2006

Documenting Discrimination in Voting: Judicial Findings Under Section 2 of the Voting Rights Act Since 1982

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DOCUMENTING DISCRIMINATION IN VOTING: JUDICIAL FINDINGS UNDER SECTION 2 OF THE VOTING RIGHTS ACT SINCE 1982

FINAL REPORT OF THE VOTING RIGHTS INITIATIVE, UNIVERSITY OF MICHIGAN LAW SCHOOL

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INTRODUCTION†

The Voting Rights Act of 1965 ("the VRA") is one of the most remarkable and consequential pieces of congressional legislation ever enacted. It targeted the massive disfranchisement of African-American citizens in numerous Southern states. It imposed measures drastic in scope and extraordinary in effect. The VRA eliminated the use of literacy tests and other "devices" that Southern jurisdictions had long employed to prevent black residents from registering and voting.[1] The VRA imposed on these "covered" jurisdictions onerous obligations to prove to federal officials that proposed changes to their electoral system would not discriminate against minority voters.[2]

† Case citations within this Article have been adapted to better serve the purposes of the piece and to conserve space. Litigation titles correspond with the Voting Rights Initiative Master List of cases, *infra* Appendix, *available at* http://www.votingreport.org, and have been abbreviated in accordance with *The Bluebook*. Litigation titles do not reflect the traditional party versus party designation and often encompass several cases in a particular litigation "string."

The adapted citation format identifies the state from which the litigation arose in cases where the traditional citation format does not indicate the state. The relevant state is indicated by its postal service abbreviation, in parenthesis, after the litigation title. Some cases of particular import do not identify the state in this manner. In order to allow for immediate identification of the relevant state, short forms are seldom used for case citations.

1. As originally enacted, the VRA banned the use of any "test or device," such as a literacy test, for five years in areas of the country where a significant portion of the voting age population either was not registered to vote or failed to vote in the 1964 presidential election. *See* 42 U.S.C. § 1973b (2000) (as amended by Pub. L. No. 94-73, tit. I, § 101, tit. II, §§ 201–03, 206, 89 Stat. 400–02 (1975)) (making ban permanent and nationwide).

2. Section 5 of the VRA required that these so-called "covered" jurisdictions obtain federal "preclearance" before they changed any aspect of their electoral rules. 42 U.S.C. § 1973c (2000). Covered jurisdictions may obtain a declaratory judgment to this effect from the United States District Court for the District of Columbia, or, alternatively, submit a preclearance request to the United States Department of Justice. *Id.* §§ 1973b, 1973c. The VRA required that these jurisdictions demonstrate that the new practice did "not have the purpose and will not have the effect of denying or abridging the right to vote on account of race . . . ." *Id.* § 1973c.

Resistance was immediate, but the VRA withstood the challenge.[3] The result was staggering. The VRA ended the long-entrenched and virtually total exclusion of African Americans from political participation in the South. Black voter registration rose and black participation followed such that, by the early 1970s, courts routinely observed that black voters throughout the South were registering and voting without interference. Similar benefits accrued to non-English speaking voters, particularly to Latino voters in the Southwest, after Congress amended the VRA to protect specified language minorities in 1975. This increased participation exposed less blatant inequalities and problems—complex issues such as racial vote dilution, the contours of which courts are still tackling today.

These persistent problems have led Congress to extend and expand the VRA each time its non-permanent provisions were due to expire. The ban on literacy tests and the "preclearance" provisions contained in Section 5 initially were enacted to last for five years. Congress extended these provisions in 1970, again in 1975, and for twenty-five more years in 1982, at which time Congress also expanded the terms of the core permanent provision of the Voting Rights Act—Section 2. This summer, Congress renewed and reauthorized the non-permanent provisions of the VRA, which were set to expire in 2007.[4]

The Voting Rights Initiative ("VRI") at the University of Michigan Law School was created during the winter of 2005 to help inform both the debates that led to this latest congressional reauthorization and the legal challenge to it that is certain to follow. A cooperative research venture involving 100 students working under faculty direction set out to produce a detailed portrait of litigation brought since 1982 under Section 2. This Report evaluates the results of that survey. The comprehensive data set may be found in a searchable form at http://www.votingreport.org or http://www.sitemaker.umich.edu/votingrights. The aim of this report and the accompanying website is to contribute to a critical understanding of current opportunities for effective political participation on the part of those minorities the Voting Rights Act seeks to protect.

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3. *See* South Carolina v. Katzenbach, 383 U.S. 301, 327 (1966) (upholding constitutionality of major portions of the VRA).

4. These provisions are the preclearance requirements of Section 5, the federal election monitoring and observer provisions set forth in Sections 6, 7, 8 and 9, and the language minority ballot coverage provisions of Sections 203 and 4(f). *See* 42 U.S.C. § 1973b(a)(8) (2000) (setting 2007 as the next required reauthorization date).

I. THE PROJECT: BACKGROUND, GOALS, AND METHODS

A. Statutory Background

The Voting Rights Act of 1965 was enacted in response to the continued, massive, and unconstitutional exclusion of African Americans from the franchise. Despite the ratification in 1870 of the Fifteenth Amendment, which prohibits denying or abridging the right to vote on the basis of "race, color, or previous condition of servitude," state voting officials continued to devise mechanisms to exclude African Americans from the franchise.[5] Judicial invalidation of one such practice often prompted the creation of another to achieve the same result. Using tactics ranging from outright violence to explicit race-based exclusions to "grandfather clauses," literacy tests, and redistricting practices, many former Confederate states (and several others) successfully prevented African Americans from participating in elections for nearly a century.[6]

Prompted by several notorious attacks on civil rights activists and recognition of the scope of African-American disfranchisement, Congress and the President acted to remedy the ineffectiveness of existing anti-discrimination provisions in 1965. The statute they created both reaffirmed the basic constitutional prohibition against race-based exclusions from the franchise and made those constitutional prohibitions effective. Section 2 of the Voting Rights Act, as originally enacted, closely tracked the wording of the Fifteenth Amendment.[7] To this Congress added Section 4, which suspended the use of particular exclusionary practices such as literacy tests, and Section 5, which demanded that jurisdictions with extremely low levels of voter registration and turnout seek "preclearance" from federal officials before implementing any changes to their voting laws and procedures.[8] Congress extended the nonpermanent provisions of the Voting Rights Act, including Section 5, in 1970, 1975, and 1982, and again this summer in The Fannie

5. U.S. CONST. amend. XV.

6. *See generally* QUIET REVOLUTION IN THE SOUTH: THE IMPACT OF THE VOTING RIGHTS ACT, 1965–1990, at 3 (Chandler Davidson & Bernard Grofman eds., 1994) [hereinafter QUIET REVOLUTION].

7. "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." U.S. CONST. amend. XV, § 1.

8. 42 U.S.C. § 1973c (2000).

Lou Hamer, Rosa Parks, And Coretta Scott King Voting Rights Act Reauthorization And Amendments Act of 2006.[9]

Congress enacted the current version of Section 2 when it amended the statute in the course of reauthorizing the nonpermanent provisions in 1982. The amendment was a response to the Supreme Court's interpretation of the VRA in a case brought by African-American residents in Mobile, Alabama. By the summer of 1975, black citizens in Mobile were registering and voting without hindrance, a feat that would have seemed impossible a decade earlier. And yet, ten years after passage of the Voting Rights Act, black residents in Mobile noticed that their participation seemed to be making little difference to the substance and structure of local governance. At the time, African Americans comprised approximately one third of the city's population, white and black voters consistently supported different candidates, and no African-American candidate had ever won a seat on the three-person city commission. Housing remained segregated, black city employees were concentrated in the lowest city salary classification, and "a significant difference and sluggishness" characterized the City's provision of city services to black residents when compared to that provided to whites.[10] Since 1911, Mobile had chosen its commissioners through city-wide at-large elections.[11]

In June of 1975, African-American residents in Mobile filed a class action lawsuit challenging the city's at-large electoral system. Two lower federal courts held that this system unconstitutionally diluted black voting strength.[12] In 1980, the Supreme Court reversed. In *City of Mobile v. Bolden*,[13] the Court held that neither the Constitution nor Section 2 of the Voting Rights Act prohibited electoral practices simply because they produced racially discriminatory results. The Court determined that these provisions proscribed only those rules or practices enacted with racially invidious intent. Mobile's at-large system remained permissible

9. Pub. L. No. 109-246, 120 Stat. 577 (2006); Pub. L. No. 97-205, 96 Stat. 131 (1982); Pub. L. No. 94-73, tit. I, § 101 & tit. II, §§ 201–03, 206, 89 Stat. 400–402 (1975); Pub. L. No. 91-285, §§ 2–4, 84 Stat. 314, 315 (1970).

10. Bolden v. City of Mobile, 423 F. Supp. 384, 391 (S.D. Ala. 1976).

11. *Id.*

12. *Id.*, *aff'd*, 571 F.2d 238 (5th Cir. 1978), *rev'd*, 446 U.S. 55 (1980).

13. City of Mobile v. Bolden, 446 U.S. 55, 60–61 (1980) ("[I]t is apparent that the language of § 2 no more than elaborates upon that of the Fifteenth Amendment, . . . [and] that it was intended to have an effect no different from that of the Fifteenth Amendment itself.").

unless the plaintiffs could demonstrate that the city adopted the at-large system for the purpose of diluting black voting strength.[14]

In 1982, Congress responded to *Mobile* by amending Section 2 to create an explicit "results"-based test for discrimination in voting. As a consequence, Section 2 provides today:

> 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 [on account of statutorily designated language minority status].[15]

Determining whether a particular electoral rule results in a denial or abridgement of the right to vote is a complex inquiry. The statute indicates that to prevail under Section 2, plaintiffs must demonstrate that, "based on the totality of circumstances . . . the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a [racial or language minority]." Plaintiffs must show that members of these protected classes "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." Relevant to the inquiry is "the extent to which members of a protected class have been elected to office in the State or political subdivision," although the statute is explicit in that it creates no right to proportional representation.[16]

The Senate Judiciary Committee issued a report to accompany the 1982 amendment to Section 2, now known as the "Senate Report."[17] The Supreme Court has since described this report as "the authoritative source" on the meaning of the amended statute.[18] The Senate Report identified several factors, now known as "the Senate Factors," for courts to use when assessing whether a particular practice or procedure results in prohibited discrimination in

14. *Id.* On remand, the district court struck down the at-large system based on evidence of such intent. Bolden v. Mobile, 542 F. Supp. 1050 (S.D. Ala. 1982). *See* SAMUEL ISSACHAROFF, PAMELA S. KARLAN & RICHARD H. PILDES, LAW OF DEMOCRACY 711 (rev. 2d ed. 2002) [hereinafter ISSACHAROFF, KARLAN & PILDES]; Peyton McCrary, *The Significance of* Bolden v. The City of Mobile, *in* MINORITY VOTE DILUTION 47, 48–49 (Chandler Davidson ed., 1984).

15. 42 U.S.C. § 1973(a) (2000).

16. *Id.* § 1973(b).

17. S. REP. NO. 97–417 (1982), *as reprinted in* 1982 U.S.C.C.A.N. 177 [hereinafter SENATE REPORT].

18. Thornburg v. Gingles, 478 U.S. 30, 43 n.7 (1986).

violation of Section 2. Derived from the Supreme Court's analysis in *White v. Regester*,[19] and the Fifth Circuit's subsequent decision in *Zimmer v. McKeithen*,[20] these "typical" factors are:

1. The extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;
2. The extent to which voting in the elections of the state or political subdivision is racially polarized;
3. The extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
4. If there is a candidate slating process, whether members of the minority group have been denied access to that process;
5. The extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;
6. Whether political campaigns have been characterized by overt or subtle racial appeals;
7. The extent to which members of the minority group have been elected to public office in the jurisdiction.[21]

The Senate Report also identified two additional factors that have "probative value" in establishing a plaintiff's claim under the amended statute, referred to as Senate Factors 8 and 9. These query whether "there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group," and whether the justification for the policy behind the practice or procedure is "tenuous."[22] The 1982 amendment to Section 2 dramatically altered voting rights

19. White v. Regester, 412 U.S. 755 (1973).

20. Zimmer v. McKeithen, 485 F.2d 1297 (5th Cir. 1973) (en banc), *aff'd sub nom.* East Carroll Parish Sch. Bd. v. Marshall, 424 U.S. 636 (1976) (per curiam).

21. SENATE REPORT, *supra* note 17, at 28–29.

22. *Id.* at 29.

litigation nationwide. While prior to 1982 plaintiffs had rarely invoked Section 2 in its original form, most plaintiffs alleging racial vote dilution since 1982 have consistently brought their claims under Section 2.[23]

B. Research Objectives

A detailed understanding of Section 2 litigation informs several issues related to the reauthorization of the expiring provisions of the Voting Rights Act. First, the record of judicial implementation of Section 2 informs the question whether the auxiliary provisions, such as Section 5, are still helpful today. To be sure, Section 5 is distinct from Section 2 in that, for covered jurisdictions, compliance with Section 2 is neither necessary nor sufficient to obtain preclearance from the federal government. Nonetheless, analyzing the judicial record of Section 2 decisions—including the structured nature of the judicial inquiry under the Senate Factors—helps illuminate the extent to which meaningful minority participation in elections has been a reality in recent times.

Section 2 decisions tell a powerful story about the health of minority political participation throughout the United States since 1982. And they do so in Congress's own terms—in the way Congress asked courts to assess political equality and to determine whether to issue a remedy. An examination of these decisions also illustrates how both claims and remedies have changed over the years. Enacted by Congress in 1965 to address the specific problem of black disfranchisement in the South, the Voting Rights Act has been amended to protect language minorities and today is invoked by several different minority groups to challenge a host of electoral practices throughout the country. The findings in these cases offer a lens, provided by Congress itself, through which variations in political participation over time and region may be viewed and evaluated.[24]

Recent Supreme Court decisions have demanded increased scrutiny of the connection between the perception of a constitutional evil and the remedy enacted under Congress's power to enforce the Civil War amendments. In *City of Boerne v. Flores*, the Supreme Court announced that Congress could only invoke its legislative powers under Section 5 of the Fourteenth Amendment

23. ISSACHAROFF, KARLAN & PILDES, *supra* note 14, at 747.

24. *See infra* Parts II.B, II.C.

where the Congressional legislation was "congruent and proportional" to "remedy or prevent" an underlying constitutional violation.[25] The same is true for the power to enforce the Fifteenth Amendment pursuant to Section 2 of that amendment.[26]

Many people read *City of Boerne* and its progeny to signal that the reauthorization of Section 5 will survive constitutional scrutiny only if Congress has adequately documented pervasive unconstitutional conduct in covered jurisdictions.[27] To the extent the Supreme Court will require such a record,[28] the Section 2 decisions offer one source for identifying recent instances of unconstitutional conduct related to voting. To be sure, Section 2's "results"-based test goes beyond what the Fifteenth Amendment alone commands. And yet, some Section 2 violations are constitutional violations.[29] Moreover, courts assessing the Senate Factors in the course of adjudicating Section 2 cases have documented evidence that reveals a range of unconstitutional conduct by state and local officials in specific regions across the Nation.[30] While these judicial findings are not

25. City of Boerne v. Flores, 521 U.S. 507, 519–20 (1997).

26. *Id.* at 518 (discussing "Congress' parallel power to enforce the provisions of the Fifteenth Amendment" as co-extensive with Section 2 of the Fourteenth Amendment).

27. Ellen D. Katz, *Not Like the South?: Regional Variation and Political Participation Through the Lens of Section 2, in* DEMOCRACY, PARTICIPATION AND POWER: PERSPECTIVES ON REAUTHORIZATION OF THE VOTING RIGHTS ACT (forthcoming 2006) (manuscript at nn.4–6, on file with authors) (discussing this argument).

28. For the argument that it should not require such a record, see *id. See also An Introduction to the Expiring Provisions of the Voting Rights Act and Legal Issues Relating to Reauthorization: Hearing Before the S. Comm. on the Judiciary*, 109th Cong. 15 (2006) (statement of Pamela S. Karlan, Professor of Public Interest Law, Stanford University School of Law); Pamela S. Karlan, *Congressional Power to Extend Preclearance Under the Voting Rights Act*, AMERICAN CONSTITUTION SOCIETY LAW FOR LAW AND POLICY, at 14, 19, June 14, 2006, http://www.acslaw.org/node/2964.

