily Op. Serv. 6569, 2013 Daily Journal D.A.R. 8199, 24 Fla. L. Weekly Fed. S 407

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.,* 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

1 Both the Fourteenth and Fifteenth Amendments were at issue in *Northwest Austin,* see Juris. Statement i, and Brief for Federal Appellee 29–30, in *Northwest Austin Municipal Util. Dist. No. One v. Holder,* O.T. 2008, No. 08–322, and accordingly *Northwest Austin* guides our review under both Amendments in this case.

1 The Court purports to declare unconstitutional only the coverage formula set out in § 4(b). See *ante,* at 2631. But without that formula, § 5 is immobilized.

2 The Constitution uses the words "right to vote" in five separate places: the Fourteenth, Fifteenth, Nineteenth, Twenty–Fourth, and Twenty–Sixth Amendments. Each of these Amendments contains the same broad empowerment of Congress to enact "appropriate legislation" to enforce the protected right. The implication is unmistakable: Under our constitutional structure, Congress holds the lead rein in making the right to vote equally real for all U.S. citizens. These Amendments are in line with the special role assigned to Congress in protecting the integrity of the democratic process in federal elections. U.S. Const., Art. I, § 4 ("[T]he Congress may at any time by Law make or alter" regulations concerning the "Times, Places and Manner of holding Elections for Senators and Representatives."); *Arizona v. Inter Tribal Council of Ariz., Inc.,* ——U.S., ——, —— – ——, 133 S.Ct. 2247, —— – ——, 186L.Ed.2d 239 (2013).

3 Acknowledging the existence of "serious constitutional questions," see *ante,* at 2630 (internal quotation marks omitted), does not suggest how those questions should be answered.

4 This number includes only changes actually proposed. Congress also received evidence that many covered jurisdictions engaged in an "informal consultation process" with DOJ before formally submitting a proposal, so that the deterrent effect of preclearance was far broader than the formal submissions alone suggest. The Continuing Need for Section 5 Pre–Clearance: Hearing before the Senate Committee on the Judiciary, 109th Cong., 2d Sess., pp. 53–54 (2006). All agree that an unsupported assertion about "deterrence" would not be sufficient to justify keeping a remedy in place in perpetuity. See *ante,* at 2627. But it was certainly reasonable for Congress to consider the testimony of witnesses who had worked with officials in covered jurisdictions and observed a real-world deterrent effect.

5 For an illustration postdating the 2006 reauthorization, see *South Carolina v. United States,* 898 F.Supp.2d 30 (D.D.C.2012), which involved a South Carolina voter-identification law enacted in 2011. Concerned that the law would burden minority voters, DOJ brought a § 5 enforcement action to block the law's implementation. In the course of the litigation, South Carolina officials agreed to binding interpretations that made it "far easier than some might have expected or feared" for South Carolina citizens to vote. *Id.,* at 37. A three-judge panel precleared the law after adopting both interpretations as an express "condition of preclearance." *Id.,* at 37–38. Two of the judges commented that the case

demonstrated "the continuing utility of Section 5 of the Voting Rights Act in deterring problematic, and hence encouraging non-discriminatory, changes in state and local voting laws." *Id.,* at 54 (opinion of Bates, J.).

6 Because preclearance occurs only in covered jurisdictions and can be expected to stop the most obviously objectionable measures, one would expect a *lower* rate of successful § 2 lawsuits in those jurisdictions if the risk of voting discrimination there were the same as elsewhere in the country.

7 This lawsuit was filed by Shelby County, a political subdivision of Alabama, rather than by the State itself. Nevertheless, it is appropriate to judge Shelby County's constitutional challenge in light of instances of discrimination statewide because Shelby County is subject to § 5's preclearance requirement by virtue of *Alabama's* designation as a covered jurisdiction under § 4(b) of the VRA. See *ante,* at 2621 – 2622. In any event, Shelby County's recent record of employing an at-large electoral system tainted by intentional racial discrimination is by itself sufficient to justify subjecting the county to § 5's preclearance mandate. See *infra,* at 2646.

8 Congress continued preclearance over Alabama, including Shelby County, *after* considering evidence of current barriers there to minority voting clout. Shelby County, thus, is no "redhead" caught up in an arbitrary scheme. See *ante,* at 2629.

9 The Court does not contest that Alabama's history of racial discrimination provides a sufficient basis for Congress to require Alabama and its political subdivisions to preclear electoral changes. Nevertheless, the Court asserts that Shelby County may prevail on its facial challenge to § 4's coverage formula because it is subject to § 5's preclearance requirement by virtue of that formula. See *ante,* at 2630 ("The county was selected [for preclearance] based on th[e] [coverage] formula."). This misses the reality that Congress decided to subject Alabama to preclearance based on evidence of continuing constitutional violations in that State. See *supra,* at 2647, n. 8.

ACLU MD Appendix 5

129 S.Ct. 2504
Supreme Court of the United States

NORTHWEST AUSTIN
MUNICIPAL UTILITY DISTRICT
NUMBER ONE, Appellant
v.
Eric H. HOLDER, Jr., Attorney General, et al.

No. 08–322.
|
Argued April 29, 2009.
|
Decided June 22, 2009.

Synopsis

Background: Texas municipal utility district, a covered jurisdiction, brought action against the Attorney General, seeking declaratory judgment exempting it from Voting Rights Act's preclearance obligation, and, alternatively, challenging constitutionality of preclearance requirement. The United States District Court for the District of Columbia, David S. Tatel, Circuit Judge, granted Attorney General's motion for summary judgment. Utility district appealed.

Holdings: The Supreme Court, Chief Justice Roberts, held that:

Supreme Court would apply principle of constitutional avoidance to refrain from deciding whether preclearance requirements were unconstitutional, and

utility district was "political subdivision" eligible to file suit to bail out of preclearance requirements.

Reversed and Remanded.

Justice Thomas filed opinion concurring in the judgment in part and dissenting in part.

West Codenotes

Validity Called into Doubt
42 U.S.C.A. 1973c

****2505** *Syllabus* [*]

The appellant is a small utility district with an elected board. Because it is located in Texas, it is required by § 5 of the Voting Rights Act of 1965 (Act) to seek federal preclearance before it can change anything about its elections, even though there is no evidence it has ever discriminated on the basis of race in those elections. The district filed suit seeking relief under the "bailout" provision in § 4(a) of the Act, which allows a "political subdivision" to be released from the preclearance requirements if certain conditions are met. The district argued in the alternative that, if § 5 were interpreted to render it ineligible for bailout, § 5 was unconstitutional. The Federal District Court rejected both claims. It concluded that bailout under § 4(a) is available only to counties, parishes, and subunits that register voters, not to an entity like the district that does not register its own voters. It also concluded that a 2006 amendment extending § 5 for 25 years was constitutional.

Held:

1. The historic accomplishments of the Voting Rights Act are undeniable, but the Act now raises serious constitutional concerns. The preclearance requirement represents an intrusion into areas of state and local responsibility that is otherwise ****2506** unfamiliar to our federal system. Some of the conditions that the Court relied upon in upholding this statutory scheme in *South Carolina v. Katzenbach,* 383 U.S. 301, 86 S.Ct. 803, 15 L.Ed.2d 769, and *City of Rome v. United States,* 446 U.S. 156, 100 S.Ct. 1548, 64 L.Ed.2d 119, have unquestionably improved. Those improvements are no doubt due in significant part to the Voting Rights Act itself, and stand as a monument to its success, but the Act imposes current burdens and must be justified by current needs. The Act also differentiates between the States in ways that may no longer be justified.

At the same time, the Court recognizes that judging the constitutionality of an Act of Congress is "the gravest and most delicate duty that this Court is called upon to perform." *Blodgett v. Holden,* 275 U.S. 142, 147–148, 48 S.Ct. 105, 72 L.Ed. 206 (Holmes, J., concurring). Here the District Court found that the sizable record compiled by Congress to support extension of § 5 documented continuing racial discrimination and that § 5 deterred discriminatory changes.

The Court will not shrink from its duty "as the bulwark of a limited Constitution against legislative encroachments," The Federalist No. 78, but "[i]t is ... well established ... that normally the Court will not decide a constitutional question if there is some other ground upon which to dispose of the case," *Escambia County v. McMillan,* 466 U.S. 48, 51, 104 S.Ct. 1577, 80 L.Ed.2d 36. Here, the district also raises a statutory claim that it is eligible to bail out under §§ 4 and 5, and that claim is sufficient to resolve the appeal. Pp. 2511 – 2513.

2. The Act must be interpreted to permit all political subdivisions, including the district, to seek to bail out from the preclearance requirements. It is undisputed that the district is a "political subdivision" in the ordinary sense, but the Act also provides a narrower definition in § 14(c)(2): " '[P]olitical subdivision' shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting." The court below concluded that the district did not qualify for § 4(a) bailout under this definition, but specific precedent, the Act's structure, and underlying constitutional concerns compel a broader reading.

This Court has already established that § 14(c)(2)'s definition does not apply to the term "political subdivision" in § 5's preclearance provision. See, *e.g., United States v. Sheffield Bd. of Comm'rs,* 435 U.S. 110, 98 S.Ct. 965, 55 L.Ed.2d 148. Rather, the "definition was intended to operate only for purposes of determining which political units in nondesignated States may be separately designated for coverage under § 4(b)." *Id.,* at 128–129, 98 S.Ct. 965. "[O]nce a State has been [so] designated ..., [the] definition ... has no operative significance in determining [§ 5's] reach." *Dougherty County Bd. of Ed. v. White,* 439 U.S. 32, 44, 99 S.Ct. 368, 58 L.Ed.2d 269. In light of these decisions, § 14(c)(2)'s definition should not constrict the availability of bailout either.

The Government responds that any such argument is foreclosed by *City of Rome*. In 1982, however, Congress expressly repudiated *City of Rome*. Thus, *City of Rome* 's logic is no longer applicable. The Government's contention that the district is subject to § 5 under *Sheffield* not because it is a "political subdivision" but because it is a "State" is counterintuitive and similarly untenable after the 1982 amendments. The Government's contrary interpretation has helped to render the bailout provision all but a nullity. ****2507** Since 1982, only 17 jurisdictions—out of the more than 12,000 covered political subdivisions—have successfully bailed out of the Act. It is unlikely that Congress intended the provision to have such limited effect. Pp. 2513 – 2517.

573 F.Supp.2d 221, reversed and remanded.

ROBERTS, C.J., delivered the opinion of the Court, in which STEVENS, SCALIA, KENNEDY, SOUTER, GINSBURG, BREYER, and ALITO, JJ., joined. THOMAS, J., filed an opinion concurring in the judgment in part and dissenting in part.

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Opinion

Chief Justice ROBERTS delivered the opinion of the Court.

***196** The plaintiff in this case is a small utility district raising a big question—the constitutionality of § 5 of the Voting Rights Act. The district has an elected board, and is required by § 5 to seek preclearance from federal authorities in Washington, D.C., before it can change anything about those elections. This is required even though there has never been any evidence of racial discrimination in voting in the district.

***197** The district filed suit seeking relief from these preclearance obligations under the "bailout" provision of the Voting Rights Act. That provision allows the release of a "political subdivision" from the preclearance requirements if certain rigorous conditions are met. The court below denied relief, concluding that bailout was unavailable to a political subdivision like the utility district that did not register its own voters. The district appealed, arguing that the Act imposes no such limitation on bailout, and that if it does, the preclearance requirements are unconstitutional.

That constitutional question has attracted ardent briefs from dozens of interested parties, but the importance of the question does not justify our rushing to decide it. Quite the contrary: Our usual practice is to avoid the unnecessary resolution of constitutional questions. We agree that the district is eligible under the Act to seek bailout. We therefore reverse, and do not reach the constitutionality of § 5.

I

A

The Fifteenth Amendment promises that the "right of citizens of the United States to vote shall not be denied or abridged ... on account of race, color, or previous condition of servitude." U.S. Const., Amdt. 15, § 1. In addition to that self-executing right, the Amendment also gives Congress the "power to enforce this article by appropriate legislation." § 2. The first century of congressional enforcement of the Amendment, however, can only be regarded as a failure. Early enforcement Acts were inconsistently applied and repealed with the rise of Jim Crow. *South Carolina v. Katzenbach,* 383 U.S. 301, 310, 86 S.Ct. 803, 15 L.Ed.2d 769 (1966); A. Keyssar, The Right to Vote 105–111 (2000). Another series of enforcement statutes in the 1950s and 1960s depended on individual lawsuits filed by the Department of Justice. But litigation is slow and expensive, and the States were ****2509** creative in "contriving new rules" to continue violating the Fifteenth Amendment ***198** "in the face of adverse federal court decrees." *Katzenbach, supra,* at 335, 86 S.Ct. 803; *Riley v. Kennedy,* 553 U.S. 406, 411 – 413, 128 S.Ct. 1970, 1976–1977, 170 L.Ed.2d 837 (2008).

Congress responded with the Voting Rights Act. Section 2 of the Act operates nationwide; as it exists today, that provision forbids any "standard, practice, or procedure" that "results in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color." 42 U.S.C. § 1973(a). Section 2 is not at issue in this case.

The remainder of the Act constitutes a "scheme of stringent remedies aimed at areas where voting discrimination has been most flagrant." *Katzenbach, supra,* at 315, 86 S.Ct. 803. Rather than continuing to depend on case-by-case litigation, the Act directly pre-empted the most powerful tools of black disenfranchisement in the covered areas. All literacy tests and similar voting qualifications were abolished by § 4 of the Act. Voting Rights Act of 1965, §§ 4(a)-(d), 79 Stat. 438–439. Although such tests may have been facially neutral, they were easily manipulated to keep blacks from voting. The Act also empowered federal examiners to override state determinations about who was eligible to vote. §§ 6, 7, 9, 13, *id.,* at 439–442, 444–445.

These two remedies were bolstered by § 5, which suspended all changes in state election procedure until they were submitted to and approved by a three-judge Federal District Court in Washington, D.C., or the Attorney General. *Id.,* at 439, codified as amended at 42 U.S.C. § 1973c(a). Such preclearance is granted only if the change neither "has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color." *Ibid.* We have interpreted the requirements of § 5 to apply not only to the ballot-access rights guaranteed by § 4, but to drawing district lines as well. *Allen v. State Bd. of Elections,* 393 U.S. 544, 564–565, 89 S.Ct. 817, 22 L.Ed.2d 1 (1969).

To confine these remedies to areas of flagrant disenfranchisement, the Act applied them only to States that had used a forbidden test or device in November 1964, and had less ***199** than 50% voter registration or turnout in the 1964 Presidential election. § 4(b), 79 Stat. 438. Congress recognized that the coverage formula it had adopted "might bring within its sweep governmental units not guilty of any unlawful discriminatory voting practices." *Briscoe v. Bell,* 432 U.S. 404, 411, 97 S.Ct. 2428, 53 L.Ed.2d 439 (1977). It therefore "afforded such jurisdictions immediately available protection in the form of ... [a] 'bailout' suit." *Ibid.*

To bail out under the current provision, a jurisdiction must seek a declaratory judgment from a three-judge District Court in Washington, D.C. 42 U.S.C. §§ 1973b(a)(1), 1973c(a). It must show that for the previous 10 years it has not used any forbidden voting test, has not been subject to any valid objection under § 5, and has not been found liable for other voting rights violations; it must also show that it has "engaged in constructive efforts to eliminate intimidation and harassment" of voters, and similar measures. §§ 1973b(a)(1)(A)-(F). The Attorney General can consent to entry of judgment in favor of bailout if the evidence warrants it, though other interested parties are allowed to intervene in the declaratory judgment action. § 1973b(a)(9). There are other restrictions: To bail out, a covered jurisdiction must show that every jurisdiction in its territory has complied with all of these requirements. § 1973b(a)(3). The District Court also retains continuing jurisdiction ****2510** over a successful bailout suit for 10 years, and may reinstate coverage if any violation is found. § 1973b(a)(5).

As enacted, §§ 4 and 5 of the Voting Rights Act were temporary provisions. They were expected to be in effect for only five years. § 4(a), 79 Stat. 438. We upheld the temporary Voting Rights Act of 1965 as an appropriate exercise of congressional power in *Katzenbach,* explaining that "[t]he constitutional propriety of the Voting Rights Act of 1965 must be judged with reference to the historical experience which it reflects." 383 U.S., at 308, 86 S.Ct. 803. We concluded that the problems Congress faced when it passed the Act were so dire ***200** that "exceptional conditions [could] justify legislative measures not otherwise appropriate." *Id.,* at 334–335, 86 S.Ct. 803 (citing *Home Building & Loan Assn. v. Blaisdell,* 290 U.S. 398, 54 S.Ct. 231, 78 L.Ed. 413 (1934), and *Wilson v. New,* 243 U.S. 332, 37 S.Ct. 298, 61 L.Ed. 755 (1917)).

Congress reauthorized the Act in 1970 (for 5 years), 1975 (for 7 years), and 1982 (for 25 years). The coverage formula remained the same, based on the use of voting-eligibility tests and the rate of registration and turnout among all voters, but the pertinent dates for assessing these criteria moved from 1964 to include 1968 and eventually 1972. 42 U.S.C. § 1973b(b). We upheld each of these reauthorizations against constitutional challenges, finding that circumstances continued to justify the provisions. *Georgia v. United States,* 411 U.S. 526, 93 S.Ct. 1702, 36 L.Ed.2d 472 (1973); *City of Rome v. United States,* 446 U.S. 156, 100 S.Ct. 1548, 64 L.Ed.2d 119 (1980); *Lopez v. Monterey County,* 525 U.S. 266, 119 S.Ct. 693, 142 L.Ed.2d 728 (1999). Most recently, in 2006, Congress extended § 5 for yet another 25 years. Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights

Act Reauthorization and Amendments Act of 2006, 120 Stat. 577. The 2006 Act retained 1972 as the last baseline year for triggering coverage under § 5. It is that latest extension that is now before us.

B

Northwest Austin Municipal Utility District Number One was created in 1987 to deliver city services to residents of a portion of Travis County, Texas. It is governed by a board of five members, elected to staggered terms of four years. The district does not register voters but is responsible for its own elections; for administrative reasons, those elections are run by Travis County. Because the district is located in Texas, it is subject to the obligations of § 5, although there is no evidence that it has ever discriminated on the basis of race.

The district filed suit in the District Court for the District of Columbia, seeking relief under the statute's bailout provisions and arguing in the alternative that, if interpreted to ***201** render the district ineligible for bailout, § 5 was unconstitutional. The three-judge District Court rejected both claims. Under the statute, only a "State or political subdivision" is permitted to seek bailout, 42 U.S.C. § 1973b(a)(1)(A), and the court concluded that the district was not a political subdivision because that term includes only "counties, parishes, and voter-registering subunits," *Northwest Austin Municipal Util. Dist. No. One v. Mukasey,* 573 F.Supp.2d 221, 232 (2008). Turning to the district's constitutional challenge, the court concluded that the 25–year extension of § 5 was constitutional both because "Congress ... rationally concluded that extending [§]5 was necessary to protect minorities from continued racial discrimination in voting" and because "the 2006 Amendment qualifies as a congruent and proportional response to the continuing ****2511** problem of racial discrimination in voting." *Id.,* at 283. We noted probable jurisdiction, 555 U.S. 1091, 129 S.Ct. 894, 172 L.Ed.2d 768 (2009), and now reverse.

II

The historic accomplishments of the Voting Rights Act are undeniable. When it was first passed, unconstitutional discrimination was rampant and the "registration of voting-age whites ran roughly 50 percentage points or more ahead" of black registration in many covered States. *Katzenbach, supra,* at 313, 86 S.Ct. 803; H.R.Rep. No. 109–478, p. 12 (2006). Today, the registration gap between white and black voters is in single digits in the covered States; in some of those States, blacks now register and vote at higher rates than whites. *Id.,* at 12–13. Similar dramatic improvements have occurred for other racial minorities. *Id.,* at 18–20. "[M]any of the first generation barriers to minority voter registration and voter turnout that were in place prior to the [Voting Rights Act] have been eliminated." *Id.,* at 12; *Bartlett v. Strickland,* 556 U.S. 1, 8 – 12, 129 S.Ct. 1231, 1240–1241, 173 L.Ed.2d 173 (2009) (plurality opinion) ("Passage of the Voting Rights Act of 1965 was an important step in the struggle to end discriminatory treatment of minorities ***202** who seek to exercise one of the most fundamental rights of our citizens: the right to vote").

At the same time, § 5, "which authorizes federal intrusion into sensitive areas of state and local policymaking, imposes substantial 'federalism costs.' " *Lopez, supra,* at 282, 119 S.Ct. 693 (quoting *Miller v. Johnson,* 515 U.S. 900, 926, 115 S.Ct. 2475, 132 L.Ed.2d 762 (1995)). These federalism costs have caused Members of this Court to express serious misgivings about the constitutionality of § 5. *Katzenbach,* 383 U.S., at 358–362, 86 S.Ct. 803 (Black, J., concurring and dissenting); *Allen,* 393 U.S., at 586, n. 4, 89 S.Ct. 817 (Harlan, J., concurring in part and dissenting in part); *Georgia, supra,* at 545, 93 S.Ct. 1702 (Powell, J., dissenting); *City of Rome,* 446 U.S., at 209–221, 100 S.Ct. 1548 (Rehnquist, J., dissenting); *id.,* at 200–206, 100 S.Ct. 1548 (Powell, J., dissenting); *Lopez,* 525 U.S., at 293–298, 119 S.Ct. 693 (THOMAS, J., dissenting); *id.,* at 288, 119 S.Ct. 693 (KENNEDY, J., concurring in judgment).

Section 5 goes beyond the prohibition of the Fifteenth Amendment by suspending *all* changes to state election law —however innocuous—until they have been precleared by federal authorities in Washington, D.C. The preclearance requirement applies broadly, *NAACP v. Hampton County Election Comm'n,* 470 U.S. 166, 175–176, 105 S.Ct. 1128, 84 L.Ed.2d 124 (1985), and in particular to every political subdivision in a covered State, no matter how small, *United States v. Sheffield Bd. of Comm'rs,* 435 U.S. 110, 117–118, 98 S.Ct. 965, 55 L.Ed.2d 148 (1978).

Some of the conditions that we relied upon in upholding this statutory scheme in *Katzenbach* and *City of Rome* have unquestionably improved. Things have changed in the South. Voter turnout and registration rates now approach parity. Blatantly discriminatory evasions of federal decrees are rare.

And minority candidates hold office at unprecedented levels. See generally H.R.Rep. No. 109–478, at 12–18.

These improvements are no doubt due in significant part to the Voting Rights Act itself, and stand as a monument to its success. Past success alone, however, is not adequate justification to retain the preclearance requirements. See ***203** Issacharoff, Is Section 5 of the Voting Rights Act a Victim of Its Own Success? 104 Colum. L.Rev. 1710 (2004). It may be that these improvements are insufficient ****2512** and that conditions continue to warrant preclearance under the Act. But the Act imposes current burdens and must be justified by current needs.

The Act also differentiates between the States, despite our historic tradition that all the States enjoy "equal sovereignty." *United States v. Louisiana,* 363 U.S. 1, 16, 80 S.Ct. 961, 4 L.Ed.2d 1025 (1960) (citing *Lessee of Pollard v. Hagan,* 3 How. 212, 223, 11 L.Ed. 565 (1845)); see also *Texas v. White,* 7 Wall. 700, 725–726, 19 L.Ed. 227 (1869). Distinctions can be justified in some cases. "The doctrine of the equality of States ... does not bar ... remedies for *local* evils which have subsequently appeared." *Katzenbach, supra,* at 328–329, 86 S.Ct. 803 (emphasis added). But a departure from the fundamental principle of equal sovereignty requires a showing that a statute's disparate geographic coverage is sufficiently related to the problem that it targets.

These federalism concerns are underscored by the argument that the preclearance requirements in one State would be unconstitutional in another. See *Georgia v. Ashcroft,* 539 U.S. 461, 491–492, 123 S.Ct. 2498, 156 L.Ed.2d 428 (2003) (KENNEDY, J., concurring) ("Race cannot be the predominant factor in redistricting under our decision in *Miller v. Johnson,* 515 U.S. 900, 115 S.Ct. 2475, 132 L.Ed.2d 762 (1995). Yet considerations of race that would doom a redistricting plan under the Fourteenth Amendment or § 2 seem to be what save it under § 5"). Additional constitutional concerns are raised in saying that this tension between §§ 2 and 5 must persist in covered jurisdictions and not elsewhere.

The evil that § 5 is meant to address may no longer be concentrated in the jurisdictions singled out for preclearance. The statute's coverage formula is based on data that is now more than 35 years old, and there is considerable evidence that it fails to account for current political conditions. For example, the racial gap in voter registration and turnout is lower in the States originally covered by § 5 than it is nationwide. ***204** E. Blum & L. Campbell, Assessment of Voting Rights Progress in Jurisdictions Covered Under Section Five of the Voting Rights Act 3–6 (American Enterprise Institute, 2006). Congress heard warnings from supporters of extending § 5 that the evidence in the record did not address "systematic differences between the covered and the non-covered areas of the United States[,] ... and, in fact, the evidence that is in the record suggests that there is more similarity than difference." The Continuing Need for Section 5 Pre–Clearance: Hearing before the Senate Committee on the Judiciary, 109th Cong., 2d Sess., 10 (2006) (statement of Richard H. Pildes); see also Persily, The Promise and Pitfalls of the New Voting Rights Act, 117 Yale L.J. 174, 208 (2007) ("The most one can say in defense of the [coverage] formula is that it is the best of the politically feasible alternatives or that changing the formula would ... disrupt settled expectations").

The parties do not agree on the standard to apply in deciding whether, in light of the foregoing concerns, Congress exceeded its Fifteenth Amendment enforcement power in extending the preclearance requirements. The district argues that " '[t]here must be a congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end,' " Brief for Appellant 31, quoting *City of Boerne v. Flores,* 521 U.S. 507, 520, 117 S.Ct. 2157, 138 L.Ed.2d 624 (1997); the Federal Government asserts that it is enough that the legislation be a " 'rational means to effectuate the constitutional prohibition,' " Brief for Federal Appellee 6, quoting *Katzenbach, supra,* ****2513** at 324, 86 S.Ct. 803. That question has been extensively briefed in this case, but we need not resolve it. The Act's preclearance requirements and its coverage formula raise serious constitutional questions under either test.

In assessing those questions, we are keenly mindful of our institutional role. We fully appreciate that judging the constitutionality of an Act of Congress is "the gravest and most delicate duty that this Court is called on to perform." *Blodgett* ***205** *v. Holden,* 275 U.S. 142, 147–148, 48 S.Ct. 105, 72 L.Ed. 206 (1927) (Holmes, J., concurring). "The Congress is a coequal branch of government whose Members take the same oath we do to uphold the Constitution of the United States." *Rostker v. Goldberg,* 453 U.S. 57, 64, 101 S.Ct. 2646, 69 L.Ed.2d 478 (1981). The Fifteenth Amendment empowers "Congress," not the Court, to determine in the first instance what legislation is needed to enforce it. Congress amassed a sizable record in support of its decision to extend the preclearance requirements, a record the District Court determined "document[ed] contemporary racial discrimination in covered states." 573 F.Supp.2d,

at 265. The District Court also found that the record "demonstrat[ed] that section 5 prevents discriminatory voting changes" by "quietly but effectively deterring discriminatory changes." *Id.,* at 264.

We will not shrink from our duty "as the bulwar[k] of a limited constitution against legislative encroachments," The Federalist No. 78, p. 526 (J. Cooke ed. 1961) (A.Hamilton), but "[i]t is a well-established principle governing the prudent exercise of this Court's jurisdiction that normally the Court will not decide a constitutional question if there is some other ground upon which to dispose of the case," *Escambia County v. McMillan,* 466 U.S. 48, 51, 104 S.Ct. 1577, 80 L.Ed.2d 36 (1984) (*per curiam*). Here, the district also raises a statutory claim that it is eligible to bail out under §§ 4 and 5.

Justice THOMAS argues that the principle of constitutional avoidance has no pertinence here. He contends that even if we resolve the district's statutory argument in its favor, we would still have to reach the constitutional question, because the district's statutory argument would not afford it all the relief it seeks. *Post,* at 2517 – 2518 (opinion concurring in judgment in part and dissenting in part).

We disagree. The district expressly describes its constitutional challenge to § 5 as being "in the alternative" to its statutory argument. See Brief for Appellant 64 ("[T]he Court should reverse the judgment of the district court and ***206** render judgment that the district is entitled to use the bailout procedure or, in the alternative, that § 5 cannot be constitutionally applied to the district"). The district's counsel confirmed this at oral argument. See Tr. of Oral Arg. 14 ("[Question:] [D]o you acknowledge that if we find in your favor on the bailout point we need not reach the constitutional point? [Answer:] I do acknowledge that"). We therefore turn to the district's statutory argument.

III

Section 4(b) of the Voting Rights Act authorizes a bailout suit by a "State or political subdivision." 42 U.S.C. § 1973b(a)(1)(A). There is no dispute that the district is a political subdivision of the State of Texas in the ordinary sense of the term. See, *e.g.,* Black's Law Dictionary 1197 (8th ed. 2004) ("A division of a state that exists primarily to discharge some function of local government"). The district was created under Texas law with "powers of government" relating to local utilities and natural resources. Tex. Const., Art. XVI, § 59(b); ****2514** Tex. Water Code Ann. § 54.011 (West 2002); see also *Bennett v. Brown Cty. Water Improvement Dist. No. 1,* 153 Tex. 599, 272 S.W.2d 498, 500 (1954) ("[W]ater improvement district[s] ... are held to be political subdivisions of the State" (internal quotation marks omitted)).

The Act, however, also provides a narrower statutory definition in § 14(c)(2): " '[P]olitical subdivision' shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting." 42 U.S.C. § 1973*l* (c)(2). The District Court concluded that this definition applied to the bailout provision in § 4(a), and that the district did not qualify, since it is not a county or parish and does not conduct its own voter registration.

"Statutory definitions control the meaning of statutory words, of course, in the usual case. But this is an unusual ***207** case." *Lawson v. Suwannee Fruit & S.S. Co.,* 336 U.S. 198, 201, 69 S.Ct. 503, 93 L.Ed. 611 (1949); see also *Farmers Reservoir & Irrigation Co. v. McComb,* 337 U.S. 755, 764, 69 S.Ct. 1274, 93 L.Ed. 1672 (1949); *Philko Aviation, Inc. v. Shacket,* 462 U.S. 406, 412, 103 S.Ct. 2476, 76 L.Ed.2d 678 (1983). Were the scope of § 4(a) considered in isolation from the rest of the statute and our prior cases, the District Court's approach might well be correct. But here specific precedent, the structure of the Voting Rights Act, and underlying constitutional concerns compel a broader reading of the bailout provision.

Importantly, we do not write on a blank slate. Our decisions have already established that the statutory definition in § 14(c)(2) does not apply to every use of the term "political subdivision" in the Act. We have, for example, concluded that the definition does not apply to the preclearance obligation of § 5. According to its text, § 5 applies only "[w]henever a [covered] State or political subdivision" enacts or administers a new voting practice. Yet in *Sheffield Bd. of Comm'rs,* 435 U.S. 110, 98 S.Ct. 965, 55 L.Ed.2d 148, we rejected the argument by a Texas city that it was neither a State nor a political subdivision as defined in the Act, and therefore did not need to seek preclearance of a voting change. The dissent agreed with the city, pointing out that the city did not meet the statutory definition of "political subdivision" and therefore could not be covered. *Id.,* at 141–144, 98 S.Ct. 965 (opinion of STEVENS, J.). The majority, however, relying on the purpose and structure of the Act, concluded that the "definition was intended to operate only for purposes of determining which

political units in nondesignated States may be separately designated for coverage under § 4(b).” *Id.,* at 128–129, 98 S.Ct. 965; see also *id.,* at 130, n. 18, 98 S.Ct. 965 (“Congress's exclusive objective in § 14(c)(2) was to limit the jurisdictions which may be separately designated for coverage under § 4(b)”).