29. Some lawsuits found both constitutional and Section 2 violations. *See* Arakaki Litig., 314 F.3d 1091 (9th Cir. 2002); Garza v. L.A. Litig., 918 F.2d 763 (9th Cir. 1990); Mobile Sch. Bd. Litig., 706 F.2d 1103 (11th Cir. 1983); Gadsden County Litig., 691 F.2d 978 (11th Cir. 1982); City of New Rochelle Litig., 308 F. Supp. 2d 152, 158 (S.D.N.Y. 2003); Marks-Phila. Litig., No. CIV. A. 93-6157, 1994 WL 146113 (E.D. Pa. Apr. 26, 1994); Jeffers Litig., 740 F. Supp. 585 (E.D. Ark. 1990); Armour Litig., 775 F. Supp. 1044 (N.D. Ohio 1991); LULAC v. Midland Litig., 648 F. Supp. 596 (W.D. Tex. 1986); Terrell Litig., 565 F. Supp. 338 (N.D. Tex. 1983); *see also* Dean Litig., 555 F. Supp. 502 (D.R.I. 1982) (declaratory and injunctive relief based on "constitutional error" and implied Section 2 violation); Haywood County Litig., 544 F. Supp. 1122 (W.D. Tenn. 1982) (preliminary injunction based on proven Section 2 violation and likely success on constitutional claim). Some lawsuits found discriminatory intent and effect under Section 2. *See* Town of N. Johns Litig., 717 F. Supp. 1471, 1476 (M.D. Ala. 1989); Baldwin Bd. of Educ. Litig., 686 F. Supp. 1459, 1467 (M.D. Ala. 1988); Harris Litig., 695 F. Supp. 517, 521 (M.D. Ala. 1988); Buskey v. Oliver Litig., 565 F. Supp. 1473, 1485 (M.D. Ala. 1983); *see also* Town of Cicero Litig., No. Civ.A. 00C 1530, 2000 WL 34342276, at *1 (N.D. Ill. Mar. 15, 2000) (preliminary injunction based on likely success of showing purposeful discrimination under Section 2); Dillard v. Crenshaw Litig., 640 F. Supp. 1347, 1361 (M.D. Ala. 1986) (same).

30. *See infra* Part II.C.1.

formal adjudications of unconstitutional conduct, they represent the considered judgments of federal judges nationwide that the evidence they reviewed reveals conduct that runs afoul of the Constitution.

C. Research Project and Design

The Voting Rights Initiative is a faculty-student research collaborative established in January 2005 at the University of Michigan Law School. Working under the direction of Professor Ellen Katz, a group of more than 100 Michigan Law students set out to document the nature and scope of litigation brought, since 1982, under Section 2 of the Voting Rights Act.

Researchers began by searching the federal court databases on Westlaw and LexisNexis to identify electronically published decisions addressing a Section 2 claim. To develop the master list, researchers searched these databases for every federal court decision that cited 42 U.S.C. § 1973 between June 29, 1982, when Section 2 was amended, and December 31, 2005. The resulting list was then narrowed by identifying cases in which plaintiffs had filed an actual claim under Section 2, and removing all decisions that merely reference Section 2 without involving a claim brought under that provision.[31]

Researchers then located all related decisions and organized them by lawsuit with a single litigation title. Within each lawsuit, researchers determined which opinion provided the final word for the purposes of this project, since many lawsuits included multiple appeals and remands.[32] The final word case in each lawsuit is usu-

31. The resulting list includes decisions published in the federal reporters, as well as some only published on electronic databases. The list includes some lawsuits that have not yet resulted in a final unappealable decision, but for which at least one opinion was published within the specified time period. The study does not include lawsuits that did not produce a published opinion before 2006. *See, e.g.*, Cottier v. City of Martin, 445 F.3d 1113 (8th Cir. 2006); Quinn v. Pauley, No. 04 C 6581, 2006 WL 752965 (N.D. Ill. Mar. 21 2006); Gonzalez v. City of Aurora, No. 02 C 8346, 2006 WL 681048 (N.D. Ill. Mar. 13 2006). The list does include a few lawsuits decided after the 1982 amendment to Section 2 which did not apply the new results test. *See, e.g.*, Cross Litig. (GA), 704 F.2d 143, 144 (5th Cir. 1983); Mobile Sch. Bd. Litig. (AL), 706 F.2d 1103, 1106 (11th Cir. 1983).

32. The final word citation, along with the litigation title, is used as a shorthand reference to an entire lawsuit (which may have multiple opinions addressing various issues). While the report frequently cites to the final word opinion to refer to the litigation as a whole, sometimes a particular judicial opinion within a litigation string is cited in order to pinpoint a specific finding or issue for discussion. Most lawsuits have only one final word citation. In the rare situations in which merits issues were severed (e.g. by minority group or by practice challenged) and addressed in separate proceedings, a lawsuit may have more

ally the last case in the lawsuit that assessed liability on the merits and determined whether Section 2 was violated. If there was no such case to analyze, researchers coded as the final word the last published case in the lawsuit making some other determination for or against the plaintiff, including whether to issue a preliminary injunction, whether to approve a settlement, what remedy to order, and whether to grant fees. In these latter cases, the contours of the underlying Section 2 claim and the court's analysis of it were often difficult to discern as the reported decision was addressing a distinct question. Still, these cases, especially preliminary injunction cases, sometimes included reference to some Senate Factors or other substantive Section 2 criteria. Even where nothing more than the fact of decision could be discerned from these opinions, researchers included the lawsuit in the overall list of lawsuits to attempt to give as broad a picture as possible of Section 2 litigation.

Researchers reviewed each case within a litigation string and followed a standard checklist[33] to catalogue the information discussed and the outcome reached on the Section 2 claim. Researchers recorded which of the nine Senate Factors, if any, the reviewing court found to exist, and whether the court ultimately found a violation of Section 2. Researchers also tracked how courts have treated the so-called "*Gingles*" threshold test,[34] the law or practice challenged in each lawsuit, the implicated governing body, the minority groups bringing the claim, the involvement of expert witnesses, and other basic case data such as the judges and lawyers involved with the case.

Each case was read and catalogued by multiple researchers working independently, then by research directors, and then checked for consistency by editors. Since the completion of the case reports, searches have been designed using the database to document and analyze particular findings in this report.

All of the case reports and searches to access this data are available at www.votingreport.org. This website includes lists of cases, organized by lawsuit and by state, in both Section 5-covered and non-covered jurisdictions that: resulted in a successful outcome for the plaintiffs;[35] found any of the Senate Factors; challenged specific

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than one "final word" case, each corresponding to the final decision on an issue. Many lawsuits may also contain decisions subsequent to the final word opinion that addressed other matters, such as fees, remedies or other related claims.

33. *See* The Voting Rights Initiative, Data Key, http://www.votingreport.org, also located at http://www.sitemaker.umich.edu/votingrights.

34. Thornburg v. Gingles, 478 U.S. 30 (1986).

35. Suits coded as a successful plaintiff outcome include both those lawsuits where a court determined, or the parties stipulated, that Section 2 was violated, and a category of lawsuits where the only published opinion indirectly documented plaintiff success. In this

types of electoral practices; challenged certain governing bodies; and involved particular minority groups. The site also provides a timeline of racial appeals in campaigns.[36] An abridged version of the master list and the Section 2 lawsuits analyzed in this study appears in an appendix to this report.[37]

VRI issued a report evaluating its findings in November 2005, as congressional hearings considering the merits of reauthorization were proceeding.[38] With the legislative component of reauthorization now complete, this volume of *The University of Michigan Journal of Law Reform* provides a revised and updated version of the original VRI report.

II. THE FINDINGS: DOCUMENTING DISCRIMINATION

A. Overall Results

1. The Numbers—This study identified 331 lawsuits, encompassing 763 decisions, addressing Section 2 claims since 1982.[39] These lawsuits, of course, represent only a portion of the Section 2 claims filed or decided since 1982. Of the total number of cases filed, some plaintiffs failed to pursue their claims, some obtained relief through settlement, and others saw their cases go to judgment, but the courts involved did not issue any published opinion or ancillary ruling published on the electronic databases surveyed. The total number of claims filed under Section 2 since the 1982 amendment is, accordingly, not known.

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second category of plaintiff success are suits where the only—or most recently—published case granted a preliminary injunction, considered a remedy or settlement, or decided whether to grant attorneys' fees after a prior unpublished determination of a Section 2 violation.

36. For additional analysis and comparisons of the following in covered and non-covered jurisdictions: rates of success in local and statewide lawsuits, rates of success for different electoral practices challenged, differing levels of white bloc voting in covered and non-covered jurisdictions, differing historic rates of minority candidate success, and rates of success when challenging new, as opposed to longstanding, electoral practices, see Katz, *supra* note 27, at app.

37. *Infra* Appendix.

38. Dave Gershman, *Study: Discrimination in Voting Still a Problem: U-M Students Suggest Congress Take Action*, ANN ARBOR NEWS, Nov. 11, 2005; *see also* VRI website, http://www.votingreport.org.

39. *See* VRI Database Master List of the Voting Rights Initiative Database (2006), http://www.votingreport.org (highlight "Final Report" on the top menu) (on file with the University of Michigan Journal of Law Reform) [hereinafter VRI Database Master List] (including instructions on how to sort data to find lists of lawsuits for each citation in this report).

The ACLU reports that approximately one out of five of their plaintiffs' Section 2 cases filed in Georgia and in South Carolina ended with a published decision.[40] Insofar as this ratio of filings is at all representative, this study's compilation of 331 lawsuits conservatively suggests that there have been more than 1,600 Section 2 filings nationwide, with filings in covered jurisdictions possibly exceeding 800.[41]

Of the identified lawsuits, 211 produced at least one published merits decision on the question of whether Section 2 was violated. The remaining 120 include lawsuits in which the only published decisions addressed preliminary matters (78 decisions) or fees, remedy, or settlement issues (42 decisions). Of the 211 lawsuits that ended with a determination on the merits, 98 (46.4%) originated in jurisdictions covered by Section 5 of the Voting Rights Act, and 113 (53.5%) were filed in non-covered jurisdictions.[42]

Plaintiffs succeeded in 123 (37.2%) of the lawsuits identified in this study. Of these suits, 92 documented a violation of Section 2—either on the merits or in the course of another favorable determination for the plaintiff. Another 31 lawsuits made a favorable determination for the plaintiff (such as issuing a preliminary injunction, granting a settlement, awarding fees, or crafting a remedy) without stating whether Section 2 was actually violated.[43]

Plaintiffs won more Section 2 lawsuits in covered jurisdictions than they did in non-covered jurisdictions even though less than one-quarter of the U.S. population resides in a jurisdiction covered by Section 5, and preclearance blocks some portion of discriminatory electoral changes that might otherwise be challenged under Section 2.[44] Of the 123 successful plaintiff outcomes documented,

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40. *See* LAUGHLIN MCDONALD & DANIEL LEVITAS, ACLU, THE CASE FOR AMENDING AND EXTENDING THE VOTING RIGHTS ACT, VOTING RIGHTS LITIGATION, 1982–2006: A REPORT OF THE VOTING RIGHTS PROJECT OF THE AMERICAN CIVIL LIBERTIES UNION (2006) (on file with the University of Michigan Journal of Law Reform), *available at* http://www.aclu.org/votingrights/2005_report.pdf.

41. In Texas, the Section 2 litigation record of attorney Rolando Rios suggests an even higher number, in that 8 of 211 or 3.8% of his law firm's filed Section 2 lawsuits ended with a reported decision. *See* List of Cases Litigated by Rolando L. Rios, Law Office, sometimes in cooperation with the Mexican American Legal Defense and Educational Fund or with Texas Rural Legal Aid (on file with the Voting Rights Initiative).

42. *See* VRI Database Master List, *supra* note 39.

43. *Id.*; *see also supra* note 35.

44. The number of people living in Section 5 jurisdictions is 67,767,900 out of 281,421,906. U.S. Census Bureau, United States Census 2000, Demographic Profiles: 100-percent and Sample Data: Demographic Profile Data Search, http://censtats.census.gov/pub/Profiles.shtml (select the appropriate state and county to view and sum county-level population and demographic data for covered and non-covered jurisdictions) (last visited June 22, 2006). In addition, census data shows that 39.3% of African Americans in the

68 originated in covered jurisdictions, and 55 elsewhere. Plaintiffs in covered jurisdictions also won a higher percentage of the cases decided than did those in non-covered areas. Of the 171 lawsuits published involving non-covered jurisdictions, 32.2% ended favorably for plaintiffs, while 42.5% of the 160 lawsuits from covered jurisdictions produced a result favorable to the plaintiffs.[45]

Courts identified violations of Section 2 more frequently between 1982 and 1992 than in the years since. Of the 92 total violations identified, courts found 46.7% of them during the 1980s, 38% during the 1990s, and 15.2% since then.[46]

The nature of Section 2 litigation has changed in recent years. Of the 100 lawsuits in the 1980s, most involved challenges to at-large elections (60 or 60%). Since 1990, 231 lawsuits have produced published opinions. Of these, 86 (37.2%) challenged at-large elections, and 89 (38.5%) challenged reapportionment or redistricting plans.[47]

African-American plaintiffs have brought the vast number of published claims (272 or 82.2%) under Section 2 since 1982, with an increasing number of cases involving Latino (97), Native American (12), and Asian American (7) plaintiffs. African Americans were the sole plaintiffs in 93 (75.6%) of the successful decisions for plaintiffs. Of all lawsuits where any plaintiff achieved success, 16 involved multiple minority group plaintiffs.[48] In addition, Latino plaintiffs won 7 lawsuits independently, and Native American plaintiffs won 5 published lawsuits.[49]

In several lawsuits, courts addressed the constitutionality of Section 2 and all upheld the statute.[50] Judicial findings on the Senate

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United States live in Section 5-covered areas, 31.8% of Hispanics or Latinos live in covered jurisdictions, and 25% of Native Americans live in covered jurisdictions. *Id.*

45. *See* VRI Database Master List, *supra* note 39.

46. *Id.* Of these 92 lawsuits, 43 found violations during the 1980s, between 1982 and 1992, 35 during the 1990s, and 14 from 2000–2006.

47. *Id.* For an analysis of the types of electoral practices plaintiffs have challenged under Section 2 and comparative success rates in covered and non-covered jurisdictions, *see* Katz, supra *note* 27, at app., fig. 4.

48. *See, e.g.*, Perry Litig. (TX), 126 S. Ct. 2594 (2006); City of Chi.-Bonilla Litig., 141 F.3d 699 (7th Cir. 1998); City of Chi.-Barnett Litig., 17 F. Supp. 2d 753 (N.D. Ill. 1998).

49. *See* VRI Database Master List, *supra* note 39. Two other lawsuits brought by plaintiffs of unknown race reached success. Arakaki Litig., 314 F.3d 1091 (9th Cir. 2002) (overturning the race-specific candidacy requirement to run for trustee of the Office of Hawaiian Affairs); Jefferson County Litig., 798 F.2d 134 (5th Cir. 1986) (litigating the amount of appropriate attorneys' fees after approval of a non-published settlement agreement).

50. Blaine County Litig. (MT), 363 F.3d 897, 904 (9th Cir. 2004); Sanchez-Colo. Litig. (CO), 97 F.3d 1303, 1314 (10th Cir. 1996); Lubbock Litig. (TX), 727 F.2d 364, 375 (5th Cir. 1984); Marengo County Litig. (AL), 731 F.2d 1546, 1558 (11th Cir. 1984); Alamosa County Litig., 306 F. Supp. 2d 1016, 1026, 1040 (D. Colo. 2004); Elections Bd. Litig., 793 F. Supp. 859, 868–69 (W.D. Wis. 1992); Wesley Litig., 605 F. Supp. 802, 808 (M.D. Tenn. 1985); Jordan Litig., 604 F. Supp. 807, 811 (N.D. Miss. 1984); El Paso Indep. Sch. Dist. Litig., 591

Factors are discussed in more detail below. Briefly stated, however, courts found Senate Factor 1—a history of official discrimination touching the right to vote—in 111 lawsuits. Thirty-three lawsuits identified evidence of explicit official discrimination against a racial or language minority group since 1982, of which 12 originated in covered jurisdictions.[51]

Since 1982, 105 lawsuits found racially polarized voting or racial bloc voting, generally analyzing the question under either Senate Factor 2 or the second and third *Gingles* preconditions. Where courts found racial bloc voting, plaintiffs prevailed 73.3% of the time, or in 77 lawsuits overall. Courts found racially polarized voting in 52 lawsuits in covered jurisdictions.[52]

Ninety lawsuits found that minority candidates had difficulty getting elected under Senate Factor 7. In 88 lawsuits, courts found that Senate Factor 5—past socioeconomic discrimination—hindered effective political participation. Courts documented, under Factor 3, the presence of enhancing practices, such as at-large elections or majority vote requirements, in 52 lawsuits, of which the vast majority did not involve a direct challenge to the practice identified under Factor 3. Courts identified Factor 6—overt or subtle racial appeals—to be met in 47 campaigns held between 1982 and 2002. Ten lawsuits expressly found that minorities were denied access to a candidate slating process (Factor 4); 20 lawsuits documented a significant lack of responsiveness by current officials to the needs of the minority community (Factor 8); and 23 found that only a tenuous policy existed for the challenged practice (Factor 9). Factors 4, 8 and 9 featured less prominently in analyzed lawsuits, but when these factors were present, courts typically found a statutory violation as well.[53]

2. The Trends

a. The Persistence of Discrimination—Four decades after the enactment of the Voting Rights Act, racial discrimination in voting is far from over. Federal judges adjudicating Section 2 cases over the last twenty-three years have documented a range of conduct by state and local officials that they have deemed racially discriminatory—and intentionally so. Examples abound.[54] The *Bone Shirt*

F. Supp. 802, 805–06 (W.D. Tex. 1984); City of Greenwood Litig., 599 F. Supp. 397, 399 (N.D. Miss. 1984); Major Litig., 574 F. Supp. 325, 345 (E.D. La. 1983)).

51. *See infra* Part II.C.1; *see also* VRI Database Master List, *supra* note 39. *See also* Ketchum Litig. (IL), 740 F.2d 1398, 1408 (7th Cir. 1984) (drawing close analogy to intentional discrimination found in Rybicki Litig., 574 F.Supp. 1147, 1151 (N.D. Ill. 1983)).

52. VRI Database Master List, *supra* note 39.

53. *Id.*

54. *See infra* Part II.C.1.

litigation documents how county officials in South Dakota purposely blocked Native Americans from registering to vote and from casting ballots.[55] The *Charleston County* litigation (South Carolina) reveals deliberate and systematic efforts by county officials to harass and intimidate African-American residents seeking to vote.[56] The *North Johns* litigation in Alabama describes the town mayor's refusal to provide African-American candidates registration forms required by state law.[57] The *Harris* litigation in Alabama tells of Jefferson County's refusal to hire black poll workers for white precincts—and the blind eye state government turned to the voting discrimination perpetuated at local polls.[58] A Philadelphia lawsuit describes a deliberate and collusive effort by party officials and city election commissioners to trick Latino voters into casting illegitimate absentee ballots that would never be counted.[59] The *Town of Cicero* litigation (Illinois) categorizes an 18-month residency requirement as deliberately designed to stymie Latino candidacies.[60] Many more cases tell of state and local authorities drawing district lines for the express purpose of diminishing the influence of minority voters, or to protect partisan interests, knowing that doing so will hinder minority voting strength.[61]

Judicial findings under the various factors set forth in the Senate Report also reveal the persistence of private (typically nonactionable) discrimination and vestiges of past official discrimination that continue to hinder meaningful political participation by various minority groups. Section 2 lawsuits catalogue formal and informal slating procedures implemented by party officials and private associations that function to deny minority candidates meaningful access to the ballot.[62] Federal judges have identified a host of campaign tactics nationwide designed to appeal to base racial prejudice, including manipulating photographs to darken the skin of opposing candidates, allusions or threats of minority group "take over"[63] or imminent racial strife, and cynical attempts to increase turnout among perceived "anti-black"[64] voters.[65]

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55. Bone Shirt Litig., 336 F. Supp. 2d 976 (D.S.D. 2004).
56. Charleston County Litig. (SC), 365 F.3d 341 (4th Cir. 2004).
57. Town of N. Johns Litig., 717 F. Supp. 1471 (M.D. Ala. 1989).
58. Harris Litig., 695 F. Supp. 517 (M.D. Ala. 1988).
59. Marks-Phila. Litig., No. CIV. A. 93-6157, 1994 WL 146113 (E.D. Pa. Apr. 26, 1994).
60. Town of Cicero Litig., No. Civ.A. 00C 1530, 2000 WL 34342276, at *1 (N.D. Ill. Mar. 15, 2000).
61. *See infra* notes 247–256 and accompanying text.
62. *See infra* Part II.C.4.
63. Bone Shirt Litig., 336 F. Supp. 2d 976, 1041 (D.S.D. 2004).
64. Charleston County Litig., 316 F. Supp. 2d 268, 296 (D.S.C. 2003).
65. *See infra* Part II.C.6.

b. The Power of Partisanship—Courts adjudicating Section 2 claims must confront the significance of the tight linkage between race and party in many parts of this country. This issue has taken on greater importance with the emergence of the Republican Party as a vibrant and influential force in the Southern United States, a development that complicates claims of racial vote dilution, as traditionally alleged. Courts must now assess how partisan affiliation affects minority electoral success and the legal significance to accord to that relationship.

Courts adjudicating Section 2 lawsuits confront this issue at numerous junctures, but do so most prominently when assessing racial bloc voting. The *LULAC v. Clements* litigation famously declared that Section 2 is "implicated only where Democrats lose because they are black, not where blacks lose because they are Democrats."[66] The majority of courts today will examine the claim that party, rather than race, causes minority electoral defeats. Some Section 2 plaintiffs falter on this requirement, particularly as numerous Section 2 lawsuits document the increasing willingness of white Democrats to support minority-preferred candidates in the general election. Concerned that party affiliation masks instances of racial discrimination among voters, some courts are looking more frequently to the primary elections as a gauge of minority political opportunity.[67] A host of recent Section 2 lawsuits document that significant racial polarization in voting remains prevalent at this juncture of the electoral process, notwithstanding the willingness of voters, minority and non-minority alike, to support the party nominee in the general election. With the proliferation of noncompetitive districts in the United States, the primary now forms the critical locus for political participation today such that the racial composition of the primary electorate is often more critical to minority electoral opportunity than is the composition of the district as a whole.[68]

Emphasis on the centrality of party as an organizing principle in American politics may also obscure the ways in which partisan conduct itself may diminish opportunities for minority political participation. State-mandated white primaries are long gone, but party officials, acting formally or ad hoc, continue to implement slating procedures that stymie minority candidacies. Some lawsuits

66. LULAC v. Clements Litig. (TX), 999 F.2d 831, 854 (5th Cir. 1993).

67. *See infra* notes 127–133 and accompanying text.

68. *See* Bernard Grofman, Lisa Handley & David Lublin, *Drawing Effective Minority Districts: A Conceptual Framework and Some Empirical Evidence*, 79 N.C. L. REV. 1383 (2001); Ellen D. Katz, *Resurrecting the White Primary*, 153 U. PA. L. REV. 325 (2004); *see also infra* note 128.

document what might aptly be labeled backstabbing by party officials who omit minority candidates from party campaign literature or otherwise fail to support their party's minority candidates.[69] Numerous courts now classify the knowing sacrifice of minority interests to the quest for partisan gain a form of intentional race discrimination.[70]

B. The Gingles *Threshold*

The Supreme Court's 1986 decision *Thornburg v. Gingles* distilled three "preconditions" from the totality of the circumstances test that Section 2 requires. Satisfaction of these conditions does not establish a Section 2 violation, but failure to meet them almost always brings a plaintiff's case to an end.

Since the Court decided *Gingles*, 169 lawsuits have addressed its preconditions, and 68 lawsuits found them to be satisfied. Of these, most (57) proceeded to a favorable outcome for the plaintiff.[71] In many of these cases, courts engaged in only a perfunctory review of the Senate Factors. Moreover, since *Johnson v. De Grandy*,[72] a number have restricted their post-*Gingles* inquiries to assessing whether the challenged practice achieved "proportionality," and finding a Section 2 violation only if it did not.[73]

In 101 lawsuits considering the *Gingles* Factors, courts held that plaintiffs failed to establish one or more of the preconditions.[74] A few of these courts nevertheless proceeded to evaluate plaintiffs' claims under the totality of the circumstances, typically finding that plaintiffs lose under this test as well.[75] In a few cases, courts have analyzed claims under the totality of circumstances without engaging in review under *Gingles* at all. Since *Gingles*, only 14 cases have identified a violation of Section 2 without addressing the *Gingles* factors.[76]

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69. *See infra* notes 314–320 and accompanying text.

70. *See, e.g.*, Garza v. L.A. Litig. (CA), 918 F.2d 763, 771 (9th Cir. 1990); Ketchum Litig. (IL), 740 F.2d 1398, 1408 (7th Cir. 1984); City of New Rochelle Litig., 308 F. Supp. 2d 152, 158 (S.D.N.Y. 2003).

71. *See* VRI Database Master List, *supra* note 39.

72. Johnson v. De Grandy, 512 U.S. 997 (1994).

73. *See, e.g.*, Little Rock Litig. (AR), 56 F.3d 904, 910 (8th Cir. 1995); Austin Litig., 857 F. Supp. 560, 569–70 (E.D. Mich. 1994); *infra* Part II.C.10.

74. *See* VRI Database Master List, *supra* note 39.

75. *See, e.g.*, Meza Litig., 322 F. Supp. 2d 52, 69 (D. Mass. 2004); Town of Babylon Litig., 914 F. Supp. 843, 884–91 (E.D.N.Y. 1996).

76. *See* VRI Database Master List, *supra* note 39.

Plaintiffs crossing the *Gingles* threshold are more likely to prevail in covered jurisdictions than in non-covered areas. Thirty lawsuits originating in covered jurisdictions found the *Gingles* factors, and of these, 28 (93.3%) also ended favorably for the plaintiffs. In non-covered jurisdictions, 38 lawsuits found all three *Gingles* factors, of which 29 (76.3%) ended with plaintiff success.[77]

1. Gingles *I: Sufficiently Large and Geographically Compact*

a. Sufficiently Large—The first component of the *Gingles* test requires a minority group to demonstrate that it is "sufficiently large and geographically compact to constitute a majority in a single-member district."[78] Courts addressing *Gingles* I have generally engaged in two inquiries: (1) assessing when the minority population is "sufficiently large," and (2) determining whether a proposed district encompassing that population is "geographically compact."[79]

Discussion of the "sufficiently large" prong has focused primarily on the size of the population needed to establish a majority in a single-member district. Most courts define the relevant majority to be the voting age population, reasoning that absent a majority among voters, the minority group will not be an effective majority.[80] Where, however, the minority group contains a large proportion of non-citizens, some courts have required that plaintiffs demonstrate the feasibility of creating a district in which the group constitutes a majority of the citizen voting age population.[81] Finally, a few courts rely on the overall minority population when assessing *Gingles* I.[82]

Several lawsuits involved claims brought by more than one minority group. These plaintiffs argued that, if members of the two

77. *Id.*

78. Thornburg v. Gingles, 478 U.S. 30, 50 (1986).

79. Other courts have simply asserted in conclusory terms that *Gingles* I is, or is not, satisfied, or have noted that the parties stipulated to its existence. *See, e.g.*, Rural West II Litig. (TN), 209 F.3d 835, 839 (6th Cir. 2000); City of LaGrange Litig., 969 F. Supp. 749, 774 (N.D. Ga. 1997); Blytheville Sch. Dist. Litig., 759 F. Supp. 525, 526 (E.D. Ark. 1991); Chattanooga Litig., 722 F. Supp. 380, 390 (E.D. Tenn. 1989).

80. *See, e.g.*, Hamrick Litig. (GA), 296 F.3d 1065, 1067 (11th Cir. 2002); Old Person Litig. (MT), 230 F.3d 1113, 1121 (9th Cir. 2000); Brewer Litig. (TX), 876 F.2d 448, 452 (5th Cir. 1989); Springfield Park Dist. Litig. (IL), 851 F.2d 937, 945 (7th Cir. 1988); Black Political Task Force Litig., 300 F. Supp. 2d 291, 300 (D. Mass. 2004); Marylanders Litig., 849 F. Supp. 1022, 1051 (D. Md. 1994).

81. *See, e.g.*, Pasadena Indep. Sch. Dist. Litig. (TX), 165 F.3d 368 (5th Cir. 1999); City of Chi.-Bonilla Litig. (IL), 141 F.3d 699, 705 (7th Cir. 1998); City of Miami Beach Litig. (FL), 113 F.3d 1563, 1569 (11th Cir. 1997); Pomona Litig. (CA), 883 F.2d 1418, 1426 (9th Cir. 1988); Meza Litig., 322 F. Supp. 2d 52, 59 (D. Mass. 2004); *see also* Perry Litig. (TX), 126 S. Ct. 2594, 2623 (2006).

82. *See, e.g.*, County of Thurston Litig. (NE), 129 F.3d 1015, 1025 (8th Cir. 1997); Dickinson Litig. (IN), 933 F.2d 497, 503 (7th Cir. 1991); City of New Rochelle Litig., 308 F. Supp. 2d 152, 159 (S.D.N.Y. 2003); Albany County Litig., No. 03-CV-502, 2003 WL 21524820, at *5 (N.D.N.Y. Jul. 7, 2003); Aldasoro v. Kennerson Litig., 922 F. Supp. 339, 372 (S.D. Cal. 1995).

(or more) groups were placed together in a single district, they would constitute an effective majority within the meaning of *Gingles* I. Most courts view this type of claim as cognizable under the statute, so long as the groups can demonstrate political cohesiveness under the second *Gingles* factor,[83] a requirement on which many aggregation claims falter.[84]

Plaintiffs have raised Section 2 claims on behalf of minority groups too small in number to constitute a majority in a single-member district. Typically, these plaintiffs take issue with district lines that divide the minority group members among several districts, and argue that the challenged districting plans hinder their ability either (1) to elect representatives of choice by forming coalitions with other voters ("coalition districts" or "ability to elect districts"), or (2) more amorphously, to influence elections ("influence districts").[85] This past June in the *Perry* litigation, the Supreme Court held that influence alone is not sufficient to establish a Section 2 claim.[86] *Perry* nevertheless expressly left open the possibility that Section 2 might protect coalition districts, a question that has divided lower courts.[87]

b. Geographically Compact—Under *Gingles* I, courts have examined the proposed district's shape,[88] the extent to which it comports with the jurisdiction's traditional districting principles,[89]

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83. *See, e.g.*, Hardee County Litig. (FL), 906 F.2d 524, 526 (11th Cir. 1990); Baytown Litig. (TX), 840 F.2d 1240, 1244 (5th Cir. 1988); Albany County Litig., No. 03-CV-502, 2003 WL 21524820, at *11 (N.D.N.Y. July 7, 2003); France Litig., 71 F. Supp. 2d 317, 327 (S.D.N.Y. 1999); LULAC—N.E. Indep. Sch. Dist., 903 F. Supp. 1071, 1092 (W.D. Tex. 1995).

84. *See, e.g.*, Forest County Litig. (WI), 336 F.3d 570, 575–76 (7th Cir. 2003); Kent County Litig. (MI), 76 F.3d 1381, 1396 (6th Cir. 1996) (en banc); Stockton Litig. (CA), 956 F.2d 884, 886 (9th Cir. 1992); Pomona Litig. (CA), 883 F.2d 1418 (9th Cir. 1989); Perry Litig., 298 F. Supp. 2d 451, 509 (E.D. Tex. 2004); Rodriguez Litig., 308 F. Supp. 2d 346, 409 (S.D.N.Y. 2004); San Diego County Litig., 794 F. Supp. 990, 998 (S.D. Cal. 1992).

85. *Gingles* itself expressly left open this question. *See* Gingles Litig., 478 U.S. 30, 46 n.12 (1986) (reserving the question of "whether § 2 permits, and if it does, what standards should pertain to, a claim brought by a minority group, that is not sufficiently large and compact to constitute a majority in a single-member district, alleging that the use of a multimember district impairs its ability to *influence* elections"). The Supreme Court again reserved the question in the *Quilter* litigation. Quilter Litig. (OH), 507 U.S. 146, 154 (1993).

86. Perry Litig. (TX), 126 S. Ct. 2594, 2625–26 (2006).

87. *Compare* Metts Litig. (RI), 363 F.3d 8, 11 (1st Cir. 2004); Rodriguez Litig., 308 F. Supp. 2d 346, 443 (S.D.N.Y. 2004); Page Litig., 144 F. Supp. 2d 346, 362 (D.N.J. 2001); Armour Litig., 775 F. Supp. 1044, 1059–60 (N.D. Ohio 1991), *with* Hall v. Virginia Litig., 385 F.3d 421, 430 (4th Cir. 2004); Kent County Litig. (MI), 76 F.3d 1381, 1386 (6th Cir. 1996) (en banc).