We reaffirmed this restricted scope of the statutory definition the next Term in *Dougherty County Bd. of Ed. v. White,* 439 U.S. 32, 99 S.Ct. 368, 58 L.Ed.2d 269 (1978). There, a school board argued ***208** that because “it d[id] not meet the definition” of political subdivision in § 14(c)(2), it “d[id] not come within the purview of § 5.” *Id.,* at 43, 44, 99 S.Ct. 368. We responded:

> “This contention is squarely foreclosed by our decision last Term in [*Sheffield*]. There, we expressly rejected the suggestion that the city of Sheffield was beyond the ambit of § 5 because it did not itself register voters and hence was not a political subdivision as the term is defined in § 14(c)(2) of the Act. ... [O]nce a State has been designated for coverage, § 14(c)(2)'s definition of political ****2515** subdivision has no operative significance in determining the reach of § 5.” *Id.,* at 44, 99 S.Ct. 368 (internal quotation marks omitted).

According to these decisions, then, the statutory definition of “political subdivision” in § 14(c)(2) does not apply to every use of the term “political subdivision” in the Act. Even the intervenors who oppose the district's bailout concede, for example, that the definition should not apply to § 2, which bans racial discrimination in voting by “any State or political subdivision,” 42 U.S.C. § 1973(a). See Brief for Intervenor–Appellee Texas State Conference of NAACP Branches et al. 17 (citing *Smith v. Salt River Project Agricultural Improvement and Power Dist.,* 109 F.3d 586, 592–593 (C.A.9 1997)); see also *United States v. Uvalde Consol. Independent School Dist.*, 625 F.2d 547, 554 (C.A.5 1980) (“[T]he Supreme Court has held that this definition [in § 14(c)(2)] limits the meaning of the phrase ‘State or political subdivision’ only when it appears in certain parts of the Act, and that it does not confine the phrase as used elsewhere in the Act”). In light of our holdings that the statutory definition does not constrict the scope of preclearance required by § 5, the district argues, it only stands to reason that the definition should not constrict the availability of bailout from those preclearance requirements either.

***209** The Government responds that any such argument is foreclosed by our interpretation of the statute in *City of Rome,* 446 U.S. 156, 100 S.Ct. 1548, 64 L.Ed.2d 119. There, it argues, we made clear that the discussion of political subdivisions in *Sheffield* was dictum, and “specifically held that a ‘city is not a “political subdivision” for purposes of § 4(a) bailout.’ ” Brief for Federal Appellee 14 (quoting *City of Rome, supra,* at 168, 100 S.Ct. 1548).

Even if that is what *City of Rome* held, the premises of its statutory holding did not survive later changes in the law. In *City of Rome* we rejected the city's attempt to bail out from coverage under § 5, concluding that “political units of a covered jurisdiction cannot independently bring a § 4(a) bailout action.” 446 U.S., at 167, 100 S.Ct. 1548. We concluded that the statute as then written authorized a bailout suit only by a “State” subject to the coverage formula, or a “political subdivision with respect to which [coverage] determinations have been made as a separate unit,” *id.,* at 164, n. 2, 100 S.Ct. 1548 (quoting 42 U.S.C. § 1973b(a) (1976 ed.)); see also 446 U.S., at 163–169, 100 S.Ct. 1548. Political subdivisions covered because they were part of a covered State, rather than because of separate coverage determinations, could not separately bail out. As Justice STEVENS put it, “[t]he political subdivisions of a covered State” were “not entitled to bail out in a piecemeal fashion.” *Id.,* at 192, 100 S.Ct. 1548 (concurring opinion).

In 1982, however, Congress expressly repudiated *City of Rome* and instead embraced “piecemeal” bailout. As part of an overhaul of the bailout provision, Congress amended the Voting Rights Act to expressly provide that bailout was also available to “political subdivisions” in a covered State, “though [coverage] determinations were *not* made with respect to such subdivision as a separate unit.” Voting Rights Act Amendments of 1982, 96 Stat. 131, codified at 42 U.S.C. § 1973b(a)(1) (emphasis added). In other words, Congress decided that a jurisdiction covered because it was within a covered State need not remain covered for as long ***210** as the State did. If the subdivision met the bailout requirements, it could bail out, even if the State could not. In light of these amendments, our logic for denying bailout in *City of Rome* is no longer applicable to the ****2516** Voting Rights Act—if anything, that logic compels the opposite conclusion.

Bailout and preclearance under § 5 are now governed by a principle of symmetry. “Given the Court's decision in *Sheffield* that all political units in a covered State are to be treated for § 5 purposes as though they were ‘political subdivisions' of that State, it follows that they should also be treated as such for purposes of § 4(a)'s bailout provisions.”

City of Rome, supra, at 192, 100 S.Ct. 1548 (STEVENS, J., concurring).

The Government contends that this reading of *Sheffield* is mistaken, and that the district is subject to § 5 under our decision in *Sheffield* not because it is a "political subdivision" but because it is a "State." That would mean it could bail out only if the whole State could bail out.

The assertion that the district is a State is at least counterintuitive. We acknowledge, however, that there has been much confusion over why *Sheffield* held the city in that case to be covered by the text of § 5. See *City of Rome,* 446 U.S., at 168–169, 100 S.Ct. 1548; *id.,* at 192, 100 S.Ct. 1548 (STEVENS, J., concurring); see also *Uvalde Consol. Independent School Dist. v. United States,* 451 U.S. 1002, 1004, n. 4, 101 S.Ct. 2341, 68 L.Ed.2d 858 (1981) (Rehnquist, J., dissenting from denial of certiorari) ("[T]his Court has not yet settled on the proper construction of the term 'political subdivision' ").

But after the 1982 amendments, the Government's position is untenable. If the district is considered the State, and therefore necessarily subject to preclearance so long as Texas is covered, then the same must be true of all other subdivisions of the State, including counties. That would render even counties unable to seek bailout so long as their State was covered. But that is the very restriction the 1982 amendments overturned. Nobody denies that counties in a ***211** covered State can seek bailout, as several of them have. See Voting Rights Act: Section 5 of the Act—History, Scope, and Purpose: Hearing Before the Subcommittee on the Constitution of the House Committee on the Judiciary, 109th Cong., 1st Sess., 2599–2834 (2005) (detailing bailouts). Because such piecemeal bailout is now permitted, it cannot be true that § 5 treats every governmental unit as the State itself.

The Government's contrary interpretation has helped to render the bailout provision all but a nullity. Since 1982, only 17 jurisdictions—out of the more than 12,000 covered political subdivisions—have successfully bailed out of the Act.App. to Brief for Jurisdictions That Have Bailed Out as *Amici Curiae* 3; Dept. of Commerce, Bureau of Census, 2002 Census of Governments, Vol. 1, No. 1, pp. 1, 22–60. It is unlikely that Congress intended the provision to have such limited effect. See *United States v. Hayes,* 555 U.S. 415, 425 – 427, 129 S.Ct. 1079, 1087, 172 L.Ed.2d 816 (2009).

We therefore hold that all political subdivisions—not only those described in § 14(c)(2)—are eligible to file a bailout suit.

* * *

More than 40 years ago, this Court concluded that "exceptional conditions" prevailing in certain parts of the country justified extraordinary legislation otherwise unfamiliar to our federal system. *Katzenbach,* 383 U.S., at 334, 86 S.Ct. 803. In part due to the success of that legislation, we are now a very different Nation. Whether conditions continue to justify such legislation is a difficult constitutional question we do not answer today. We conclude instead that the Voting Rights Act permits all political subdivisions, including ****2517** the district in this case, to seek relief from its preclearance requirements.

The judgment of the District Court is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

***212** Justice THOMAS, concurring in the judgment in part and dissenting in part.

This appeal presents two questions: first, whether appellant is entitled to bail out from coverage under the Voting Rights Act of 1965 (VRA); and second, whether the preclearance requirement of § 5 of the VRA is unconstitutional. Because the Court's statutory decision does not provide appellant with full relief, I conclude that it is inappropriate to apply the constitutional avoidance doctrine in this case. I would therefore decide the constitutional issue presented and hold that § 5 exceeds Congress' power to enforce the Fifteenth Amendment.

I

The doctrine of constitutional avoidance factors heavily in the Court's conclusion that appellant is eligible for bailout as a "political subdivision" under § 4(a) of the VRA. See *ante,* at 2513. Regardless of the Court's resolution of the statutory question, I am in full agreement that this case raises serious questions concerning the constitutionality of § 5 of the

VRA. But, unlike the Court, I do not believe that the doctrine of constitutional avoidance is applicable here. The ultimate relief sought in this case is not bailout eligibility—it is bailout itself. See First Amended Complaint in No. 06–1384(DDC), p. 8, Record, Doc. 83 ("Plaintiff requests the Court to declare that the district has met the bail-out requirements of § 4 of the [VRA] and that the preclearance requirements of § 5 ... no longer apply to the district; or, in the alternative, that § 5 of the Act as applied to the district is an unconstitutional overextension of Congress's enforcement power to remedy past violations of the Fifteenth Amendment").

Eligibility for bailout turns on the statutory question addressed by the Court—the proper definition of "political subdivision" in the bailout clauses of § 4(a) of the VRA. Entitlement to bailout, however, requires a covered "political subdivision" to submit substantial evidence indicating that ***213** it is not engaging in "discrimination in voting on account of race," see 42 U.S.C. § 1973b(a)(3). The Court properly declines to give appellant bailout because appellant has not yet proved its compliance with the statutory requirements for such relief. See §§ 1973b(a)(1)-(3). In fact, the record below shows that appellant's factual entitlement to bailout is a vigorously contested issue. See, *e.g.,* NAACP's Statement of Undisputed Material Facts in No. 06–1384(DDC), pp. 490–492, Record, Doc. 100; Attorney General's Statement of Uncontested Material Facts in No. 06–1384(DDC), ¶¶ 19, 59, Record, Doc. 98. Given its resolution of the statutory question, the Court has thus correctly remanded the case for resolution of appellant's factual entitlement to bailout. See *ante,* at 2516 – 2517.

But because the Court is not in a position to award appellant bailout, adjudication of the constitutionality of § 5, in my view, cannot be avoided. "Traditionally, the avoidance canon was not a doctrine under which courts read statutes to avoid mere constitutional doubts. Instead, it commanded courts, when faced with two plausible constructions of a statute—one constitutional and the other unconstitutional—to choose the constitutional reading." *Clark v. Martinez,* 543 U.S. 371, 395, 125 S.Ct. 716, 160 L.Ed.2d 734 (2005) (THOMAS, J., dissenting). To the extent that ****2518** constitutional avoidance is a worthwhile tool of statutory construction, it is because it allows a court to dispose of an entire case on grounds that do not require the court to pass on a statute's constitutionality. See *Ashwander v. TVA,* 297 U.S. 288, 347, 56 S.Ct. 466, 80 L.Ed. 688 (1936) (Brandeis, J., concurring) ("The Court will not pass upon a constitutional question although properly presented by the record, if there is also some other ground upon which the case may be disposed of"); see also, *e.g., Mayor of Philadelphia v. Educational Equality League,* 415 U.S. 605, 629, 94 S.Ct. 1323, 39 L.Ed.2d 630 (1974). The doctrine "avoids decision of constitutional questions where possible, and it permits one lawsuit, rather than two, to resolve the entire controversy." C. Wright, The Law of Federal ***214** Courts § 19, p. 104 (4th ed.1983). Absent a determination that appellant is not just eligible for bailout, but is entitled to it, this case will not have been entirely disposed of on a nonconstitutional ground. Cf. Tr. of Oral Arg. 14 ("[I]f the Court were to give us bailout ... the Court might choose on its own not to reach the constitutional issues because we would receive relief"). Invocation of the doctrine of constitutional avoidance is therefore inappropriate in this case.

The doctrine of constitutional avoidance is also unavailable here because an interpretation of § 4(a) that merely makes more political subdivisions *eligible* for bailout does not render § 5 constitutional and the Court notably does not suggest otherwise. See *Clark, supra,* at 396, 125 S.Ct. 716 (THOMAS, J., dissenting). Bailout eligibility is a distant prospect for most covered jurisdictions. To obtain bailout a covered jurisdiction must satisfy numerous objective criteria. It must show that during the previous 10 years: (A) no "test or device has been used within such State or political subdivision for the purpose or with the effect of denying or abridging the right to vote on account of race or color"; (B) "no final judgment of any court of the United States ... has determined that denials or abridgments of the right to vote on account of race or color have occurred anywhere in the territory of" the covered jurisdiction; (C) "no Federal examiners or observers ... have been assigned to" the covered jurisdiction; (D) the covered jurisdiction has fully complied with § 5; and (E) "the Attorney General has not interposed any objection (that has not been overturned by a final judgment of a court) and no declaratory judgment has been denied under [§ 5]." §§ 1973b(a)(1)(A)-(E). The jurisdiction also has the burden of presenting "evidence of minority participation, including evidence of the levels of minority group registration and voting, changes in such levels over time, and disparities between minority-group and non-minority-group participation." § 1973b(a)(2).

***215** These extensive requirements may be difficult to satisfy, see Brief for Georgia Governor Sonny Purdue as *Amicus Curiae* 20–26, but at least they are objective. The covered jurisdiction seeking bailout must also meet subjective criteria: it must "(i) have eliminated voting procedures and

methods of election which inhibit or dilute equal access to the electoral process; (ii) have engaged in constructive efforts to eliminate intimidation and harassment of persons exercising rights protected [under the Act]; and (iii) have engaged in other constructive efforts, such as expanded opportunity for convenient registration and voting for every person of voting age and the appointment of minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process." §§ 1973b(a)(1)(F)(i)-(iii).

As a result, a covered jurisdiction meeting each of the objective conditions could ****2519** nonetheless be denied bailout because it has not, in the subjective view of the United States District Court for the District of Columbia, engaged in sufficiently "constructive efforts" to expand voting opportunities, § 1973b(a)(1)(F)(iii). Congress, of course, has complete authority to set the terms of bailout. But its promise of a bailout opportunity has, in the great majority of cases, turned out to be no more than a mirage. As the Court notes, only a handful "of the more than 12,000 covered political subdivisions ... have successfully bailed out of the Act." *Ante,* at 2516;[1] see Williamson, The 1982 Amendments to the Voting Rights Act: A Statutory Analysis of the Revised Bailout Provisions, 62 Wash. U.L.Q. 1, 42 (1984) (explaining that ***216** "the conditions for termination of coverage have been made so restrictive that bailout will continue to be impossible for most jurisdictions"). Accordingly, bailout eligibility does not eliminate the issue of § 5's constitutionality.

II

The Court quite properly alerts Congress that § 5 tests the outer boundaries of its Fifteenth Amendment enforcement authority and may not be constitutional. See *ante,* at 2511 – 2512. And, although I respect the Court's careful approach to this weighty issue, I nevertheless believe it is necessary to definitively resolve that important question. For the reasons set forth below, I conclude that the lack of current evidence of intentional discrimination with respect to voting renders § 5 unconstitutional. The provision can no longer be justified as an appropriate mechanism for enforcement of the Fifteenth Amendment.

A

"The government of the United States is one of delegated powers alone. Its authority is defined and limited by the Constitution. All powers not granted to it by that instrument are reserved to the States or the people." *United States v. Cruikshank,* 92 U.S. 542, 551, 23 L.Ed. 588 (1876); see also *U.S. Term Limits, Inc. v. Thornton,* 514 U.S. 779, 848, 115 S.Ct. 1842, 131 L.Ed.2d 881 (1995) (THOMAS, J., dissenting). In the specific area of voting rights, this Court has consistently recognized that the Constitution gives the States primary authority over the structuring of electoral systems. See, *e.g., White v. Weiser,* 412 U.S. 783, 795, 93 S.Ct. 2348, 37 L.Ed.2d 335 (1973); *Burns v. Richardson,* 384 U.S. 73, 84–85, 86 S.Ct. 1286, 16 L.Ed.2d 376 (1966). "No function is more essential to the separate and independent existence of the States and their governments than the power to determine within the limits of the Constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices." *Oregon v. Mitchell,* 400 U.S. 112, 125, 91 S.Ct. 260, 27 L.Ed.2d 272 (1970) (opinion of Black, J.).

***217** State autonomy with respect to the machinery of self-government defines the States as sovereign entities rather than mere provincial outposts subject to every dictate of a central governing authority. See U.S. Const., Amdt. 10 ("The powers ****2520** not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people"); see also *Alden v. Maine,* 527 U.S. 706, 713, 119 S.Ct. 2240, 144 L.Ed.2d 636 (1999). In the main, the "Framers of the Constitution intended the States to keep for themselves, as provided in the Tenth Amendment, the power to regulate elections." *Gregory v. Ashcroft,* 501 U.S. 452, 461–462, 111 S.Ct. 2395, 115 L.Ed.2d 410 (1991) (internal quotation marks omitted).

To be sure, state authority over local elections is not absolute under the Constitution. The Fifteenth Amendment guarantees that the "right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude," § 1, and it grants Congress the authority to "enforce" these rights "by appropriate legislation," § 2. The Fifteenth Amendment thus renders unconstitutional any federal or state law that would limit a citizen's access to the ballot on one of the three bases enumerated in the Amendment. See *Mobile v. Bolden,* 446 U.S. 55, 65, 100 S.Ct. 1490, 64 L.Ed.2d 47 (1980) (plurality opinion) (the Fifteenth Amendment guards against "purposefully discriminatory denial or abridgment by government of the freedom to vote"). Nonetheless, because

States still retain sovereign authority over their election systems, any measure enacted in furtherance of the Fifteenth Amendment must be closely examined to ensure that its encroachment on state authority in this area is limited to the appropriate enforcement of this ban on discrimination.

There is certainly no question that the VRA initially "was passed pursuant to Congress' authority under the Fifteenth Amendment." *Lopez v. Monterey County,* 525 U.S. 266, 282, 119 S.Ct. 693, 142 L.Ed.2d 728 (1999). For example, §§ 2 and 4(a) seek to implement the Fifteenth Amendment's substantive command by creating a ***218** private cause of action to enforce § 1 of the Fifteenth Amendment, see § 1973(a), and by banning discriminatory tests and devices in covered jurisdictions, see § 1973b(a); see also *City of Lockhart v. United States,* 460 U.S. 125, 139, 103 S.Ct. 998, 74 L.Ed.2d 863 (1983) (Marshall, J., concurring in part and dissenting in part) (explaining that § 2 reflects Congress' determination "that voting discrimination was a nationwide problem" that called for a "general prohibition of discriminatory practices"). Other provisions of the VRA also directly enforce the Fifteenth Amendment. See § 1973h (elimination of poll taxes that effectively deny certain racial groups the right to vote); § 1973i(a) ("No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote ... or willfully fail or refuse to tabulate, count, and report such person's vote").

Section 5, however, was enacted for a different purpose: to prevent covered jurisdictions from circumventing the direct prohibitions imposed by provisions such as §§ 2 and 4(a). See *Reno v. Bossier Parish School Bd.,* 520 U.S. 471, 477, 117 S.Ct. 1491, 137 L.Ed.2d 730 (1997) (explaining that §§ 2 and 5 "combat different evils" and "impose very different duties upon the States"). Section 5 "was a response to a common practice in some jurisdictions of staying one step ahead of the federal courts by passing new discriminatory voting laws as soon as the old ones had been struck down. That practice had been possible because each new law remained in effect until the Justice Department or private plaintiffs were able to sustain the burden of proving that the new law, too, was discriminatory." ****2521** *Beer v. United States,* 425 U.S. 130, 140, 96 S.Ct. 1357, 47 L.Ed.2d 629 (1976) (internal quotation marks omitted).

The rebellion against the enfranchisement of blacks in the wake of ratification of the Fifteenth Amendment illustrated the need for increased federal intervention to protect the right to vote. Almost immediately following Reconstruction, blacks attempting to vote were met with coordinated ***219** intimidation and violence. See, *e.g.,* L. McDonald, A Voting Rights Odyssey: Black Enfranchisement in Georgia 34 (2003) ("By 1872, the legislative and executive branches of state government ... were once again firmly in the control of white Democrats, who resorted to a variety of tactics, including fraud, intimidation, and violence, to take away the vote from blacks, despite ratification of the Fifteenth Amendment in 1870 ...").[2] A soon-to-be victorious mayoral candidate in Wilmington, North Carolina, for example, urged white voters in an 1898 election-eve speech: "Go to the polls tomorrow and if you find the negro out voting, tell him to leave the polls, and if he refuses kill him; shoot him down in his tracks." S. Tolnay & E. Beck, A Festival of Violence: An Analysis of Southern Lynchings, 1882–1930, p. 67 (1995).

This campaign of violence eventually was supplemented, and in part replaced, by more subtle methods engineered to deny blacks the right to vote. See *South Carolina v. Katzenbach,* 383 U.S. 301, 310–312, 86 S.Ct. 803, 15 L.Ed.2d 769 (1966). Literacy tests were particularly effective: "as of 1890 in ... States [with literacy tests], more than two-thirds of the adult Negroes were illiterate while less than one-quarter of the adult whites were unable to read or write," *id.,* at 311, 86 S.Ct. 803, because "[p]rior to the Civil War, most of the slave States made it a crime to ***220** teach Negroes how to read or write," see also *id.,* at 311, n. 10, 86 S.Ct. 803.[3] Compounding the tests' discriminatory impact on blacks, alternative voter qualification laws such as "grandfather clauses, property qualifications, [and] 'good character' tests" were enacted to protect those whites who were unable to pass the literacy tests. *Id.*, at 311, 86 S.Ct. 803; see also *Lopez, supra,* at 297, 119 S.Ct. 693 (THOMAS, J., dissenting) ("Literacy tests were unfairly administered; whites were given easy questions, and blacks were given ****2522** more difficult questions, such as the number of bubbles in a soap bar, the news contained in a copy of the *Peking Daily,* the meaning of obscure passages in state constitutions, and the definition of terms such as *habeas corpus* " (internal quotation marks omitted)).

The Court had declared many of these "tests and devices" unconstitutional, see *Katzenbach, supra,* at 311–312, 86 S.Ct. 803, but case-by-case eradication was woefully inadequate to ensure that the franchise extended to all citizens regardless of race, see *id.,* at 328, 86 S.Ct. 803. As a result, enforcement efforts before the enactment of § 5 had rendered the right to vote illusory for blacks in the Jim Crow South. Despite the Civil War's bloody purchase of the Fifteenth Amendment, "the reality remained far from the promise." *Rice v. Cayetano,*

528 U.S. 495, 512–513, 120 S.Ct. 1044, 145 L.Ed.2d 1007 (2000); see also ***221** R. Wardlaw, Negro Suffrage in Georgia, 1867–1930, p. 34 (Phelps–Stokes Fellowship Studies, No. 11, 1932) ("Southern States were setting out to accomplish an effective nullification of the war measures of Congress").

Thus, by 1965, Congress had every reason to conclude that States with a history of disenfranchising voters based on race would continue to do all they could to evade the constitutional ban on voting discrimination. By that time, race-based voting discrimination had "infected the electoral process in parts of our country for nearly a century." *Katzenbach,* 383 U.S., at 308, 86 S.Ct. 803. Moreover, the massive scale of disenfranchisement efforts made case-by-case enforcement of the Fifteenth Amendment impossible, if not Sisyphean. See *id.,* at 309, 86 S.Ct. 803 ("Congress concluded that the unsuccessful remedies which it had prescribed in the past would have to be replaced by sterner and more elaborate measures in order to satisfy the clear commands of the Fifteenth Amendment") ; *Rice, supra,* at 513, 120 S.Ct. 1044 ("Progress was slow, particularly when litigation had to proceed case by case, district by district, sometimes voter by voter"); Thernstrom, Section 5 of the Voting Rights Act: By Now, a Murky Mess, 5 Geo. J.L. & Pub. Pol'y 41, 44 (2007) ("In 1965, it was perfectly reasonable to believe that *any* move affecting black enfranchisement in the Deep South was deeply suspect. And only such a punitive measure [as § 5] had any hope of forcing the South to let blacks vote" (emphasis in original)).

It was against this backdrop of "historical experience" that § 5 was first enacted and upheld against a constitutional challenge. See *Katzenbach, supra,* at 308, 86 S.Ct. 803. As the *Katzenbach* Court explained, § 5, which applied to those States and political subdivisions that had employed discriminatory tests and devices in the previous Presidential election, see 42 U.S.C. § 1973b(b), directly targeted the "insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution." 383 U.S., at 309, 86 S.Ct. 803; see also *id.,* at 329, 86 S.Ct. 803 ("Congress began work with reliable evidence of actual voting ***222** discrimination in a great majority of the States and political subdivisions affected by the new remedies of the Act"). According to the Court, it was appropriate to radically interfere with control over local elections only in those jurisdictions with a history of discriminatory disenfranchisement as those were "the geographic areas where immediate action seemed necessary." *Id.*, at 328, 86 S.Ct. 803. The Court believed it was thus "permissible to impose the new remedies" on the jurisdictions covered under § 4(b) "at least in the absence of proof that they ha[d] been free ****2523** of substantial voting discrimination in recent years." *Id.,* at 330, 86 S.Ct. 803.

In upholding § 5 in *Katzenbach,* the Court nonetheless noted that the provision was an "uncommon exercise of congressional power" that would not have been "appropriate" absent the "exceptional conditions" and "unique circumstances" present in the targeted jurisdictions at that particular time. *Id.,* at 334–335, 86 S.Ct. 803. In reaching its decision, the Court thus refused to simply accept Congress' representation that the extreme measure was necessary to enforce the Fifteenth Amendment; rather, it closely reviewed the record compiled by Congress to ensure that § 5 was " 'appropriate' " antievasion legislation. See *id.*, at 308, 86 S.Ct. 803. In so doing, the Court highlighted evidence showing that black voter registration rates ran approximately 50 percentage points lower than white voter registration in several States. See *id.,* at 313, 86 S.Ct. 803. It also noted that the registration rate for blacks in Alabama "rose only from 14.2% to 19.4% between 1958 and 1964; in Louisiana it barely inched ahead from 31.7% to 31.8% between 1956 and 1965; and in Mississippi it increased only from 4.4% to 6.4% between 1954 and 1964." *Ibid.* The Court further observed that voter turnout levels in covered jurisdictions had been at least 12% below the national average in the 1964 Presidential election. See *id.,* at 329–330, 86 S.Ct. 803.

The statistical evidence confirmed Congress' judgment that "the extraordinary stratagem of contriving new rules of various kinds for the sole purpose of perpetuating voting ***223** discrimination in the face of adverse federal court decrees" was working and could not be defeated through case-by-case enforcement of the Fifteenth Amendment. *Id.,* at 335, 86 S.Ct. 803. This record also clearly supported Congress' predictive judgment that such "States might try similar maneuvers in the future in order to evade the remedies for voting discrimination contained in the Act itself." *Ibid.* These stark statistics—in conjunction with the unrelenting use of discriminatory tests and practices that denied blacks the right to vote—constituted sufficient proof of "actual voting discrimination" to uphold the preclearance requirement imposed by § 5 on the covered jurisdictions as an appropriate exercise of congressional power under the Fifteenth Amendment. *Id.,* at 330, 86 S.Ct. 803. It was only "[u]nder the compulsion of these unique circumstances [that]

Congress responded in a permissibly decisive manner." *Id.,* at 335, 86 S.Ct. 803.

B

Several important principles emerge from *Katzenbach* and the decisions that followed it. First, § 5 prohibits more state voting practices than those necessarily encompassed by the explicit prohibition on intentional discrimination found in the text of the Fifteenth Amendment. The explicit command of the Fifteenth Amendment is a prohibition on state practices that in fact deny individuals the right to vote "on account of" race, color, or previous servitude. In contrast, § 5 is the quintessential prophylaxis; it "goes beyond the prohibition of the Fifteenth Amendment by suspending *all* changes to state election law—however innocuous—until they have been precleared by federal authorities in Washington, D.C." *Ante,* at 2511. The Court has freely acknowledged that such legislation is preventative, upholding it based on the view that the Reconstruction Amendments give Congress the power "both to remedy and to *deter* violation of rights guaranteed thereunder by prohibiting a *somewhat broader* swath of conduct, including that which is not itself forbidden by the ***224** Amendment's text." ****2524** *Kimel v. Florida Bd. of Regents,* 528 U.S. 62, 81, 120 S.Ct. 631, 145 L.Ed.2d 522 (2000) (emphasis added).

Second, because it sweeps more broadly than the substantive command of the Fifteenth Amendment, § 5 pushes the outer boundaries of Congress' Fifteenth Amendment enforcement authority. See *Miller v. Johnson,* 515 U.S. 900, 926, 115 S.Ct. 2475, 132 L.Ed.2d 762 (1995) (detailing the "federalism costs exacted by § 5"); *Presley v. Etowah County Comm'n,* 502 U.S. 491, 500–501, 112 S.Ct. 820, 117 L.Ed.2d 51 (1992) (describing § 5 as "an extraordinary departure from the traditional course of relations between the States and the Federal Government"); *City of Rome v. United States,* 446 U.S. 156, 200, 100 S.Ct. 1548, 64 L.Ed.2d 119 (1980) (Powell, J., dissenting) ("The preclearance requirement both intrudes on the prerogatives of state and local governments and abridges the voting rights of all citizens in States covered under the Act"); *Lopez,* 525 U.S., at 293, 119 S.Ct. 693 (THOMAS, J., dissenting) ("Section 5 is a unique requirement that exacts significant federalism costs"); *ante,* at 2511 ("[Section] 5, which authorizes federal intrusion into sensitive areas of state and local policymaking, imposes substantial federalism costs" (internal quotation marks omitted)).

Indeed, § 5's preclearance requirement is "one of the most extraordinary remedial provisions in an Act noted for its broad remedies. Even the Department of Justice has described it as a 'substantial departure ... from ordinary concepts of our federal system'; its encroachment on state sovereignty is significant and undeniable." *United States v. Sheffield Bd. of Comm'rs,* 435 U.S. 110, 141, 98 S.Ct. 965, 55 L.Ed.2d 148 (1978) (STEVENS, J., dissenting) (footnote omitted). This "encroachment is especially troubling because it destroys local control of the means of self-government, one of the central values of our polity." *City of Rome, supra,* at 201, 100 S.Ct. 1548 (Powell, J., dissenting). More than 40 years after its enactment, this intrusion has become increasingly difficult to justify.

Third, to accommodate the tension between the constitutional imperatives of the Fifteenth and Tenth Amendments—a balance between allowing the Federal Government ***225** to patrol state voting practices for discrimination and preserving the States' significant interest in self-determination—the constitutionality of § 5 has always depended on the proven existence of intentional discrimination so extensive that elimination of it through case-by-case enforcement would be impossible. See *Katzenbach,* 383 U.S., at 308, 86 S.Ct. 803 ("Before enacting the measure, Congress explored with great care the problem of racial discrimination in voting"); *Katzenbach v. Morgan,* 384 U.S. 641, 667, 86 S.Ct. 1717, 16 L.Ed.2d 828 (1966) (Harlan, J., dissenting) ("Congress made a detailed investigation of various state practices that had been used to deprive Negroes of the franchise"). "There can be no remedy without a wrong. Essential to our holdings in [*South Carolina* v.] *Katzenbach* and *City of Rome* was our conclusion that Congress was remedying the effects of prior *intentional* racial discrimination. In both cases, we required Congress to have some evidence that the jurisdiction burdened with preclearance obligations had actually engaged in such intentional discrimination." *Lopez, supra,* at 294–295, 119 S.Ct. 693 (THOMAS, J., dissenting) (emphasis in original).