88. *See, e.g.*, Sensley Litig. (LA), 385 F.3d 591, 596 (5th Cir. 2004); Mallory-Ohio Litig. (OH), 173 F.3d 377, 382–83 (6th Cir. 2000).

89. *See, e.g.*, Bone Shirt Litig., 336 F. Supp. 2d 976, 989, 992 (D.S.D. 2004); Montezuma-Cortez Sch. Dist. Litig., 7 F. Supp. 2d 1152, 1167 (D. Colo. 1998).

and how it compares to other proposed or existing districts.[90] Some courts view compactness as a "practical or functional" concept to be assessed in terms of whether the district captures a community.[91]

Since 1994, courts have invoked *Shaw v. Reno*[92] and its progeny[93] when discussing compactness under *Gingles* I.[94] The *Shaw* cases require close scrutiny of districting plans in which racial considerations predominate over traditional districting principles in the drawing of district lines. An oddly shaped district is not a prerequisite to a *Shaw* claim, but courts often look to shape to assess whether race was the primary consideration when the district was drawn. Since *Shaw*, some courts have invoked bizarre shape to measure compactness under *Gingles* I,[95] and generally consider districts compact when they appear more compact than those struck down in the *Shaw* cases.[96]

The Supreme Court's decision this past June in the *Perry* litigation holds that compactness under *Shaw* is not sufficient to establish compactness under *Gingles* I. *Perry* finds that an exceptionally large district that combines minority populations with "disparate needs and interests" fails to satisfy the first *Gingles* factor.[97]

2. Gingles *II and III: Racial Bloc Voting*—Racial polarization in voting, also known as racial bloc voting, constitutes a critical component of a Section 2 claim.[98] The majority of successful Section 2

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90. *See, e.g.*, Bone Shirt Litig., 336 F. Supp. 2d 976, 989, 992 (D.S.D. 2004); City of Columbia Litig., 850 F. Supp. 404, 413 (D.S.C. 1993).

91. *See, e.g.*, Sensley Litig. (LA), 385 F.3d 591, 597–98 (5th Cir. 2004); City of Chi.-Barnett Litig., 17 F. Supp. 2d 753, 758 (N.D. Ill. 1998); Columbus County Litig., 782 F. Supp. 1097, 1105 (E.D.N.C. 1991); Baldwin Bd. of Educ. Litig., 686 F. Supp. 1459, 1466 (M.D. Ala. 1988); Jefferson Parish I Litig., 691 F. Supp. 991, 1007 (E.D. La. 1988).

92. Shaw v. Reno, 509 U.S. 630 (1993).

93. Bush v. Vera, 517 U.S. 952 (1996); Miller v. Johnson, 515 U.S. 900 (1995).

94. Sensley Litig. (LA), 385 F.3d 591, 596–98 (5th Cir. 2004); Hamrick Litig. (GA), 296 F.3d 1065, 1071 (11th Cir. 2002); Town of Hempstead Litig. (NY), 180 F.3d 476, 492 (2d Cir. 1999); Davis v. Chiles Litig. (FL), 139 F.3d 1414, 1424 (11th Cir. 1998); City of Rome Litig. (GA), 127 F.3d 1355, 1376 (11th Cir. 1997); City of New Rochelle Litig., 308 F. Supp. 2d 152, 159 (S.D.N.Y. 2003); France Litig., 71 F. Supp. 2d 317, 325–26 (S.D.N.Y. 1999); Lafayette County Litig., 20 F. Supp. 2d 996, 999–1000 (N.D. Miss. 1998); Chickasaw County II Litig., No. CIV.A. 1:92CV142-JAD, 1997 WL 33426761, at *1 (N.D. Miss. Oct. 28, 1997); Town of Babylon Litig., 914 F. Supp. 843, 873 (E.D.N.Y. 1996); Calhoun County Litig., 881 F. Supp. 252, 253–54 (N.D. Miss. 1995); Marylanders Litig., 849 F. Supp. 1022, 1056 (D. Md. 1994).

95. *See, e.g.*, County of Thurston Litig. (NE), 129 F.3d 1015, 1025 (8th Cir. 1997); City of Minneapolis Litig., No. 02-1139 (JRT/FLN), 2004 U.S. Dist. LEXIS 19708, at *49–50 (D. Minn. Sept. 30, 2004).

96. *See, e.g.*, Sanchez-Colo. Litig. (CO), 97 F.3d 1303, 1315 (10th Cir. 1996); Town of Babylon Litig., 914 F. Supp. 843, 873 (E.D.N.Y. 1996).

97. Perry Litig. (TX), 126 S. Ct. 2594, 2619 (2006).

98. SENATE REPORT, *supra* note 17, at 27–30. Unlike the other Senate Factors, which were largely derived from judicial decisions predating the 1982 amendments, racial bloc

suits (77 of 123, or 62.6%) identified in this study found legally significant racial bloc voting.[99] Racial bloc voting factors into the evaluation of Section 2 claims at two junctures. The second and third of the *Gingles* "preconditions" to a Section 2 claim call for an inquiry into racial polarization in voting. They require courts to determine whether minority voters are politically cohesive, and whether whites vote sufficiently as a bloc to defeat the minority-preferred candidate.[100] Courts who so find (and also find the first *Gingles* factor[101]) must then evaluate whether the plaintiffs can sustain their claim under "the totality of circumstances."[102] This inquiry includes analysis of the Senate Factors, one of which is the extent of racially polarized voting.[103]

In practice, however, courts that consider racial bloc voting generally engage in one inquiry, typically under the *Gingles* factors.[104] Of those that deem *Gingles* satisfied and proceed to the totality of circumstances review, some simply refer back to their previous analysis of racial bloc voting under *Gingles*. Other courts engage in additional analysis, typically examining within the totality of circumstances the question whether race is the cause of the polarized

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voting emerged as a formal element of the Section 2 inquiry for the first time in 1982. *See, e.g.*, Lubbock Litig. (TX), 727 F.2d 364, 384 (5th Cir. 1984). Supporters of the 1982 amendments to Section 2 invoked racial bloc voting as the critical restraint that would keep the amended statute from devolving into a mandate for proportional representation. *See* ISSACHAROFF, KARLAN & PILDES, *supra* note 14, at 741.

99. *See* VRI Database Master List, *supra* note 39. The exceptions are: (1) cases involving challenges to specific voting procedures that identified Section 2 violations without considering racially polarized voting, *see* Operation Push Litig. (MS), 932 F.2d 400, 401 (5th Cir. 1991) (voter registration system); Berks County Litig., 277 F. Supp. 2d 570, 573–75 (E.D. Pa. 2003) (poll official conduct); Marks-Phila. Litig., No. CIV. A. 93-6157, 1994 WL 146113, at *3 (E.D. Pa. Apr. 26, 1994) (absentee ballots); Town of N. Johns Litig., 717 F. Supp. 1471, 1471 (M.D. Ala. 1989) (withholding of candidacy filing forms); Harris Litig., 695 F. Supp. 517, 517 (M.D. Ala. 1988) (policy of appointing only white poll officials); Madison County Litig., 610 F. Supp. 240, 243 (S.D. Miss. 1985) (invalidation of absentee ballots), and (2) cases that found a violation of Section 2 based on invidious intent without considering racially polarized voting, *see* Arakaki Litig. (HI), 314 F.3d 1091, 1097 (9th Cir. 2002); Rybicki Litig., 574 F. Supp. 1147, 1149 (N.D. Ill. 1983).

100. *See* Gingles Litig. (NC), 478 U.S. 30, 50–51 (1986).

101. *See id.* at 32; *see also supra* Part II.B.

102. *See, e.g.*, De Grandy Litig. (FL), 512 U.S. 997, 1011–12 (1994); City of Holyoke Litig. (MA), 72 F.3d 973, 983 (1st Cir. 1995); LULAC v. Clements Litig. (TX), 999 F.2d 831, 849–50 (5th Cir. 1993).

103. *See* SENATE REPORT, *supra* note 17, at 27–30.

104. Decisions between the 1982 amendments and the Court's decision in *Gingles* obviously did not employ the *Gingles* test. Instead, these courts applied varied standards to evaluate racial bloc voting under Senate Factor 2. *See, e.g.*, Terrell Litig., 565 F. Supp. 338, 348–49 (N.D. Tex. 1983).

voting patterns identified under *Gingles*.[105] This Report discusses racial bloc voting solely within this Section.

Of the lawsuits analyzed, 155 considered the extent of racially polarized voting, 105 found the factor to exist. In covered jurisdictions, 52 lawsuits found racial bloc voting; 53 in non-covered.[106] Of suits finding this factor, 77 (73.3%) also resulted in a favorable outcome for the plaintiff.[107]

The discussion that follows describes several recurring issues that pervade judicial analyses of racial bloc voting.

a. Identifying the Minority-Preferred Candidate—Courts assessing racial bloc voting must identify the minority-preferred candidate in order to determine "whether whites vote sufficiently as a bloc usually to defeat"[108] this candidate. In making this determination, courts overwhelmingly agree that the race of the candidates must inform the analysis at least to some degree. Courts have thus not followed Justice Brennan's position in *Thornburg v. Gingles* that a candidate's race should be irrelevant when assessing racial bloc voting.[109]

Most courts, for example, more easily identify a minority candidate as minority-preferred than they do a non-minority candidate. Some implicitly or explicitly assume the minority candidate is

105. *See, e.g.*, Westwego Litig. (LA), 946 F.2d 1109, 1116 (5th Cir. 1991); Charleston County Litig., 316 F. Supp. 2d 268, 277–78 (D.S.C. 2003). Many courts also have held that causation should be considered in the totality of the circumstances assessment. *See infra* Part II.B.2. Some courts then import the causation question into a consideration of Factor 2. *See, e.g.*, Alamosa County Litig., 306 F. Supp. 2d 1016, 1029–33 (D. Colo. 2004) (finding *Gingles* met, but no racially polarized voting due to causation). Others simply consider causation as a different part of the totality of the circumstances. *See, e.g.*, Alamance County Litig. (NC), 99 F.3d 600, 616 n.12 (4th Cir. 1996) ("[T]he best reading of [*Gingles*] . . . is one that treats causation as irrelevant in the inquiry into the three *Gingles* preconditions but relevant in the totality of circumstances inquiry." (internal citation omitted)); *see also infra* notes 131–168.

106. *See* VRI Database Master List, *supra* note 39.

107. *Id.* Twenty-eight lawsuits found racially polarized voting but ultimately did not end in a favorable outcome for the plaintiffs. *Id.* Sixty percent of these were in non-covered jurisdictions. Seven deemed *Gingles* I or II unsatisfied, *id.*, eight identified "rough proportionality" as defined in *Johnson v. De Grandy*, *see infra* Part II.B (discussing cases that found *Gingles* but no violation due to proportionality), two remanded the case for further review, *see* City of Chi.-Bonilla Litig. (IL), 141 F.3d 699, 706 (7th Cir. 1998); Carrollton NAACP Litig. (GA), 829 F.2d 1547, 1563 (11th Cir. 1987), and six declined to find a violation under a more general totality of the circumstances review, *see* Old Person Litig. (MT), 312 F.3d 1036, 1050 (9th Cir. 2002); NAACP v. Fordice Litig. (MS), 252 F.3d 361, 374 (5th Cir. 2001); Liberty County Comm'rs Litig. (FL), 221 F.3d 1218, 1235 (11th Cir. 2000); Niagara Falls Litig. (NY), 65 F.3d 1002, 1019–24 (2d Cir. 1995); Democratic Party of Arkansas Litig. (AR), 902 F.2d 15, 15 (8th Cir. 1990); City of Boston Litig. (MA), 784 F.2d 409, 414 (1st Cir. 1986).

108. Gingles Litig. (NC), 478 U.S. 30, 56 (1986).

109. *Id.* at 68.

the minority-preferred candidate,[110] and some demand evidence on point, although typically less than what they require to demonstrate a white candidate is minority-preferred.[111] No court has held that white candidates cannot be minority-preferred.[112]

Decisions in several circuits, however, have held that courts should engage in a searching inquiry before identifying a white candidate as minority-preferred. This approach, typically associated with the *Jenkins v. Red Clay School District* litigation that articulated it, deems election results only a preliminary component of the inquiry.[113] Courts must determine not only who gets minority votes, but also the depth and vigor of minority support for that candidate, the scope of that candidate's interest in the minority community, whether and why a viable minority candidate did not run, and whether minority candidates had run previously.[114] Because this approach looks at factors such as candidate slating, it implicitly imports into the racial bloc voting inquiry some of the

110. *See, e.g.*, Brooks Litig. (GA), 158 F.3d 1230, 1235, 1240 (11th Cir. 1998); City of Chi.-Barnett Litig. (IL), 141 F.3d 699, 703 (7th Cir. 1998); Blytheville Sch. Dist. Litig. (AR), 71 F.3d 1382, 1387–88 (8th Cir. 1995); Jenkins v. Red Clay Sch. Dist. Litig. (DE), 4 F.3d 1103, 1126 (3d Cir. 1993); Gretna Litig. (LA), 834 F.2d 496, 503 (5th Cir. 1987); City of Boston Litig. (MA), 784 F.2d 409, 413 (1st Cir. 1986); Alamosa County Litig., 306 F. Supp. 2d 1016, 1029–33 (D. Colo. 2004); Campuzano Litig., 200 F. Supp. 2d 905, 914 (N.D. Ill. 2002); St. Bernard Parish Sch. Bd. Litig., No. CIV.A. 02-2209, 2002 WL 2022589, at *6 (E.D. La. Aug. 26, 2002); Rural West I Litig., 877 F. Supp. 1096, 1108 (W.D. Tenn. 1995).

111. Some courts allow for a lesser burden to establish that a minority candidate is minority-preferred. *See, e.g.*, Sanchez-Colo. Litig. (CO), 97 F.3d 1303, 1320–21 (10th Cir. 1996); Jenkins v. Red Clay Sch. Dist. Litig. (DE), 4 F.3d 1103, 1129 (3d Cir. 1993); De Grandy Litig., 815 F. Supp. 1550, 1572–73 (N.D. Fla. 1992); Rockford Bd. of Educ. Litig., No. 89 C 20168, 1991 WL 299104, at *4 (N.D. Ill. Sept. 12, 1991); Gretna Litig., 636 F. Supp. 1113, 1133 (E.D. La. 1986).

Others require the same evidence regardless of the candidate's race. *See, e.g.*, City of Santa Maria Litig. (CA), 160 F.3d 543, 549–50 (9th Cir. 1998); Alamance County Litig. (NC), 99 F.3d 600, 615 (4th Cir. 1996); Watsonville Litig. (CA), 863 F.2d 1407, 1416 (9th Cir. 1988); Black Political Task Force Litig., 300 F. Supp. 2d 291, 303 (D. Mass. 2004); Rodriguez Litig., 308 F. Supp. 2d 346, 388, 389 (S.D.N.Y. 2004); Armour Litig., 775 F. Supp. 1044, 1057 (N.D. Ohio 1991).

112. *See generally* City of Santa Maria Litig. (CA), 160 F.3d 543, 549–50 (9th Cir. 1998); City of Rome Litig. (GA), 127 F.3d 1355, 1379 n.9 (11th Cir. 1997); Alamance County Litig. (NC), 99 F.3d 600, 608 (4th Cir. 1996); Blytheville Sch. Dist. Litig. (AR), 71 F.3d 1382, 1387–88 (8th Cir. 1995); Niagara Falls Litig. (NY), 65 F.3d 1002, 1016 (2d Cir. 1995); Cincinnati Litig. (OH), 40 F.3d 807, 813 (6th Cir. 1994); Jenkins v. Red Clay Sch. Dist. Litig. (DE), 4 F.3d 1103, 1126 (3d Cir. 1993); LULAC v. Clements Litig. (TX), 999 F.2d 831, 882–83 (5th Cir. 1993); Bond Litig. (CO), 875 F.2d 1488, 1495 (10th Cir. 1989); Black Political Task Force Litig., 300 F. Supp. 2d 291, 304 (D. Mass. 2004); Williams v. State Bd. of Elections Litig., 718 F. Supp. 1324, 1325–26 (N.D. Ill. 1989).

113. Jenkins v. Red Clay Sch. Dist. Litig. (DE), 4 F.3d 1103, 1129 (3d Cir. 1993).

114. *See, e.g., id.*; Sanchez-Colo. Litig. (CO), 97 F.3d 1303, 1321 (10th Cir. 1996); Blytheville Sch. Dist. Litig. (AR), 71 F.3d 1382, 1386 (8th Cir. 1995); Nipper Litig. (FL), 39 F.3d 1494, 1540 (11th Cir. 1994); Bone Shirt Litig., 336 F. Supp. 2d 976, 997–1017 (D.S.D. 2004).

Senate Factors typically reviewed only after the *Gingles* threshold is crossed.

Courts in the Second, Sixth, and Ninth Circuits expressly reject this approach, maintaining that this "subjective" inquiry into minority preferences is inappropriate and impractical. These courts posit that the inquiry should be limited almost exclusively to election results to identify the minority-preferred candidate. With a few caveats, these courts define the preferred candidate as the one who receives the most votes from minority voters.[115] The Fourth Circuit appears to follow a similar approach, albeit not explicitly,[116] while the Seventh Circuit seems to assume that a minority candidate is the minority-preferred candidate.[117]

In practice, however, many courts do not strictly adhere to one or the other of these tests.[118] For instance, after adopting the *Jenkins v. Red Clay School District* approach,[119] the Eighth Circuit, in the *St. Louis Board of Education* litigation, noted "it is a near tautological principle that the minority preferred candidate 'should generally be one able to receive [minority] votes.'"[120] Likewise, the Eleventh Circuit relies on the totality of the circumstances to demonstrate that a white candidate is minority-preferred, but its most recent decisions treat the candidate who receives the majority of the minority vote as minority-preferred.[121] In the context of multi-seat elections, moreover, where voters are permitted to cast as many votes as there are seats, both the Fourth and Eleventh Circuits have combined the quantitative and subjective approaches to assess the

115. *See, e.g.*, City of Santa Maria Litig. (CA), 160 F.3d 543, 552 (9th Cir. 1998); Niagara Falls Litig. (NY), 65 F.3d 1002, 1018–19 (2d Cir. 1995); Cincinnati Litig. (OH), 40 F.3d 807, 810 n.1 (6th Cir. 1994); Watsonville Litig. (CA), 863 F.2d 1407, 1416 (9th Cir. 1988).

116. Older cases in the Fourth Circuit allowed room for subjective inquiries. *See, e.g.*, City of Norfolk Litig. (VA), 816 F.2d 932, 937 (4th Cir. 1987). More recently, however, the Fourth Circuit has moved closer to the Second Circuit's approach. *See* Alamance County Litig. (NC), 99 F.3d 600, 614 (4th Cir. 1996).

117. *See, e.g.*, City of Chi.-Bonilla Litig. (IL), 141 F.3d 699, 703 (7th Cir. 1998).

118. Courts in the Fifth and First Circuits do consider voting patterns, testimony from the community, and evidence of active minority support for a particular candidate. *See* LULAC v. Roscoe Indep. Sch. Dist. Litig. (TX), 123 F.3d 843, 848 (5th Cir. 1997); Black Political Task Force Litig., 300 F. Supp. 2d 291, 307–08 (D. Mass. 2004); LULAC v. Roscoe Indep. Sch. Dist. Litig., No. 1:94-CV-104-C, 1996 WL 453584, at *2 (N.D. Tex. May 14, 1996); City of Dallas Litig., 734 F. Supp. 1317, 1393, 1395 (N.D. Tex. 1990).

119. Blytheville Sch. Dist. Litig. (AR), 71 F.3d 1382 (8th Cir. 1995).

120. St. Louis Bd. of Educ. Litig. (MO), 90 F.3d 1357, 1362 (8th Cir. 1996).

121. Hamrick Litig. (GA), 296 F.3d 1065, 1072–73 (11th Cir. 2002); Davis v. Chiles Litig. (FL), 139 F.3d 1414, 1417–18 (11th Cir. 1998); City of Rome Litig. (GA), 127 F.3d 1355, 1377, 1379 n.9 (11th Cir. 1997).

status of candidates that do not place first among black voters, but do receive a substantial percentage of the black vote.[122]

b. Probative Elections—Courts in most circuits generally place more weight on elections involving a minority candidate than on those involving only white candidates.[123] Some courts discount white-on-white elections based on concern that the candidate receiving minority votes is not truly minority-preferred.[124] Others do so because of concern that these elections mask polarized voting patterns that should be deemed legally significant.[125] Not infrequently, candidates preferred by minority voters in elections between white candidates prevail. These victories suggest that white voters are not voting sufficiently as a bloc to defeat minority-preferred candidates. And yet, minority candidates in the same jurisdictions are often defeated even though they receive overwhelming support from minority voters, suggesting white voters are voting as a bloc within the meaning of the third *Gingles* factor.[126] Discounting elections between white candidates consequently helps courts discern polarization of a sort that might otherwise be obscured.

For similar reasons, courts have increasingly looked to primary elections to determine which candidate is minority-preferred. Because primary elections remove party as a causal explanation for voting patterns, some courts view these elections as allowing better

122. *See, e.g.*, City of Rome Litig. (GA), 127 F.3d 1355, 1379 n.9 (11th Cir. 1997); Alamance County Litig. (NC), 99 F.3d 600, 614 (4th Cir. 1996).

123. *See* Old Person Litig. (MT), 230 F.3d 1113, 1127 (9th Cir. 2000); Sanchez-Colo. Litig. (CO), 97 F.3d 1303, 1307–08 (10th Cir. 1996); City of Holyoke Litig. (MA), 72 F.3d 973, 988 n.8 (1st Cir. 1995); S. Christian Leadership Litig. (AL), 56 F.3d 1281, 1293 (11th Cir. 1995); Jenkins v. Red Clay Sch. Dist. Litig. (DE), 4 F.3d 1103, 1128 (3d Cir. 1993); Magnolia Bar Ass'n Litig. (MS), 994 F.2d 1143, 1149 (5th Cir. 1993); City of Indianapolis Litig. (IN), 976 F.2d 357, 361 (7th Cir. 1992); Gretna Litig. (LA), 834 F.2d 496, 503–04 (5th Cir. 1987); Jeffers Litig., 730 F. Supp. 196, 209 (E.D. Ark. 1989); City of Jackson, TN Litig., 683 F. Supp. 1515, 1531 (W.D. Tenn. 1988). *But see* Alamance County Litig. (NC), 99 F.3d 600, 608, 610 n.8 (4th Cir. 1996); Niagara Falls Litig. (NY), 65 F.3d 1002, 1018–19 (2d Cir. 1995).

124. *See, e.g.*, Black Political Task Force Litig., 300 F. Supp. 2d 291, 304 (D. Mass. 2004); Metro Dade County Litig., 805 F. Supp. 967, 984–85 (S.D. Fla. 1992); City of Dallas Litig., 734 F. Supp. 1317, 1388 (N.D. Tex. 1990).

125. *See* LULAC-N.E. Indep. Sch. Dist. Litig., 903 F. Supp. 1071, 1092–93 (W.D. Tex. 1995); City of Columbia Litig., 850 F. Supp. 404, 416 (D.S.C. 1993); Jeffers Litig., 730 F. Supp. 196, 209 (E.D. Ark. 1989); Smith-Crittenden County Litig., 687 F. Supp. 1310, 1317 (E.D. Ark. 1988).

126. *See* S. Christian Leadership Litig. (AL), 56 F.3d 1281, 1287, 1291 (11th Cir. 1995); City of LaGrange Litig., 969 F. Supp. 749, 775 (N.D. Ga. 1997); City of Columbia Litig., 850 F. Supp. 404, 416 (D.S.C. 1993); Nipper Litig., 795 F. Supp. 1525, 1534, 1548 (M.D. Fla. 1992); City of Starke Litig., 712 F. Supp. 1523, 1530 (M.D. Fla. 1989); Jeffers Litig., 730 F. Supp. 196, 209 (E.D. Ark. 1989); Smith-Crittenden County Litig., 687 F. Supp. 1310, 1316, 1317 (E.D. Ark. 1988).

focus on the role of race in voter decisionmaking.[127] Primaries, moreover, are increasingly the only election of consequence as noncompetitive districts have proliferated nationwide.[128]

Many courts, consequently, discount minority support for a particular candidate in the general election where minority voters supported another candidate in the primary.[129] A few courts have also held that white support for a minority-preferred candidate in the general election does not bar finding the third *Gingles* factor, so long as white voters supported a different candidate in the Democratic primary.[130] Highlighting this point, the district court in the *Black Political Task Force* litigation observed that "black and white voters in Boston preferred the [black] Democratic candidate at a general election is hardly news. . . . [It] says less about race than about partisan politics."[131]

Courts have also relied on primary election results to examine whether two minority groups seeking to aggregate their voting strength in a Section 2 claim prefer the same candidate. While most courts have held that multi-minority coalition claims are cognizable under Section 2, several decisions find that party affiliation masks a lack of cohesiveness between, for example, black and Latino voters.[132] In this context, evidence that members of the minority groups supported different candidates in the primary weighs against finding political cohesion, even if voters from both groups supported the same candidate in the general election. As such, voting patterns in primary elections are probative on the

127. *See, e.g.*, Black Political Task Force Litig., 300 F. Supp. 2d 291, 305–06 (D. Mass. 2004); Perry Litig., 298 F. Supp. 2d 451, 478 (E.D. Tex. 2004); Anthony Litig., 35 F. Supp. 2d 989, tbl. iv (E.D. Mich. 1999); Cousin Litig. (TN), 145 F.3d 818, 825 (6th Cir. 1998); Sanchez-Colo. Litig. (CO), 97 F.3d 1303, 1317 n.25 (10th Cir. 1996); LULAC v. Clements Litig. (TX), 999 F.2d 831, 884 (5th Cir. 1993); Chattanooga Litig., 722 F. Supp. 380, 392 (E.D. Tenn. 1989); City of Starke Litig., 712 F. Supp. 1523, 1534 (M.D. Fla. 1989); County of Big Horn (Windy Boy) Litig., 647 F. Supp. 1002, 1009–10 (D. Mont. 1986).

128. *See* Black Political Task Force Litig., 300 F. Supp. 2d 291, 305–06 (D. Mass. 2004); City of Starke Litig., 712 F. Supp. 1523, 1534, 1537 (M.D. Fla. 1989); *see generally* MORRIS FIORINA, DIVIDED GOVERNMENT (2d ed. 1996); Katz, *supra* note 68; Sam Hirsch, *The United States House of Unrepresentatives: What Went Wrong in the Latest Round of Congressional Redistricting*, 2 ELECTION L.J. 179 (2003).

129. *See* Niagara Falls Litig. (NY), 65 F.3d 1002, 1019 (2d Cir. 1995); Nash Litig., 797 F. Supp. 1488, 1500 (W.D. Mo. 1992).

130. *See, e.g.*, Black Political Task Force Litig., 300 F. Supp. 2d 291, 305–06 (D. Mass. 2004); Garza v. L.A. Litig., 756 F. Supp. 1298, 1335 n.7 (C.D. Cal. 1990).

131. Black Political Task Force Litig., 300 F. Supp. 2d 291, 306 (D. Mass. 2004).

132. *See* Pomona Litig. (CA), 883 F.2d 1418, 1426 (9th Cir. 1989); Perry Litig., 298 F. Supp. 2d 451, 478 (E.D. Tex. 2004). *Cf.* France Litig., 71 F. Supp. 2d 317, 327 (S.D.N.Y. 1999).

issue of cohesion because such elections remove partisanship as an explanation for voting behavior.[133]

Although no court has expressly rejected consideration of primary elections, some courts have identified reasons that suggest caution before weighing primary elections too heavily. To the extent that primary voters are fewer in number and more extreme in political persuasion than those participating in the general election, the candidate who garners minority group support in the primary may not be the preferred candidate of most minority voters. Some courts, therefore, have expressed concern that the preferences of politically active members of the minority community should not define the candidate preferred by the minority community as a whole.[134] Some courts have also questioned whether general election results should be discounted simply because minority voters supported a different candidate in the primary. These courts suggest that doing so privileges minority voters to an improper extent, effectively relieving them of the obligation to "pull, haul, and trade" that all voters confront.[135]

c. Causation—The Justices in *Thornburg v. Gingles* disagreed about the role causation should play in the racial bloc voting inquiry. Justice Brennan rejected causation in his plurality opinion, arguing that "it is the *difference* between the choices made by blacks and whites—not the reasons for that difference" that is important.[136] Justice O'Connor, however, thought the inquiry should address "evidence that the divergent racial voting patterns may be explained in part by causes other than race, such as an underlying divergence in the interests of minority and white voters."[137] Justice White was the critical fifth vote on the issue and his separate opinion did not definitively resolve the question. Lower courts ever since have disputed the role causation should play in the racial bloc voting analysis. When courts consider causation, they all ask the same underlying question: namely, whether race, as opposed to partisanship or some other factor, best explains why white voters

133. *See* Perry Litig., 298 F. Supp. 2d 451, 478 (E.D. Tex. 2004); Rodriguez Litig., 308 F. Supp. 2d 346, 389, 421 (S.D.N.Y. 2004); Page Litig., 144 F. Supp. 2d 346 (D.N.J. 2001); County of Big Horn (Windy Boy) Litig., 647 F. Supp. 1002 (D. Mont. 1986).

134. *See, e.g.*, City of Santa Maria Litig. (CA), 160 F.3d 543, 552 (9th Cir. 1998).

135. City of Rome Litig. (GA), 127 F.3d 1355, 1378–79 (11th Cir. 1997); Alamance County Litig. (NC), 99 F.3d 600, 615 (4th Cir. 1996).

136. Gingles Litig. (NC), 478 U.S. 30, 63 (1986).

137. *Id.* at 100 (O'Connor, J., concurring) ("Evidence that a candidate preferred by the minority group . . . was rejected by white voters for reasons other than those which made that candidate the preferred choice of the minority group would seem clearly relevant in answering the question whether bloc voting by white voters will consistently defeat minority candidates.").

failed to support the minority-preferred candidate. Courts in nine judicial circuits now expressly or implicitly incorporate causation when they assess racial bloc voting, either under the second and third *Gingles* factors or as part of the totality of circumstances test.[138]

And yet, courts suggest that the juncture at which they ask this question matters. A finding that political party best explains divergent voting patterns under *Gingles* means that the court will not find legally significant racial bloc voting and that a plaintiff's results-based voting discrimination claim likely fails.[139] Instead, consideration of causation within the totality of the circumstances review means that the plaintiffs have already satisfied the *Gingles* preconditions and, as a result, an inference may come into play that "racial bias is at work."[140] In the *Mount Holyoke* litigation, the appellate court posited that "cases will be rare in which plaintiffs establish the *Gingles* preconditions yet fail on a Section 2 claim because other facts undermine the original inference."[141]

In practice, however, the juncture at which courts consider causation may matter less than these courts suggest. Regardless of where they consider causation, courts do not typically require that plaintiffs disprove that factors other than race caused divergent voting patterns,[142] but most require that plaintiffs demonstrate that race is the causal linkage when defendants proffer evidence supporting an alternative explanation.[143] Proving the linkage is difficult

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138. *See, e.g.*, Charleston County Litig. (SC), 365 F.3d 341, 348–49 (4th Cir. 2004); Town of Hempstead Litig. (NY), 180 F.3d 476, 493 (2d Cir. 1999); Mallory-Ohio County Litig., 38 F. Supp. 2d 525, 575–76 (S.D. Ohio 1997), *aff'd*, 173 F.3d 377 (6th Cir. 1999); Milwaukee NAACP Litig. (WI), 116 F.3d 1194, 1199 (7th Cir. 1997); Attala County Litig. (MS), 92 F.3d 283, 290 (5th Cir. 1996); Sanchez-Colo. Litig. (CO), 97 F.3d 1303, 1307–08, 1313 (10th Cir. 1996); City of Holyoke Litig. (MA), 72 F.3d 973, 983 (1st Cir. 1995); S. Christian Leadership Litig. (AL), 56 F.3d 1281, 1293–94 (11th Cir. 1995); LULAC v. Clements Litig. (TX), 999 F.2d 831 (5th Cir. 1993); *see also* Bone Shirt Litig., 336 F. Supp. 2d 976, 1008 (D.S.D. 2004); Perry Litig., 298 F. Supp. 2d 451, 478 (E.D. Tex. 2004); Rodriguez Litig., 308 F. Supp. 2d 346, 393 (S.D.N.Y. 2004).

139. *See* LULAC v. Clements Litig. (TX), 999 F.2d 831, 850 (5th Cir. 1993) ("Unless the tendency among minorities and whites to support different candidates, and the accompanying losses by minority groups at the polls, are somehow tied to race . . . plaintiffs' attempt to establish legally significant white bloc voting, and thus their vote dilution claim under § 2, must fail.").