The Court has never deviated from this understanding. We have explained that prophylactic legislation designed to enforce the Reconstruction Amendments must "identify conduct transgressing the ... substantive provisions" it seeks to enforce and be tailored "to remedying or preventing ****2525** such conduct." *Florida Prepaid Postsecondary Ed. Expense Bd. v. College Savings Bank,* 527 U.S. 627, 639, 119 S.Ct. 2199, 144 L.Ed.2d 575 (1999). Congress must establish

a "history and pattern" of constitutional violations to establish the need for § 5 by justifying a remedy that pushes the limits of its constitutional authority. *Board of Trustees of Univ. of Ala. v. Garrett,* 531 U.S. 356, 368, 121 S.Ct. 955, 148 L.Ed.2d 866 (2001). As a result, for § 5 to withstand renewed constitutional scrutiny, there must be a demonstrated connection between the "remedial measures" chosen and the "evil presented" in the record made by Congress when it renewed the Act. *City of Boerne v. Flores,* 521 U.S. 507, 530, 117 S.Ct. 2157, 138 L.Ed.2d 624 (1997). ***226** "Strong measures appropriate to address one harm may be an unwarranted response to another, lesser one." *Ibid*.

C

The extensive pattern of discrimination that led the Court to previously uphold § 5 as enforcing the Fifteenth Amendment no longer exists. Covered jurisdictions are not now engaged in a systematic campaign to deny black citizens access to the ballot through intimidation and violence. And the days of "grandfather clauses, property qualifications, 'good character' tests, and the requirement that registrants 'understand' or 'interpret' certain matter," *Katzenbach,* 383 U.S., at 311, 86 S.Ct. 803, are gone. There is thus currently no concerted effort in these jurisdictions to engage in the "unremitting and ingenious defiance of the Constitution," *id.,* at 309, 86 S.Ct. 803, that served as the constitutional basis for upholding the "uncommon exercise of congressional power" embodied in § 5, *id.,* at 334, 86 S.Ct. 803.

The lack of sufficient evidence that the covered jurisdictions currently engage in the type of discrimination that underlay the enactment of § 5 undermines any basis for retaining it. Punishment for long past sins is not a legitimate basis for imposing a forward-looking preventative measure that has already served its purpose. Those supporting § 5's reenactment argue that without it these jurisdictions would return to the racially discriminatory practices of 30 and 40 years ago. But there is no evidence that public officials stand ready, if given the chance, to again engage in concerted acts of violence, terror, and subterfuge in order to keep minorities from voting. Without such evidence, the charge can only be premised on outdated assumptions about racial attitudes in the covered jurisdictions. Admitting that a prophylactic law as broad as § 5 is no longer constitutionally justified based on current evidence of discrimination is not a sign of defeat. It is an acknowledgment of victory.

***227** The current statistical evidence confirms that the emergency that prompted the enactment of § 5 has long since passed. By 2006, the voter registration rates for blacks in Alabama, Louisiana, and Mississippi had jumped to 71.8%, 66.9%, and 72.2%, respectively. See App. to Brief for Southeastern Legal Foundation as *Amicus Curiae* 6a–7a (hereinafter SLF Brief). Therefore, in contrast to the *Katzenbach* Court's finding that the "registration of voting-age whites ran roughly 50 percentage points or more ahead of Negro registration" in these States in 1964, see 383 U.S., at 313, 86 S.Ct. 803, since that time this disparity has nearly vanished. In 2006, the disparity was only 3 percentage points in Alabama, 8 percentage points in Louisiana, and in Mississippi, black voter registration actually exceeded white voter registration by 1.5 percentage points. See App. to SLF Brief 6a–7a. In addition, blacks in these three covered States also have higher registration numbers ****2526** than the registration rate for whites in noncovered states. See E. Blum & L. Campbell, Assessment of Voting Rights Progress in Jurisdictions Covered Under Section Five of the Voting Rights Act 3–6 (American Enterprise Institute, 2006); see also S.Rep. No. 109–295, p. 11 (2006) (noting that "presently in seven of the covered States, African–Americans are registered at a rate higher than the national average"; in two more, black registration in the 2004 election was "identical to the national average"; and in "California, Georgia, Mississippi, North Carolina, and Texas, black registration and turnout in the 2004 election ... was higher than that for whites").

Indeed, when reenacting § 5 in 2006, Congress evidently understood that the emergency conditions which prompted § 5's original enactment no longer exist. See H.R.Rep. No. 109–478, p. 12 (2006) ("The record reveals that many of the first generation barriers to minority voter registration and voter turnout that were in place prior to the VRA have been eliminated"). Instead of relying on the kind of evidence ***228** that the *Katzenbach* Court had found so persuasive, Congress instead based reenactment on evidence of what it termed "second generation barriers constructed to prevent minority voters from fully participating in the electoral process." § 2(b)(2), 120 Stat. 577. But such evidence is not probative of the type of purposeful discrimination that prompted Congress to enact § 5 in 1965. For example, Congress relied upon evidence of racially polarized voting within the covered jurisdictions. But racially polarized voting is not evidence of unconstitutional discrimination, see *Bolden,* 446 U.S. 55, 100 S.Ct. 1490, 64 L.Ed.2d 47, is not state action, see *James v. Bowman,* 190 U.S. 127, 136, 23 S.Ct. 678, 47 L.Ed. 979

(1903), and is not a problem unique to the South, see Katz, Aisenbrey, Baldwin, Cheuse, & Weisbrodt, Documenting Discrimination in Voting: Judicial Findings Under Section 2 of The Voting Rights Act Since 1982, 39 U. Mich. J.L. Reform 643, 665 (2006). The other evidence relied on by Congress, such as § 5 enforcement actions, §§ 2 and 4 lawsuits, and federal examiner and observer coverage, also bears no resemblance to the record initially supporting § 5, and is plainly insufficient to sustain such an extraordinary remedy. See SLF Brief 18–35. In sum, evidence of "second generation barriers" cannot compare to the prevalent and pervasive voting discrimination of the 1960's.

This is not to say that voter discrimination is extinct. Indeed, the District Court singled out a handful of examples of allegedly discriminatory voting practices from the record made by Congress. See, *e.g., Northwest Austin Municipal Util. Dist. No. One v. Mukasey,* 573 F.Supp.2d. 221, 252–254, 256–262 (D.D.C.2008). But the existence of discrete and isolated incidents of interference with the right to vote has never been sufficient justification for the imposition of § 5's extraordinary requirements. From its inception, the statute was promoted as a measure needed to neutralize a coordinated and unrelenting campaign to deny an entire race access to the ballot. See *City of Boerne,* 521 U.S., at 526, 117 S.Ct. 2157 (concluding that *Katzenbach* confronted a "widespread and ***229** persisting deprivation of constitutional rights resulting from this country's history of racial discrimination"). Perfect compliance with the Fifteenth Amendment's substantive command is not now—nor has it ever been—the yardstick for determining whether Congress has the power to employ broad prophylactic legislation to enforce that Amendment. The burden remains with Congress to prove that the extreme circumstances warranting § 5's enactment persist today. A record of scattered ****2527** infringement of the right to vote is not a constitutionally acceptable substitute.

* * *

In 1870, the Fifteenth Amendment was ratified in order to guarantee that no citizen would be denied the right to vote based on race, color, or previous condition of servitude. Congress passed § 5 of the VRA in 1965 because that promise had remained unfulfilled for far too long. But now —more than 40 years later—the violence, intimidation, and subterfuge that led Congress to pass § 5 and this Court to uphold it no longer remains. An acknowledgment of § 5's unconstitutionality represents a fulfillment of the Fifteenth Amendment's promise of full enfranchisement and honors the success achieved by the VRA.

All Citations

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Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.,* 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

1 All 17 covered jurisdictions that have been awarded bailout are from Virginia, see *ante,* at 2515 – 2517, and all 17 were represented by the same attorney—a former lawyer in the Voting Rights Section of the Department of Justice, see Hebert, An Assessment of the Bailout Provisions of the Voting Rights Act, in Voting Rights Act Reauthorization of 2006, p. 257, n. 1 (A. Henderson ed.2007). Whatever the reason for this anomaly, it only underscores how little relationship there is between the existence of bailout and the constitutionality of § 5.

2 See also S.Rep. No. 41, 42d Cong., 2d Sess., pt. 7, p. 610 (1872) (quoting a Ku Klux Klan letter warning a black man from Georgia to " 'stay at home if you value your life, and not vote at all, and advise all of your race to do the same thing. You are marked and closely watched by K.K.K. ...' "); see also Jackson Daily Mississippian, Dec. 29, 1887, reprinted in S. Misc. Doc. No. 106, 50th Cong., 1st Sess., 14 (1888) ("[W]e hereby warn the negroes that if any one of their race attempts to run for office in the approaching municipal election he does so at his supremest peril, and we further warn any and all negroes of this city against attempting, at their utmost hazard, by vote or influence, to foist on us again this black and damnable machine miscalled a government of our city" (publishing resolutions passed by the Young White Men's League of Jackson)).

3 Although tests had become the main tool for disenfranchising blacks, state governments engaged in violence into 1965. See Daniel, Tear Gas, Clubs Halt 600 in Selma March, Washington Times Herald, Mar. 8, 1965, pp. A1, A3 ("State troopers and mounted deputies bombarded 600 praying Negroes with tear gas today and then waded into them with clubs, whips and ropes, injuring scores .... The Negroes started out today to walk the 50 miles to Montgomery to protest to [Governor] Wallace the denial of Negro voting rights in Alabama"); Banner, Aid for Selma Negroes, N.Y. Times, Mar. 14, 1965, p. E11 ("We should remember March 7, 1965 as 'Bloody Sunday in Selma.' It is now clear that the public officials and the police of Alabama are at war with those citizens who are Negroes and who are determined to exercise their rights under the Constitution of the United States").

ACLU MD Appendix 6

129 S.Ct. 1231
Supreme Court of the United States

Gary BARTLETT, Executive Director of North Carolina State Board of Elections, et al., Petitioners,

v.

Dwight STRICKLAND et al.

No. 07–689.
|
Argued Oct. 14, 2008.
|
Decided March 9, 2009.

Synopsis

Background: County and county commissioners brought action against the Governor of North Carolina, the Director of the State Board of Elections, and other state officials, alleging that legislative redistricting plan violated Whole County Provision of state constitution. A three-judge panel of the Superior Court, Wake County, entered summary judgment in favor of defendants, finding that redistricting plan complied, to the maximum extent practicable, with the Whole County Provision. The North Carolina Supreme Court, Edmunds, J., 361 N.C. 491, 649 S.E.2d 364, reversed and ordered state legislature to redraw the district at issue. State defendants' petition for writ of certiorari was granted.

The Supreme Court, Justice Kennedy, announced the judgment of the court and delivered an opinion which held that crossover districts do not meet *Gingles* requirement that minority is sufficiently large and geographically compact enough to constitute majority in a single-member district, for purpose of claim under Voting Rights Act's vote dilution provision.

Affirmed.

Justice Thomas concurred in the judgment and filed opinion in which Justice Scalia joined.

Justice Souter filed dissenting opinion in which Justice Stevens, Justice Ginsburg, and Justice Breyer joined.

Justice Ginsburg filed dissenting opinion.

Justice Breyer filed dissenting opinion.

****1235** *Syllabus* [*]

Despite the North Carolina Constitution's "Whole County Provision" prohibiting the General Assembly from dividing counties when drawing its own legislative districts, in 1991 the legislature drew House District 18 to include portions of four counties, including Pender County, for the asserted purpose of satisfying § 2 of the Voting Rights Act of 1965. At that time, District 18 was a geographically compact majority-minority district. By the time the district was to be redrawn in 2003, the African–American voting-age population in District 18 had fallen below 50 percent. Rather than redrawing the district to keep Pender County whole, the legislators split portions of it and another county. District 18's African–American voting-age population is now 39.36 percent. Keeping Pender County whole would have resulted in an African–American voting-age population of 35.33 percent. The legislators' rationale was that splitting Pender County gave African–American voters the potential to join with majority voters to elect the minority group's candidate of choice, while leaving Pender County whole would have violated § 2 of the Voting Rights Act.

Pender County and others filed suit, alleging that the redistricting plan violated the Whole County Provision. The state-official defendants answered that dividing Pender County was required by § 2. The trial court first considered whether the defendants had established the three threshold requirements for § 2 liability under *Thornburg v. Gingles,* 478 U.S. 30, 51, 106 S.Ct. 2752, 92 L.Ed.2d 25, only the first of which is relevant here: whether the minority group "is sufficiently large and geographically compact to constitute a majority in a single-member district." The court concluded that although African–Americans were not a majority of District 18's voting-age population, the district was a "de facto" majority-minority district because African–Americans could get enough support from crossover majority voters to elect their preferred candidate. ****1236** The court ultimately determined, based on the totality of the circumstances, that § 2 required that Pender County be split, and it sustained District 18's lines on that rationale. The State Supreme Court reversed, holding that a minority group must constitute a numerical majority of the voting-age population in an area before § 2 requires the creation of a legislative district to prevent

dilution of that group's votes. Because African–Americans did not have such a numerical majority in District 18, the court ordered the legislature to redraw the district.

Held: The judgment is affirmed.

361 N.C. 491, 649 S.E.2d 364, affirmed.

Justice KENNEDY, joined by THE CHIEF JUSTICE and Justice ALITO, concluded that § 2 does not require state officials to draw election-district lines to allow a racial minority that would make up less than 50 percent of the voting-age population in the redrawn district to join with crossover voters to elect the minority's candidate of choice. Pp. 1240 – 1250.

1. As amended in 1982, § 2 provides that a violation "is established if, based on the totality of circumstances, it is shown that the [election] processes ... in the State or political subdivision are not equally open to participation by members of a [protected] class [who] have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C. § 1973(b). Construing the amended § 2 in *Gingles, supra,* at 50–51, 106 S.Ct. 2752, the Court identified three "necessary preconditions" for a claim that the use of multimember districts constituted actionable vote dilution. It later held that those requirements apply equally in § 2 cases involving single-member districts. *Growe v. Emison,* 507 U.S. 25, 40–41, 113 S.Ct. 1075, 122 L.Ed.2d 388. Only when a party has established the requirements does a court proceed to analyze whether a § 2 violation has occurred based on the totality of the circumstances. See, *e.g., Johnson v. De Grandy,* 512 U.S. 997, 1013, 114 S.Ct. 2647, 129 L.Ed.2d 775. Pp. 1240 – 1242.

2. 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. Pp. 1241 – 1250.

(a) A party asserting § 2 liability must show by a preponderance of the evidence that the minority population in the potential election district is greater than 50 percent. The Court has held both that § 2 can require the creation of a "majority-minority" district, in which a minority group composes a numerical, working majority of the voting-age population, see, *e.g., Voinovich v. Quilter,* 507 U.S. 146, 154–155, 113 S.Ct. 1149, 122 L.Ed.2d 500, and that § 2 does not require the creation of an "influence" district, in which a minority group can influence the outcome of an election even if its preferred candidate cannot be elected, see *League of United Latin American Citizens v. Perry,* 548 U.S. 399, 445, 126 S.Ct. 2594, 165 L.Ed.2d 609 (*LULAC*). This case involves an intermediate, "crossover" district, in which the minority makes up less than a majority of the voting-age population, but is large enough to elect the candidate of its choice with help from majority voters who cross over to support the minority's preferred candidate. Petitioners' theory that such districts satisfy the first *Gingles* requirement is contrary to § 2, which requires a showing that minorities "have less opportunity than other members of the electorate to ... elect representatives of their choice," 42 U.S.C. § 1973(b). Because they form only 39 percent of District 18's voting-age population, African–Americans ****1237** standing alone have no better or worse opportunity to elect a candidate than any other group with the same relative voting strength. Recognizing a § 2 claim where minority voters cannot elect their candidate of choice based on their own votes and without assistance from others would grant special protection to their right to form political coalitions that is not authorized by the section. Nor does the reasoning of this Court's cases support petitioners' claims. In *Voinovich,* for example, the Court stated that the first *Gingles* requirement "would have to be modified or eliminated" to allow crossover-district claims. 507 U.S., at 158, 113 S.Ct. 1149. Indeed, mandatory recognition of such claims would create serious tension with the third *Gingles* requirement, that the majority votes as a bloc to defeat minority-preferred candidates, see 478 U.S., at 50–51, 106 S.Ct. 2752, and would call into question the entire *Gingles* framework. On the other hand, the plurality finds support for the clear line drawn by the majority-minority requirement in the need for workable standards and sound judicial and legislative administration. By contrast, if § 2 required crossover districts, determining whether a § 2 claim would lie would require courts to make complex political predictions and tie them to race-based assumptions. Heightening these concerns is the fact that because § 2 applies nationwide to every jurisdiction required to draw election-district lines under state or local law, crossover-district claims would require courts to make predictive political judgments not only about familiar, two-party contests in large districts but also about regional and local elections. Unlike any of the standards proposed to allow crossover claims, the majority-minority rule relies on an objective, numerical test: Do minorities make up more than 50 percent of the voting-age population in the relevant geographic area? Given § 2's text, the Court's cases interpreting that provision, and the many difficulties in assessing § 2 claims without the restraint and guidance provided by the majority-minority rule,

all of the Federal Courts of Appeals that have interpreted the first *Gingles* factor have required a majority-minority standard. The plurality declines to depart from that uniform interpretation, which has stood for more than 20 years. Because this case does not involve allegations of intentional and wrongful conduct, the Court need not consider whether intentional discrimination affects the *Gingles* analysis. Pp. 1241 – 1246.

(b) Arguing for a less restrictive interpretation, petitioners point to § 2's guarantee that political processes be "equally open to participation" to protect minority voters' "opportunity ... to elect representatives of their choice," 42 U.S.C. § 1973(b), and assert that such "opportunit[ies]" occur in crossover districts and require protection. But petitioners emphasize the word "opportunity" at the expense of the word "equally." The statute does not protect any possible opportunity through which minority voters could work with other constituencies to elect their candidate of choice. Section 2 does not guarantee minority voters an electoral advantage. Minority groups in crossover districts have the same opportunity to elect their candidate as any other political group with the same relative voting strength. The majority-minority rule, furthermore, is not at odds with § 2's totality-of-the-circumstances test. See, *e.g., Growe, supra,* at 40, 113 S.Ct. 1075. Any doubt as to whether § 2 calls for this rule is resolved by applying the canon of constitutional avoidance to steer clear of serious constitutional concerns under the Equal Protection Clause. See *Clark v. Martinez,* 543 U.S. 371, 381–382, 125 S.Ct. 716, 160 L.Ed.2d 734. Such concerns would be ****1238** raised if § 2 were interpreted to require crossover districts throughout the Nation, thereby "unnecessarily infus[ing] race into virtually every redistricting." *LULAC, supra,* at 446, 126 S.Ct. 2594. Pp. 1246 – 1248.

(c) This holding does not consider the permissibility of crossover districts as a matter of legislative choice or discretion. Section 2 allows States to choose their own method of complying with the Voting Rights Act, which may include drawing crossover districts. See *Georgia v. Ashcroft,* 539 U.S. 461, 480–482, 123 S.Ct. 2498, 156 L.Ed.2d 428. Moreover, the holding should not be interpreted to entrench majority-minority districts by statutory command, for that, too, could pose constitutional concerns. See, *e.g., Miller v. Johnson,* 515 U.S. 900, 115 S.Ct. 2475, 132 L.Ed.2d 762. Such districts are only required if all three *Gingles* factors are met and if § 2 applies based on the totality of the circumstances. A claim similar to petitioners' assertion that the majority-minority rule is inconsistent with § 5 was rejected in *LULAC, supra,* at 446, 126 S.Ct. 2594. Pp. 1248 – 1250.

Justice THOMAS, joined by Justice SCALIA, adhered to his view in *Holder v. Hall,* 512 U.S. 874, 891, 893, 114 S.Ct. 2581, 129 L.Ed.2d 687 (opinion concurring in judgment), that the text of § 2 of the Voting Rights Act of 1965 does not authorize any vote dilution claim, regardless of the size of the minority population in a given district. The *Thornburg v. Gingles,* 478 U.S. 30, 106 S.Ct. 2752, 92 L.Ed.2d 25, framework for analyzing such claims has no basis in § 2's text and "has produced ... a disastrous misadventure in judicial policymaking," *Holder, supra,* at 893, 114 S.Ct. 2581. P. 1250.

KENNEDY, J., announced the judgment of the Court and delivered an opinion, in which ROBERTS, C.J., and ALITO, J., joined. THOMAS, J., filed an opinion concurring in the judgment, in which SCALIA, J., joined, *post*, p. 1250. SOUTER, J., filed a dissenting opinion, in which STEVENS, GINSBURG, and BREYER, JJ., joined, *post*, pp. 1250 – 1260. GINSBURG, J., *post*, p. 1260, and BREYER, J., *post*, pp. 1260 – 1262, filed dissenting opinions.

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Opinion

Justice KENNEDY announced the judgment of the Court and delivered an opinion, in which THE CHIEF JUSTICE and Justice ALITO join.

***6** This case requires us to interpret § 2 of the Voting Rights Act of 1965, 79 Stat. 437, as amended, 42 U.S.C. § 1973 (2000 ed.). The question is whether the statute can be invoked to require state officials to draw election-district lines to allow a racial minority to join with other voters to elect the minority's

candidate of choice, even where the racial minority is less than 50 percent of the voting-age population in the district to be drawn. To use election-law terminology: In a district that is not a majority-minority district, if a racial minority could elect its candidate of choice with support from crossover majority voters, can § 2 require the district to be drawn to accommodate this potential?

**1239 I

The case arises in a somewhat unusual posture. State authorities who created a district now invoke the Voting Rights *7 Act as a defense. They argue that § 2 required them to draw the district in question in a particular way, despite state laws to the contrary. The state laws are provisions of the North Carolina Constitution that prohibit the General Assembly from dividing counties when drawing legislative districts for the State House and Senate. Art. II, §§ 3, 5. We will adopt the term used by the state courts and refer to both sections of the State Constitution as the Whole County Provision. See *Pender County v. Bartlett,* 361 N.C. 491, 493, 649 S.E.2d 364, 366 (2007) (case below).

It is common ground that state election-law requirements like the Whole County Provision may be superseded by federal law—for instance, the one-person, one-vote principle of the Equal Protection Clause of the United States Constitution. See *Reynolds v. Sims,* 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964). Here the question is whether § 2 of the Voting Rights Act requires district lines to be drawn that otherwise would violate the Whole County Provision. That, in turn, depends on how the statute is interpreted.

We begin with the election district. The North Carolina House of Representatives is the larger of the two chambers in the State's General Assembly. District 18 of that body lies in the southeastern part of North Carolina. Starting in 1991, the General Assembly drew District 18 to include portions of four counties, including Pender County, in order to create a district with a majority African–American voting-age population and to satisfy the Voting Rights Act. Following the 2000 census, the North Carolina Supreme Court, to comply with the Whole County Provision, rejected the General Assembly's first two statewide redistricting plans. See *Stephenson v. Bartlett,* 355 N.C. 354, 375, 562 S.E.2d 377, 392, stay denied, 535 U.S. 1301, 122 S.Ct. 1751, 152 L.Ed.2d 1015 (2002) (Rehnquist, C. J., in chambers); *Stephenson v. Bartlett,* 357 N.C. 301, 314, 582 S.E.2d 247, 254 (2003).

District 18 in its present form emerged from the General Assembly's third redistricting attempt, in 2003. By that *8 time the African–American voting-age population had fallen below 50 percent in the district as then drawn, and the General Assembly no longer could draw a geographically compact majority-minority district. Rather than draw District 18 to keep Pender County whole, however, the General Assembly drew it by splitting portions of Pender and New Hanover counties. District 18 has an African–American voting-age population of 39.36 percent. App. 139. Had it left Pender County whole, the General Assembly could have drawn District 18 with an African–American voting-age population of 35.33 percent. *Id.,* at 73. The General Assembly's reason for splitting Pender County was to give African–American voters the potential to join with majority voters to elect the minority group's candidate of its choice. *Ibid.* Failure to do so, state officials now submit, would have diluted the minority group's voting strength in violation of § 2.

In May 2004, Pender County and the five members of its board of commissioners filed the instant suit in North Carolina state court against the Governor of North Carolina, the Director of the State Board of Elections, and other state officials. The plaintiffs alleged that the 2003 plan violated the Whole County Provision by splitting Pender County into two House districts. *Id.*, at 5–14. The state-official defendants answered that dividing Pender County was required by § 2. *Id.,* at 25. As the trial court recognized, the procedural posture of **1240 this case differs from most § 2 cases. Here the defendants raise § 2 as a defense. As a result, the trial court stated, they are "in the unusual position" of bearing the burden of proving that a § 2 violation would have occurred absent splitting Pender County to draw District 18. App. to Pet. for Cert. 90a.

The trial court first considered whether the defendant state officials had established the three threshold requirements for § 2 liability under *Thornburg v. Gingles,* 478 U.S. 30, 50–51, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986)—namely, (1) that the minority group "is sufficiently *9 large and geographically compact to constitute a majority in a single-member district," (2) that the minority group is "politically cohesive," and (3) "that the white majority votes sufficiently as a bloc to enable it ... usually to defeat the minority's preferred candidate."

As to the first *Gingles* requirement, the trial court concluded that, although African–Americans were not a majority of the

voting-age population in District 18, the district was a "de facto" majority-minority district because African–Americans could get enough support from crossover majority voters to elect the African–Americans' preferred candidate. The court ruled that African–Americans in District 18 were politically cohesive, thus satisfying the second requirement. And later, the plaintiffs stipulated that the third *Gingles* requirement was met. App. to Pet. for Cert. 102a–103a, 130a. The court then determined, based on the totality of the circumstances, that § 2 required the General Assembly to split Pender County. The court sustained the lines for District 18 on that rationale. *Id.,* at 116a–118a.

Three of the Pender County Commissioners appealed the trial court's ruling that the defendants had established the first *Gingles* requirement. The Supreme Court of North Carolina reversed. It held that a "minority group must constitute a numerical majority of the voting population in the area under consideration before Section 2 ... requires the creation of a legislative district to prevent dilution of the votes of that minority group." 361 N.C., at 502, 649 S.E.2d, at 371. On that premise the State Supreme Court determined District 18 was not mandated by § 2 because African–Americans do not "constitute a numerical majority of citizens of voting age." *Id.,* at 507, 649 S.E.2d, at 374. It ordered the General Assembly to redraw District 18. *Id.,* at 510, 649 S.E.2d, at 376.

We granted certiorari, 552 U.S. 1256, 128 S.Ct. 1648, 170 L.Ed.2d 352 (2008), and now affirm.

***10** II

Passage of the Voting Rights Act of 1965 was an important step in the struggle to end discriminatory treatment of minorities who seek to exercise one of the most fundamental rights of our citizens: the right to vote. Though the Act as a whole was the subject of debate and controversy, § 2 prompted little criticism. The likely explanation for its general acceptance is that, as first enacted, § 2 tracked, in part, the text of the Fifteenth Amendment. It prohibited practices "imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color." 79 Stat. 437; cf. U.S. Const., Amdt. 15 ("The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude"); see also S.Rep. No. 162, 89th Cong., 1st Sess., pt. 3, pp. 19–20 (1965). In *Mobile v. Bolden,* 446 U.S. 55, 60–61, 100 S.Ct. 1490, 64 L.Ed.2d 47 (1980), this Court held that § 2, as it ****1241** then read, "no more than elaborates upon ... the Fifteenth Amendment" and was "intended to have an effect no different from that of the Fifteenth Amendment itself."

In 1982, after the *Mobile* ruling, Congress amended § 2, giving the statute its current form. The original Act had employed an intent requirement, prohibiting only those practices "imposed or applied ... to deny or abridge" the right to vote. 79 Stat. 437. The amended version of § 2 requires consideration of effects, as it prohibits practices "imposed or applied ... in a manner which results in a denial or abridgment" of the right to vote. 96 Stat. 134, 42 U.S.C. § 1973(a) (2000 ed.). The 1982 amendments also added a subsection, § 2(b), providing a test for determining whether a § 2 violation has occurred. The relevant text of the statute now states:

> "(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or ***11** applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color [or membership in a language minority group], as provided in subsection (b) of this section.
>
> "(b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C. § 1973.

This Court first construed the amended version of § 2 in *Thornburg v. Gingles,* 478 U.S. 30, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986). In *Gingles,* the plaintiffs were African–American residents of North Carolina who alleged that multimember districts diluted minority voting strength by submerging black voters into the white majority, denying them an opportunity to elect a candidate of their choice. The Court identified three "necessary preconditions" for a claim that the use of multimember districts constituted actionable vote dilution under § 2:(1) The minority group must be "sufficiently large and geographically compact to constitute a majority in a single-member district," (2) the minority group must be "politically cohesive," and (3) the majority must vote

"sufficiently as a bloc to enable it ... usually to defeat the minority's preferred candidate." *Id.,* at 50–51, 106 S.Ct. 2752.

The Court later held that the three *Gingles* requirements apply equally in § 2 cases involving single-member districts, such as a claim alleging vote dilution because a geographically compact minority group has been split between two or more single-member districts. *Growe v. Emison,* 507 U.S. 25, 40–41, 113 S.Ct. 1075, 122 L.Ed.2d 388 (1993). In a § 2 case, only when a party has established ***12** the *Gingles* requirements does a court proceed to analyze whether a violation has occurred based on the totality of the circumstances. *Gingles, supra,* at 79, 106 S.Ct. 2752; see also *Johnson v. De Grandy,* 512 U.S. 997, 1013, 114 S.Ct. 2647, 129 L.Ed.2d 775 (1994).

III

A

This case turns on whether the first *Gingles* requirement can be satisfied when the minority group makes up less than 50 percent of the voting-age population in the potential election district. The parties ****1242** agree on all other parts of the *Gingles* analysis, so the dispositive question is: What size minority group is sufficient to satisfy the first *Gingles* requirement?

At the outset the answer might not appear difficult to reach, for the *Gingles* Court said the minority group must "demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district." 478 U.S., at 50, 106 S.Ct. 2752. This would seem to end the matter, as it indicates the minority group must demonstrate it can constitute "a majority." But in *Gingles* and again in *Growe* the Court reserved what it considered to be a separate question —whether, "when a plaintiff alleges that a voting practice or procedure impairs a minority's ability to influence, rather than alter, election results, a showing of geographical compactness of a minority group not sufficiently large to constitute a majority will suffice." *Growe, supra,* at 41, n. 5, 113 S.Ct. 1075; see also *Gingles, supra,* at 46–47, n. 12, 106 S.Ct. 2752. The Court has since applied the *Gingles* requirements in § 2 cases but has declined to decide the minimum size minority group necessary to satisfy the first requirement. See *Voinovich v. Quilter,* 507 U.S. 146, 154, 113 S.Ct. 1149, 122 L.Ed.2d 500 (1993); *De Grandy, supra,* at 1009, 114 S.Ct. 2647; *League of United Latin American Citizens v. Perry,* 548 U.S. 399, 443, 126 S.Ct. 2594, 165 L.Ed.2d 609 (2006) *(LULAC)* (opinion of KENNEDY, J.). We must consider the minimum-size question in this case.

***13** It is appropriate to review the terminology often used to describe various features of election districts in relation to the requirements of the Voting Rights Act. In majority-minority districts, a minority group composes a numerical, working majority of the voting-age population. Under present doctrine, § 2 can require the creation of these districts. See, *e.g., Voinovich, supra,* at 154, 113 S.Ct. 1149 ("Placing black voters in a district in which they constitute a sizeable and therefore 'safe' majority ensures that they are able to elect their candidate of choice"); but see *Holder v. Hall,* 512 U.S. 874, 922–923, 114 S.Ct. 2581, 129 L.Ed.2d 687 (1994) (THOMAS, J., concurring in judgment). At the other end of the spectrum are influence districts, in which a minority group can influence the outcome of an election even if its preferred candidate cannot be elected. This Court has held that § 2 does not require the creation of influence districts. *LULAC, supra,* at 445, 126 S.Ct. 2594 (opinion of KENNEDY, J.).

The present case involves an intermediate type of district —a so-called crossover district. Like an influence district, a crossover district is one in which minority voters make up less than a majority of the voting-age population. But in a crossover district, the minority population, at least potentially, is large enough to elect the candidate of its choice with help from voters who are members of the majority and who cross over to support the minority's preferred candidate. 361 N.C., at 501–502, 649 S.E.2d, at 371 (case below). This Court has referred sometimes to crossover districts as "coalitional" districts, in recognition of the necessary coalition between minority and crossover majority voters. See *Georgia v. Ashcroft,* 539 U.S. 461, 483, 123 S.Ct. 2498, 156 L.Ed.2d 428 (2003); see also Pildes, Is Voting Rights Law Now at War With Itself? Social Science and Voting Rights in the 2000s, 80 N.C.L.Rev. 1517, 1539 (2002) (hereinafter Pildes). But that term risks confusion with coalition-district claims in which two minority groups form a coalition to elect the candidate of the coalition's choice. See, *e.g., Nixon v. Kent County,* 76 F.3d 1381, 1393 (C.A.6 1996) (en banc). We do not address ****1243** that type of coalition ***14** district here. The petitioners in the present case (the state officials who were the defendants in the trial court) argue that § 2 requires a crossover district, in which minority voters might be able to persuade some members of the majority to cross over and join with them.

Petitioners argue that although crossover districts do not include a numerical majority of minority voters, they still satisfy the first *Gingles* requirement because they are "effective minority districts." Under petitioners' theory keeping Pender County whole would have violated § 2 by cracking the potential crossover district that they drew as District 18. See *Gingles, supra*, at 46, n. 11, 106 S.Ct. 2752 (vote dilution "may be caused by the dispersal of blacks into districts in which they constitute an ineffective minority of voters"). So, petitioners contend, § 2 required them to override state law and split Pender County, drawing District 18 with an African–American voting-age population of 39.36 percent rather than keeping Pender County whole and leaving District 18 with an African–American voting-age population of 35.33 percent. We reject that claim.

First, we conclude, petitioners' theory is contrary to the mandate of § 2. The statute requires a showing that minorities "have less opportunity than other members of the electorate to ... elect representatives of their choice." 42 U.S.C. § 1973(b) (2000 ed.). But because they form only 39 percent of the voting-age population in District 18, African–Americans standing alone have no better or worse opportunity to elect a candidate than does any other group of voters with the same relative voting strength. That is, African–Americans in District 18 have the opportunity to join other voters—including other racial minorities, or whites, or both—to reach a majority and elect their preferred candidate. They cannot, however, elect that candidate based on their own votes and without assistance from others. Recognizing a § 2 claim in this circumstance would grant minority voters "a right to preserve their strength for the purposes ***15** of forging an advantageous political alliance." *Hall v. Virginia,* 385 F.3d 421, 431 (C.A.4 2004); see also *Voinovich,* 507 U.S., at 154, 113 S.Ct. 1149 (minorities in crossover districts "could not dictate electoral outcomes independently"). Nothing in § 2 grants special protection to a minority group's right to form political coalitions. "[M]inority voters are not immune from the obligation to pull, haul, and trade to find common political ground." *De Grandy,* 512 U.S., at 1020, 114 S.Ct. 2647.

Although the Court has reserved the question we confront today and has cautioned that the *Gingles* requirements "cannot be applied mechanically," *Voinovich, supra,* at 158, 113 S.Ct. 1149, the reasoning of our cases does not support petitioners' claims. Section 2 does not impose on those who draw election districts a duty to give minority voters the most potential, or the best potential, to elect a candidate by attracting crossover voters. In setting out the first requirement for § 2 claims, the *Gingles* Court explained that "[u]nless minority voters possess the *potential* to elect representatives in the absence of the challenged structure or practice, they cannot claim to have been injured by that structure or practice." 478 U.S., at 50, n. 17, 106 S.Ct. 2752. The *Growe* Court stated that the first *Gingles* requirement is "needed to establish that the minority has the potential to elect a representative of its own choice in some single-member district." 507 U.S., at 40, 113 S.Ct. 1075. Without such a showing, "there neither has been a wrong nor can be a remedy." *Id.*, at 41, 113 S.Ct. 1075. ****1244** There is a difference between a racial minority group's "own choice" and the choice made by a coalition. In *Voinovich,* the Court stated that the first *Gingles* requirement "would have to be modified or eliminated" to allow crossover-district claims. 507 U.S., at 158, 113 S.Ct. 1149. Only once, in dicta, has this Court framed the first *Gingles* requirement as anything other than a majority-minority rule. See *De Grandy,* 512 U.S., at 1008, 114 S.Ct. 2647 (requiring "a sufficiently large minority population to elect candidates of its choice"). And in the same case, the Court rejected the proposition, inherent in petitioners' claim here, that § 2 entitles ***16** minority groups to the maximum possible voting strength:

> "[R]eading § 2 to define dilution as any failure to maximize tends to obscure the very object of the statute and to run counter to its textually stated purpose. One may suspect vote dilution from political famine, but one is not entitled to suspect (much less infer) dilution from mere failure to guarantee a political feast." *Id.,* at 1016–1017, 114 S.Ct. 2647.

Allowing crossover-district claims would require us to revise and reformulate the *Gingles* threshold inquiry that has been the baseline of our § 2 jurisprudence. Mandatory recognition of claims in which success for a minority depends upon crossover majority voters would create serious tension with the third *Gingles* requirement that the majority votes as a bloc to defeat minority-preferred candidates. It is difficult to see how the majority-bloc-voting requirement could be met in a district where, by definition, white voters join in sufficient numbers with minority voters to elect the minority's preferred candidate. (We are skeptical that the bloc-voting test could be satisfied here, for example, where minority voters in District 18 cannot elect their candidate of choice without support from almost 20 percent of white voters. We do not confront that issue, however, because for some reason respondents conceded the third *Gingles* requirement in state court.)

As the *Gingles* Court explained, "in the absence of significant white bloc voting it cannot be said that the ability of minority voters to elect their chosen representatives is inferior to that of white voters." 478 U.S., at 49, n. 15, 106 S.Ct. 2752. Were the Court to adopt petitioners' theory and dispense with the majority-minority requirement, the ruling would call in question the *Gingles* framework the Court has applied under § 2. See *LULAC,* 548 U.S., at 490, n. 8, 126 S.Ct. 2594. (SOUTER, J., concurring in part and dissenting in part) ("All aspects of our established analysis for majority-minority districts in *Gingles* and ***17** its progeny may have to be rethought in analyzing ostensible coalition districts"); cf. *Metts v. Murphy,* 363 F.3d 8, 12 (C.A.1 2004) (en banc) *(per curiam)* (allowing influence-district claim to survive motion to dismiss but noting "there is tension in this case for plaintiffs in any effort to satisfy both the first and third prong of *Gingles* ").

We find support for the majority-minority requirement in the need for workable standards and sound judicial and legislative administration. The rule draws clear lines for courts and legislatures alike. The same cannot be said of a less exacting standard that would mandate crossover districts under § 2. Determining whether a § 2 claim would lie —*i.e.,* determining whether potential districts could function as crossover districts—would place courts in the untenable position of predicting many political variables and tying them to race-based assumptions. The Judiciary would be directed to make predictions or adopt premises that even experienced polling ****1245** analysts and political experts could not assess with certainty, particularly over the long term. For example, courts would be required to pursue these inquiries: What percentage of white voters supported minority-preferred candidates in the past? How reliable would the crossover votes be in future elections? What types of candidates have white and minority voters supported together in the past and will those trends continue? Were past crossover votes based on incumbency and did that depend on race? What are the historical turnout rates among white and minority voters and will they stay the same? Those questions are speculative, and the answers (if they could be supposed) would prove elusive. A requirement to draw election districts on answers to these and like inquiries ought not to be inferred from the text or purpose of § 2. Though courts are capable of making refined and exacting factual inquiries, they "are inherently ill-equipped" to "make decisions based on highly political judgments" of the sort that crossover-district claims would require. *Holder,* 512 U.S., at 894, 114 S.Ct. 2581 ***18** THOMAS, J., concurring in judgment). There is an underlying principle of fundamental importance: We must be most cautious before interpreting a statute to require courts to make inquiries based on racial classifications and race-based predictions. The statutory mandate petitioners urge us to find in § 2 raises serious constitutional questions. See *infra,* at 1246 – 1248.

Heightening these concerns even further is the fact that § 2 applies nationwide to every jurisdiction that must draw lines for election districts required by state or local law. Crossover-district claims would require courts to make predictive political judgments not only about familiar, two-party contests in large districts but also about regional and local jurisdictions that often feature more than two parties or candidates. Under petitioners' view courts would face the difficult task of discerning crossover patterns in nonpartisan contests for a city commission, a school board, or a local water authority. The political data necessary to make such determinations are nonexistent for elections in most of those jurisdictions. And predictions would be speculative at best given that, especially in the context of local elections, voters' personal affiliations with candidates and views on particular issues can play a large role.

Unlike any of the standards proposed to allow crossover-district claims, the majority-minority rule relies on an objective, numerical test: Do minorities make up more than 50 percent of the voting-age population in the relevant geographic area? That rule provides straightforward guidance to courts and to those officials charged with drawing district lines to comply with § 2. See *LULAC, supra,* at 485, 126 S.Ct. 2594 (opinion of SOUTER, J.) (recognizing need for "clear-edged rule"). Where an election district could be drawn in which minority voters form a majority but such a district is not drawn, or where a majority-minority district is cracked by assigning some voters elsewhere, then—assuming the other *Gingles* factors are also satisfied—denial of the opportunity to elect ***19** a candidate of choice is a present and discernible wrong that is not subject to the high degree of speculation and prediction attendant upon the analysis of crossover claims. Not an arbitrary invention, the majority-minority rule has its foundation in principles of democratic governance. The special significance, in the democratic process, of a majority means it is a special wrong when a minority group has 50 percent or more of the voting population and could constitute a compact voting majority but, despite racially polarized ****1246** bloc voting, that group is not put into a district.

Given the text of § 2, our cases interpreting that provision, and the many difficulties in assessing § 2 claims without the restraint and guidance provided by the majority-minority rule, no federal court of appeals has held that § 2 requires creation of coalition districts. Instead, all to consider the question have interpreted the first *Gingles* factor to require a majority-minority standard. See *Hall,* 385 F.3d, at 427–430 (C.A.4 2004), cert. denied, 544 U.S. 961, 125 S.Ct. 1725, 161 L.Ed.2d 602 (2005); *Valdespino v. Alamo Heights Independent School Dist.,* 168 F.3d 848, 852–853 (C.A.5 1999), cert. denied, 528 U.S. 1114, 120 S.Ct. 931, 145 L.Ed.2d 811 (2000); *Cousin v. Sundquist,* 145 F.3d 818, 828–829 (C.A.6 1998), cert. denied, 525 U.S. 1138, 119 S.Ct. 1026, 143 L.Ed.2d 37 (1999); *Sanchez v. Colorado,* 97 F.3d 1303, 1311–1312 (C.A.10 1996), cert. denied, 520 U.S. 1229, 117 S.Ct. 1820, 137 L.Ed.2d 1028 (1997); *Romero v. Pomona,* 883 F.2d 1418, 1424, n. 7, 1425–1426 (C.A.9 1989), overruled on other grounds, 914 F.2d 1136, 1141 (C.A.9 1990); *McNeil v. Springfield Park Dist.,* 851 F.2d 937, 947 (C.A.7 1988), cert. denied, 490 U.S. 1031, 109 S.Ct. 1769, 104 L.Ed.2d 204 (1989). Cf. *Metts, supra,* at 11 (expressing unwillingness "at the complaint stage to foreclose the *possibility* " of influence-district claims). We decline to depart from the uniform interpretation of § 2 that has guided federal courts and state and local officials for more than 20 years.

To be sure, the *Gingles* requirements "cannot be applied mechanically and without regard to the nature of the claim." *Voinovich,* 507 U.S., at 158, 113 S.Ct. 1149. It remains the rule, however, that a party asserting § 2 liability must show by a preponderance ***20** of the evidence that the minority population in the potential election district is greater than 50 percent. No one contends that the African–American voting-age population in District 18 exceeds that threshold. Nor does this case involve allegations of intentional and wrongful conduct. We therefore need not consider whether intentional discrimination affects the *Gingles* analysis. Cf. Brief for United States as *Amicus Curiae* 14 (evidence of discriminatory intent "tends to suggest that the jurisdiction is not providing an equal opportunity to minority voters to elect the representative of their choice, and it is therefore unnecessary to consider the majority-minority requirement before proceeding to the ultimate totality-of-the-circumstances analysis"); see also *Garza v. County of Los Angeles,* 918 F.2d 763, 771 (C.A.9 1990). Our holding does not apply to cases in which there is intentional discrimination against a racial minority.

B

In arguing for a less restrictive interpretation of the first *Gingles* requirement petitioners point to the text of § 2 and its guarantee that political processes be "equally open to participation" to protect minority voters' "opportunity ... to elect representatives of their choice." 42 U.S.C. § 1973(b) (2000 ed.). An "opportunity," petitioners argue, occurs in crossover districts as well as majority-minority districts; and these extended opportunities, they say, require § 2 protection.

But petitioners put emphasis on the word "opportunity" at the expense of the word "equally." The statute does not protect any possible opportunity or mechanism through which minority voters could work with other constituencies to elect their candidate of choice. Section 2 does not guarantee minority voters an electoral advantage. Minority groups in crossover districts cannot form a voting majority without crossover voters. In those districts minority voters have the same opportunity to elect their candidate as any ****1247** other political group with the same relative voting strength.

***21** The majority-minority rule, furthermore, is not at odds with § 2's totality-of-the-circumstances test. The Court in *De Grandy* confirmed "the error of treating the three *Gingles* conditions as exhausting the enquiry required by § 2." 512 U.S., at 1013, 114 S.Ct. 2647. Instead the *Gingles* requirements are preconditions, consistent with the text and purpose of § 2, to help courts determine which claims could meet the totality-of-the-circumstances standard for a § 2 violation. See *Growe,* 507 U.S., at 40, 113 S.Ct. 1075 (describing the "*Gingles* threshold factors").

To the extent there is any doubt whether § 2 calls for the majority-minority rule, we resolve that doubt by avoiding serious constitutional concerns under the Equal Protection Clause. See *Clark v. Martinez,* 543 U.S. 371, 381–382, 125 S.Ct. 716, 160 L.Ed.2d 734 (2005) (canon of constitutional avoidance is "a tool for choosing between competing plausible interpretations of a statutory text, resting on the reasonable presumption that Congress did not intend the alternative which raises serious constitutional doubts"). Of course, the "moral imperative of racial neutrality is the driving force of the Equal Protection Clause," and racial classifications are permitted only "as a last resort." *Richmond v. J.A. Croson Co.,* 488 U.S. 469, 518, 519, 109 S.Ct. 706, 102 L.Ed.2d 854 (1989) (KENNEDY, J., concurring in part and concurring in judgment). "Racial classifications with respect

to voting carry particular dangers. Racial gerrymandering, even for remedial purposes, may balkanize us into competing racial factions; it threatens to carry us further from the goal of a political system in which race no longer matters—a goal that the Fourteenth and Fifteenth Amendments embody, and to which the Nation continues to aspire." *Shaw v. Reno,* 509 U.S. 630, 657, 113 S.Ct. 2816, 125 L.Ed.2d 511 (1993). If § 2 were interpreted to require crossover districts throughout the Nation, "it would unnecessarily infuse race into virtually every redistricting, raising serious constitutional questions." *LULAC,* 548 U.S., at 446, 126 S.Ct. 2594 (opinion of KENNEDY, J.); see also *Ashcroft,* 539 U.S., at 491, 123 S.Ct. 2498 (KENNEDY, J., concurring). That interpretation would result in a substantial increase in the number of mandatory ***22** districts drawn with race as "the predominant factor motivating the legislature's decision." *Miller v. Johnson,* 515 U.S. 900, 916, 115 S.Ct. 2475, 132 L.Ed.2d 762 (1995).

On petitioners' view of the case courts and legislatures would need to scrutinize every factor that enters into districting to gauge its effect on crossover voting. Injecting this racial measure into the nationwide districting process would be of particular concern with respect to consideration of party registration or party influence. The easiest and most likely alliance for a group of minority voters is one with a political party, and some have suggested using minority voters' strength within a particular party as the proper yardstick under the first *Gingles* requirement. See, *e.g., LULAC, supra,* at 485–486, 126 S.Ct. 2594 (opinion of SOUTER, J.) (requiring only "that minority voters ... constitute a majority of those voting in the primary of ... the party tending to win in the general election"). That approach would replace an objective, administrable rule with a difficult "judicial inquiry into party rules and local politics" to determine whether a minority group truly "controls" the dominant party's primary process. McLoughlin, *Gingles* in Limbo: Coalitional Districts, Party Primaries and Manageable Vote Dilution Claims, 80 N.Y.U.L.Rev. 312, 349 (2005). More troubling still is the inquiry's ****1248** fusion of race and party affiliation as a determinant when partisan considerations themselves may be suspect in the drawing of district lines. See *Vieth v. Jubelirer,* 541 U.S. 267, 317, 124 S.Ct. 1769, 158 L.Ed.2d 546 (2004) (STEVENS, J., dissenting); *id.,* at 316, 124 S.Ct. 1769 (KENNEDY, J., concurring in judgment); see also Pildes 1565 (crossover-district requirement would essentially result in political party "entitlement to ... a certain number of seats"). Disregarding the majority-minority rule and relying on a combination of race and party to presume an effective majority would involve the law and courts in a perilous enterprise. It would rest on judicial predictions, as a matter of law, that race and party would hold together as an effective majority over time—at least for the decennial apportionment ***23** cycles and likely beyond. And thus would the relationship between race and party further distort and frustrate the search for neutral factors and principled rationales for districting.

Petitioners' approach would reverse the canon of avoidance. It invites the divisive constitutional questions that are both unnecessary and contrary to the purposes of our precedents under the Voting Rights Act. Given the consequences of extending racial considerations even further into the districting process, we must not interpret § 2 to require crossover districts.

C

Our holding that § 2 does not require crossover districts does not consider the permissibility of such districts as a matter of legislative choice or discretion. Assuming a majority-minority district with a substantial minority population, a legislative determination, based on proper factors, to create two crossover districts may serve to diminish the significance and influence of race by encouraging minority and majority voters to work together toward a common goal. The option to draw such districts gives legislatures a choice that can lead to less racial isolation, not more. And as the Court has noted in the context of § 5 of the Voting Rights Act, "various studies have suggested that the most effective way to maximize minority voting strength may be to create more influence or [crossover] districts." *Ashcroft,* 539 U.S., at 482, 123 S.Ct. 2498. Much like § 5, § 2 allows States to choose their own method of complying with the Voting Rights Act, and we have said that may include drawing crossover districts. See *id.,* at 480–483, 123 S.Ct. 2498. When we address the mandate of § 2, however, we must note it is not concerned with maximizing minority voting strength, *De Grandy, supra*, at 1022, 114 S.Ct. 2647; and, as a statutory matter, § 2 does not mandate creating or preserving crossover districts.

Our holding also should not be interpreted to entrench majority-minority districts by statutory command, for that, ***24** too, could pose constitutional concerns. See *Miller v. Johnson, supra*; *Shaw v. Reno,* 509 U.S. 630. States that wish to draw crossover districts are free to do so where no other prohibition exists. Majority-minority districts are only required if all three *Gingles* factors are met and if § 2

applies based on a totality of the circumstances. In areas with substantial crossover voting it is unlikely that the plaintiffs would be able to establish the third *Gingles* precondition—bloc voting by majority voters. See *supra,* at 1244. In those areas majority-minority districts would not be required in the first place; and in the exercise of lawful discretion States could draw crossover districts as they deemed appropriate. See Pildes 1567 ("Districts could still be designed in such places that encouraged coalitions across racial lines, ****1249** but these districts would result from legislative choice, not ... obligation"). States can—and in proper cases should—defend against alleged § 2 violations by pointing to crossover voting patterns and to effective crossover districts. Those can be evidence, for example, of diminished bloc voting under the third *Gingles* factor or of equal political opportunity under the § 2 totality-of-the-circumstances analysis. And if there were a showing that a State intentionally drew district lines in order to destroy otherwise effective crossover districts, that would raise serious questions under both the Fourteenth and Fifteenth Amendments. See *Reno v. Bossier Parish School Bd.,* 520 U.S. 471, 481–482, 117 S.Ct. 1491, 137 L.Ed.2d 730 (1997); Brief for United States as *Amicus Curiae* 13–14. There is no evidence of discriminatory intent in this case, however. Our holding recognizes only that there is no support for the claim that § 2 can require the creation of crossover districts in the first instance.

Petitioners claim the majority-minority rule is inconsistent with § 5, but we rejected a similar argument in *LULAC,* 548 U.S., at 446, 126 S.Ct. 2594 (opinion of KENNEDY, J.). The inquiries under §§ 2 and 5 are different. Section 2 concerns minority ***25** groups' opportunity "to elect representatives of their choice," 42 U.S.C. § 1973(b) (2000 ed.), while the more stringent § 5 asks whether a change has the purpose or effect of "denying or abridging the right to vote," § 1973c. See *LULAC, supra,* at 446, 126 S.Ct. 2594; *Bossier Parish, supra,* at 476–480, 117 S.Ct. 1491. In *LULAC,* we held that although the presence of influence districts is relevant for the § 5 retrogression analysis, "the lack of such districts cannot establish a § 2 violation." 548 U.S., at 446, 126 S.Ct. 2594 (opinion of KENNEDY, J.); see also *Ashcroft,* 539 U.S., at 482–483, 123 S.Ct. 2498. The same analysis applies for crossover districts: Section 5 "leaves room" for States to employ crossover districts, *id.,* at 483, 123 S.Ct. 2498, but § 2 does not require them.

IV

Some commentators suggest that racially polarized voting is waning—as evidenced by, for example, the election of minority candidates where a majority of voters are white. See Note, The Future of Majority–Minority Districts in Light of Declining Racially Polarized Voting, 116 Harv. L.Rev. 2208, 2209 (2003); see also *id.,* at 2216–2222; Pildes 1529–1539; Bullock & Dunn, The Demise of Racial Districting and the Future of Black Representation, 48 Emory L.J. 1209 (1999). Still, racial discrimination and racially polarized voting are not ancient history. Much remains to be done to ensure that citizens of all races have equal opportunity to share and participate in our democratic processes and traditions; and § 2 must be interpreted to ensure that continued progress.

It would be an irony, however, if § 2 were interpreted to entrench racial differences by expanding a "statute meant to hasten the waning of racism in American politics." *De Grandy,* 512 U.S., at 1020, 114 S.Ct. 2647. Crossover districts are, by definition, the result of white voters joining forces with minority voters to elect their preferred candidate. The Voting Rights Act was passed to foster this cooperation. We decline now to expand the reaches of § 2 to require, by force of ***26** law, the voluntary cooperation our society has achieved. 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.

****1250** The judgment of the Supreme Court of North Carolina is affirmed.

It is so ordered.

Justice THOMAS, with whom Justice SCALIA joins, concurring in the judgment.

I continue to adhere to the views expressed in my opinion in *Holder v. Hall,* 512 U.S. 874, 891, 114 S.Ct. 2581, 129 L.Ed.2d 687 (1994) (opinion concurring in judgment). The text of § 2 of the Voting Rights Act of 1965 does not authorize any vote dilution claim, regardless of the size of the minority population in a given district. See 42 U.S.C. § 1973(a) (2000 ed.) (permitting only a challenge to a "voting qualification or prerequisite to voting or standard, practice, or procedure"); see also *Holder, supra,* at 893, 114 S.Ct. 2581 (stating that the terms " 'standard, practice, or procedure' " "reach only state enactments that limit citizens' access to the ballot"). I continue to disagree, therefore, with the framework set forth in *Thornburg v. Gingles,* 478 U.S. 30, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986), for analyzing vote dilution claims because it has no basis in the text of § 2. I would not evaluate any

Voting Rights Act claim under a test that "has produced such a disastrous misadventure in judicial policymaking." *Holder, supra,* at 893, 114 S.Ct. 2581. For these reasons, I concur only in the judgment.

Justice SOUTER, with whom Justice STEVENS, Justice GINSBURG, and Justice BREYER join, dissenting.

The question in this case is whether a minority with under 50% of the voting population of a proposed voting district can ever qualify under § 2 of the Voting Rights Act of 1965(VRA) as residents of a putative district whose minority voters ***27** would have an opportunity "to elect representatives of their choice." 42 U.S.C. § 1973(b) (2000 ed.). If the answer is no, minority voters in such a district will have no right to claim relief under § 2 from a statewide districting scheme that dilutes minority voting rights. I would hold that the answer in law as well as in fact is sometimes yes: a district may be a minority-opportunity district so long as a cohesive minority population is large enough to elect its chosen candidate when combined with a reliable number of crossover voters from an otherwise polarized majority.

In the plurality's view, only a district with a minority population making up 50% or more of the citizen voting age population (CVAP) can provide a remedy to minority voters lacking an opportunity "to elect representatives of their choice." This is incorrect as a factual matter if the statutory phrase is given its natural meaning; minority voters in districts with minority populations under 50% routinely "elect representatives of their choice." The effects of the plurality's unwillingness to face this fact are disturbing by any measure and flatly at odds with the obvious purpose of the VRA. If districts with minority populations under 50% can never count as minority-opportunity districts to remedy a violation of the States' obligation to provide equal electoral opportunity under § 2, States will be required under the plurality's rule to pack black voters into additional majority-minority districts, contracting the number of districts where racial minorities are having success in transcending racial divisions in securing their preferred representation. The object of the VRA will now be promoting racial blocs, and the role of race in districting decisions as a proxy for political identification will be heightened by any measure.

I

Recalling the basic premises of vote-dilution claims under § 2 will show just ****1251** how far astray the plurality has gone. ***28** Section 2 of the VRA prohibits districting practices that "resul[t] in a denial or abridgement of the right of any citizen of the United States to vote on account of race." 42 U.S.C. § 1973(a). A denial or abridgment is established if, "based on the totality of circumstances," it is shown that members of a racial minority "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." § 1973(b).

Since § 2 was amended in 1982, 96 Stat. 134, we have read it to prohibit practices that result in "vote dilution," see *Thornburg v. Gingles,* 478 U.S. 30, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986), understood as distributing politically cohesive minority voters through voting districts in ways that reduce their potential strength. See *id.,* at 47–48, 106 S.Ct. 2752. There are two classic patterns. Where voting is racially polarized, a districting plan can systemically discount the minority vote either "by the dispersal of blacks into districts in which they constitute an ineffective minority of voters" or from "the concentration of blacks into districts where they constitute an excessive majority," so as to eliminate their influence in neighboring districts. *Id.,* at 46, n. 11, 106 S.Ct. 2752. Treating dilution as a remediable harm recognizes that § 2 protects not merely the right of minority voters to put ballots in a box, but to claim a fair number of districts in which their votes can be effective. See *id.,* at 47, 106 S.Ct. 2752.

Three points follow. First, to speak of a fair chance to get the representation desired, there must be an identifiable baseline for measuring a group's voting strength. *Id.,* at 88, 106 S.Ct. 2752 (O'Connor, J., concurring in judgment) ("In order to evaluate a claim that a particular multimember district or single-member district has diluted the minority group's voting strength to a degree that violates § 2, ... it is ... necessary to construct a measure of 'undiluted' minority voting strength"). Several baselines can be imagined; one could, for example, compare a minority's voting strength under a particular districting plan with the maximum strength possible ***29** under any alternative.[1] Not surprisingly, we have conclusively rejected this approach; the VRA was passed to guarantee minority voters a fair game, not a killing. See *Johnson v. De Grandy,* 512 U.S. 997, 1016–1017, 114 S.Ct. 2647, 129 L.Ed.2d 775 (1994). We have held that the better baseline for measuring opportunity to elect under § 2, although not dispositive, is the minority's rough proportion of the relevant population. *Id.,* at 1013–1023, 114 S.Ct. 2647. Thus, in assessing § 2 claims under a totality of the

circumstances, including the facts of history and geography, the starting point is a comparison of the number of districts where minority voters can elect their chosen candidate with the group's population percentage. *Ibid.;* see also **1252 *League of United Latin American Citizens v. Perry,* 548 U.S. 399, 436, 126 S.Ct. 2594, 165 L.Ed.2d 609 (2006) *(LULAC)* ("We proceed now to the totality of the circumstances, and first to the proportionality inquiry, comparing the percentage of total districts that are [minority] opportunity districts with the [minority] share of the citizen voting-age population").[2]

*30 Second, the significance of proportionality means that a § 2 claim must be assessed by looking at the overall effect of a multidistrict plan. A State with one congressional seat cannot dilute a minority's congressional vote, and only the systemic submergence of minority votes where a number of single-member districts could be drawn can be treated as harm under § 2. So a § 2 complaint must look to an entire districting plan (normally, statewide), alleging that the challenged plan creates an insufficient number of minority-opportunity districts in the territory as a whole. See *id.,* at 436–437, 126 S.Ct. 2594.

Third, while a § 2 violation ultimately results from the dilutive effect of a districting plan as a whole, a § 2 plaintiff must also be able to place himself in a reasonably compact district that could have been drawn to improve upon the plan actually selected. See, *e.g., De Grandy, supra,* at 1001–1002, 114 S.Ct. 2647. That is, a plaintiff must show both an overall deficiency and a personal injury open to redress.

Our first essay at understanding these features of statutory vote dilution was *Thornburg v. Gingles,* which asked whether a multimember district plan for choosing representatives by at-large voting deprived minority voters of an equal opportunity to elect their preferred candidates. In answering, we set three now-familiar conditions that a § 2 claim must meet at the threshold before a court will analyze it under the totality of circumstances:

> "First, the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district .... Second, the minority group must be able to show that it is politically cohesive .... Third, the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it ... usually to defeat the minority's preferred candidate." 478 U.S., at 50–51, 106 S.Ct. 2752.

*31 As we have emphasized over and over, the *Gingles* conditions do not state the ultimate standard under § 2, nor could they, since the totality of the circumstances standard has been set explicitly by Congress. See *LULAC, supra,* at 425–426, 126 S.Ct. 2594; *De Grandy, supra,* at 1011, 114 S.Ct. 2647. Instead, each condition serves as a gatekeeper, ensuring that a plaintiff who proceeds to plenary review has a real chance to show a redressable violation of the ultimate § 2 standard. The third condition, majority racial bloc voting, is necessary to establish the premise of vote-dilution claims: that the minority as a whole is placed at a disadvantage owing to race, not the happenstance of independent politics. *Gingles,* 478 U.S., at 51, 106 S.Ct. 2752. The second, minority cohesion, is there to show that minority voters will vote together to elect a distinct representative of choice. *Ibid.* And the **1253 first, a large and geographically compact minority population, is the condition for demonstrating that a dilutive plan injures the § 2 plaintiffs by failing to draw an available remedial district that would give them a chance to elect their chosen candidate. *Growe v. Emison,* 507 U.S. 25, 40–41, 113 S.Ct. 1075, 122 L.Ed.2d 388 (1993); *Gingles, supra,* at 50, 106 S.Ct. 2752.