140. Nipper Litig. (FL), 39 F.3d 1494, 1525 (11th Cir. 1994); *see also* City of Holyoke Litig. (MA), 72 F.3d 973, 983 (1st Cir. 1995) (noting that *Gingles* preconditions "rise to an inference that racial bias is operating through the medium of the targeted electoral structure to impair minority political opportunities").

141. City of Holyoke Litig. (MA), 72 F.3d 973, 983 (1st Cir. 1995).

142. *See, e.g.*, *id.* (examining causation and stating that plaintiffs need not "affirmatively . . . disprove every other possible explanation for racially polarized voting."); Attala County Litig. (MS), 92 F.3d 283, 290 (5th Cir. 1996).

143. *See, e.g.*, City of Holyoke Litig. (MA), 72 F.3d 973, 983 (1st Cir. 1995) ("[O]nce the defendant proffers enough evidence to raise a legitimate question in regard to whether

regardless of the juncture,[144] and numerous lawsuits have held that plaintiffs failed to meet their burden to successfully rebut defendants' evidence on this point.[145]

d. Special Circumstances—Courts have identified a variety of "special circumstances" that influence the racial bloc voting inquiry and have excluded or discounted elections involving such special circumstances as distinct from the "usual predictability" of voting patterns.[146] Some circuits have identified numerous special circumstances, others few or none. Typically, the recognition of special circumstances makes an ultimate finding of racial bloc voting more likely. A few cases, however, have discounted elections where the minority-preferred candidate was defeated due to special circumstances, thus having the opposite effect.[147] Some recent decisions voice resistance to discounting elections because of special circum-

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nonracial factors adequately explain racial voting patterns, the ultimate burden of persuading the factfinder that the voting patterns were engendered by race rests with the plaintiffs."); Mallory-Ohio Litig., 38 F. Supp. 2d 525, 539, 575–76 (S.D. Ohio 1997) ("In this case, numerous factors, other than race, explain losses at the polls by particular minority candidates .... Two factors in particular, 'partisanship' and 'incumbency,' accurately explain electoral outcomes in numerous judicial elections involving African-American candidates.").

144. *But see* Charleston County Litig. (SC), 365 F.3d 341, 353 (4th Cir. 2004) (holding that it was not clearly erroneous for the district court to conclude that "even controlling for partisanship in Council elections, race still appears to play a role in the voting patterns of white and minority voters in Charleston County"); Town of Hempstead Litig. (NY), 180 F.3d 476, 495–96 (2d Cir. 1999) (rejecting defendants' argument that minority-preferred candidates were defeated because of party not race, due to the town Republican Party's slating process which effectively excluded minorities).

145. *See, e.g.*, Bexar County Litig. (TX), 385 F.3d 853, 867 (5th Cir. 2004); Hamrick Litig. (GA), 296 F.3d 1065, 1078 (11th Cir. 2002); City of Rome Litig. (GA), 127 F.3d 1355, 1383 (11th Cir. 1997); S. Christian Leadership Litig. (AL), 56 F.3d 1281, 1293–94 (11th Cir. 1995); Nipper Litig. (FL), 39 F.3d 1494, 1547 (11th Cir. 1994); Liberty County Comm'rs Litig. (FL), 899 F.2d 1012, 1021 (11th Cir. 1990); Alamosa County Litig., 306 F. Supp. 2d 1016, 1039–40 (D. Colo. 2004); Perry Litig., 298 F. Supp. 2d 451, 478 (E.D. Tex. 2004) (concluding that minority groups are not politically cohesive because they "do not vote cohesively in primary elections, where their allegiance is free of party affiliation"); City of Holyoke Litig., 960 F. Supp. 515 (D. Mass. 1997); Mallory-Ohio Litig., 38 F. Supp. 2d 525, 539 (S.D. Ohio 1997) ("The 'clear partisan patterns' reflected in Dr. King's Report suggest that party affiliation is a, if not the, predominant factor in Ohio judicial elections."); Town of Babylon Litig., 914 F. Supp. 843, 881–84 (E.D.N.Y. 1996); City of Columbia Litig., 850 F. Supp. 404, 418, 420 (D.S.C. 1993) (concluding that plaintiffs' evidence was "simply not sufficient to overcome the evidence that the blacks who lost owe their losses as much to blacks' failure to vote more cohesively or to turn out at all as to failure to achieve white support"); Bandemer Litig., 603 F. Supp. 1479, 1489–90 (S.D. Ind. 1984) (finding that minorities in Indiana vote as a bloc for the Democratic candidate and that therefore "the voting efficacy of [minorities] was impinged upon because of their politics and not because of their race").

146. Cano Litig., 211 F. Supp. 2d 1208, 1235–42 (C.D. Cal. 2002).

147. *See, e.g.*, Hamrick Litig. (GA), 296 F.3d 1065, 1978 (11th Cir. 2002) (using incumbency to dismiss the loss of the minority-preferred candidate); Fort Bend Indep. Sch. Dist. (TX), 89 F.3d 1205, 1217 (5th Cir. 1996) (discounting a minority loss because the candidate lost to an incumbent).

stances, preferring instead to consider all the evidence presented.[148]

Incumbency: Numerous courts have held that legally significant white bloc voting may exist, notwithstanding white support for a black candidate, if the black candidate is an incumbent.[149] Others disagree, finding that "incumbency plays a significant role in the vast majority of American elections," such that its use as a special circumstance "would confuse the ordinary with the special."[150]

Majority-Minority Districts: Some courts have identified the majority-minority district as a "special circumstance" that alters the conventional racial bloc inquiry.[151] In such districts, white voters are by definition a minority of the population, and thus, courts have reasoned that the inability of white voters to defeat the minority-preferred candidate is less probative evidence of a decline in racial bloc voting than it would be elsewhere. The Ninth Circuit said that "[t]o do otherwise would permit white bloc voting in a majority-white district to be washed clean by electoral success in neighboring majority-Indian districts."[152]

Post-Lawsuit Elections: Some courts have discounted the results of elections occurring after a lawsuit was filed. This approach is premised on the view that the very filing of a Section 2 lawsuit makes white voters more likely to support the minority-preferred candidate and that this support is somehow not genuine. The concern is that post-lawsuit elections might "work[] a one-time advantage for [minority] candidates in the form of unusual organized political support by white leaders concerned to forestall single-member

148. *See, e.g.*, Rodriguez Litig., 308 F. Supp. 2d 346, 422 (S.D.N.Y. 2004) (noting that it would be possible to find anomalies in most elections and refusing to discount 3 elections because of low turnout, a little known candidate, and controversy).

149. *See, e.g.*, Gingles Litig. (NC), 478 U.S. 30, 76 (1996); Fort Bend Indep. Sch. Dist. Litig. (TX), 89 F.3d 1205, 1217 (5th Cir. 1996); Little Rock Litig. (AR), 56 F.3d 904, 911 (8th Cir. 1995); Metro Dade County Litig. (FL), 985 F.2d 1471, 1483–84 (11th Cir. 1993); City of Norfolk Litig. (VA), 883 F.2d 1232, 1342 (4th Cir. 1989); Black Political Task Force Litig., 300 F. Supp. 2d 291, 306 (D. Mass. 2004); Rodriguez Litig., 308 F. Supp. 2d 346, 403 (S.D.N.Y. 2004); City of LaGrange Litig., 969 F. Supp. 749, 775–76 (N.D. Ga. 1997); Town of Babylon Litig., 914 F. Supp. 843, 879, 881 (E.D.N.Y. 1996); Texarkana Litig., 861 F. Supp. 756 (W.D. Ark. 1992); Chattanooga Litig., 722 F. Supp. 380, 394 n.200 (E.D. Tenn. 1989); Jeffers Litig., 730 F. Supp. 196 (E.D. Ark. 1989).

150. Cincinnati Litig. (OH), 40 F.3d 807, 813, 814 n.3 (6th Cir. 1994); *see also* Milwaukee NAACP Litig. (WI), 116 F.3d 1194, 1198–99 (7th Cir. 1997) (rejecting incumbency as a special circumstance when minority judges ran unopposed); Alamance County Litig. (NC), 99 F.3d 600, 617 (4th Cir. 1996).

151. Old Person Litig. (MT), 230 F.3d 1113, 1122 (9th Cir. 2000); Black Political Task Force Litig., 300 F. Supp. 2d 291, 305 (D. Mass. 2004); Bone Shirt Litig., 336 F. Supp. 2d 976, 1011 (D.S.D. 2004).

152. Old Person Litig. (MT), 230 F.3d 1113, 1122 (9th Cir. 2000).

districting."[153] Other courts will consider such elections, either outright,[154] or with the caveat that plaintiffs are unable to show unusual white support for the minority-preferred candidate.[155]

Unusual Elections: Courts have held that the success of minority-preferred candidates may be discounted when reason exists to view voting behavior as unusual. Courts have excluded elections based on a plurality victory,[156] an atypical primary,[157] an unopposed candidacy,[158] and a candidacy against only a third-party candidate.[159] Courts have also excluded elections where a minority candidate was seen as "anti-busing" at a time when a local school desegregation lawsuit was pending,[160] a candidate was under federal indictment at the time of the election,[161] and a winning black candidate had been a professional athlete.[162] Further, courts discount elections not involving serious or well-known candidates,[163] and some have approved discounting minority success when the race of the candidate was not widely known.[164] Courts are often skeptical,

153. Gingles Litig. (NC), 478 U.S. 30, 76 (1986). *See, e.g.*, City of Santa Maria (CA), 160 F.3d 543, 548–50 (9th Cir. 1998) (discounting the election because days before the election, the candidate told a local newspaper that his victory would prove "that the city of Santa Maria is not racist"); City of Norfolk Litig. (VA), 816 F.2d 932, 938 (4th Cir. 1987) (discounting an election where the mayor made a public statement suggesting the election of two black candidates could moot the pending litigation).

154. *See, e.g.*, Alamosa County Litig., 306 F. Supp. 2d 1016, 1033 (D. Colo. 2004); NAACP v. Fordice Litig. (MS), 252 F.3d 361, 370 (5th Cir. 2001).

155. *See, e.g.*, Nat'l City Litig. (CA), 976 F.2d 1293, 1297–98 (9th Cir. 1992); City of Norfolk Litig. (VA), 816 F.2d 932, 938 (4th Cir. 1987); Aldasoro v. Kennerson Litig., 922 F. Supp. 339, 376 (S.D. Cal. 1995).

156. *See, e.g.*, Blytheville Sch. Dist. Litig. (AR), 71 F.3d 1382, 1387–88 (8th Cir. 1995).

157. Jordan Litig., 604 F. Supp. 807, 812 (N.D. Miss. 1984) (concluding that the primary was "atypical" because of "a variety of factors, including uncertainty about election dates, the recent realignment of the district . . . the lack of an incumbent" and "a court order allowing Republican voters to participate in the democratic primary").

158. *See, e.g.*, Blytheville Sch. Dist. Litig. (AR), 71 F.3d 1382, 1387–88 (8th Cir. 1995). Some other courts do, however, consider these elections on the grounds that the candidate would not be unopposed if not supported by the white voters. *See, e.g.*, Milwaukee NAACP Litig. (WI), 116 F.3d 1194, 1199 (7th Cir. 1997) ("One good measure of white voters' willingness to support black candidates is the failure of white candidates to present themselves for election even when a majority of the electorate is white. Potential opponents concede the election only when they face certain defeat. That 6 black candidates ran without opposition therefore is highly informative.").

159. Old Person Litig. (MT), 312 F.3d 1036, 1048 n.13 (9th Cir. 2002).

160. Chattanooga Litig., 722 F. Supp. 380 (E.D. Tenn. 1989).

161. Kirksey v. Allain Litig., 658 F. Supp. 1183, 1193 (S.D. Miss. 1987).

162. Chickasaw County II Litig., No. CIV.A. 1:92CV142-JAD, 1997 WL 33426761, at *4 (N.D. Miss. Oct. 28, 1997).

163. Columbus County Litig., 782 F. Supp. 1097, 1101 (E.D.N.C. 1991).

164. Carrollton NAACP Litig. (GA), 829 F.2d 1547, 1559 (11th Cir. 1987). *But see* Alamosa County Litig., 306 F. Supp. 2d 1016, 1032 (D. Colo. 2004).

however, of "special circumstances" that simply illustrate good campaigning on the part of the minority candidate.[165]

Low Turnout: Some courts have been unwilling to find white bloc voting where minority voters did not turn out to vote in substantial numbers.[166] Some courts phrase this issue as one of causation: namely, those plaintiffs must establish that white bloc voting caused the minority defeat, as opposed to a seemingly independent cause such as low turnout. The premise is that if there had been higher minority turnout, the minority-preferred candidate might have been elected.[167] Other courts warn that indicators of vote dilution, such as official discrimination, may contribute to low turnout.[168]

C. The Senate Factors

1. History of Official Discrimination in Voting—The first factor listed in the Senate Report asks courts to assess "the extent of any history of official discrimination" in the jurisdiction that "touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process."[169] Courts assessing Factor 1 have documented numerous instances in which state and local officials engaged in intentional race discrimination.[170] These judicial findings record the nature, frequency, and recentness of this conduct.

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165. *See, e.g.*, Niagara Falls Litig. (NY), 65 F.3d 1002, 1021 (2d Cir. 1995); Anthony Litig., 35 F. Supp. 2d 989, 1006 (E.D. Mich. 1999).

166. *See, e.g.*, Meza Litig., 322 F. Supp. 2d 52, 65 (D. Mass. 2004) ("These elections on their face provide evidence of ethnic voting polarization by both Hispanic and non-Hispanic voters in Chelsea. We note that the force of this evidence is diminished to some extent because the election results reveal low turnout rates for Hispanic voters in these elections.").

167. *See, e.g.*, City of Columbia Litig., 850 F. Supp. 404, 418, 420 (D.S.C. 1993) (concluding that plaintiffs' evidence was "simply not sufficient to overcome the evidence that the blacks who lost owe their losses as much to blacks' failure to vote more cohesively or to turn out at all as to failure to achieve white support"); *see also* Sw. Tex. Junior Coll. Dist. Litig. (TX), 964 F.2d 1542, 1550–51 (5th Cir. 1992).

168. *See, e.g.*, Blytheville Sch. Dist. Litig. (AR), 71 F.3d 1382, 1388 (8th Cir. 1995) (suggesting lower turnout may follow from the moving of a polling place in a minority area, a sense of defeat, or the absence of ballot issues that may turn out the minority vote); City of Holyoke Litig. (MA), 72 F.3d 973, 986 (1st Cir. 1995) (noting that "low voter turnout in the minority community sometimes may result from the interaction of the electoral system with the effects of past discrimination, which together operate to discourage meaningful electoral participation"); *see also* Sanchez-Colo. Litig. (CO), 97 F.3d 1303, 1321 (10th Cir. 1996).

169. SENATE REPORT, *supra* note 17, at 27–30.

170. *See* VRI Database Master List, *supra* note 39.