II

Though this case arose under the Constitution of North Carolina, the dispositive issue is one of federal statutory law: whether a district with a minority population under 50%, but large enough to elect its chosen candidate with the help of majority voters disposed to support the minority favorite, can ever count as a district where minority voters have the opportunity "to elect representatives of their choice" for purposes of § 2. I think it clear from the nature of a vote-dilution claim and the text of § 2 that the answer must be yes. There is nothing in the statutory text to suggest that Congress meant to protect minority opportunity to elect solely by the creation of majority-minority districts. See *Voinovich v. Quilter,* 507 U.S. 146, 155, 113 S.Ct. 1149, 122 L.Ed.2d 500 (1993) ("[Section 2] *32 says nothing about majority-minority districts"). On the contrary, § 2 "focuses exclusively on the consequences of apportionment," *ibid.,* as Congress made clear when it explicitly prescribed the ultimate functional approach: a totality of the circumstances test. See 42 U.S.C. § 1973(b) ("[a] violation ... is established if, based on the totality of circumstances, it is shown ..."). And a functional analysis leaves no doubt that crossover districts vindicate the interest expressly protected by § 2: the opportunity to elect a desired representative.

It has been apparent from the moment the Court first took up § 2 that no reason exists in the statute to treat a crossover district as a less legitimate remedy for dilution than a majority-minority one (let alone to rule it out). See *Gingles, supra,* at 90, n. 1, 106 S.Ct. 2752 (O'Connor, J., concurring in judgment) ("[I]f a minority group that is not large enough to constitute a voting majority in a single-member district can show that white support would probably ... enable the election of the candidates its members prefer, that minority group would appear to have demonstrated that, at least under this measure of its voting strength, it would be able to elect some candidates of its choice"); see also Pildes, Is Voting–Rights Law Now at War With Itself? Social Science and Voting Rights in the 2000s, 80 N.C.L.Rev. 1517, 1553 (2002) (hereinafter Pildes) ("What should be so magical, then, about whether there are enough black voters to become a formal majority so that a conventional 'safe' district can be created? If a safe and a coalitional district have the same probability of electing a black candidate, are they not functionally identical, by definition, with respect to electing such candidates?").

As these earlier comments as much as say, whether a district with a minority population under 50% of the CVAP may redress a violation of § 2 is a question of fact with an obvious answer: of course minority voters constituting less than 50% of the voting population can have an opportunity to elect the ***33** candidates of their choice, as amply shown by empirical studies confirming that such minority groups regularly elect their preferred candidates with the help of modest crossover by members of the majority. See, *e.g., id.,* at 1531–1534, 1538. The North Carolina Supreme Court, for example, determined that voting districts with a black voting age population of as little as 38.37% have an opportunity to elect black candidates, ****1254** *Pender Cty. v. Bartlett,* 361 N.C. 491, 494–495, 649 S.E.2d 364, 366–367 (2007), a factual finding that has gone unchallenged and is well supported by electoral results in North Carolina. Of the nine House districts in which blacks make up more than 50% of the voting age population (VAP), all but two elected a black representative in the 2004 election. See App. 109. Of the 12 additional House districts in which blacks are over 39% of the VAP, all but one elected a black representative in the 2004 election. *Ibid*. It would surely surprise legislators in North Carolina to suggest that black voters in these 12 districts cannot possibly have an opportunity to "elect [the] representatives of their choice."

It is of course true that the threshold population sufficient to provide minority voters with an opportunity to elect their candidates of choice is elastic, and the proportions will likely shift in the future, as they have in the past. See Pildes 1527–1532 (explaining that blacks in the 1980s required well over 50% of the population in a district to elect the candidates of their choice, but that this number has gradually fallen to well below 50%); *id.,* at 1527, n. 26 (stating that some courts went so far as to refer to 65% "as a 'rule of thumb' for the black population required to constitute a safe district"). That is, racial polarization has declined, and if it continues downward the first *Gingles* condition will get easier to satisfy.

But this is no reason to create an arbitrary threshold; the functional approach will continue to allow dismissal of claims for districts with minority populations too small to demonstrate ***34** an ability to elect, and with "crossovers" too numerous to allow an inference of vote dilution in the first place. No one, for example, would argue based on the record of experience in this case that a district with a 25% black population would meet the first *Gingles* condition. And the third *Gingles* requirement, majority-bloc voting, may well provide an analytical limit to claims based on crossover districts. See *LULAC,* 548 U.S., at 490, n. 8, 126 S.Ct. 2594 (SOUTER, J., concurring in part and dissenting in part) (noting the interrelationship of the first and third *Gingles* factors); see also *post,* at 1260 – 1262 (BREYER, J., dissenting) (looking to the third *Gingles* condition to suggest a mathematical limit to the minority population necessary for a cognizable crossover district). But whatever this limit may be, we have no need to set it here, since the respondent state officials have stipulated to majority-bloc voting, App. to Pet. for Cert. 130a. In sum, § 2 addresses voting realities, and for practical purposes a 39%-minority district in which we know minorities have the potential to elect their preferred candidate is every bit as good as a 50%-minority district.

In fact, a crossover district is better. Recognizing crossover districts has the value of giving States greater flexibility to draw districting plans with a fair number of minority-opportunity districts, and this in turn allows for a beneficent reduction in the number of majority-minority districts with their "quintessentially race-conscious calculus," *De Grandy,* 512 U.S., at 1020, 114 S.Ct. 2647, thereby moderating reliance on race as an exclusive determinant in districting decisions, cf. *Shaw v. Reno,* 509 U.S. 630, 113 S.Ct. 2816, 125 L.Ed.2d 511 (1993). See also Pildes 1547–1548 ("In contrast to the Court's concerns with bizarrely designed safe districts, it is hard to see how coalitional districts could 'convey the

message that political identity is, or should be, predominantly racial.' ... Coalitional districts would seem to encourage and require a kind of integrative, cross-racial political alliance that might be thought consistent with, even the very ideal of, both the VRA and the U.S. Constitution" (quoting **1255 *Bush v. Vera,* 517 U.S. 952, 980, 116 S.Ct. 1941, 135 L.Ed.2d 248 (1996))). A crossover *35 is thus superior to a majority-minority district precisely because it requires polarized factions to break out of the mold and form the coalitions that discourage racial divisions.

III

A

The plurality's contrary conclusion that § 2 does not recognize a crossover claim is based on a fundamental misunderstanding of vote-dilution claims, a mistake epitomized in the following assessment of the crossover district in question:

> "[B]ecause they form only 39 percent of the voting-age population in District 18, African–Americans standing alone have no better or worse opportunity to elect a candidate than does any other group of voters with the same relative voting strength [in District 18]." *Ante,* at 1242 – 1243.

See also *ante,* at 1246 ("[In crossover districts,] minority voters have the same opportunity to elect their candidate as any other political group with the same relative voting strength").

The claim that another political group in a particular district might have the same relative voting strength as the minority if it had the same share of the population takes the form of a tautology: the plurality simply looks to one district and says that a 39% group of blacks is no worse off than a 39% group of whites would be. This statement might be true, or it might not be, and standing alone it demonstrates nothing.

Even if the two 39% groups were assumed to be comparable in fact because they will attract sufficient crossover (and so should be credited with satisfying the first *Gingles* condition), neither of them could prove a § 2 violation without looking beyond the 39% district and showing a disproportionately small potential for success in the State's overall configuration of districts. As this Court has explained before, the ultimate question in a § 2 case (that is, whether the *36 minority group in question is being denied an equal opportunity to participate and elect) can be answered only by examining the broader pattern of districts to see whether the minority is being denied a roughly proportionate opportunity. See *LULAC, supra,* at 436–437, 126 S.Ct. 2594. Hence, saying one group's 39% equals another's, even if true in particular districts where facts are known, does not mean that either, both, or neither group could show a § 2 violation. The plurality simply fails to grasp that an alleged § 2 violation can only be proved or disproved by looking statewide.

B

The plurality's more specific justifications for its counterfactual position are no more supportable than its 39% tautology.

1

The plurality seems to suggest that our prior cases somehow require its conclusion that a minority population under 50% will never support a § 2 remedy, emphasizing that *Gingles* spoke of a majority and referred to the requirement that minority voters have " 'the *potential* to elect' " their chosen representatives. *Ante,* at 1243 (quoting *Gingles,* 478 U.S., at 50, n. 17, 106 S.Ct. 2752). It is hard to know what to make of this point since the plurality also concedes that we have explicitly and repeatedly reserved decision on today's question. See *LULAC, supra*, at 443, 126 S.Ct. 2594 (plurality opinion); *De Grandy, supra*, at 1009, 114 S.Ct. 2647; *Voinovich,* 507 U.S., at 154, 113 S.Ct. 1149; *Growe,* 507 U.S., at 41, n. 5, 113 S.Ct. 1075; *Gingles, supra,* at 46–47, n. 12, 106 S.Ct. 2752. In fact, in our more recent cases applying **1256 § 2, Court majorities have formulated the first *Gingles* prong in a way more consistent with a functional approach. See *LULAC, supra,* at 430, 126 S.Ct. 2594 ("[I]n the context of a challenge to the drawing of district lines, 'the first *Gingles* condition requires the possibility of creating more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice' " (quoting *37 *De Grandy, supra,* at 1008, 114 S.Ct. 2647)). These Court majorities get short shrift from today's plurality.

In any event, even if we ignored *Gingles*'s reservation of today's question and looked to *Gingles*'s "*potential* to elect" as if it were statutory text, I fail to see how that phrase dictates

that a minority's ability to compete must be singlehanded in order to count under § 2. As explained already, a crossover district serves the same interest in obtaining representation as a majority-minority district; the potential of 45% with a 6% crossover promises the same result as 51% with no crossover, and there is nothing in the logic of § 2 to allow a distinction between the two types of district.

In fact, the plurality's distinction is artificial on its own terms. In the past, when black voter registration and black voter turnout were relatively low, even black voters with 55% of a district's CVAP would have had to rely on crossover voters to elect their candidate of choice. See Pildes 1527–1528. But no one on this Court (and, so far as I am aware, any other court addressing it) ever suggested that reliance on crossover voting in such a district rendered minority success any less significant under § 2, or meant that the district failed to satisfy the first *Gingles* factor. Nor would it be any answer to say that black voters in such a district, assuming unrealistic voter turnout, theoretically had the "potential" to elect their candidate without crossover support; that would be about as relevant as arguing in the abstract that a black CVAP of 45% is potentially successful, on the assumption that black voters could turn out en masse to elect the candidate of their choice without reliance on crossovers if enough majority voters stay home.

2

The plurality is also concerned that recognizing the "potential" of anything under 50% would entail an exponential expansion of special minority districting; the plurality goes so far as to suggest that recognizing crossover districts as possible minority-opportunity districts would inherently "entitl[e] ***38** minority groups to the maximum possible voting strength." *Ante,* at 1244. But this conclusion again reflects a confusion of the gatekeeping function of the *Gingles* conditions with the ultimate test for relief under § 2. See *ante,* at 1242 – 1243 ("African–Americans standing alone have no better or worse opportunity to elect a candidate than does any other group of voters with the same relative voting strength").

As already explained, *supra,* at 1252 – 1253, the mere fact that all threshold *Gingles* conditions could be met and a district could be drawn with a minority population sufficiently large to elect the candidate of its choice does not require drawing such a district. This case simply is about the first *Gingles* condition, not about the number of minority-opportunity districts needed under § 2, and accepting Bartlett's position would in no way imply an obligation to maximize districts with minority voter potential. Under any interpretation of the first *Gingles* factor, the State must draw districts in a way that provides minority voters with a fair number of districts in ****1257** which they have an opportunity to elect candidates of their choice; the only question here is which districts will count toward that total.

3

The plurality's fear of maximization finds a parallel in the concern that treating crossover districts as minority-opportunity districts would "create serious tension" with the third *Gingles* prerequisite of majority-bloc voting. *Ante,* at 1244. The plurality finds "[i]t ... difficult to see how the majority-bloc-voting requirement could be met in a district where, by definition, white voters join in sufficient numbers with minority voters to elect the minority's preferred candidate." *Ibid.*

It is not difficult to see. If a minority population with 49% of the CVAP can elect the candidate of its choice with crossover by 2% of white voters, the minority "by definition" relies on white support to elect its preferred candidate. But this fact alone would raise no doubt, as a matter of definition ***39** or otherwise, that the majority-bloc-voting requirement could be met, since as much as 98% of the majority may have voted against the minority's candidate of choice. As explained above, *supra,* at 1254, the third *Gingles* condition may well impose an analytical floor to the minority population and a ceiling on the degree of crossover allowed in a crossover district; that is, the concept of majority-bloc voting requires that majority voters tend to stick together in a relatively high degree. The precise standard for determining majority-bloc voting is not at issue in this case, however; to refute the plurality's 50% rule, one need only recognize that racial cohesion of 98% would be bloc voting by any standard.[3]

4

The plurality argues that qualifying crossover districts as minority-opportunity districts would be less administrable than demanding 50%, forcing courts to engage with the various factual and predictive questions that would come up in determining what percentage of majority voters would

provide the voting minority with a chance at electoral success. *Ante,* at 1244 – 1245. But claims based on a State's failure to draw majority-minority districts raise the same issues of judicial judgment; even when the 50% threshold is satisfied, a court will still have to engage in factually messy enquiries about ***40** the "potential" such a district may afford, the degree of minority cohesion and majority-bloc voting, and the existence of vote dilution under a totality of the circumstances. See *supra,* at 1252 – 1253, 1254. The plurality's rule, therefore, conserves an uncertain amount of judicial resources, and only at the expense of ignoring a class of § 2 claims that this Court has no authority to strike from the statute's coverage.

5

The plurality again misunderstands the nature of § 2 in suggesting that its rule ****1258** does not conflict with what the Court said in *Georgia v. Ashcroft,* 539 U.S. 461, 480–482, 123 S.Ct. 2498, 156 L.Ed.2d 428 (2003): that crossover districts count as minority-opportunity districts for the purpose of assessing whether minorities have the opportunity "to elect their preferred candidates of choice" under § 5 of the VRA, 42 U.S.C. § 1973c(b) (2006 ed.). While the plurality is, of course, correct that there are differences between the enquiries under §§ 2 and 5, *ante,* at 1249, those differences do not save today's decision from inconsistency with the prior pronouncement. A districting plan violates § 5 if it diminishes the ability of minority voters to "elect their preferred candidates of choice," § 1973c(b), as measured against the minority's previous electoral opportunity, *Ashcroft, supra,* at 477, 123 S.Ct. 2498. A districting plan violates § 2 if it diminishes the ability of minority voters to "elect representatives of their choice," 42 U.S.C. § 1973(b) (2000 ed.), as measured under a totality of the circumstances against a baseline of rough proportionality. It makes no sense to say that a crossover district counts as a minority-opportunity district when comparing the past and the present under § 5, but not when comparing the present and the possible under § 2.

6

Finally, the plurality tries to support its insistence on a 50% threshold by invoking the policy of constitutional avoidance, which calls for construing a statute so as to avoid a ***41** possibly unconstitutional result. The plurality suggests that allowing a lower threshold would "require crossover districts throughout the Nation," *ante,* at 1247, thereby implicating the principle of *Shaw v. Reno* that districting with an excessive reliance on race is unconstitutional ("excessive" now being equated by the plurality with the frequency of creating opportunity districts). But the plurality has it precisely backwards. A State will inevitably draw some crossover districts as the natural byproduct of districting based on traditional factors. If these crossover districts count as minority-opportunity districts, the State will be much closer to meeting its § 2 obligation without any reference to race, and fewer minority-opportunity districts will, therefore, need to be created purposefully. But if, as a matter of law, only majority-minority districts provide a minority seeking equality with the opportunity to elect its preferred candidates, the State will have much further to go to create a sufficient number of minority-opportunity districts, will be required to bridge this gap by creating exclusively majority-minority districts, and will inevitably produce a districting plan that reflects a greater focus on race. The plurality, however, seems to believe that any reference to race in districting poses a constitutional concern, even a State's decision to reduce racial blocs in favor of crossover districts. A judicial position with these consequences is not constitutional avoidance.

IV

More serious than the plurality opinion's inconsistency with prior cases construing § 2 is the perversity of the results it portends. Consider the effect of the plurality's rule on North Carolina's districting scheme. Black voters make up approximately 20% of North Carolina's VAP[4] and are distributed ***42** throughout 120 State ****1259** House districts, App. to Pet. for Cert. 58a. As noted before, black voters constitute more than 50% of the VAP in 9 of these districts and over 39% of the VAP in an additional 12. *Supra,* at 1253 – 1254. Under a functional approach to § 2, black voters in North Carolina have an opportunity to elect (and regularly do elect) the representative of their choice in as many as 21 House districts, or 17.5% of North Carolina's total districts. See App. 109–110. North Carolina's districting plan is therefore close to providing black voters with proportionate electoral opportunity. According to the plurality, however, the remedy of a crossover district cannot provide opportunity to minority voters who lack it, and the requisite opportunity must therefore be lacking for minority voters already living in districts where they must rely on crossover. By the plurality's reckoning, then, black voters

have an opportunity to elect representatives of their choice in, at most, nine North Carolina House districts. See *ibid*. In the plurality's view, North Carolina must have a long way to go before it satisfies the § 2 requirement of equal electoral opportunity.[5]

***43** A State like North Carolina faced with the plurality's opinion, whether it wants to comply with § 2 or simply to avoid litigation, will, therefore, have no reason to create crossover districts. Section 2 recognizes no need for such districts, from which it follows that they can neither be required nor be created to help the State meet its obligation of equal electoral opportunity under § 2. And if a legislature were induced to draw a crossover district by the plurality's encouragement to create them voluntarily, *ante,* at 1249 – 1250, it would open itself to attack by the plurality based on the pointed suggestion that a policy favoring crossover districts runs counter to *Shaw*. The plurality has thus boiled § 2 down to one option: the best way to avoid suit under § 2, and the only way to comply with § 2, is by drawing district lines in a way that packs minority voters into majority-minority districts, probably eradicating crossover districts in the process.

Perhaps the plurality recognizes this aberrant implication, for it eventually attempts to disavow it. It asserts that "§ 2 allows States to choose their own method of complying with the Voting Rights Act, and we have said that may include drawing crossover districts.... [But] § 2 does not mandate creating or preserving crossover districts." *Ante,* at 1248. See also, *ante,* at 1249 (crossover districts "can be evidence ... of equal political opportunity ..."). But this is judicial fiat, not legal reasoning; the plurality does not even attempt to explain how a crossover district can be a minority-opportunity district when assessing the compliance of a districting plan with § 2, but cannot be one when sought as a remedy to a § 2 violation. The plurality cannot have it both ways. If voluntarily drawing a crossover ****1260** district brings a State into compliance with § 2, then requiring creation of a crossover district must be a way to remedy a violation of § 2, and eliminating a crossover district must in some cases take a State out of compliance with the statute. And when the elimination of a crossover district does cause a violation of ***44** § 2, I cannot fathom why a voter in that district should not be able to bring a claim to remedy it.

In short, to the extent the plurality's holding is taken to control future results, the plurality has eliminated the protection of § 2 for the districts that best vindicate the goals of the statute, and has done all it can to force the States to perpetuate racially concentrated districts, the quintessential manifestations of race consciousness in American politics.

I respectfully dissent.

Justice GINSBURG, dissenting.
I join Justice SOUTER's powerfully persuasive dissenting opinion, and would make concrete what is implicit in his exposition. The plurality's interpretation of § 2 of the Voting Rights Act of 1965 is difficult to fathom and severely undermines the statute's estimable aim. Today's decision returns the ball to Congress' court. The Legislature has just cause to clarify beyond debate the appropriate reading of § 2.

Justice BREYER, dissenting.
I join Justice SOUTER's opinion in full. I write separately in light of the plurality's claim that a bright-line 50% rule (used as a *Thornburg v. Gingles,* 478 U.S. 30 (1986), gateway) serves administrative objectives. In the plurality's view, that rule amounts to a relatively simple administrative device that will help separate at the outset those cases that are more likely meritorious from those that are not. Even were that objective as critically important as the plurality believes, however, it is not difficult to find other numerical gateway rules that would work better.

Assume that a basic purpose of a gateway number is to separate (1) districts where a minority group can "elect representatives of their choice," from (2) districts where the minority, because of the need to obtain majority crossover votes, can only "elect representatives" that are consensus candidates. 42 U.S.C. § 1973(b) (2000 ed.); *League of* ***45** *United Latin American Citizens v. Perry,* 548 U.S. 399, 445, 126 S.Ct. 2594, 165 L.Ed.2d 609 (2006) (plurality opinion). At first blush, one might think that a 50% rule will work in this respect. After all, if a 50% minority population votes as a bloc, can it not always elect the candidate of its choice? And if a minority population constitutes less than 50% of a district, is not any candidate elected from that district always a consensus choice of minority and majority voters? The realities of voting behavior, however, make clear that the answer to both these questions is "no." See, *e.g.,* Brief for Nathaniel Persily et al. as *Amici Curiae* 5–6 ("Fifty percent is seen as a magic number by some because under conditions of complete racial polarization and equal rates of voting eligibility, registration, and turnout, the minority community will be able to elect its candidate of choice. *In practice, such*

extreme conditions are never present .... [S]ome districts must be more than 50% minority, while others can be less than 50% minority, in order for the minority community to have an equal opportunity to elect its candidate of choice" (emphasis added)); see also *ante,* at 1254 (SOUTER, J., dissenting).

No voting group is 100% cohesive. Except in districts with overwhelming minority populations, some crossover votes are often necessary. The question is how likely it is that the need for crossover votes will force a minority to reject its "preferred ****1261** choice" in favor of a "consensus candidate." A 50% number does not even try to answer that question. To the contrary, it includes, say, 51% minority districts, where imperfect cohesion may, in context, prevent election of the "minority-preferred" candidate, while it excludes, say, 45% districts where a smaller but more cohesive minority can, with the help of a small and reliable majority crossover vote, elect its preferred candidate.

Why not use a numerical gateway rule that looks more directly at the relevant question: Is the minority bloc large enough, is it cohesive enough, is the necessary majority crossover vote small enough, so that the minority (tending ***46** to vote cohesively) can likely vote its preferred candidate (rather than a consensus candidate) into office? See *ante,* at 1253 (SOUTER, J., dissenting) ("[E]mpirical studies confir[m] that ... minority groups" constituting less than 50% of the voting population "regularly elect their preferred candidates with the help of modest crossover by members of the majority"); see also Pildes, Is Voting–Rights Law Now at War With Itself? Social Science and Voting Rights in the 2000s, 80 N.C.L.Rev. 1517, 1529–1535 (2002) (reviewing studies showing small but reliable crossover voting by whites in districts where minority voters have demonstrated the ability to elect their preferred candidates without constituting 50% of the population in that district). We can likely find a reasonably administrable mathematical formula more directly tied to the factors in question.

To take a possible example: Suppose we pick a numerical ratio that requires the minority voting age population to be twice as large as the percentage of majority crossover votes needed to elect the minority's preferred candidate. We would calculate the latter (the percentage of majority crossover votes the minority voters need) to take account of both the percentage of minority voting age population in the district and the cohesiveness with which they vote. Thus, if minority voters account for 45% of the voters in a district and 89% of those voters tend to vote cohesively as a group, then the minority needs a crossover vote of about 20% of the majority voters to elect its preferred candidate. (Such a district with 100 voters would have 45 minority voters and 55 majority voters; 40 minority voters would vote for the minority group's preferred candidate at election time; the minority voters would need 11 more votes to elect their preferred candidate; and 11 is about 20% of the majority's 55.) The larger the minority population, the greater its cohesiveness, and thus the smaller the crossover vote needed to assure success, the greater the likelihood that the minority can ***47** elect its preferred candidate and the smaller the likelihood that the cohesive minority, in order to find the needed majority crossover vote, must support a consensus, rather than its preferred, candidate.

In reflecting the reality that minority voters can elect the candidate of their choice when they constitute less than 50% of a district by relying on a small majority crossover vote, this approach is in no way contradictory to, or even in tension with, the third *Gingles* requirement. Since *Gingles* itself, we have acknowledged that the requirement of majority-bloc voting can be satisfied even when some small number of majority voters cross over to support a minority-preferred candidate. See 478 U.S., at 59, 106 S.Ct. 2752, 92 L.Ed.2d 25 (finding majority-bloc voting where the majority group supported African–American candidates in the general election at a rate of between 26% and 49%, with an average support of one-third). Given the difficulty of obtaining totally accurate statistics about cohesion, or even voting age ****1262** population, the district courts should administer the numerical ratio flexibly, opening (or closing) the *Gingles* gate (in light of the probable merits of a case) where only small variances are at issue (*e.g.,* where the minority group is 39% instead of 40% of a district). But the same is true with a 50% number (*e.g.,* where the minority group is 49% instead of 50% of a district). See, *e.g.,* Brief for United States as *Amicus Curiae* 15.

I do not claim that the 2–to–1 ratio is a perfect rule; I claim only that it is better than the plurality's 50% rule. After all, unlike 50%, a 2–to–1 ratio (of voting age minority population to necessary nonminority crossover votes) focuses directly upon the problem at hand, better reflects voting realities, and consequently far better separates at the gateway likely sheep from likely goats. See *Gingles, supra,* at 45, 106 S.Ct. 2752 (The § 2 inquiry depends on a " 'functional' view of the political process" and " 'a searching practical evaluation of the past and present reality' ") (quoting S.Rep. No. 97–417, p. 30, and n. 120 (1982))); *Gingles, supra,* at 94–95, 106 S.Ct. 2752 (O'Connor, J., ***48** concurring in

judgment) ("[T]here is no indication that Congress intended to mandate a single, universally applicable standard for measuring undiluted minority voting strength, regardless of local conditions ... "). In most cases, the 50% rule and the 2–to–1 rule would have roughly similar effects. Most districts where the minority voting age population is greater than 50% will almost always satisfy the 2–to–1 rule; and most districts where the minority population is below 40% will almost never satisfy the 2–to–1 rule. But in districts with minority voting age populations that range from 40% to 50%, the divergent approaches of the two standards can make a critical difference —as well they should.

In a word, Justice SOUTER well explains why the majority's test is ill suited to the statute's objectives. I add that the test the majority adopts is ill suited to its own administrative ends. Better gateway tests, if needed, can be found.

With respect, I dissent.

All Citations

556 U.S. 1, 129 S.Ct. 1231, 173 L.Ed.2d 173, 77 USLW 4187, 09 Cal. Daily Op. Serv. 2838, 2009 Daily Journal D.A.R. 3408, 21 Fla. L. Weekly Fed. S 705, 51 A.L.R. Fed. 2d 709

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.,* 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

1 We have previously illustrated this in stylized fashion:

"Assume a hypothetical jurisdiction of 1,000 voters divided into 10 districts of 100 each, where members of a minority group make up 40 percent of the voting population and voting is totally polarized along racial lines. With the right geographic dispersion to satisfy the compactness requirement, and with careful manipulation of district lines, the minority voters might be placed in control of as many as 7 of the 10 districts. Each such district could be drawn with at least 51 members of the minority group, and whether the remaining minority voters were added to the groupings of 51 for safety or scattered in the other three districts, minority voters would be able to elect candidates of their choice in all seven districts." *Johnson v. De Grandy,* 512 U.S. 997, 1016, 114 S.Ct. 2647, 129 L.Ed.2d 775 (1994).

2 Of course, this does not create an entitlement to proportionate minority representation. Nothing in the statute promises electoral success. Rather, § 2 simply provides that, subject to qualifications based on a totality of circumstances, minority voters are entitled to a practical chance to compete in a roughly proportionate number of districts. *Id.,* at 1014, n. 11, 114 S.Ct. 2647. "[M]inority voters are not immune from the obligation to pull, haul, and trade to find common political ground." *Id.,* at 1020, 114 S.Ct. 2647.

3 This case is an entirely inappropriate vehicle for speculation about a more exact definition of majority-bloc voting. See *supra,* at 1254 – 1255. The political science literature has developed statistical methods for assessing the extent of majority-bloc voting that are far more nuanced than the plurality's 50% rule. See, *e.g.,* Pildes 1534–1535 (describing a "falloff rate" that social scientists use to measure the comparative rate at which whites vote for black Democratic candidates compared to white Democratic candidates and noting that the falloff rate for congressional elections during the 1990s in North Carolina was 9%). But this issue was never briefed in this case and is not before us, the respondents having stipulated to the existence of majority-bloc voting, App. to Pet. for Cert. 130a, and there is no reason to attempt to accomplish in this case through the first *Gingles* factor what would actually be a quantification of the third.

4 Compare Dept. of Commerce, Bureau of Census, 2000 Voting Age Population and Voting–Age Citizens (PHC–T–31) (Table 1–1), online at http:/ /www.census.gov/population/www /cen2000/briefs/phc-t31/index.html (as visited Mar. 5, 2009, and available in Clerk of Court's case file) (total VAP in North Carolina is 6,087,996), with *id.,* Table 1–3 (black or African–American VAP is 1,216,622).

5 Under the same logic, North Carolina could fracture and submerge in majority-dominated districts the 12 districts in which black voters constitute between 35% and 49% of the voting population and routinely elect the candidates of their choice without ever implicating § 2, and could do so in districts not covered by § 5 without implicating the VRA at all. The untenable

implications of the plurality's rule do not end there. The plurality declares that its holding "does not apply to cases in which there is intentional discrimination against a racial minority." *Ante,* at 1246. But the logic of the plurality's position compels the absurd conclusion that the invidious and intentional fracturing of crossover districts in order to harm minority voters would not state a claim under § 2. After all, if the elimination of a crossover district can never deprive minority voters in the district of the opportunity "to elect representatives of their choice," minorities in an invidiously eliminated district simply cannot show an injury under § 2.

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ACLU MD Appendix 7

123 S.Ct. 2498
Supreme Court of the United States

GEORGIA, Appellant,

v.

John ASHCROFT, Attorney General, et al.

No. 02–182.
|
Argued April 29, 2003.
|
Decided June 26, 2003.

Synopsis

State of Georgia sought preclearance of its state legislative redistricting plan under Voting Rights Act. A three-judge panel of the United States District Court for the District of Columbia, 195 F.Supp.2d 25, Sullivan, J., found failure to demonstrate lack of retrogressive effect on African-American voters and refused to preclear. State appealed. The United States Supreme Court, Justice O'Connor, held that: (1) District Court did not abuse its discretion by permitting private parties to intervene; (2) compliance with section of Act prohibiting vote dilution is not sufficient by itself to warrant preclearance; (3) assessment of racially retrogressive effect under Act depends not solely on comparative ability of minority group to elect candidate of its choice, but on all relevant circumstances including extent of group's opportunity to participate in political process; (4) minority group's opportunity to participate in turn depends on several factors including whether plan adds or subtracts "influence" or coalitional districts; and (5) District Court engaged in too narrow an inquiry by focusing on three particular proposed districts and by concentrating on factor of comparative ability to elect candidates to exclusion of other factors.

Vacated and remanded.

Justices Kennedy and Thomas filed concurring opinions.

Justice Souter filed dissenting opinion joined by Justices Stevens, Ginsburg and Breyer.