One hundred and fifty-two lawsuits considered Factor 1.[171] Of these, 111 (73%) lawsuits found that Factor 1 was met, including 61 in covered jurisdictions and 50 in non-covered.[172] An additional 30 cases concluded that plaintiffs had failed to establish that the identified history "touched" the present-day ability of members of the minority group to participate in the political process.[173] Of the 111 lawsuits that found Factor 1, 69 reached a decision favorable to the plaintiffs.[174]

Many courts assessing Factor 1 discussed instances of discriminatory conduct dating from the nineteenth century and continuing through much of the twentieth. These accounts addressed literacy tests, grandfather clauses, poll taxes, white primaries, racially discriminatory voter registration requirements as well as state laws mandating segregation, the separation of names by race on voter registration lists, and other official discriminatory practices in education, employment, and housing.[175]

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171. *Id.*

172. *Id.*

173. NAACP v. Fordice Litig. (MS), 252 F.3d 361, 367–68 (5th Cir. 2001); Calhoun County Litig. (MS), 88 F.3d 1393, 1399 (5th Cir. 1996); Niagara Falls Litig. (NY), 65 F.3d 1002, 1021–22 (2d Cir. 1995); LULAC v. Clements Litig. (TX), 999 F.2d 831, 884 (5th Cir. 1993); Sw. Tex. Junior Coll. Dist. Litig. (TX), 964 F.2d 1542, 1555–56 (5th Cir. 1992); Carrollton NAACP Litig. (GA), 829 F.2d 1547, 1561 (11th Cir. 1987); City of Boston Litig. (MA), 784 F.2d 409, 412 (1st Cir. 1986); Wesley Litig. (TN), 791 F.2d 1255, 1261 (6th Cir. 1986); McCarty Litig. (TX), 749 F.2d 1134, 1137 (5th Cir. 1984); Alamosa County Litig., 306 F. Supp. 2d 1016, 1034–35 (D. Colo. 2004); Black Political Task Force Litig., 300 F. Supp. 2d 291, 313 (D. Mass. 2004); Meza Litig., 322 F. Supp. 2d 52, 74 (D. Mass. 2004); France Litig., 71 F. Supp. 2d 317, 330 (S.D.N.Y. 1999); Jones v. Edgar Litig., 3 F. Supp. 2d 979, 981 (C.D. Ill. 1998); Lafayette County Litig., 20 F. Supp. 2d 996, 1003 (N.D. Miss. 1998); City of Chi.-Bonilla Litig., 969 F. Supp. 1359, 1446 (N.D. Ill. 1997); City of Chi. Heights Litig., Nos. 87 C 5112, 88 C 9800, 1997 WL 102543, at *12 (N.D. Ill. Mar. 5, 1997); City of Holyoke Litig., 960 F. Supp. 515, 526 (D. Mass. 1997); Liberty County Comm'rs Litig., 957 F. Supp. 1522, 1557–59 (N.D. Fla. 1997); Aldasoro v. Kennerson Litig., 922 F. Supp. 339, 363–64 (S.D. Cal. 1995); LULAC–N.E. Indep. Sch. Dist. Litig., 903 F. Supp. 1071, 1083 (W.D. Tex. 1995); Armstrong v. Allain Litig., 893 F. Supp. 1320, 1332 (S.D. Miss. 1994); Metro Dade County Litig., 805 F. Supp. 967, 990 (S.D. Fla. 1992); Nipper Litig., 795 F. Supp. 1525, 1544 (M.D. Fla. 1992); Monroe County Litig., 740 F. Supp. 417, 422–23 (N.D. Miss. 1990); Chickasaw County I Litig., 705 F. Supp. 315, 320 (N.D. Miss. 1989) (though the court in the *Chickasaw County* II litigation found this factor met); Pomona Litig., 665 F. Supp. 853, 862 (C.D. Cal. 1987); City of Fort Lauderdale Litig., 617 F. Supp. 1093, 1098–99 (S.D. Fla. 1985); Cincinnati Litig., No. C-1-92-278, 1993 WL 761489, at *15 (S.D. Ohio July 8, 1983); Rybicki Litig., 574 F. Supp. 1147, 1151–52 (N.D. Ill. 1983).

174. *See* VRI Database Master List, *supra* note 39. Seven lawsuits found a violation of Section 2 without considering Factor 1. Ten others identified a violation of Section 2 after considering, but not finding, Factor 1. *Id.*

175. *See, e.g.*, Bone Shirt Litig., 336 F. Supp. 2d 976, 1013–34 (D.S.D. 2004); DeSoto County Litig., 995 F. Supp. 1440, 1442–50 (M.D. Fla. 1997); Emison Litig., 782 F. Supp. 427, 439 n.35 & 440 n.39 (D. Minn. 1992); City of Dallas Litig., 734 F. Supp. 1317, 1320–21 (N.D. Tex. 1990); Chattanooga Litig., 722 F. Supp. 380, 385–89 (E.D. Tenn. 1989); Neal Litig., 689 F. Supp. 1426, 1428 (E.D. Va. 1988); Dillard v. Crenshaw Litig., 640 F. Supp. 1347, 1356–60 (M.D. Ala. 1986); Edgefield County Litig., 650 F. Supp. 1176, 1180–87 (D.S.C. 1986); Gretna

Seventy lawsuits considering evidence of Factor 1 identified official discrimination post-dating the enactment of the VRA.[176] A number of these focused on instances of discriminatory conduct during the period between the VRA's passage in 1965 and the 1982 amendments. Courts in these lawsuits cited official resistance to school desegregation orders, employment discrimination settlements and judgments against local governments,[177] and violations of the VRA itself.[178] Courts took note of various states' and counties' failures to hire minority poll officials,[179] a county registrar's refusal to register black citizens as voters,[180] the "hostility and uncooperation" displayed by public officials in Texas when Mexican-American candidates ran for office,[181] the race-based retention of a majority-vote and post system, and the retention of unenforceable laws mandating segregation.[182] In the *Harris* litigation, the court refused to absolve the State of Alabama of responsibility for discrimination occurring at the local level, given that Alabama continued to allow "the poll official . . . to play a 'gate keeping' role, to assure that if blacks did slip through and register and vote they voted in a certain way."[183]

Judicial findings documenting official, intentional discrimination on the basis of race or language minority status identify a wide range of conduct by public officials. Thirty-three lawsuits identified more than 100 instances of intentionally discriminatory conduct in voting since 1982. Twelve of these lawsuits originated in covered jurisdictions; 21 originated in non-covered. While several findings identified intentional discrimination in the drawing of state reapportionment plans, conduct by local governmental officials

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Litig., 636 F. Supp. 1113, 1116–18 (E.D. La. 1986); Butts v. NYC Litig., 614 F. Supp. 1527, 1544–45 (S.D.N.Y. 1985), *rev'd*, 779 F.2d 141, 150 (2d Cir. 1985) (criticizing district court's Factor 1 finding); Major Litig., 574 F. Supp. 325, 339–40 (E.D. La. 1983).

176. *See, e.g.*, Abilene Litig. (TX), 725 F.2d 1017, 1023 (5th Cir. 1984); Hamrick Litig., No. Civ. 2:91-CV-002-WCO, 1998 WL 476186, at *7 (N.D. Ga. June 10, 1998), *rev'd on other grounds*, 196 F.3d 1216, 1224 (11th Cir. 1999); Mehfoud Litig., 702 F. Supp. 588, 594 (E.D. Va. 1988); Gretna Litig., 636 F. Supp. 1113, 1116 (E.D. La. 1986); Gingles Litig., 590 F. Supp. 345, 359 (E.D.N.C. 1984).

177. *See, e.g.*, Marengo County Litig. (AL), 731 F.2d 1546, 1568 (11th Cir. 1984); City of LaGrange Litig., 969 F. Supp. 749, 757 (N.D. Ga. 1997); Dillard v. Crenshaw Litig., 640 F. Supp. 1347, 1359–60 (M.D. Ala. 1986).

178. *See, e.g.*, Quilter Litig., 794 F. Supp. 695, 730 (N.D. Ohio 1992); City of Greenwood Litig., 599 F. Supp. 397, 400–01 (N.D. Miss. 1984).

179. *See, e.g.*, Edgefield County Litig., 650 F. Supp. 1176, 1182 (D.S.C. 1986) (first black poll officials not hired until 1970); Harris Litig., 601 F. Supp. 70, 72 (M.D. Ala. 1984).

180. Columbus County Litig., 782 F. Supp. 1097, 1103 (E.D.N.C. 1991).

181. Abilene Litig. (TX), 725 F.2d 1017, 1023 (5th Cir. 1984).

182. City of LaGrange Litig., 969 F. Supp. 749, 767 (N.D. Ga. 1997); City of Starke Litig., 712 F. Supp. 1523, 1537 (M.D. Fla. 1989).

183. Harris Litig., 695 F. Supp. 517, 524–25 (M.D. Ala. 1988).

accounted for the vast number of instances of official discrimination identified.[184]

Findings of Intentional Discrimination in Covered Jurisdictions Since 1982—

In Charleston County, South Carolina[185]

- The "consistent and more recent pattern of white persons acting to intimidate and harass African-American voters at the polls during the 1980s and 1990s and even as late as the 2000 general election," including "significant evidence of intimidation and harassment" that was "undeniably racial" and that "never occurred at predominantly white polling places, including those that tended to support Democratic candidates."[186]
- The participation of county officials, including at least one member of the Charleston County Election Commission and at least one county-employed poll manager,[187] in the Ballot Security Group which, in the 1990 election, "sought to prevent African-American voters from seeking assistance in casting their ballots."[188]
- The county's assignment of white poll managers, described as "bulldogs," in unspecified recent elections since 1982, to majority African-American precincts, where they "caused confusion, intimidated African-American voters, . . . had the tendency to be condescending to those voters," and engaged in "inappropriate behavior."[189]
- The "routine" assignment by "the Election Commission . . . [of] one particularly problematic poll

184. See text *infra*, this Section; *see also* VRI Database Master List, *supra* note 39. Precise quantification of these findings is difficult because, as these excerpts demonstrate, some courts describe official policies or multiple actions taken over time as a single example of official discrimination, and other courts specifically mention repeated instances of similar conduct by officials.

185. Charleston County Litig., 316 F. Supp. 2d 268, 286 n.23, 287–89 (D.S.C. 2003); *see also* Charleston County Litig., 365 F.3d 341, 353 n.4 (4th Cir. 2004) (affirming district court's fact findings and finding of a violation).

186. Charleston County Litig., 316 F. Supp. 2d 268, 286 n.23 (D.S.C. 2003).

187. *Id.*

188. *Id.* at 289.

189. *Id.* at 287.

manager to predominantly African-American polling places in different parts of the County during the 1980s and early 1990s. At the polls, this poll manager, who is white, routinely approached elderly African-American women seeking to vote." He would often "make a scene": approaching them, putting his arm around them and speaking loudly, when "[t]hey just wanted to come in and sign up and vote. And it happened repeatedly just to that class of voter."[190]

- The "recurring" official harassment of elderly African-American voters during the 1980s and 1990s, so severe that the Charleston County Circuit Court "issue[d] a restraining order against the Election Commission requiring its agents to cease interfering with the voting process."[191]
- The persistence of problematic "treatment of African-American voters by some white poll managers, even though the Election Commission [had] provided training to poll managers on this subject."[192]
- The refusal of county workers at the polls to provide African-American voters with legally required voting assistance in elections from 1992–2002; including: the discriminatory practice employed by white poll managers working at black-majority precincts of hassling African-American voters who asked for help voting, including "asking questions such as: 'Why do you need assistance? Why can't you read and write? And didn't you just sign in? And you know how to spell your name, why can't you just vote by yourself? And do you really need voter assistance?' "[193]
- The absence of comparable questioning of white voters who were allowed to have their voting assistor of choice without being challenged, since "no evidence exists of any instances of harassment, intimidation, or interference directed against white

190. *Id.* at 288.
191. *Id.*
192. *Id.* at 287.
193. *Id.* at 288.

or African-American voters at predominantly white polling places."[194]

- The county's retention of a poll manager who had exhibited a "threatening attitude" toward black voters at the Joseph Floyd Major Precinct in the 1996 election, after his refusal to respond to a county election commissioner's reprimand; and the retention of this poll manager as a county employee at majority African-American polls in Charleston County in 2004.
- The decision of "the Charleston County Council [to reduce] the salary for the Charleston County Probate Judge in 1991, following the election of the first and only African-American person elected to that position" from $85,000 to $59,000 annually.[195]
- The state legislative delegation's proposal to replace the School Board's non-partisan electoral system with a partisan one and to remove control of budgetary matters from the Board following African-American candidate success in School Board elections in 2000; both proposals were made without communicating at all with members of the School Board at the time.

In South Dakota[196]

- The display of discriminatory "negative reactions" by county voter registrars to Native Americans during voter registration drives in the 1980s, ranging from "unhelpful to hostile."[197]
- The limitation imposed by county officials on the number of voter registration forms given to people intending to register Native American voters despite the absence of a legal limit on the provision of such forms.
- The refusal of county officials to accept Internet voter registration forms from Native American voters.
- The "erroneous rejections of registration cards" from Native American applicants by county officials

194. *Id.*

195. *Id.* at 289.

196. Bone Shirt Litig., 336 F. Supp. 2d 976, 1023–28 (D.S.D. 2004) (covered jurisdictions include the counties of Shannon and Todd, S.D., with all examples discussed by the court provided here).

197. *Id.* at 1025.

who, after apparent protest, accepted them without explaining why they had first been rejected.[198]

- The state's requirement that voters provide photo identification and other new voting requirements enacted by the South Dakota legislature following the 2002 election, passed after a legislative debate that included the following:

  * Statement by Rep. Van Norman that in passing these provisions, "the legislature was retaliating because the Indian vote was a big factor in new registrants and a close senatorial race."[199]

  * Statement by Rep. Ted Klaudt defending driver's license requirements by referring to Native American voters: "The way I feel is if you don't have enough drive to get up and drive to the county auditor . . . maybe you shouldn't really be voting in the first place."[200]

  * Statement by Rep. Stanford Adelstein opposing provisions that would have made voting registration easier and, in reference to Native American voters, claiming: "Having made many efforts to register people . . . I realize that those people we want to vote will be given adequate opportunity. I, in my heart, feel that this bill . . . will encourage those who we don't particularly want to have in the system. . . . I'm not sure we want that sort of person in the polling place. I think the effort of registration . . . is adequate."[201]

- The state legislature's 1996 decision to combine two single-member house districts, including a majority-Native American district where a Native American had won the Democratic primary in 1994, in order to create one multi-member, majority-white house district.
- The 2002 refusal of Bennett County commissioners to move two polling places to Indian housing areas that would "increase convenience for Indian

198. *Id.*
199. *Id.* at 1026.
200. *Id.*
201. *Id.*

voters," after Indian residents petitioned the County for the stations.[202]

- Wholly unsubstantiated public claims made by Bennett County officials just before the 2002 election that Indians involved in voter registration were engaged in voter fraud, and investigations that followed these claims in Pine Ridge and Rosebud, which produced no actual charges but "intimidated Indian voters."[203]
- The 1986 refusal of the Dewey County Auditor to provide Native Americans with sufficient voter registration cards to conduct a voter registration drive on the Cheyenne River Reservation, conduct that prompted a court order instructing the auditor to supply 750 additional cards and extend the registration deadline.
- The 1984 refusal of the Fall River County Auditor "to register Indians who had attempted to register as part of a last-minute voter registration drive on the Pine Ridge Reservation," a refusal that led to a court order the day before the election requiring that voters be allowed to register and cast their ballots.[204]
- The discriminatory retention by Buffalo County of "[a] redistricting plan, which had been in use for decades, [and which] confined virtually all of the county's Indian population to a single district containing approximately 1500 people," leaving white voters in control of the remaining two districts, "which essentially gave them control over the county government," an arrangement that prompted a lawsuit settled in 2004, in which the county "admitt[ed] that the plan was discriminatory."[205]
- The 1999 refusal by Day County officials to let Native Americans vote in a sanitary district election, an action that prompted a lawsuit which ended in a settlement under which "the county and the district

202. *Id.* at 1027.
203. *Id.* at 1026.
204. *Id.* at 1025.
205. *Id.* at 1024.

admitted that the district's boundaries unlawfully denied Indian citizens' right to vote."[206]

In Bleckley County, Georgia[207]

- The county's 1984 decision to replace numerous polling places that "provid[ed] ready access to voters in the outlying areas"[208] with a single precinct for the 219 square mile county and to locate this single precinct in an "all-white civic club"[209] (the Jaycee Barn in Cochran); and the county's decision to use the precinct as the sole polling place for county commissioner and county school board elections throughout the 1980s and up to the court's 1992 decision.

In Dallas, Texas[210]

- The city's attempt to keep a partially at-large election system after minority voters petitioned for its change and city officials recognized the existing system "denied both blacks and Hispanics access to any of the 3 at-large seats."[211]

In Terrell, Texas[212]

- The city's reliance on at-large elections with staggered terms for five member city council, adjudicated on the merits to constitute intentional racial discrimination, compounded by the city's settlement of a lawsuit "alleging that poll workers improperly refused to let certain black citizens vote,"[213] and the city's refusal in 1983 to establish a polling place repeatedly sought by black residents.

In North Johns, Alabama[214]

- The town mayor's 1988 refusal to provide registration forms required by state law to two African-American

206. *Id.* at 1023–24.

207. Holder v. Hall Litig. (GA), 955 F.2d 1563 (11th Cir. 1992) (later reversed by the Supreme Court, Holder v. Hall, 512 U.S. 874 (1994), on the question of whether plaintiffs could challenge single commissioner form of government).

208. *Id.* at 1566 n.3.

209. *Id.* at 1566.

210. City of Dallas Litig., 734 F. Supp. 1317 (N.D. Tex. 1990).

211. *Id.* at 1320.

212. Terrell Litig., 565 F. Supp. 338 (N.D. Tex. 1983).

213. *Id.* at 341.