****2500** ***461** *Syllabus* [*]

Georgia's 1997 State Senate districting plan is the benchmark plan for this litigation. That plan drew 56 districts, 11 of them with a total black population of over 50%, and 10 of them with a black voting age population of over 50%. The 2000 census revealed that these numbers had increased so that 13 districts had a black population of at least 50%, with the black voting age population exceeding 50% in 12 of those districts. After the 2000 census, the Georgia General Assembly began redistricting the Senate once again. It is uncontested that a substantial majority of Georgia's black voters vote Democratic, and that all elected black representatives in the General Assembly are Democrats. The Senator who chaired the subcommittee that developed the new plan testified he believed that as a district's black voting age population increased beyond what was necessary to elect a candidate, it would push the Senate more toward the Republicans, and correspondingly diminish the power of African–Americans overall. Thus, part of the Democrats' strategy was not only to maintain the number of majority-minority districts and increase the number of Democratic Senate seats, but also to increase the number of so-called "influence" districts, where black voters would be able to exert a significant—if not decisive—force in the election process. The new plan therefore "unpacked" the most heavily concentrated majority-minority districts in the benchmark plan, and created a number of new influence districts, drawing 13 districts with a majority-black voting age population, 13 additional districts with a black voting age population of between 30%–50%, and 4 other districts with a black voting age population of between ****2501** 25%–30%. When the Senate adopted the new plan, 10 of the 11 black Senators voted for it. The Georgia House of Representatives passed the plan with 33 of the 34 black Representatives voting for it. No Republican in either body voted for the plan, making the votes of the black legislators necessary for passage. The Governor signed the Senate plan into law in 2001.

Because Georgia is a covered jurisdiction under § 5 of the Voting Rights Act of 1965, it must submit any new voting "standard, practice, or procedure" for preclearance by either the United States Attorney General or the District Court for the District of Columbia in order to ensure that the change "does not have the purpose [or] effect of denying ***462** or abridging the right to vote on account of race or color," 42 U.S.C. § 1973c. No change should be precleared if it "would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer v. United States,* 425 U.S. 130, 141, 96 S.Ct. 1357, 47 L.Ed.2d 629. In order to preclear its 2001 plan,

Georgia filed suit in the District Court seeking a declaratory judgment that the plan does not violate § 5. To satisfy its burden of proving nonretrogression, Georgia submitted detailed evidence documenting, among other things, the total population, total black population, black voting age population, percentage of black registered voters, and the overall percentage of Democratic votes in each district; evidence about how each of these statistics compared to the benchmark districts; testimony from numerous participants in the plan's enactment that it was designed to increase black voting strength throughout the State as well as to help ensure a continued Democratic majority in the Senate; expert testimony that black and nonblack voters have equal chances of electing their preferred candidate when the black voting age population of a district is at 44.3%; and, in response to the United States' objections, more detailed statistical evidence with respect to three proposed Senate districts that the United States found objectionable—Districts 2, 12, and 26—and two districts challenged by the intervenors—Districts 15 and 22. The United States argued that the plan should not be precleared because the changes to the boundaries of Districts 2, 12, and 26 unlawfully reduced black voters' ability to elect candidates of their choice. The United States' evidence focused only on those three districts and was not designed to permit the court to assess the plan's overall impact. The intervenors, four African–Americans, argued that retrogression had occurred in Districts 15 and 22, and presented proposed alternative plans and an expert report critiquing the State's expert report. A three-judge District Court panel held that the plan violated § 5, and was therefore not entitled to preclearance.

Held:

1. The District Court did not err in allowing the private litigants to intervene. That court found that the intervenors' analysis of the plan identifies interests not adequately represented by the existing parties. Private parties may intervene in § 5 actions assuming they meet the requirements of Federal Rule of Civil Procedure 24, *NAACP v. New York,* 413 U.S. 345, 365, 93 S.Ct. 2591, 37 L.Ed.2d 648, and the District Court did not abuse its discretion in allowing intervention in this case, see *id.,* at 367, 93 S.Ct. 2591. *Morris v. Gressette,* 432 U.S. 491, 504–505, 97 S.Ct. 2411, 53 L.Ed.2d 506, in which the Court held that the decision to object belongs only to the Attorney General, is distinguished because it concerned the administrative, not the judicial, preclearance ***463** process. *Morris* itself recognized the difference between the two. See *id.,* at 503–507, 97 S.Ct. 2411. Pp. 2509–2510.

2. The District Court failed to consider all the relevant factors when it examined whether Georgia's Senate plan resulted in a retrogression of black voters' effective exercise of the electoral franchise. Pp. 2510–2517.

****2502** (a) Georgia's argument that a plan should be precleared under § 5 if it would satisfy § 2 of the Voting Rights Act, 42 U.S.C. § 1973, is rejected. A § 2 vote dilution violation is not an independent reason to deny § 5 preclearance, because that would inevitably make § 5 compliance contingent on § 2 compliance and thereby replace § 5 retrogression standards with those for § 2. *Reno v. Bossier Parish School Bd.,* 520 U.S. 471, 477, 117 S.Ct. 1491, 137 L.Ed.2d 730. Instead of showing that its plan is nondilutive under § 2, Georgia must prove that it is nonretrogressive under § 5. Pp. 2510–2511.

(b) To determine the meaning of "a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise," *Beer, supra,* at 141, 96 S.Ct. 1357, the statewide plan must first be examined as a whole: First, the diminution of a minority group's effective exercise of the electoral franchise violates § 5 only if the State cannot show that the gains in the plan as a whole offset the loss in a particular district. Second, all of the relevant circumstances must be examined, such as minority voters' ability to elect their candidate of choice, the extent of the minority group's opportunity to participate in the political process, and the feasibility of creating a nonretrogressive plan. See, *e.g., Johnson v. De Grandy,* 512 U.S. 997, 1011–1012, 1020–1021, 114 S.Ct. 2647, 129 L.Ed.2d 775. In assessing the totality of the circumstances, a minority group's comparative ability to elect a candidate of its choice is an important factor, but it cannot be dispositive or exclusive. See, *e.g., Thornburg v. Gingles,* 478 U.S. 30, 47–50, 106 S.Ct. 2752. To maximize such a group's electoral success, a State may choose to create either a certain number of "safe" districts in which it is highly likely that minority voters will be able to elect the candidate of their choice, see, *e.g., id.,* at 48–49, 106 S.Ct. 2752, or a greater number of districts in which it is likely, although perhaps not quite as likely as under the benchmark plan, that minority voters will be able to elect their candidates, see, *e.g., id.,* at 88–89, 106 S.Ct. 2752 (O'CONNOR, J., concurring in judgment). Section 5 does not dictate that a State must pick one of these redistricting methods over the other. *Id.,* at 89, 106 S.Ct. 2752. In considering the other

highly relevant factor in a retrogression inquiry—the extent to which a new plan changes the minority group's opportunity to participate in the political process—a court must examine whether the plan adds or subtracts "influence districts" where minority voters may not be able to elect a candidate of choice but can play a substantial, if not ***464** decisive, role in the electoral process, cf., *e.g., Johnson, supra,* at 1007, 114 S.Ct. 2647. In assessing these influence districts' comparative weight, it is important to consider "the likelihood that candidates elected without decisive minority support would be willing to take the minority's interests into account." *Thornburg,* 478 U.S., at 100, 106 S.Ct. 2752 (O'CONNOR, J., concurring in judgment). Various studies suggest that the most effective way to maximize minority voting strength may be to create more influence or coalitional districts. Section 5 allows States to risk having fewer minority representatives in order to achieve greater overall representation of a minority group by increasing the number of representatives sympathetic to the interests of minority voters. See, *e.g., id.,* at 87–89, 99, 106 S.Ct. 2752. Another method of assessing the group's opportunity to participate in the political process is to examine the comparative position of black representatives' legislative leadership, influence, and power. See *Johnson, supra,* at 1020, 114 S.Ct. 2647. Maintaining or increasing legislative positions of power for minority voters' representatives of choice, while not dispositive by itself, can show the lack of retrogressive effect. And it is also significant, though not dispositive, whether the representatives elected from the very districts created and protected by the Voting Rights Act support the new plan. Pp. 2511–2514.

****2503** (c) The District Court failed to consider all the relevant factors. First, although acknowledging the importance of assessing the statewide plan as a whole, the court focused too narrowly on proposed Senate Districts 2, 12, and 26, without examining the increases in the black voting age population that occurred in many of the other districts. Second, the court did not consider any factor beyond black voters' comparative ability to elect a candidate of their choice. It improperly rejected other evidence that the legislators representing the benchmark majority-minority districts support the plan; that the plan maintains those representatives' legislative influence; and that Georgia affirmatively decided that the best way to maximize black voting strength was to adopt a plan that "unpacked" the high concentration of minority voters in the majority-minority districts. In the face of Georgia's evidence of nonretrogression, the United States' only evidence was that it would be more difficult for minority voters to elect their candidate of choice in Districts 2, 12, and 26. Given the evidence submitted in this case, Georgia likely met its burden of showing nonretrogression. Section 5 gives States the flexibility to implement the type of plan that Georgia has submitted for preclearance—a plan that increases the number of districts with a majority-black voting age population, even if it means that minority voters in some of those districts will face a somewhat reduced opportunity to elect a candidate of their choice. Cf. *Thornburg, supra,* at 89, 106 S.Ct. 2752 (O'CONNOR, J., concurring in judgment). While courts and the ***465** Justice Department should be vigilant in ensuring that States neither reduce minority voters' effective exercise of the electoral franchise nor discriminate against them, the Voting Rights Act, as properly interpreted, should encourage the transition to a society where race no longer matters. Pp. 2514–2517.

(d) The District Court is in a better position to reweigh all the facts in the record in the first instance in light of this Court's explication of retrogression. P. 2517.

195 F.Supp.2d 25, vacated and remanded.

O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and SCALIA, KENNEDY, and THOMAS, JJ., joined. KENNEDY, J., *post,* p. 2517, and THOMAS, J., *post,* p. 2517, filed concurring opinions. SOUTER, J., filed a dissenting opinion, in which STEVENS, GINSBURG, and BREYER, JJ., joined, *post,* p. 2518.

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Opinion

Justice O'CONNOR delivered the opinion of the Court.

In this case, we decide whether Georgia's State Senate redistricting plan should have been precleared under § 5 of the Voting Rights Act of 1965, 79 Stat. 439, as renumbered and amended, 42 U.S.C. § 1973c. Section 5 requires that before a covered jurisdiction's new voting "standard, practice, ***466** or procedure" goes into effect, it must be precleared by either the Attorney General of the United States or a federal court to ensure that the change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. § 1973c. Whether a voting procedure change should be precleared depends on whether the change "would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer v. United States,* 425 U.S. 130, 141, 96 S.Ct. 1357, 47 L.Ed.2d 629 (1976). We therefore must decide whether Georgia's State Senate redistricting plan is retrogressive as compared to its previous, benchmark districting plan.

I

A

Over the past decade, the propriety of Georgia's state and congressional districts has been the subject of repeated litigation. In 1991, the Georgia General Assembly began the process of redistricting after the 1990 census. Because Georgia is a covered jurisdiction under § 5 of the Voting Rights Act, see *Miller v. Johnson,* 515 U.S. 900, 905, 115 S.Ct. 2475, 132 L.Ed.2d 762 (1995), Georgia submitted its revised State Senate plan to the United States Department of Justice for preclearance. The plan as enacted into law increased the number of majority-minority districts from the previous Senate plan. The Department of Justice nevertheless refused preclearance because of Georgia's failure to maximize the number of majority-minority districts. See *Johnson v. Miller,* 929 F.Supp. 1529, 1537, and n. 23 (S.D.Ga.1996). After Georgia made changes to the Senate plan in an attempt to satisfy the United States' objections, the State again submitted it to the Department of Justice for preclearance. Again, the Department of Justice refused preclearance because the plan did not contain a sufficient number of majority-minority districts. See *id.,* at 1537, 1539. Finally, the United States precleared ***467** Georgia's third redistricting plan, approving it in the spring of 1992. See *id.,* at 1537.

Georgia's 1992 Senate plan was not challenged in court. See *id.,* at 1533–1534. Its congressional districting plan, however, was challenged as unconstitutional under the Equal Protection Clause of the Fourteenth Amendment. See *Shaw v. Reno,* 509 U.S. 630, 113 S.Ct. 2816, 125 L.Ed.2d 511 (1993). In 1995, we held in *Miller v. Johnson* that Georgia's congressional districting plan was unconstitutional because it engaged in "the very racial stereotyping the Fourteenth Amendment forbids" by making race the "predominant, overriding factor explaining" Georgia's congressional districting decisions. 515 U.S., at 928, 920, 115 S.Ct. 2475. And even though it was "safe to say that the congressional plan enacted in the end was required in order to obtain preclearance," this justification did not permit Georgia to engage in racial gerrymandering. See *id.,* at 921, 115 S.Ct. 2475. Georgia's State Senate districts served as "building blocks" to create the congressional districting plan found unconstitutional in *Miller v. Johnson. Johnson v. Miller,* 929 F.Supp., at 1533, n. 8 (internal quotation marks omitted); see also *id.,* at 1536.

Georgia recognized that after *Miller v. Johnson,* its legislative districts were unconstitutional under the Equal Protection Clause. See 929 F.Supp., at 1533, 1540. Accordingly, Georgia attempted to cure the perceived constitutional problems with ****2505** the 1992 State Senate districting plan by passing another plan in 1995. The Department of Justice refused to preclear the 1995 plan, maintaining that it retrogressed from the 1992 plan and that *Miller v. Johnson* concerned only Georgia's congressional districts, not Georgia's State Senate districts. See 929 F.Supp., at 1540–1541.

Private litigants subsequently brought an action challenging the constitutionality of the 1995 Senate plan. See *id.,* at 1533. The three-judge panel of the District Court reviewing the 1995 Senate plan found that "[i]t is clear that a black maximization policy had become an integral part of the section ***468** 5 preclearance process ... when the Georgia redistricting plans were under review. The net effect of the DOJ's preclearance objection [s] ... was to require the State

of Georgia to increase the number of majority black districts in its redistricting plans, which were already ameliorative plans, beyond any reasonable concept of non-retrogression." *Id.,* at 1539–1540. The court noted that in *Miller v. Johnson,* we specifically disapproved of the Department of Justice's policy that the maximization of black districts was a part of the § 5 retrogression analysis. See 929 F.Supp., at 1539. Indeed, in *Miller,* we found that the Department of Justice's objections to Georgia's redistricting plans were "driven by its policy of maximizing majority-black districts." 515 U.S., at 924, 115 S.Ct. 2475. And "[i]n utilizing § 5 to require States to create majority-minority districts wherever possible, the Department of Justice expanded its authority under the statute beyond what Congress intended and we have upheld." *Id.,* at 925, 115 S.Ct. 2475.

The District Court stated that the maximization of majority-minority districts in Georgia "artificially push[ed] the percentage of black voters within some majority black districts as high as possible." 929 F.Supp., at 1536. The plan that eventually received the Department of Justice's preclearance in 1992 "represented the General Assembly's surrender to the black maximization policy of the DOJ." *Id.,* at 1540. The court then found that the 1995 plan was an unconstitutional racial gerrymander. See *id.,* at 1543.

Under court direction, Georgia and the Department of Justice reached a mediated agreement on the constitutionality of the 1995 Senate plan. Georgia passed a new plan in 1997, and the Department of Justice quickly precleared it. The redrawn map resembled to a large degree the 1992 plan that eventually received preclearance from the Department of Justice, with some changes to accommodate the decision of this Court in *Miller v. Johnson,* and of the District Court in *Johnson v. Miller.*

***469** All parties here concede that the 1997 plan is the benchmark plan for this litigation because it was in effect at the time of the 2001 redistricting effort. The 1997 plan drew 56 districts, 11 of them with a total black population of over 50%, and 10 of them with a black voting age population of over 50%. See Record, Doc. No. 148, Pl. Exh. 1C (hereinafter Pl. Exh.). The 2000 census revealed that these numbers had increased so that 13 districts had a black population of at least 50%, with the black voting age population exceeding 50% in 12 of those districts. See 195 F.Supp.2d 25, 39 (D.D.C.2002).

After the 2000 census, the Georgia General Assembly began the process of redistricting the Senate once again. No party contests that a substantial majority of black voters in Georgia vote Democratic, or that all elected black representatives in the General Assembly are Democrats. The goal of the Democratic leadership—black and white—was to maintain the number of majority-minority districts and also increase the number of Democratic Senate seats. See *id.,* at 41–42. For example, the Director of Georgia's Legislative Redistricting Office, Linda Meggers, testified that the Senate Black Caucus " 'wanted to maintain' " the existing majority-minority ****2506** districts and at the same time " 'not waste' " votes. *Id.,* at 41.

The Vice Chairman of the Senate Reapportionment Committee, Senator Robert Brown, also testified about the goals of the redistricting effort. Senator Brown, who is black, chaired the subcommittee that developed the Senate plan at issue here. See *id.,* at 42. Senator Brown believed when he designed the Senate plan that as the black voting age population in a district increased beyond what was necessary, it would "pus[h] the whole thing more towards [the] Republican[s]." Pl. Exh. 20, at 24. And "correspondingly," Senator Brown stated, "the more you diminish the power of African–Americans overall." *Ibid.* Senator Charles Walker was the majority leader of the Senate. Senator Walker ***470** testified that it was important to attempt to maintain a Democratic majority in the Senate because "we [African–Americans] have a better chance to participate in the political process under the Democratic majority than we would have under a Republican majority." Pl. Exh. 24, at 19. At least 7 of the 11 black members of the Senate could chair committees. See 195 F.Supp.2d, at 41.

The plan as designed by Senator Brown's committee kept true to the dual goals of maintaining at least as many majority-minority districts while also attempting to increase Democratic strength in the Senate. Part of the Democrats' strategy was not only to maintain the number of majority-minority districts, but to increase the number of so-called "influence" districts, where black voters would be able to exert a significant—if not decisive—force in the election process. As the majority leader testified, "in the past, you know, what we would end up doing was packing. You put all blacks in one district and all whites in one district, so what you end up with is [a] black Democratic district and [a] white Republican district. That's not a good strategy. That does not bring the people together, it divides the population. But if you put people together on voting precincts it brings people together." Pl. Exh. 24, at 19.

The plan as designed by the Senate "unpacked" the most heavily concentrated majority-minority districts in the benchmark plan, and created a number of new influence districts. The new plan drew 13 districts with a majority-black voting age population, 13 additional districts with a black voting age population of between 30% and 50%, and 4 other districts with a black voting age population of between 25% and 30%. See Pl. Exh. 2C. According to the 2000 census, as compared to the benchmark plan, the new plan reduced by five the number of districts with a black voting age population in excess of 60%. Compare Pl. Exh. 1D with Pl. Exh. 2C. Yet it increased the number of majority-black voting age population districts by one, and it increased the number ***471** of districts with a black voting age population of between 25% and 50% by four. As compared to the benchmark plan enacted in 1997, the difference is even larger. Under the old census figures, Georgia had 10 Senate districts with a majority-black voting age population, and 8 Senate districts with a black voting age population of between 30% and 50%. See Pl. Exh. 1C. The new plan thus increased the number of districts with a majority black voting age population by three, and increased the number of districts with a black voting age population of between 30% and 50% by another five. Compare Pl. Exh. 1C with Pl. Exh. 2C.

The Senate adopted its new districting plan on August 10, 2001, by a vote of 29 to 26. Ten of the eleven black Senators voted for the plan. 195 F.Supp.2d, at 55. The Georgia House of Representatives passed the Senate plan by a vote of 101 to 71. Thirty-three of the thirty-four black Representatives voted for the plan. *Ibid.* No Republican in either the House or the Senate voted for the plan, making the votes of the black legislators necessary for passage. See *id.*, at 41. The Governor ****2507** signed the Senate plan into law on August 24, 2001, and Georgia subsequently sought to obtain preclearance.

B

Pursuant to § 5 of the Voting Rights Act, a covered jurisdiction like Georgia has the option of either seeking administrative preclearance through the Attorney General of the United States or seeking judicial preclearance by instituting an action in the United States District Court for the District of Columbia for a declaratory judgment that the voting change comports with § 5. 42 U.S.C. § 1973c; *Georgia v. United States,* 411 U.S. 526, 93 S.Ct. 1702, 36 L.Ed.2d 472 (1973). Georgia chose the latter method, filing suit seeking a declaratory judgment that the State Senate plan does not violate § 5.

Georgia, which bears the burden of proof in this action, see *Pleasant Grove v. United States,* 479 U.S. 462, 107 S.Ct. 794, 93 L.Ed.2d 866 (1987), attempted to prove that its Senate plan was not retrogressive ***472** either in intent or in effect. It submitted detailed evidence documenting in each district the total population, the total black population, the black voting age population, the percentage of black registered voters, and the overall percentage of Democratic votes (*i.e.,* the overall likelihood that voters in a particular district will vote Democratic), among other things. See 195 F.Supp.2d, at 36; see also Pl. Exhs. 2C, 2D. The State also submitted evidence about how each of these statistics compared to the benchmark districts. See 195 F.Supp.2d, at 36; see also Pl. Exhs. 1C, 1D, 1E (revised).

Georgia also submitted testimony from numerous people who had participated in enacting the Senate plan into law, and from United States Congressman John Lewis, who represents the Atlanta area. These witnesses testified that the new Senate plan was designed to increase black voting strength throughout the State as well as to help ensure a continued Democratic majority in the Senate. The State also submitted expert testimony that African–American and non-African-American voters have equal chances of electing their preferred candidate when the black voting age population of a district is at 44.3%. Finally, in response to objections raised by the United States, Georgia submitted more detailed statistical evidence with respect to three proposed Senate districts that the United States found objectionable—Districts 2, 12, and 26—and two districts that the intervenors challenged—Districts 15 and 22.

The United States, through the Attorney General, argued in District Court that Georgia's 2001 Senate redistricting plan should not be precleared. It argued that the plan's changes to the boundaries of Districts 2, 12, and 26 unlawfully reduced the ability of black voters to elect candidates of their choice. See Brief for Federal Appellees 8; 195 F.Supp.2d, at 72. The United States noted that in District 2, the black voting age population dropped from 60.58% to 50.31%; in District 12, the black voting age population dropped from 55.43% to 50.66%; and in District 26, the black ***473** voting age population dropped from 62.45% to 50.80%.[1] Moreover, in all ****2508** three of these districts, the percentage of black registered voters dropped to just under 50%. The United States also submitted expert evidence that voting is racially polarized in Senate Districts 2, 12, and 26. See *id.,* at 69–71. The United States acknowledged that some limited

percentage of whites would vote for a black candidate, but maintained that the percentage was not sufficient for black voters to elect their candidate of choice. See *id.,* at 70–71. The United States also offered testimony from various witnesses, including lay witnesses living in the three districts, who asserted that the new contours of Districts 2, 12, and 26 would reduce the opportunity for blacks to elect a candidate of their choice in those districts; Senator Regina Thomas of District 2, the only black Senator who voted against the plan; Senator Eric Johnson, the Republican leader of the Senate; and some black legislators who voted ***474** for the plan but questioned how the plan would affect black voters. See Vols. 25–27 Record, Doc. No. 177, United States Exhs. 707–736 (Depositions). As the District Court stated, "the United States' evidence was extremely limited in scope—focusing only on three contested districts in the State Senate plan. That evidence was not designed to permit the court to assess the overall impact of [the Senate plan]." 195 F.Supp.2d, at 37.

Pursuant to Federal Rule of Civil Procedure 24, the District Court also permitted four African–American citizens of Georgia to intervene. The intervenors identified two other districts—Districts 15 and 22—where they alleged retrogression had occurred. The intervenors "present[ed] little evidence other than proposed alternative plans and an expert report critiquing the State's expert report." 195 F.Supp.2d, at 37.

A three-judge panel of the District Court held that Georgia's State Senate apportionment violated § 5, and was therefore not entitled to preclearance. See *id.,* at 97. Judge Sullivan, joined by Judge Edwards, concluded that Georgia had "not demonstrated by a preponderance of the evidence that the State Senate redistricting plan would not have a retrogressive effect on African American voters" effective exercise of the electoral franchise. *Ibid.* The court found that Senate Districts 2, 12, and 26 were retrogressive because in each district, a lesser opportunity existed for the black candidate of choice to win election under the new plan than under the benchmark plan. See *id.,* at 93–94. The court found that the reductions in black voting age population in Districts 2, 12, and 26 would "diminish African American voting strength in these districts," and that Georgia had "failed to present any ... evidence" that the retrogression in those districts "will be offset by gains in other districts." *Id.,* at 88.

***475** Judge Edwards, joined by Judge Sullivan, concurred. Judge Edwards emphasized that §§ 5 and 2 are "procedurally and substantively distinct provisions." *Id.,* at 97. He therefore rejected Georgia's argument that a plan preserving an equal opportunity for minorities to elect candidates of their choice satisfies § 5. Judge Edwards also rejected the testimony of the black Georgia politicians who supported the Senate plan. In his view, the testimony did not address whether racial polarization was occurring in Senate Districts 2, 12, and 26. See *id.,* at 101–102.

Judge Oberdorfer dissented. He would have given "greater credence to the political expertise and motivation of Georgia's African–American political leaders and ****2509** reasonable inferences drawn from their testimony and the voting data and statistics." *Id.,* at 102. He noted that this Court has not answered "whether a redistricting plan that preserves or increases the number of districts statewide in which minorities have a fair or reasonable opportunity to elect candidates of choice is entitled to preclearance, or whether every district must remain at or improve on the benchmark probability of victory, even if doing so maintains a minority super-majority far in excess of the level needed for effective exercise of [the] electoral franchise." *Id.,* at 117.

After the District Court refused to preclear the plan, Georgia enacted another plan, largely similar to the one at issue here, except that it added black voters to Districts 2, 12, and 26. The District Court precleared this plan. See 204 F.Supp.2d 4 (D.D.C.2002). No party has contested the propriety of the District Court's preclearance of the Senate plan as amended. Georgia asserts that it will use the plan as originally enacted if it receives preclearance.

We noted probable jurisdiction to consider whether the District Court should have precleared the plan as originally enacted by Georgia in 2001, 537 U.S. 1151, 123 S.Ct. 964, 154 L.Ed.2d 861 (2003), and now vacate the judgment below.

***476** II

Before addressing the merits of Georgia's preclearance claim, we address the State's argument that the District Court was incorrect in allowing the private litigants to intervene in this lawsuit. Georgia maintains that private parties should not be allowed to intervene in § 5 actions because States should not be subjected to the political stratagems of intervenors. While the United States disagrees with Georgia on the propriety of intervention here, the United States argues that this question is moot because the participation of the intervenors did

not affect the District Court's ruling on the merits and the intervenors did not appeal the court's ruling.

We do not think Georgia's argument is moot. The intervenors did not have to appeal because they were prevailing parties below. Moreover, the District Court addressed the evidence that the intervenors submitted, which is now in front of this Court. The issue whether intervenors are proper parties still has relevance in this Court because they argue here that the District Court correctly found that the Senate plan was retrogressive.

The District Court properly found that Federal Rule of Civil Procedure 24 governs intervention in this case. Section 5 permits a State to bring "an action in the United States District Court for the District of Columbia for a declaratory judgment." 42 U.S.C. § 1973c. Section 5 does not limit in any way the application of the Federal Rules of Civil Procedure to this type of lawsuit, and the statute by its terms does not bar private parties from intervening. In *NAACP v. New York,* 413 U.S. 345, 365, 93 S.Ct. 2591, 37 L.Ed.2d 648 (1973), we held that in an action under § 5, "[i]ntervention in a federal court suit is governed by Fed. Rule Civ. Proc. 24."

To support its argument, Georgia relies on *Morris v. Gressette,* 432 U.S. 491, 97 S.Ct. 2411, 53 L.Ed.2d 506 (1977). In *Morris,* we held that in an *administrative* preclearance action, the decision to object belongs only to the Attorney General and is not judicially ***477** reviewable. See *id.,* at 504–505, 97 S.Ct. 2411. But *Morris* concerned the administrative preclearance process, not the judicial preclearance process. *Morris* itself recognized the difference between administrative preclearance and judicial preclearance. See *id.,* at 503–507, 97 S.Ct. 2411.

Here, the District Court granted the motion to intervene because it found that the intervenors' "analysis of the ... Senate redistricting pla[n] identifies interests that are not adequately represented ****2510** by the existing parties." App. to Juris. Statement 218a. Private parties may intervene in § 5 actions assuming they meet the requirements of Rule 24, and the District Court did not abuse its discretion in granting the motion to intervene in this case. See *NAACP v. New York, supra,* at 367, 93 S.Ct. 2591.

III

A

Section 5 of the Voting Rights Act "has a limited substantive goal: " 'to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.' " *Miller,* 515 U.S., at 926, 115 S.Ct. 2475 (quoting *Beer v. United States,* 425 U.S., [at 141, 96 S.Ct. 1357])." *Bush v. Vera,* 517 U.S. 952, 982–983, 116 S.Ct. 1941, 135 L.Ed.2d 248 (1996). Thus, a plan that merely preserves "current minority voting strength" is entitled to § 5 preclearance. *City of Lockhart v. United States,* 460 U.S. 125, 134, n. 10, 103 S.Ct. 998, 74 L.Ed.2d 863 (1983); *Bush v. Vera, supra,* at 983, 116 S.Ct. 1941. Indeed, a voting change with a discriminatory but nonretrogressive purpose or effect does not violate § 5. See *Reno v. Bossier Parish School Bd.,* 528 U.S. 320, 341, 120 S.Ct. 866, 145 L.Ed.2d 845 (2000). And "*no matter how unconstitutional it may be,*" a plan that is not retrogressive should be precleared under § 5. *Id.,* at 336, 120 S.Ct. 866. "[P]reclearance under § 5 affirms nothing but the absence of backsliding." *Id.,* at 335, 120 S.Ct. 866.

Georgia argues that a plan should be precleared under § 5 if the plan would satisfy § 2 of the Voting Rights Act of 1965, ***478** 42 U.S.C. § 1973. We have, however, "consistently understood" § 2 to "combat different evils and, accordingly, to impose very different duties upon the States." *Reno v. Bossier Parish School Bd.,* 520 U.S. 471, 477, 117 S.Ct. 1491, 137 L.Ed.2d 730 (1997) *(Bossier Parish I).* For example, while § 5 is limited to particular covered jurisdictions, § 2 applies to all States. And the § 2 inquiry differs in significant respects from a § 5 inquiry. In contrast to § 5's retrogression standard, the "essence" of a § 2 vote dilution claim is that "a certain electoral law, practice, or structure ... cause[s] an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives." *Thornburg v. Gingles,* 478 U.S. 30, 47, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986); see also *id.,* at 48–50, 106 S.Ct. 2752 (enunciating a three-part test to establish vote dilution); *id.,* at 85–100, 106 S.Ct. 2752 (O'CONNOR, J., concurring in judgment); 42 U.S.C. § 1973(b). Unlike an inquiry under § 2, a retrogression inquiry under § 5, "by definition, requires a comparison of a jurisdiction's new voting plan with its existing plan." *Bossier Parish I, supra,* at 478, 117 S.Ct. 1491. While some parts of the § 2 analysis may overlap with the § 5 inquiry, the two sections "differ in structure, purpose, and application." *Holder v. Hall,* 512 U.S. 874, 883, 114 S.Ct. 2581, 129 L.Ed.2d 687 (1994) (plurality opinion).

In *Bossier Parish I,* we specifically held that a violation of § 2 is not an independent reason to deny preclearance under § 5. See 520 U.S., at 477, 117 S.Ct. 1491. The reason for this holding was straightforward: "[R]ecognizing § 2 violations as a basis for denying § 5 preclearance would inevitably make compliance with § 5 contingent upon compliance with § 2. Doing so would, for all intents and purposes, replace the standards for § 5 with those for § 2." *Ibid.*

Georgia here makes the flip side of the argument that failed in *Bossier Parish I*—compliance with § 2 suffices for preclearance under § 5. Yet the argument fails here for the same reasons the argument failed in *Bossier Parish I.* We refuse to equate a § 2 vote dilution inquiry with the § 5 retrogression standard. Georgia's argument, like the argument ***479** in *Bossier Parish I,* would "shift the focus of § 5 ****2511** from nonretrogression to vote dilution, and [would] change the § 5 benchmark from a jurisdiction's existing plan to a hypothetical, undiluted plan." *Id.,* at 480, 117 S.Ct. 1491. Instead of showing that the Senate plan is nondilutive under § 2, Georgia must prove that its plan is nonretrogressive under § 5.

B

Georgia argues that even if compliance with § 2 does not automatically result in preclearance under § 5, its State Senate plan should be precleared because it does not lead to "a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer v. United States, supra,* at 141, 96 S.Ct. 1357. See, *e.g.,* Brief for Appellant 32, 36.

While we have never determined the meaning of "effective exercise of the electoral franchise," this case requires us to do so in some detail. First, the United States and the District Court correctly acknowledge that in examining whether the new plan is retrogressive, the inquiry must encompass the entire statewide plan as a whole. See 195 F.Supp.2d, at 73; Tr. of Oral Arg. 28–29. Thus, while the diminution of a minority group's effective exercise of the electoral franchise in one or two districts may be sufficient to show a violation of § 5, it is only sufficient if the covered jurisdiction cannot show that the gains in the plan as a whole offset the loss in a particular district.

Second, any assessment of the retrogression of a minority group's effective exercise of the electoral franchise depends on an examination of all the relevant circumstances, such as the ability of minority voters to elect their candidate of choice, the extent of the minority group's opportunity to participate in the political process, and the feasibility of creating a nonretrogressive plan. See, *e.g., Johnson v. De Grandy,* 512 U.S. 997, 1011–1012, 1020–1021, 114 S.Ct. 2647, 129 L.Ed.2d 775 (1994); *Richmond v. United States,* 422 U.S. 358, 371–372, 95 S.Ct. 2296, 45 L.Ed.2d 245 (1975); *Thornburg* ***480** *v. Gingles, supra,* at 97–100, 106 S.Ct. 2752 (O'CONNOR, J., concurring in judgment). "No single statistic provides courts with a shortcut to determine whether" a voting change retrogresses from the benchmark. *Johnson v. De Grandy, supra,* at 1020–1021, 114 S.Ct. 2647.

In assessing the totality of the circumstances, a court should not focus solely on the comparative ability of a minority group to elect a candidate of its choice. While this factor is an important one in the § 5 retrogression inquiry, it cannot be dispositive or exclusive. The standard in § 5 is simple—whether the new plan "would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer v. United States,* 425 U.S., at 141, 96 S.Ct. 1357.

The ability of minority voters to elect a candidate of their choice is important but often complex in practice to determine. In order to maximize the electoral success of a minority group, a State may choose to create a certain number of "safe" districts, in which it is highly likely that minority voters will be able to elect the candidate of their choice. See *Thornburg v. Gingles,* 478 U.S., at 48–49, 106 S.Ct. 2752; *id.,* at 87–89, 106 S.Ct. 2752 (O'CONNOR, J., concurring in judgment). Alternatively, a State may choose to create a greater number of districts in which it is likely—although perhaps not quite as likely as under the benchmark plan—that minority voters will be able to elect candidates of their choice. See *id.,* at 88–89, 106 S.Ct. 2752 (O'CONNOR, J., concurring in judgment); cf. Pildes, Is Voting–Rights Law Now at War With Itself? Social Science and Voting Rights in the 2000s, 80 N.C.L.Rev. 1517 (2002).

Section 5 does not dictate that a State must pick one of these methods of redistricting over another. Either option "will ****2512** present the minority group with its own array of electoral risks and benefits," and presents "hard choices about what would truly 'maximize' minority electoral success." *Thornburg v. Gingles, supra,* at 89, 106 S.Ct. 2752

(O'CONNOR, J., concurring in judgment). On one hand, a smaller number of safe ***481** majority-minority districts may virtually guarantee the election of a minority group's preferred candidate in those districts. Yet even if this concentration of minority voters in a few districts does not constitute the unlawful packing of minority voters, see *Voinovich v. Quilter,* 507 U.S. 146, 153–154, 113 S.Ct. 1149, 122 L.Ed.2d 500 (1993), such a plan risks isolating minority voters from the rest of the State, and risks narrowing political influence to only a fraction of political districts. Cf. *Shaw v. Reno,* 509 U.S., at 648–650, 113 S.Ct. 2816. And while such districts may result in more "descriptive representation" because the representatives of choice are more likely to mirror the race of the majority of voters in that district, the representation may be limited to fewer areas. See H. Pitkin, The Concept of Representation 60–91 (1967).

On the other hand, spreading out minority voters over a greater number of districts creates more districts in which minority voters may have the opportunity to elect a candidate of their choice. Such a strategy has the potential to increase "substantive representation" in more districts, by creating coalitions of voters who together will help to achieve the electoral aspirations of the minority group. See *id.,* at 114. It also, however, creates the risk that the minority group's preferred candidate may lose. Yet as we stated in *Johnson v. De Grandy, supra,* at 1020, 114 S.Ct. 2647:

> "[T]here are communities in which minority citizens are able to form coalitions with voters from other racial and ethnic groups, having no need to be a majority within a single district in order to elect candidates of their choice. Those candidates may not represent perfection to every minority voter, but minority voters are not immune from the obligation to pull, haul, and trade to find common political ground, the virtue of which is not to be slighted in applying a statute meant to hasten the waning of racism in American politics."

***482** Section 5 gives States the flexibility to choose one theory of effective representation over the other.

In addition to the comparative ability of a minority group to elect a candidate of its choice, the other highly relevant factor in a retrogression inquiry is the extent to which a new plan changes the minority group's opportunity to participate in the political process. " '[T]he power to influence the political process is not limited to winning elections.' " *Thornburg v. Gingles, supra,* at 99, 106 S.Ct. 2752 (O'CONNOR, J., concurring in judgment) (quoting *Davis v. Bandemer,* 478 U.S. 109, 132, 106 S.Ct. 2797, 92 L.Ed.2d 85 (1986)); see also *White v. Regester,* 412 U.S. 755, 766–767, 93 S.Ct. 2332, 37 L.Ed.2d 314 (1973); *Whitcomb v. Chavis,* 403 U.S. 124, 149–160, 91 S.Ct. 1858, 29 L.Ed.2d 363 (1971); *Johnson v. De Grandy, supra,* at 1011–1012, 114 S.Ct. 2647.

Thus, a court must examine whether a new plan adds or subtracts "influence districts"—where minority voters may not be able to elect a candidate of choice but can play a substantial, if not decisive, role in the electoral process. Cf. *Shaw v. Hunt,* 517 U.S. 899, 947, n. 21, 116 S.Ct. 1894, 135 L.Ed.2d 207 (1996) (STEVENS, J., dissenting); *Hays v. Louisiana,* 936 F.Supp. 360, 364, n. 17 (W.D.La.1996); *Johnson v. De Grandy,* 512 U.S., at 1011–1012, 114 S.Ct. 2647; *Thornburg v. Gingles,* 478 U.S., at 98–100, 106 S.Ct. 2752 (O'CONNOR, J., concurring in judgment). In assessing the comparative weight of these influence districts, it is important to consider "the likelihood that candidates elected without decisive minority support would be willing to take the minority's interests into account." *Id.,* at 100, 106 S.Ct. 2752 (O'CONNOR, J., concurring in judgment). ****2513** In fact, various studies have suggested that the most effective way to maximize minority voting strength may be to create more influence or coalitional districts. See, *e.g.,* Lublin, Racial Redistricting and African–American Representation: A Critique of "Do Majority–Minority Districts Maximize Substantive Black Representation in Congress?" 93 Am. Pol. Sci. Rev. 183, 185 (1999) (noting that racial redistricting in the early 1990's, which created more majority-minority districts, made Congress "less likely to adopt initiatives supported by blacks"); Cameron, Epstein, & ***483** O'Halloran, Do Majority–Minority Districts Maximize Substantive Black Representation in Congress? 90 Am. Pol. Sci. Rev. 794, 808 (1996) (concluding that the "[d]istricting schemes that maximize the number of minority representatives do not necessarily maximize substantive minority representation"); C. Swain, Black Faces, Black Interests 193–234 (1995); Pildes, 80 N.C.L.Rev., at 1517; Grofman, Handley, & Lublin, Drawing Effective Minority Districts: A Conceptual Framework and Some Empirical Evidence, 79 N.C.L.Rev. 1383(2001).

Section 5 leaves room for States to use these types of influence and coalitional districts. Indeed, the State's choice ultimately may rest on a political choice of whether substantive or descriptive representation is preferable. See Pitkin, *supra,* at 142; Swain, *supra,* at 5. The State may choose, consistent with § 5, that it is better to risk having fewer minority representatives in order to achieve greater

overall representation of a minority group by increasing the number of representatives sympathetic to the interests of minority voters. See *Thornburg v. Gingles, supra,* at 87–89, 99, 106 S.Ct. 2752 (O'CONNOR, J., concurring in judgment); cf. *Johnson v. De Grandy,* 512 U.S., at 1020, 114 S.Ct. 2647.

In addition to influence districts, one other method of assessing the minority group's opportunity to participate in the political process is to examine the comparative position of legislative leadership, influence, and power for representatives of the benchmark majority-minority districts. A legislator, no less than a voter, is "not immune from the obligation to pull, haul, and trade to find common political ground." *Ibid.* Indeed, in a representative democracy, the very purpose of voting is to delegate to chosen representatives the power to make and pass laws. The ability to exert more control over that process is at the core of exercising political power. A lawmaker with more legislative influence has more potential to set the agenda, to participate in closed-door meetings, to negotiate from a stronger position, and to ***484** shake hands on a deal. Maintaining or increasing legislative positions of power for minority voters' representatives of choice, while not dispositive by itself, can show the lack of retrogressive effect under § 5.

And it is also significant, though not dispositive, whether the representatives elected from the very districts created and protected by the Voting Rights Act support the new districting plan. The District Court held that the support of legislators from benchmark majority-minority districts may show retrogressive purpose, but it is not relevant in assessing retrogressive effect. See 195 F.Supp.2d, at 89; see also *post,* at 2523–2524 (SOUTER, J., dissenting). But we think this evidence is also relevant for retrogressive effect. As the dissent recognizes, the retrogression inquiry asks how "voters will probably act in the circumstances in which they live." *Post,* at 2526. The representatives of districts created to ensure continued minority participation in the political process have some knowledge about how "voters will probably act" and whether the proposed change will decrease minority voters' effective exercise of the electoral franchise.

The dissent maintains that standards for determining nonretrogression under § 5 that we announce today create a situation where "[i]t is very hard to see anything left of" § 5. *Post,* at 2519. But the dissent ignores that the ability of a minority ****2514** group to elect a candidate of choice remains an integral feature in any § 5 analysis. Cf. *Thornburg v. Gingles, supra,* at 98, 106 S.Ct. 2752 (O'CONNOR, J., concurring in judgment). And the dissent agrees that the addition or subtraction of coalitional districts is relevant to the § 5 inquiry. See *post,* at 2518, 2524. Yet assessing whether a plan with coalitional districts is retrogressive is just as fact-intensive as whether a plan with both influence and coalitional districts is retrogressive. As Justice SOUTER recognized for the Court in the § 2 context, a court or the Department of Justice should assess the totality of circumstances in determining retrogression under § 5. See ***485** *Johnson v. De Grandy, supra,* at 1020–1021, 114 S.Ct. 2647. And it is of course true that evidence of racial polarization is one of many factors relevant in assessing whether a minority group is able to elect a candidate of choice or to exert a significant influence in a particular district. See *Thornburg v. Gingles,* 478 U.S., at 37, 106 S.Ct. 2752; *id.,* at 100–104, 106 S.Ct. 2752 (O'CONNOR, J., concurring in judgment); see also *White v. Regester,* 412 U.S. 755, 93 S.Ct. 2332 (1973); *Zimmer v. McKeithen,* 485 F.2d 1297 (C.A.5 1973) (en banc).

The dissent nevertheless asserts that it "cannot be right" that the § 5 inquiry goes beyond assessing whether a minority group can elect a candidate of its choice. *Post,* at 2519. But except for the general statement of retrogression in *Beer,* the dissent cites no law to support its contention that retrogression should focus solely on the ability of a minority group to elect a candidate of choice. As Justice SOUTER himself, writing for the Court in *Johnson v. De Grandy, supra,* at 1011–1012, 114 S.Ct. 2647, has recognized, the "extent of the opportunities minority voters enjoy to participate in the political processes" is an important factor to consider in assessing a § 2 vote-dilution inquiry. See also *Thornburg v. Gingles, supra,* at 98–100, 106 S.Ct. 2752 (O'CONNOR, J., concurring in judgment). In determining how the new districting plan differs from the benchmark plan, the same standard should apply to § 5.

C

The District Court failed to consider all the relevant factors when it examined whether Georgia's Senate plan resulted in a retrogression of black voters' effective exercise of the electoral franchise. First, while the District Court acknowledged the importance of assessing the statewide plan as a whole, the court focused too narrowly on proposed Senate Districts 2, 12, and 26. It did not examine the increases in the black voting age population that occurred in many of the other districts. Second, the District Court did not

explore in any meaningful depth any other factor beyond the comparative ability of black voters in the majority-minority ***486** districts to elect a candidate of their choice. In doing so, it paid inadequate attention to the support of legislators representing the benchmark majority-minority districts and the maintenance of the legislative influence of those representatives.

The District Court correctly recognized that the increase in districts with a substantial minority of black voters is an important factor in the retrogression inquiry. See 195 F.Supp.2d, at 75–78. Nevertheless, it did not adequately apply this consideration to the facts of this case. The District Court ignored the evidence of numerous other districts showing an increase in black voting age population, as well as the other evidence that Georgia decided that a way to increase black voting strength was to adopt a plan that "unpacked" the high concentration of minority voters in the majority-minority districts. Its statement that Georgia did not "presen[t] evidence regarding potential gains in minority voting strength in Senate Districts other than Districts 2, 12 and 26" is therefore clearly erroneous. *Id.,* at 94. Like the dissent, we accept the District Court's findings that the reductions in ****2515** black voting age population in proposed Districts 2, 12, and 26 to just over 50% make it marginally less likely that minority voters can elect a candidate of their choice in those districts, although we note that Georgia introduced evidence showing that approximately one-third of white voters would support a black candidate in those districts, see *id.,* at 66, and that the United States' own expert admitted that the results of statewide elections in Georgia show that "there would be a 'very good chance' that ... African American candidates would win election in the reconstituted districts." *Id.,* at 71; see also *id.,* at 84–85. Nevertheless, regardless of any racially polarized voting or diminished opportunity for black voters to elect a candidate of their choice in proposed Districts 2, 12, and 26, the District Court's inquiry was too narrow.

***487** In the face of Georgia's evidence that the Senate plan as a whole is not retrogressive, the United States introduced nothing apart from the evidence that it would be more difficult for minority voters to elect their candidate of choice in Districts 2, 12, and 26. As the District Court stated, the United States did not introduce any evidence to rebut Georgia's evidence that the increase in black voting age population in the other districts offsets any decrease in black voting age population in the three contested districts: "[T]he United States' evidence was extremely limited in scope—focusing only on three contested districts in the State Senate plan." *Id.,* at 37. Indeed, the District Court noted that the United States' evidence "was not designed to permit the court to assess the overall impact" of the Senate plan. *Ibid.*

Given the evidence submitted in this case, we find that Georgia likely met its burden of showing nonretrogression. The increase in black voting age population in the other districts likely offsets any marginal decrease in the black voting age population in the three districts that the District Court found retrogressive. Using the overlay of the 2000 census numbers, Georgia's strategy of "unpacking" minority voters in some districts to create more influence and coalitional districts is apparent. Under the 2000 census numbers, the number of majority black voting age population districts in the new plan increases by one, the number of districts with a black voting age population of between 30% and 50% increases by two, and the number of districts with a black voting age population of between 25% and 30% increases by another 2. See Pl. Exhs. 1D, 2C; see also *supra,* at 2506–2507.

Using the census numbers in effect at the time the benchmark plan was enacted to assess the benchmark plan, the difference is even more striking. Under those figures, the new plan increases from 10 to 13 the number of districts with a majority-black voting age population and increases from 8 to 13 the number of districts with a black voting age population of between 30% and 50%. See Pl. Exhs. 1C, 2C. Thus, ***488** the new plan creates 8 new districts—out of 56—where black voters as a group can play a substantial or decisive role in the electoral process. Indeed, under the census figures in use at the time Georgia enacted its benchmark plan, the black voting age population in Districts 2, 12, and 26 does not decrease to the extent indicated by the District Court. District 2 drops from 59.27% black voting age population to 50.31%. District 26 drops from 53.45% black voting age population to 50.80%. And District 12 actually *increases,* from 46.50% black voting age population to 50.66%. See Pl. Exhs. 1C, 2C.[2] And regardless of any ****2516** potential retrogression in some districts, § 5 permits Georgia to offset the decline in those districts with an increase in the black voting age population in other districts. The testimony from those who designed the Senate plan confirms what the statistics suggest —that Georgia's goal was to "unpack" the minority voters from a few districts to increase blacks' effective exercise ***489** of the electoral franchise in more districts. See *supra,* at 2505–2507.

Other evidence supports the implausibility of finding retrogression here. An examination of black voters' opportunities to participate in the political process shows, if anything, an increase in the effective exercise of the electoral franchise. It certainly does not indicate retrogression. The 34 districts in the proposed plan with a black voting age population of above 20% consist almost entirely of districts that have an overall percentage of Democratic votes of above 50%. See Pl. Exh. 2D. The one exception is proposed District 4, with a black voting age population of 30.51% and an overall Democratic percentage of 48.86%. See *ibid.* These statistics make it more likely as a matter of fact that black voters will constitute an effective voting bloc, even if they cannot always elect the candidate of their choice. See *Thornburg v. Gingles,* 478 U.S., at 100, 106 S.Ct. 2752 (O'CONNOR, J., concurring in judgment). These statistics also buttress the testimony of the designers of the plan such as Senator Brown, who stated that the goal of the plan was to maintain or increase black voting strength and relatedly to increase the prospects of Democratic victory. See *supra,* at 2505–2506.

The testimony of Congressman John Lewis is not so easily dismissed. Congressman Lewis is not a member of the State Senate and thus has less at stake personally in the outcome of this litigation. Congressman Lewis testified that "giving real power to black voters comes from the kind of redistricting efforts the State of Georgia has made," and that the Senate plan "will give real meaning to voting for African Americans" because "you have a greater chance of putting in office people that are going to be responsive." Pl. Exh. 21, at 21–23. Section 5 gives States the flexibility to implement the type of plan that Georgia has submitted for preclearance—a plan that increases the number of districts with a majority-black voting age population, even if it means that in some of those districts, minority voters will face a ***490** somewhat reduced opportunity to elect a candidate of their choice. Cf. *Thornburg v. Gingles, supra,* at 89, 106 S.Ct. 2752 (O'CONNOR, J., concurring in judgment).

The dissent's analysis presumes that we are deciding that Georgia's Senate plan is not retrogressive. See *post,* at 2522–2526. To the contrary, we hold only that the District Court did not engage in the correct retrogression analysis because it focused too heavily on the ability of the minority group to elect a candidate of its choice in the majority-minority districts. While the District Court engaged in a thorough analysis of the issue, we must remand the case for the District Court to examine the facts using the standard that we announce today. We leave it for the ****2517** District Court to determine whether Georgia has indeed met its burden of proof. The dissent justifies its conclusion here on the ground that the District Court did not clearly err in its factual determination. But the dissent does not appear to dispute that if the District Court's legal standard was incorrect, the decision below should be vacated.

The purpose of the Voting Rights Act is to prevent discrimination in the exercise of the electoral franchise and to foster our transformation to a society that is no longer fixated on race. Cf. *Johnson v. De Grandy,* 512 U.S., at 1020, 114 S.Ct. 2647; *Shaw v. Reno,* 509 U.S., at 657, 113 S.Ct. 2816. As Congressman Lewis stated: "I think that's what the [civil rights] struggle was all about, to create what I like to call a truly interracial democracy in the South. In the movement, we would call it creating the beloved community, an all-inclusive community, where we would be able to forget about race and color and see people as people, as human beings, just as citizens." Pl. Exh. 21, at 14. While courts and the Department of Justice should be vigilant in ensuring that States neither reduce the effective exercise of the electoral franchise nor discriminate against minority voters, the Voting Rights Act, as properly interpreted, should encourage the transition to a society where race no longer matters: a society where integration ***491** and color-blindness are not just qualities to be proud of, but are simple facts of life. See *Shaw v. Reno, supra,* at 657, 113 S.Ct. 2816.

IV

The District Court is in a better position to reweigh all the facts in the record in the first instance in light of our explication of retrogression. The judgment of the District Court for the District of Columbia, accordingly, is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Justice KENNEDY, concurring.

As is evident from the Court's accurate description of the facts in this case, race was a predominant factor in drawing the lines of Georgia's State Senate redistricting map. If the Court's statement of facts had been written as the preface to consideration of a challenge brought under the Equal Protection Clause or under § 2 of the Voting Rights Act of 1965, a reader of the opinion would have had sound reason

to conclude that the challenge would succeed. Race cannot be the predominant factor in redistricting under our decision in *Miller v. Johnson,* 515 U.S. 900, 115 S.Ct. 2475, 132 L.Ed.2d 762 (1995). Yet considerations of race that would doom a redistricting plan under the Fourteenth Amendment or § 2 seem to be what save it under § 5.

I agree that our decisions controlling the § 5 analysis require the Court's ruling here. See, *e.g., Reno v. Bossier Parish School Bd.,* 520 U.S. 471, 117 S.Ct. 1491, 137 L.Ed.2d 730 (1997); *Reno v. Bossier Parish School Bd.,* 528 U.S. 320, 120 S.Ct. 866, 145 L.Ed.2d 845 (2000). The discord and inconsistency between §§ 2 and 5 should be noted, however; and in a case where that issue is raised, it should be confronted. There is a fundamental flaw, I should think, in any scheme in which the Department of Justice is permitted or directed to encourage or ratify a course of unconstitutional conduct in order to find compliance with a statutory directive. This serious issue has not been raised here, and, as already observed, ***492** the Court is accurate both in its summary of the facts and in its application of the controlling precedents. With these observations, I join the opinion of the Court.

Justice THOMAS, concurring.
I continue to adhere to the views expressed in my opinion in *Holder v. Hall,* 512 U.S. 874, 891, 114 S.Ct. 2581, 129 L.Ed.2d 687 (1994) (opinion concurring in judgment). I join the Court's opinion because ****2518** it is fully consistent with our § 5 precedents.

Justice SOUTER, with whom Justice STEVENS, Justice GINSBURG, and Justice BREYER join, dissenting.

I

I agree with the Court that reducing the number of majority-minority districts within a State would not necessarily amount to retrogression barring preclearance under § 5 of the Voting Rights Act of 1965. See *ante,* at 2511–2512. The prudential objective of § 5 is hardly betrayed if a State can show that a new districting plan shifts from supermajority districts, in which minorities can elect their candidates of choice by their own voting power, to coalition districts, in which minorities are in fact shown to have a similar opportunity when joined by predictably supportive nonminority voters. Cf. *Johnson v. De Grandy,* 512 U.S. 997, 1020, 114 S.Ct. 2647, 129 L.Ed.2d 775 (1994) (explaining in the context of § 2 that although "society's racial and ethnic cleavages sometimes necessitate majority-minority districts to ensure equal political and electoral opportunity, that should not obscure the fact that there are communities in which minority citizens are able to form coalitions with voters from other racial and ethnic groups, having no need to be a majority within a single district in order to elect candidates of their choice").

Before a State shifts from majority-minority to coalition districts, however, the State bears the burden of proving that nonminority voters will reliably vote along with the minority. See, *e.g.,* ***493** *Reno v. Bossier Parish School Bd.,* 520 U.S. 471, 478, 117 S.Ct. 1491, 137 L.Ed.2d 730 (1997). It must show not merely that minority voters in new districts may have some influence, but that minority voters will have effective influence translatable into probable election results comparable to what they enjoyed under the existing district scheme. And to demonstrate this, a State must do more than produce reports of minority voting age percentages; it must show that the probable voting behavior of nonminority voters will make coalitions with minorities a real prospect. See, *e.g.,* Pildes, Is Voting–Rights Law Now at War With Itself? Social Science and Voting Rights in the 2000s, 80 N.C.L.Rev. 1517, 1539 (2002). If the State's evidence fails to convince a factfinder that high racial polarization in voting is unlikely, or that high white crossover voting is likely, or that other political and demographic facts point to probable minority effectiveness, a reduction in supermajority districts must be treated as potentially and fatally retrogressive, the burden of persuasion always being on the State.

The District Court majority perfectly well understood all this and committed no error. Error enters this case here in this Court, whose majority unmoors § 5 from any practical and administrable conception of minority influence that would rule out retrogression in a transition from majority-minority districts, and mistakes the significance of the evidence supporting the District Court's decision.

II

The Court goes beyond recognizing the possibility of coalition districts as nonretrogressive alternatives to those with majorities of minority voters when it redefines effective voting power in § 5 analysis without the anchoring reference to electing a candidate of choice. It does this by alternatively suggesting that a potentially retrogressive redistricting plan could satisfy § 5 if a sufficient number of so-called "influence

districts," in addition to "coalitio[n] districts," were created, *ante,* at 2513, 2514, or if the new plan provided minority groups ***494** with an opportunity to elect a particularly powerful candidate, *ante,* at 2513. On either alternative, the § 5 requirement that voting changes be nonretrogressive is substantially diminished and left practically unadministrable.

****2519** A

The Court holds that a State can carry its burden to show a nonretrogressive degree of minority "influence" by demonstrating that " 'candidates elected without decisive minority support would be willing to take the minority's interests into account.' " *Ante,* at 2512 (quoting *Thornburg v. Gingles,* 478 U.S. 30, 100, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986) (O'CONNOR, J., concurring in judgment)). But this cannot be right.

The history of § 5 demonstrates that it addresses changes in state law intended to perpetuate the exclusion of minority voters from the exercise of political power. When this Court held that a State must show that any change in voting procedure is free of retrogression it meant that changes must not leave minority voters with less chance to be effective in electing preferred candidates than they were before the change. "[T]he purpose of § 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer v. United States,* 425 U.S. 130, 141, 96 S.Ct. 1357, 47 L.Ed.2d 629 (1976); see, *e.g., id.,* at 140–141, 96 S.Ct. 1357 ("Section 5 was intended 'to insure that [the gains thus far achieved in minority political participation] shall not be destroyed through new [discriminatory] procedures and techniques' " (quoting S.Rep. No. 94–295, p. 19 (1975), U.S.Code Cong. & Admin.News 1974, pp. 774, 785)). In addressing the burden to show no retrogression, therefore, "influence" must mean an opportunity to exercise power effectively.

The Court, however, says that influence may be adequate to avoid retrogression from majority-minority districts when it consists not of decisive minority voting power but of sentiment on the part of politicians: influence may be sufficient ***495** when it reflects a willingness on the part of politicians to consider the interests of minority voters, even when they do not need the minority votes to be elected. The Court holds, in other words, that there would be no retrogression when the power of a voting majority of minority voters is eliminated, so long as elected politicians can be expected to give some consideration to minority interests.

The power to elect a candidate of choice has been forgotten; voting power has been forgotten. It is very hard to see anything left of the standard of nonretrogression, and it is no surprise that the Court's cited precedential support for this reconception, see *ante,* at 2512, consists of a footnote from a dissenting opinion in *Shaw v. Hunt,* 517 U.S. 899, 116 S.Ct. 1894, 135 L.Ed.2d 207 (1996), and footnote dictum in a case from the Western District of Louisiana.

Indeed, to see the trouble ahead, one need only ask how on the Court's new understanding, state legislators or federal preclearance reviewers under § 5 are supposed to identify or measure the degree of influence necessary to avoid the retrogression the Court nominally retains as the § 5 touchstone. Is the test purely *ad hominem,* looking merely to the apparent sentiments of incumbents who might run in the new districts? Would it be enough for a State to show that an incumbent had previously promised to consider minority interests before voting on legislative measures? Whatever one looks to, however, how does one put a value on influence that falls short of decisive influence through coalition? Nondecisive influence is worth less than majority-minority control, but how much less? Would two influence districts offset the loss of one majority-minority district? Would it take three? Or four? The Court gives no guidance for measuring influence that falls short of the voting strength of a coalition member, let alone a majority of minority voters. Nor do I see how the Court could possibly give any such guidance. The Court's "influence" is simply not functional in the political and judicial worlds.

****2520** ***496** B

Identical problems of comparability and administrability count at least as much against the Court's further gloss on nonretrogression, in its novel holding that a State may trade off minority voters' ability to elect a candidate of their choice against their ability to exert some undefined degree of influence over a candidate likely to occupy a position of official legislative power. See *ante,* at 2513. The Court implies that one majority-minority district in which minority voters could elect a legislative leader could replace a larger number of majority-minority districts with ordinary candidates, without retrogression of overall minority voting

strength. Under this approach to § 5, a State may value minority votes in a district in which a potential committee chairman might be elected differently from minority votes in a district with ordinary candidates.

It is impossible to believe that Congress could ever have imagined § 5 preclearance actually turning on any such distinctions. In any event, if the Court is going to allow a State to weigh minority votes by the ambitiousness of candidates the votes might be cast for, it is hard to see any stopping point. I suppose the Court would not go so far as to give extra points to an incumbent with the charisma to attract a legislative following, but would it value all committee chairmen equally? (The committee chairmen certainly would not.) And what about a legislator with a network of influence that has made him a proven dealmaker? Thus, again, the problem of measurement: is a shift from 10 majority-minority districts to 8 offset by a good chance that 1 of the 8 may elect a new Speaker of the House?

I do not fault the Court for having no answers to these questions, for there are no answers of any use under § 5. The fault is more fundamental, and the very fact that the Court's interpretation of nonretrogression under § 5 invites unanswerable questions points to the error of a § 5 preclearance regime that defies reviewable administration. We are ***497** left with little hope of determining practically whether a districting shift to one party's overall political advantage can be expected to offset a loss of majority-minority voting power in particular districts; there will simply be greater opportunity to reduce minority voting strength in the guise of obtaining party advantage.

One is left to ask who will suffer most from the Court's new and unquantifiable standard. If it should turn out that an actual, serious burden of persuasion remains on the States, States that rely on the new theory of influence should be guaranteed losers: nonretrogression cannot be demonstrated by districts with minority influence too amorphous for objective comparison. But that outcome is unlikely, and if in subsequent cases the Court allows the State's burden to be satisfied on the pretense that unquantifiable influence can be equated with majority-minority power, § 5 will simply drop out as a safeguard against the "unremitting and ingenious defiance of the Constitution" that required the procedure of preclearance in the first place. *South Carolina v. Katzenbach,* 383 U.S. 301, 309, 86 S.Ct. 803, 15 L.Ed.2d 769 (1966).

III

The District Court never reached the question the Court addresses, of what kind of influence districts (coalition or not) might demonstrate that a decrease in majority-minority districts was not retrogressive. It did not reach this question because it found that the State had not satisfied its burden of persuasion on an issue that should be crucial on any administrable theory:[1] the State had not shown ****2521** the possibility ***498** of actual coalitions in the affected districts that would allow any retreat from majority-minority districts without a retrogressive effect. This central evidentiary finding is invulnerable under the correct standard of review.

This Court's review of the District Court's factual findings is for clear error. See, *e.g., Miller v. Johnson,* 515 U.S. 900, 917, 115 S.Ct. 2475, 132 L.Ed.2d 762 (1995); *Pleasant Grove v. United States,* 479 U.S. 462, 469, 107 S.Ct. 794, 93 L.Ed.2d 866 (1987); *McCain v. Lybrand,* 465 U.S. 236, 258, 104 S.Ct. 1037, 79 L.Ed.2d 271 (1984); *City of Lockhart v. United States,* 460 U.S. 125, 136, 103 S.Ct. 998, 74 L.Ed.2d 863 (1983). We have no business disturbing the District Court's ruling "simply because we would have decided the case differently," but only if based "on the entire evidence, [we are] left with the definite and firm conviction that a mistake has been committed." *Easley v. Cromartie,* 532 U.S. 234, 242, 121 S.Ct. 1452, 149 L.Ed.2d 430 (2001) (internal quotation marks omitted). It is not, then, up to us to "decide whether Georgia's State Senate redistricting plan is retrogressive as compared to its previous, benchmark districting plan." *Ante,* at 2504. Our sole responsibility is to see whether the District Court committed clear error in refusing to preclear the plan. It did not.

A

The District Court began with the acknowledgment (to which we would all assent) that the simple fact of a decrease in black voting age population (BVAP) in some districts is not alone dispositive about whether a proposed plan is retrogressive:

> ***499** " 'Unpacking' African American districts may have positive or negative consequences for the statewide electoral strength of African American voters. To the extent that voting patterns suggest that minority voters are in a better position to join forces with other segments of the population to elect minority preferred candidates,

a decrease in a district's BVAP may have little or no effect on minority voting strength." 195 F.Supp.2d 25, 76 (D.D.C.2002).

See *id.,* at 78 ("[T]he Voting Rights Act allows states to adopt plans that move minorities out of districts in which they formerly constituted a majority of the voting population, provided that racial divisions have healed to the point that numerical reductions will not necessarily translate into reductions in electoral power"); *id.,* at 84 ("[T]he mere fact that BVAP decreases in certain districts is not enough to deny preclearance to a plan under Section 5").[2]

The District Court recognized that the key to understanding the impact of drops in a district's BVAP on the minority group's "effective exercise of the electoral franchise," *Beer,* 425 U.S., at 141, 96 S.Ct. 1357, is the level of racial polarization. If racial elements consistently vote in separate blocs, decreasing the proportion of ****2522** black voters will generally reduce the chance that the minority group's favored candidate will be elected; whereas in districts with low racial bloc voting or significant white crossover voting, a decrease in the black proportion may have no effect at all on the minority's opportunity to elect their candidate of choice. See, *e.g.,* 195 F.Supp.2d, at 84 ("[R]acial polarization is critically important because its presence or absence in the Senate Districts challenged by the United States goes a long way to determining whether ***500** or not the decreases in BVAP and African American voter registration in those districts are likely to produce retrogressive effects").

This indisputable recognition, that context determines the effect of decreasing minority numbers for purposes of the § 5 enquiry, points to the nub of this case, and the District Court's decision boils down to a judgment about what the evidence showed about that context. The District Court found that the United States had offered evidence of racial polarization in the contested districts,[3] *id.*, at 86, and it found that Georgia had failed to present anything relevant on that issue. Georgia, the District Court said, had "provided the court with no competent, comprehensive information regarding white crossover voting or levels of polarization in individual districts across the State." *Id.*, at 88. In particular, the District Court found it "impossible to extrapolate" anything about the level of racial polarization from the statistical submissions of Georgia's lone expert witness. *Id.*, at 85. And the panel majority took note that Georgia's expert "admitted on cross-examination" that his evidence simply did not address racial polarization: "the whole point of my analysis," the expert stated, "is not to look at polarization per se. The question is not whether or not blacks and whites in general vote for different candidates." *Ibid.* (internal quotation marks omitted).

Accordingly, the District Court explained that Georgia's expert:

> ***501** "made no attempt to address the central issue before the court: whether the State's proposal is retrogressive. He failed even to identify the decreases in BVAP that would occur under the proposed plan, and certainly did not identify corresponding reductions in the electability of African American candidates of choice. The paucity of information in [the expert's] report thus leaves us unable to use his analysis to assess the expected change in African American voting strength statewide that will be brought by the proposed Senate plan." *Id.,* at 81.

B

How is it, then, that the majority of this Court speaks of "Georgia's evidence that the Senate plan as a whole is not retrogressive," against which "the United States did not introduce any evidence [in] rebut[tal]," *ante,* at 2515? The answer is that the Court is not engaging in review for clear error. Instead, it is reweighing evidence *de novo,* discovering what it thinks the District Court overlooked, and drawing evidentiary conclusions the District Court supposedly did not see. The Court is mistaken on all points.

1

Implicitly recognizing that evidence of voting behavior by majority voters is crucial to any showing of nonretrogression when minority numbers drop under a proposed ****2523** plan, the Court tries to find evidence to fill the record's gap. It says, for example, that "Georgia introduced evidence showing that approximately one-third of white voters would support a black candidate in [the contested] districts." *Ibid.* In support of this claim, however, the majority focuses on testimony offered by Georgia's expert relating to crossover voting in the pre-existing rather than proposed districts. 195 F.Supp.2d, at 66. The District Court specifically noted that the expert did not calculate crossover voting under the proposed plan. *Id.,* at 65, n. 31 ("The court also emphasizes ***502** that Epstein did not attempt to rely on the table's calculations to demonstrate voting patterns in the districts, and calculated crossover in the existing, and not the proposed, Senate districts"). Indeed, in

relying on this evidence the majority attributes a significance to it that Georgia's own expert disclaimed, as the District Court pointed out. See *id.,* at 85 ("[I]t is impossible to extrapolate these voting patterns from Epstein's database. As Epstein admitted on cross-examination: the whole point of my analysis is not to look at polarization per se. The question is not whether or not blacks and whites in general vote for different candidates" (internal quotation marks omitted)).

2

In another effort to revise the record, the Court faults the District Court, alleging that it "focused too narrowly on proposed Senate Districts 2, 12, and 26." *Ante,* at 2514. In fact, however, it is Georgia that asked the District Court to consider only the contested districts, and the District Court explicitly refused to limit its review in any such fashion: "we reject the State's argument that this court's review is limited only to those districts challenged by the United States, and should not encompass the redistricting plans in their entirety.... [T]he court's review necessarily extends to the entire proposed plan." 195 F.Supp.2d, at 73. The District Court explained that it "is vested with the final authority to approve or disapprove the proposed change as a whole." *Ibid.* "The question before us is whether the proposed Senate plan as a whole, has the 'purpose or effect of denying or abridging the right to vote on account of race or color.' " *Id.,* at 103 (Oberdorfer, J., concurring in part and dissenting in part) (quoting 42 U.S.C. § 1973c). Though the majority asserts that "[t]he District Court ignored the evidence of numerous other districts showing an increase in black voting age population," *ante,* at 2514, the District Court, in fact, specifically considered the parties' dispute over the statewide ***503** impact of the change in black voting age population. See, *e.g.,* 195 F.Supp.2d, at 93 ("The number of Senate Districts with majorities of BVAP would, according to Georgia's calculations, increase from twelve to thirteen; according to the Attorney General's interpretation of the census data, the number would decrease from twelve to eleven").

3

In a further try to improve the record, the Court focuses on the testimony of certain lay witnesses, politicians presented by the State to support its claim that the Senate plan is not retrogressive. Georgia, indeed, relied heavily on the near unanimity of minority legislators' support for the plan. But the District Court did not overlook this evidence; it simply found it inadequate to carry the State's burden of showing nonretrogression. The District Court majority explained that the "legislators' support is, in the end, far more probative of a lack of retrogressive *purpose* than of an absence of retrogressive *effect.*" *Id.,* at 89 (emphasis in original). As against the politicians' testimony, the District Court had contrary "credible," *id.,* at 88, evidence of retrogressive effect. This evidence was the testimony of the expert witness presented by the United States, which "suggests the existence of highly racially polarized voting in the proposed ****2524** districts," *ibid.,* evidence of retrogressive effect to which Georgia offered "no competent" response, *ibid.* The District Court was clearly within bounds in finding that (1) Georgia's proposed plan decreased BVAP in the relevant districts, (2) the United States offered evidence of significant racial polarization in those districts, and (3) Georgia offered no adequate response to this evidence.

The reasonableness of the District Court's treatment of the evidence is underscored in its concluding reflection that it was possible Georgia could have shown the plan to be nonretrogressive, but the evidence the State had actually offered simply failed to do that. "There are, without doubt, ***504** numerous other ways, given the limited evidence of racially polarized voting in State Senate and local elections, that Georgia could have met its burden of proof in this case. Yet, the court is limited to reviewing the evidence presented by the parties, and is compelled to hold that the State has not met its burden." *Id.,* at 94. "[T]he lack of positive racial polarization data was the gap at the center of the State's case [and] the evidence presented by [the] estimable [legislators] does not come close to filling that void." *Id.,* at 100.

As must be plain, in overturning the District Court's thoughtful consideration of the evidence before it, the majority of this Court is simply rejecting the District Court's evidentiary finding in favor of its own. It is reweighing testimony and making judgments about the competence, interest, and character of witnesses. The Court is not conducting clear error review.

4

Next, the Court attempts to fill the holes in the State's evidence on retrogression by drawing inferences favorable to the State from undisputed statistics. See *ante,* at 2515–2516. This

exercise comes no closer to demonstrating clear error than the others considered so far.

In the first place, the District Court has already explained the futility of the Court's effort. Knowing whether the number of majority BVAP districts increases, decreases, or stays the same under a proposed plan does not alone allow any firm conclusion that minorities will have a better, or worse, or unvarying opportunity to elect their candidates of choice. Any such inference must depend not only on trends in BVAP levels, but on evidence of likely voter turnout among minority and majority groups, patterns of racial bloc voting, likelihood of white crossover voting, and so on.[4] Indeed, ***505** the core holding of the Court today, with which I agree, that nonretrogression does not necessarily require maintenance of existing supermajority minority districts, turns on this very point; comparing the number of majority-minority districts under existing and proposed plans does not alone reliably indicate whether the new plan is retrogressive.

Lack of contextual evidence is not, however, the only flaw in the Court's numerical arguments. Thus, in its first example, *ante,* at 2515, the Court points out that under the proposed plan the number of districts with majority BVAP increases by one over the existing plan,[5] but the Court does not mention that the number of districts with BVAP levels over 55% decreases by four. See Record, Doc. No. 148, Pl. Exhs. 1D, 2C. Similarly, the Court points to an increase of two in districts with ****2525** BVAP in the 30% to 50% range, along with a further increase of two in the 25% to 30% range. *Ante,* at 2515. It fails to mention, however, that Georgia's own expert argued that 44.3% was the critical threshold for BVAP levels, 195 F.Supp.2d, at 107, and the data on which the Court relies shows the number of districts with BVAP over 40% actually decreasing by one, see Record, Doc. No. 148, Pl. Exhs. 1D, 2C. My point is not that these figures conclusively demonstrate retrogression; I mean to say only that percentages tell us nothing in isolation, and that without contextual evidence the raw facts about population levels fail to get close to indicating that the State carried its burden to show no retrogression. They do not come close to showing clear error.

***506** 5

Nor could error, clear or otherwise, be shown by the Court's comparison of the proposed plan with the description of the State and its districts provided by the 1990 census. *Ante,* at 2515–2516. The 1990 census is irrelevant. We have the 2000 census, and precedent confirms in no uncertain terms that the issue for § 5 purposes is not whether Georgia's proposed plan would have had a retrogressive effect 13 years ago: the question is whether the proposed plan would be retrogressive now. See, *e.g., Reno v. Bossier Parish School Bd.,* 528 U.S. 320, 334, 120 S.Ct. 866, 145 L.Ed.2d 845 (2000) (Under § 5 "the baseline is the status quo that is proposed to be changed"); *Holder v. Hall,* 512 U.S. 874, 883, 114 S.Ct. 2581, 129 L.Ed.2d 687 (1994) (plurality opinion) (Under § 5, "[t]he baseline for comparison is present by definition; it is the existing status"); *City of Lockhart v. United States,* 460 U.S., at 132, 103 S.Ct. 998 ("The proper comparison is between the new system and the system actually in effect"); Cf. 28 CFR § 51.54(b)(2) (2002) (when determining if a change is retrogressive under § 5 "[t]he Attorney General will make the comparison based on the conditions existing at the time of the submission"). The Court's assumption that a proper § 5 analysis may proceed on the basis of obsolete data from a superseded census is thus as puzzling as it is unprecedented. It is also an invitation to perverse results, for if a State could carry its burden under § 5 merely by showing no retrogression from the state of affairs 13 years ago, it could demand preclearance for a plan flatly diminishing minority voting strength under § 5.[6]

***507** 6

The Court's final effort to demonstrate that Georgia's plan is nonretrogressive focuses on statistics about Georgia Democrats. *Ante,* at 2516. The Court explains that almost all the districts in the proposed plan with a BVAP above 20% have a likely overall Democratic performance above 50%, and from this the Court concludes that "[t]hese statistics make it more likely as a matter of fact that black voters will constitute an effective voting bloc." *Ibid.* But this is not so. The degree to which the statistics could support any judgment about the effect of black voting in State Senate elections is doubtful, and even on the Court's assumptions the statistics show no clear error by the District Court.

As for doubt about what the numbers have to do with State Senate elections, it is enough to know that the majority's figures are taken from a table describing Democratic voting in statewide, not local, elections. The Court offers no basis for assuming that voting for Democratic candidates in statewide elections correlates ****2526** with voting behavior in local elections,[7] and in fact, the record points to different, not

identical, voting patterns. The District Court specifically noted that the United States's expert testified that "African American candidates consistently received less crossover voting in local election[s] than in statewide elections," 195 F.Supp.2d, at 71, and the court concluded that there is "compelling evidence that racial voting patterns in State Senate races can be expected to differ from racial voting patterns in statewide races," *id.*, at 85–86.

***508** But even if we assume the data on Democratic voting statewide can tell us something useful about Democratic voting in State Senate districts, the Court's argument does not hold up. It proceeds from the faulty premise that even with a low BVAP, if enough of the district is Democratic, the minority Democrats will necessarily have an effect on which candidates are elected. But if the proportion of nonminority Democrats is high enough, the minority group may well have no impact whatever on which Democratic candidate is selected to run and ultimately elected. In districts, say, with 20% minority voters (all of them Democrats) and 51% nonminority Democrats, the Democratic candidate has no obvious need to take the interests of the minority group into account; if everybody votes (or the proportion of stay-at-homes is constant throughout the electorate) the Democrat can win the general election without minority support. Even in a situation where a Democratic candidate needs a substantial fraction of minority voters to win (say the population is 25% minority and 30% nonminority Democrats), the Democratic candidate may still be able to ignore minority interests if there is such ideological polarization as between the major parties that the Republican candidate is entirely unresponsive to minority interests. In that situation, a minority bloc would presumably still prefer the Democrat, who would not need to adjust any political positions to get the minority vote.

All of this reasoning, of course, carries a whiff of the lamp. I do not know how Georgia's voters will actually behave if the percentage of something is x, or maybe y, any more than the Court does. We are arguing about numerical abstractions, and my sole point is that the Court's abstract arguments do not hold up. Much less do they prove the District Court wrong.

IV

Section 5, after all, was not enacted to address abstractions. It was enacted "to shift the advantage of time and ***509** inertia from the perpetrators of the evil to its victim," *Beer*, 425 U.S., at 140, 96 S.Ct. 1357 (internal quotation marks omitted) (quoting H.R.Rep. No. 94–196, pp. 57–58 (1970)), and the State of Georgia was made subject to the requirement of preclearance because Congress "had reason to suppose" it might "try ... to evade the remedies for voting discrimination" and thus justifies § 5's "uncommon exercise of congressional power." *South Carolina v. Katzenbach*, 383 U.S., at 334–335, 86 S.Ct. 803. Section 5 can only be addressed, and the burden to prove no retrogression can only be carried, with evidence of how particular populations of voters will probably act in the circumstances in which they live. The State has the burden to convince on the basis of such evidence. The District Court considered such evidence: it received testimony, decided what it was worth, and concluded as the trier of fact that the State ****2527** had failed to carry its burden. There was no error, and I respectfully dissent.

All Citations

539 U.S. 461, 123 S.Ct. 2498, 156 L.Ed.2d 428, 71 USLW 4585, 03 Cal. Daily Op. Serv. 5549, 2003 Daily Journal D.A.R. 7001, 16 Fla. L. Weekly Fed. S 448

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

1 Georgia and the United States have submitted slightly different figures regarding the black voting age population of each district. The differing figures depend upon whether the total number of blacks includes those people who self-identify as both black and a member of another minority group, such as Hispanic. Georgia counts this group of people, while the United States does not do so. Like the District Court, we consider all the record information, "including total black population, black registration numbers and both [black voting age population] numbers." 195 F.Supp.2d 25, 79 (D.D.C.2002). We focus in particular on Georgia's black voting age population numbers in this case because all parties rely on them to some extent and because Georgia used its own black voting age population numbers when it enacted the Senate plan. Moreover, the United States does not count all persons who identify themselves as black. It counts those

who say they are black and those who say that they are both black and white, but it does not count those who say they are both black and a member of another minority group. Using the United States' numbers may have more relevance if the case involves a comparison of different minority groups. Cf. *Johnson v. De Grandy,* 512 U.S. 997, 114 S.Ct. 2647, 129 L.Ed.2d 775 (1994); *Bush v. Vera,* 517 U.S. 952, 116 S.Ct. 1941, 135 L.Ed.2d 248 (1996). Here, however, the case involves an examination of only one minority group's effective exercise of the electoral franchise. In such circumstances, we believe it is proper to look at *all* individuals who identify themselves as black.

2 The dissent summarily rejects any inquiry into the benchmark plan using the census numbers in effect at the time the redistricting plan was passed. See *post,* at 2525. Yet we think it is relevant to examine how the new plan differs from the benchmark plan as originally enacted by the legislature. The § 5 inquiry, after all, revolves around the change from the previous plan. The 1990 census numbers are far from "irrelevant." *Ibid.* Rather, examining the benchmark plan with the census numbers in effect at the time the State enacted its plan comports with the one-person, one-vote principle of *Reynolds v. Sims,* 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964), and its progeny. When the decennial census numbers are released, States must redistrict to account for any changes or shifts in population. But before the new census, States operate under the legal fiction that even 10 years later, the plans are constitutionally apportioned. After the new enumeration, no districting plan is likely to be legally enforceable if challenged, given the shifts and changes in a population over 10 years. And if the State has not redistricted in response to the new census figures, a federal court will ensure that the districts comply with the one-person, one-vote mandate before the next election. See, *e.g., Branch v. Smith,* 538 U.S. 254, 123 S.Ct. 1429, 155 L.Ed.2d 407 (2003); *Lawyer v. Department of Justice,* 521 U.S. 567, 117 S.Ct. 2186, 138 L.Ed.2d 669 (1997); *Growe v. Emison,* 507 U.S. 25, 113 S.Ct. 1075, 122 L.Ed.2d 388 (1993).

1 The District Court correctly recognized that the State bears the burden of proof in establishing that its proposed redistricting plan satisfied the standards of § 5. See, *e.g.,* 195 F.Supp.2d 25, 86 (D.D.C.2002) ("We look to the State to explain why retrogression is not present"); see also *Reno v. Bossier Parish School Bd.,* 520 U.S. 471, 478, 117 S.Ct. 1491, 137 L.Ed.2d 730 (1997) (covered jurisdiction "bears the burden of proving that the change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color" (internal quotation marks omitted)); *id.,* at 480, 117 S.Ct. 1491 (Section 5 "imposes upon a covered jurisdiction the difficult burden of proving the *absence* of discriminatory purpose and effect"); *Reno v. Bossier Parish School Bd.,* 528 U.S. 320, 332, 120 S.Ct. 866, 145 L.Ed.2d 845 (2000) ("In the specific context of § 5 ... the covered jurisdiction has the burden of persuasion"); cf. *Beer v. United States,* 425 U.S. 130, 140, 96 S.Ct. 1357, 47 L.Ed.2d 629 (1976) (Congress in passing § 5 sought to "freez[e] election procedures in the covered areas unless the changes can be shown to be nondiscriminatory" (internal quotation marks omitted)).

2 Indeed, the other plans approved by the District Court, Georgia's State House plan, 195 F.Supp.2d, at 95, congressional plan, *ibid.,* and the interim plan approved for the State Senate, 204 F.Supp.2d 4, 7 (D.D.C.2002), all included decreases in BVAP in particular districts.

3 The majority cites the District Court's comment that " 'the United States' evidence was extremely limited in scope—focusing only on three contested districts in the State Senate plan.' " *Ante,* at 2508 (quoting 195 F.Supp.2d, at 37). The District Court correctly did not require the United States to prove that the plan was retrogressive. As the District Court explained: "[u]ltimately, the burden of proof in this matter lies with the State. We look to the State to explain why retrogression is not present, and to prove the absence of racially polarized voting that might diminish African American voting strength in light of several districts' decreased BVAPs." *Id.,* at 86.

4 The fact that the Court premises its analysis on BVAP alone is ironic given that the Court, incorrectly, chastises the District Court for committing the very error the Court now engages in, "fail[ing] to consider all the relevant factors." *Ante,* at 2514.

5 Though the Court does not acknowledge it in its discussion of why "Georgia likely met its burden," *ante,* at 2515, even this claim was disputed. As the District Court explained: "[t]he number of Senate Districts with majorities of BVAP would, according to Georgia's calculations, increase from twelve to thirteen; according to the Attorney General's interpretation of the census data, the number would decrease from twelve to eleven." 195 F.Supp.2d, at 93.

6 For example, if a covered jurisdiction had two majority-minority districts in 1990, but rapidly changing demography had produced two more during the ensuing decade, a new redistricting plan, setting the number of majority-minority districts

at three would conclusively rule out retrogression on the Court's calculus. This would be the case even when voting behavior showed that nothing short of four majority-minority districts would preserve the status quo as of 2000.

7 Even if the majority wanted to rely on these figures to make a claim about Democratic voting in statewide elections, the predictors' significance is utterly unclear. The majority pulls its figures from an exhibit titled, "Political Data Report," and a column labeled, "% OVER DEMVOTES," Pl. Exh. 2D. See *ante,* at 2516. The document provides no information regarding whether the numbers in the column reflect an average of past performance, a prediction for future performance, or something else altogether.

Testimony in support of SB0660.pdf
Uploaded by: Richard KAP Kaplowitz
Position: FAV

SB0660_RichardKaplowitz_FAV

2/21/2024

Richard Keith Kaplowitz
Frederick, MD 21703

TESTIMONY ON SB#0660- POSITION: FAVORABLE
Maryland Voting Rights Act of 2024 – Counties and Municipalities

TO: Chair Feldman, Vice Chair Kagan, and members of the Education, Energy, and the Environment Committee

FROM: Richard Keith Kaplowitz

My name is Richard Keith Kaplowitz. I am a resident of District 3. I am submitting this testimony in support of SB#0660, Maryland Voting Rights Act of 2024 – Counties and Municipalities

One of the main requirements of citizenship and an awesome responsibility is the right to vote. A vote is the citizen's voice on how they wish themselves and their community to be governed.

Maryland is an increasingly diverse state. People come from all over the world to our state and undertake the journey to citizenship in the United States. For many their native language and customs are primary considerations in how they adapt and integrate into the community. Over 20% of Marylanders have a native language other than English.

This bill's purpose is to forbid erecting any barrier to political participation in local governments within Maryland caused by language related barriers being erected. It mandates solutions that remove those impediments as a requirement from the state and local boards of election. It upholds the right to vote for every eligible citizen removing language-based restrictions to that right.

This bill is an ethical and moral commitment to support every voter in their journey to election participation as the best possible resident, and citizen, within our state and our country.

. **I respectfully urge this committee to return a favorable report on SB#0660.**

MML-SB660 - OPP.pdf
Uploaded by: Angelica Bailey Thupari
Position: UNF

Maryland Municipal League
The Association of Maryland's Cities and Towns

TESTIMONY

February 21, 2024

Committee: Senate Education, Energy and the Environment

Bill: SB 660 - Maryland Voting Rights Act of 2024 – Counties and Municipalities

Position: Oppose

Reason for Position:
The Maryland Municipal League (MML) respectfully opposes Senate Bill 660, which establishes many new requirements for voting qualifications which are both unduly burdensome and redundant.

The State has largely authorized municipal governments to operate their elections in a manner that allows for changes to be made to fit the wants and needs of each individual community. As a result, municipalities have different eligibility requirements, election dates, and processes. Establishing the new requirements proposed in this bill would be financially and logistically challenging, especially to smaller towns, with little value added; the federal Voting Rights Act already ensures that residents cannot be excluded from voting based on race.

Our towns and cities already work hard to make sure all residents can vote safely and effectively, at great cost to their own budgets. For these reasons, the League respectfully requests that the committee provide Senate Bill 660 with an unfavorable report.

FOR MORE INFORMATION CONTACT:

Theresa Kuhns	Chief Executive Officer
Angelica Bailey Thupari, Esq.	Director, Advocacy & Public Affairs
Bill Jorch	Director, Public Policy & Research
Justin Fiore	Deputy Director, Advocacy & Public Affairs

SB 0660 Voting Rights Act 2024 UNF.pdf
Uploaded by: Ella Ennis
Position: UNF

Ella Ennis, Legislative Chairman
Maryland Federation of Republican Women
PO Box 6040, Annapolis MD 21401
Email: eee437@comcast.net

February 20, 2024

The Honorable Brian J. Feldman, Chairman
And Members of the Education, Energy and the Environment Committee
Maryland Senate, Annapolis, Maryland

RE: **SB 0660** – Voting Rights Act of 2023 – Counties and Municipalities - **UNFAVORABLE**

Dear Chairman Feldman and Committee Members,

The 1,220 members of the Maryland Federation of Republican Women strongly OPPOSE SB 0660 – *Voting Rights Act of 2024 – Counties and Municipalities* for these reasons:

- Election protections are already codified in the **Federal Voting Rights Act of 1965**. SB 0660 gives special preference to a "protected class" when all voters must be treated equally and have an equal voice in all elections.

- Many of the elements on pages 8-11 that the court may or may not consider in evaluating a claim of vote dilution, identified in this bill as "racially polarized voting", **would not withstand a constitutional challenge**. Several violate the criteria required to determine vote dilution (known collectively as the Gingles criteria) established in 1986 by Supreme Court Justice William Brennan's court opinion in Thornburg v. Gingles.

- The proposed legislation **will override county and municipal governing documents**, forcing jurisdictions to replace their legally chosen voting method with an alternative voting method that is unfamiliar to voters and often more cumbersome. Election chaos will ensue -- confused voters (some choosing not to vote) and increased wait times at the polls, especially with ranked-choice voting.

- Several items in the calculation of the point at which **language-related assistance** is required (referenced on pages 15-17) will **inflate the result**.

    - Pg 16 Lns 10 and 16 – "speak a particular language other than English" – would include in the calculation anyone who is multi-lingual (vs. English as their primary language – the question on the Census survey)

    - The definition of "Limited English Proficient" (pg 3 lns 23-26) includes only those who responded "Very Well" to the Census survey response, ignoring those who responded that they speak English "Well".

Ella Ennis, Legislative Chairman
Maryland Federation of Republican Women
PO Box 6040, Annapolis MD 21401
Email: eee437@comcast.net

- No English language proficiency determination or language-related assistance is needed for naturalized citizens to vote. The U.S. Naturalization interview and test requires that the applicant demonstrate an understanding of the English language, including the ability to read, write and speak basic English, before they take their Oath of Allegiance to the United States.

- "Racially polarized voting" is based on the false premise that all voters of a given race or language group think and vote alike. SB 0660 insults minority citizens by presuming they are unable to make voting decisions on their own – that they are dependent on "group think".

- Organizations whose mission would be frustrated by a violation or who would expend resources as a result of a violation of this section in order to fulfill its mission under this subtitle would give organizations (within and outside Maryland) more rights than Maryland's citizens.

Our democracy was founded on the principle of "one-person, one-vote". Requiring voter ID is the best method to ensure that an individual's vote has not been stolen by another. It is disheartening that that protection was not included in this bill.

Please give an **UNFAVORABLE** Report to **SB 0660**.

Sincerely,
Ella Ennis
Legislative Chairman
Maryland Federation of Republican Women

sb660.pdf
Uploaded by: Linda Miller
Position: UNF

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Matthew J. Fader
Chief Justice

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO:	Senate Education, Energy, and the Environment Committee
FROM:	Legislative Committee Suzanne D. Pelz, Esq. 410-260-1523
RE:	Senate Bill 660 Maryland Voting Rights Act of 2024 – Counties and Municipalities
DATE:	February 7, 2024 (2/21)
POSITION:	Oppose

The Maryland Judiciary opposes Senate Bill 660. This bill proposes to add an entire section to the Election Law Article titled the Voting Rights Act – Counites and Municipalities.

First, the bill is problematic because it limits what evidence the court may consider or require in determining whether racially polarized voting by protected class voters in a local election has occurred (p. 8, lines 10–26) and in determining whether a violation of proposed subtitle 2 has occurred (pp. 10–11, lines 19–32, 1–7). Limiting evidence does not afford the parties the opportunity to fully litigate their case. Second, proposed subtitle 4, "Preclearance," (pp. 18–26) as well as the provisions directing the courts on how to exercise its discretion (p. 5, lines 4–13), poses concerns under the separation-of-powers and equal protection doctrine. Third, the bill would require courts to consider and accord certain evidence mandatory weight or probative value (pp. 7–8, lines 21–33, 1–9).These provisions are difficult to understand and it is unclear how to apply such provisions. Lastly, the bill is overly broad because it authorizes an organization whose membership includes "or is likely to include" aggrieved persons to file an action under proposed subtitle 2 (p. 11, lines 12–13).It is not clear how the Court would assess whether aggrieved persons are "likely" to be included or what factors the Court would use to make such a determination.

cc. Hon. Charles Sydnor
Judicial Council
Legislative Committee
Kelley O'Connor

2024-SB0660-UNFav.pdf
Uploaded by: Nelda Fink
Position: UNF

SB0660 – UNFAVORABLE

Nelda Fink

MD District 32

This bill is too broad and introduces rank choice voting at the state level without having a separate bill for that. Other sections of this bill I support, but I do not support rank choice voting at this time, therefore I cannot support this bill.

Break it down as your legislative process requires you to do.

100% OPPOSE this bill.

Thank you.

Nelda Fink

SB0660.pdf
Uploaded by: Suzanne Duffy
Position: UNF

SB0660 is a bad bill because it gives more rights to some citizens and less rights to other citizens (HAVA violations in the making!!!) 30 pages of complications and confusion! NO bill needs to be this complicated, there is always something very bad in a 30 pg bill that is not apparent. Why should certain people get a whole new way of voting that isn't necessary during the voting season? Of 50 other ways to vote in an insecure method? NO TO this violation of our rights. We already have HAVA (HELP AMERICA VOTE ACT) in place, we don't need this too. Say NO to this bad and highly discriminatory bill.

Suzanne Price
AACo

"Public trust in the federal government, which has been low for decades, has returned to near record lows following a modest uptick in 2020 and 2021. Currently, fewer than two-in-ten Americans say they trust the government in Washington to do what is right "just about always" (1%) or "most of the time" (15%). This is among the lowest trust measures in nearly seven decades of polling. Last year, 20% said they trusted the government just about always or most of the time." PEW Research, Sept 2023 https://www.pewresearch.org/politics/2023/09/19/public-trust-in-government-1958-2023/