214. Town of N. Johns Litig., 717 F. Supp. 1471 (M.D. Ala. 1989).

city council candidates, the first African Americans to run for town office after the entry of a consent decree that replaced an at-large regime with a districted one, where "[t]he mayor was aware that Jones and Richardson, as black candidates, were seeking to take advantage of the new court-ordered single-member districting plan and that their election would result in the town council being majority black."[215]

- The town's prosecution of the two successful black candidates for failing to file the forms required by state law that the mayor refused to give them, a failure that a federal court later attributed to the mayor's intentionally discriminatory actions.
- The town's refusal to seat the candidates after they were elected in 1988 until a federal court ordered the town to do so.

In Jefferson County, Alabama[216]

- The express refusal of Jefferson County officials to appoint black workers in white precincts in 1984 on the ground that white voters would not listen to black poll officials, a refusal that a federal court equated with "open and intentional discrimination" that "is lawless and inexcusable." The court stated that "try[ing] to excuse the practice under cover of the purported intolerance of their own constituents is indefensible and repugnant."[217]

In Montgomery, Alabama[218]

- The mayor's proposal of a city ordinance in 1981, following a series of annexations, to lower the African-American population in majority-black district 3 to "the lowest level he understood to be legally possible in order to reduce the possibility that district 3's council member could be reelected."[219] Still in place as of 1983, the ordinance was found to be "in substantial measure the product of a scheme pur-

215. *Id.* at 1476.
216. Harris Litig., 601 F. Supp. 70, 74 (M.D. Ala. 1984).
217. *Id.* at 74.
218. Buskey v. Oliver Litig., 565 F. Supp. 1473 (M.D. Ala. 1983).
219. *Id.* at 1483.

posefully designed and executed to decrease the voting strength of the black electorate in district 3."[220]

In Alabama[221]

- The intentional and systematic failure of the Governor and Attorney General of Alabama to remedy past discrimination and ongoing racial harassment at the polls.
- The conduct of white poll officials who "continue to harass and intimidate black voters" including "numerous instances of where white poll officials refused to help illiterate black voters or refused to allow them to vote, where they refused to allow black voters to cast challenged ballots, and where they were simply rude and even intimidating toward black voters."[222]

Findings of Intentional Discrimination in Non-Covered Jurisdictions Since 1982—

In Berks County, Pennsylvania[223]

- Hostile public statements by officials at the polls to Latino and Spanish-speaking voters, statements such as "This is the U.S.A.–Hispanics should not be allowed to have two last names. They should learn to speak the language and we should make them take only one last name,"[224] and "Dumb Spanish-speaking people . . . I don't know why they're given the right to vote."[225]
- The subjection of Latino voters "to unequal treatment at the polls, including being required to show photo identification where white voters have not been required to do so."[226]
- The county's refusal to "appoint bilingual persons to serve as clerks or machine inspectors, and to fill

220. *Id.*
221. Harris Litig., 695 F. Supp. 517, 524–25, 527 & n.8 (M.D. Ala. 1988).
222. *Id.* at 525.
223. Berks County Litig., 277 F. Supp. 2d 570, 575–77, 580 (E.D. Pa. 2003); Berks County Litig., 250 F. Supp. 2d 525, 529 (E.D. Pa. 2003).
224. Berks County Litig., 277 F. Supp. 2d at 575.
225. Berks County Litig., 250 F. Supp. 2d at 529.
226. Berks County Litig., 277 F. Supp. 2d at 580.

vacant elected poll worker positions" showing an "apparent unwillingness to ensure that poll workers included persons reflective of the community."[227]

- The conduct of poll officials in the City of Reading, who "turned away Hispanic voters because they could not understand their names, or refused to 'deal' with Hispanic surnames."[228]
- The County's imposition of more onerous requirements for applicants seeking to serve as translators at the polls than those applying to be other types of poll officials, a requirement that impeded the court's order requiring the County to hire bilingual poll officials.
- Boasts by county officials and poll workers, flaunting their racially discriminatory motivations and practices to federal officials observing elections in May 2001, November 2001, May 2002 and November 2002, including statements from poll officials in the City of Reading to Justice Department observers "boast[ing] of the outright exclusion of Hispanic voters . . . during the May 15, 2001 municipal primary election."[229]

In Philadelphia, Pennsylvania[230]

- The operation by city election commissioners, in conjunction with campaign workers, of a fraudulent "minority absentee ballot program" to manipulate the outcome of a 1993 city election. Efforts included "specifically target[ing] Latino and African-Americans as groups to saturate with the illegal absentee ballot program," and "deceiving Latino and African-American voters into believing that the law had changed and that there was a 'new way to vote' from the convenience of one's home."[231]

227. *Id.* at 577.
228. Berks County Litig., 250 F. Supp. 2d at 529.
229. Berks County Litig., 277 F. Supp. 2d at 575–576.
230. Marks-Phila. Litig., No. CIV. A. 93-6157, 1994 WL 146113, at *11 (E.D. Pa. Apr. 26, 1994).
231. *Id.*

In Montezuma County, Colorado[232]

- The refusal of county officials during the 1980s and early 1990s to allow residents to register to vote at Towaoc on the Ute Reservation, even though the county created satellite registration in the non-Indian communities of Mancus and Dolores.
- The county's imposition of significant limitations on the hours it would make available mobile voter registration on the Ute reservation, as compared to the non-Indian communities, after the County decided to allow such registration in the 1990s.

In Big Horn County, Montana[233]

- The use of a discriminatory voter registration process, and the appointment of deputy registrars and election judges in 1986 with the County's "intent to discriminate" against Native Americans.
- The county's failure to include "the names of Indians who had registered to vote . . . on voting lists in 1982 and 1984"[234] and the county's removal of the names of Indians who had voted in primary elections from voting lists such that they were not allowed to vote in the subsequent general election.
- The county's refusal to provide "[a]n Indian candidate for the state legislature . . . voter registration cards in 1984,"[235] forcing her to obtain them at the State Capitol.
- County officials' refusal to provide a Native American man more than a scant number of voter registration cards based on the claim that few cards remained, even though the official shortly thereafter provided a white woman with fifty more cards.
- The subjection of Native Americans to a more technical and more difficult voter registration process than whites, in which county officials "looked for minor errors in [Native American] registration

232. Montezuma-Cortez Sch. Dist. Litig., 7 F. Supp. 2d 1152, 1162 (D. Colo. 1998).
233. County of Big Horn (Windy Boy) Litig., 647 F. Supp. 1002, 1008 (D. Mont. 1986).
234. *Id.* at 1008.
235. *Id.*

applications and used them as an excuse to refuse to allow registration."[236]

On the Eastern Shore of Maryland[237]

- The operation of "a kind of unofficial slating organization for white candidates" by some all-white, state-funded volunteer fire departments on the Eastern Shore until at least the mid-1980s.[238]
- The failure of the State of Maryland to stop funding departments engaging in this practice until an amendment to the Code of Fair Practices the Governor made upon the recommendation of the Attorney General in 1988.
- The discriminatory placement of polling places, that continues "[e]ven today, [in] counties on the lower Shore . . . in white-dominated volunteer fire companies, a hostile environment that may depress black electoral participation."[239]
- Through the 1980s, the only "black councilman was allowed to 'attend[] all meetings except the annual banquet, from which he was excluded. His colleagues sent his dinner on a paper plate to his home.' "[240]

In Little Rock, Arkansas[241]

- The state of Arkansas in 1983 and 1989 passing majority-vote requirements immediately after the election of black candidates in Little Rock and West Memphis as "a systematic and deliberate attempt to reduce black political opportunity. . . . [which] is plainly unconstitutional. It replaces a system in which blacks could and did succeed, with one in which they almost certainly cannot. The inference of racial motivation is inescapable."[242]
- Decisions in the 1980s by county officials to move polling places on short notice.

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236. *Id.*
237. Marylanders Litig., 849 F. Supp. 1022, 1057 n.56, 1061 (D. Md. 1994).
238. *Id.* at 1061.
239. *Id.*
240. *Id.* at 1057 n.56.
241. Jeffers Litig., 740 F. Supp. 585, 594–95 (E.D. Ark. 1990); Jeffers Litig., 730 F. Supp. 196, 210 & n.8, 211 (E.D. Ark. 1989).
242. Jeffers Litig., 740 F. Supp. at 594–95.

- The county's appointment, "with isolated exceptions," of deputy voting registrars "only as a result of litigation;" other recent, unspecified efforts to "intimidate black candidates."[243]
- The intimidation in 1986 by an unnamed white county sheriff of a black lawyer, Roy Lewellen, running for State Senate, including: first, warning him "not to run," and, second, when that advice was ignored, an unnamed prosecutor's "institution [of] a widely-publicized criminal prosecution against Mr. Lewellen for witness bribery"[244]—treatment that "a white lawyer, even one who opposed the political powers that be" would not have received;[245] and conduct amounting to "racial intimidation" that shows "that official discrimination designed to suppress black political activity is not wholly a thing of the past, at least not in the Delta."[246]

In Boston, Massachusetts[247]

- The enactment of a redistricting plan in 2001 described by the court as "a textbook case of packing . . . concentrating large numbers of minority voters within a relatively small number of districts," devised by the House leadership, which "knew what it was doing."[248]
- The manipulation of district lines "to benefit two white incumbents" where the State House did not "paus[e] to investigate the consequences of its actions for minority voting opportunities," thereby using race "as a tool to ensure the protection of incumbents."[249]

In New Rochelle, New York[250]

- The enactment of a city council redistricting plan in 2003 that diluted minority voting strength by replacing a majority-minority district with a plurality

243. *Id.*
244. Jeffers Litig., 740 F. Supp. at 210 n.8.
245. *Id.* at 211.
246. *Id.* at 210.
247. Black Political Taskforce Litig., 300 F. Supp. 2d 291, 314–15 (D. Mass. 2004).
248. *Id.* at 314.
249. *Id.* at 315.
250. City of New Rochelle Litig., 308 F. Supp. 2d 152, 158 (S.D.N.Y. 2003).

district, a plan reflecting "a course of conduct which can only be characterized as intentional and deliberate."[251]

In Los Angeles County, California[252]

- The County's reliance in 1990 on a districting plan that was found to be discriminatory because it "intentionally fragmented the Hispanic population among the various districts in order to dilute the effect of the Hispanic vote in future elections and preserve incumbencies of the Anglo members of the Board of Supervisors."[253] A concurring judge observed that this conduct illustrated the County's "single-minded pursuit of incumbency," which led it to "run roughshod over the rights of protected minorities."[254]

In Thurston County, Nebraska[255]

- The County's refusal to adjust its 1990 redistricting process to address a documented increase in the Native American population, and its decision instead to maintain its existing districting system, a course of action found to embody discriminatory intent.

In Illinois[256]

- The state legislature's retention and defense in a 1983 lawsuit of its districting plan for the state legislature, which diluted minority voting strength in order to protect two incumbent white senators in Chicago.
- The state redistricting commission's drawing of district lines with "the immediate purpose . . . to preserve the incumbencies of two white state Senators . . . . [T]his process was so intimately intertwined with, and dependent on, racial discrimination , and dilution of minority voting strength that purposeful dilution has been clearly

251. *Id.* at 158.

252. Garza v. County of L.A. Litig. (CA), 918 F.2d 763, 766, 768–69, 772 (9th Cir. 1990).

253. *Id.* at 769.

254. *Id.* at 778–79 (Kozinski, J., concurring on liability question).

255. County of Thurston Litig. (NE), 129 F.3d 1015, 1022 (8th Cir. 1997).

256. Rybicki Litig., 574 F. Supp. 1147, 1151 (N.D. Ill. 1983) (citing pre-amendment district court opinion in 574 F. Supp. 1082, 1110, 1112 (N.D. Ill. 1982)).

demonstrated in the construction of Commission senate districts 14, 17 and 18."[257]

In Western Tennessee[258]

- "[V]oting rights violations by public officials in rural west Tennessee as late as the 1980's. . . .Official discrimination not only prevents blacks from electing representatives of their choice, it also leads to disillusionment, mistrust, and disenfranchisement . . . . can cause black voters to drop out of the political process and potential black candidates to forgo an election run."[259]
- The city council's amendment of the Bolivar city charter creating a majority-vote requirement for mayoral elections "in response to the success of two black candidates for mayor," which was challenged in a 1983 lawsuit against the city of Bolivar. "The district court approved a class action settlement setting up a new 'system which will ensure the opportunity of black citizens of Bolivar to meaningfully participate in the political process'. . . .[C]ases challenging newly adopted election systems indicate to the court that official discrimination against blacks in voting is not entirely a thing of the past in west Tennessee."[260]

Intentional Discrimination Considered at Other Litigation Stages—

Some courts have credited allegations of current official discrimination in the course of issuing Section 2 plaintiffs a preliminary injunction, action that reflects the view of these courts that plaintiffs were likely to prevail on their claims, but that did not reach the question of whether Section 2 had been violated on the merits. Examples include:

257. *Id.*

258. Rural West II Litig., 29 F. Supp. 2d 448, 459 (W.D. Tenn. 1998); Rural West I Litig., 836 F. Supp. 453, 460–61 (W.D. Tenn. 1993).

259. Rural West II Litig., 29 F. Supp. 2d at 459.

260. Rural West I Litig., 836 F. Supp. at 460–61.

In Crenshaw County, Alabama[261]

- The consistent and repeated creation of at-large systems for local governments by the Alabama legislature, "during periods when there was a substantial threat of black participation in the political process."[262]
- Barriers "consistently erected" by the state "[f]rom the late 1800's through the present [1986] to keep black persons from full and equal participation in the social, economic, and political life of the state," where these systems "are still having their intended racist impact."[263]
- The creation of these "systems . . . in the midst of the state's unrelenting historical agenda, spanning from the late 1800's to the 1980's, to keep its black citizens economically, socially, and politically downtrodden, from the cradle to the grave."[264]

In Haywood County, Tennessee[265]

- The 1982 decision by the Haywood County Commission to replace 10 district seats for the Road Commission with 9 seats elected at-large after the first black road commissioner was elected, a decision the court "finds from the evidence in the record . . . occurred as a result of the purposeful intention to dilute black voting strength in Haywood County, Tennessee."[266]

261. Dillard v. Crenshaw Litig., 640 F. Supp. 1347, 1356–57, 1360–61 (M.D. Ala. 1986) (granting preliminary injunction). This court's findings of official discrimination were later cited in many other Alabama cases. *See, e.g.*, Baldwin Bd. of Educ. Litig., 686 F. Supp. 1459, 1466–67 (M.D. Ala. 1988) (finding that "this court demonstrated in *Crenshaw County* that from the late 1880's to the present the State of Alabama and its political subdivisions have 'openly and unabashedly' discriminated against their black citizens by employing at different times such devices as the poll tax, racial gerrymandering, and at-large elections, and by enacting such laws as the anti-single-shot voting laws, numbered places laws, and the Sayre law").

262. Dillard v. Crenshaw Litig., 640 F. Supp. 1347, 1361 (M.D. Ala. 1986)

263. *Id.* at 1356.

264. *Id.* at 1357.

265. Haywood County Litig., 544 F. Supp. 1122, 1131, 1135 (W.D. Tenn. 1982).

266. *Id.* at 1131.

In Cicero, Illinois[267]

- Town board's adoption in January 2000 of an 18-month residency requirement to register to vote, and its placement on the March primary ballot—a requirement that "was adopted, at least in part, with the racially discriminatory purpose of targeting potential Hispanic candidates for disqualification and thereby seeking to prevent Hispanic voters from having the opportunity to vote for and/or elect candidates of their choice, in violation of Section 2 of the Voting Rights Act."[268]

Courts relied on varied sources when evaluating Senate Factor 1.[269] Sixty-five (58.5% of those finding Factor 1) cited statutes or other official policies;[270] 35 (31.5%) noted actions and statements

267. Town of Cicero Litig., No. Civ.A. 00C 1530, 2000 WL 34342276 (N.D. Ill. Mar. 15, 2000).

268. *Id.* at *1.

269. Thirty-two lawsuits (28.8%) found Factor 1 without reference to any evidence, equally divided between covered and non-covered jurisdictions. *See* De Grandy Litig. (FL), 512 U.S. 997 (1994); Hamrick Litig. (GA), 296 F.3d 1065 (11th Cir. 2002); Old Person Litig. (MT), 312 F.3d 1036 (9th Cir. 2002); Davis v. Chiles Litig. (FL), 139 F.3d 1414 (11th Cir. 1998); Attala County Litig. (MS), 92 F.3d 283 (5th Cir. 1996); Fort Bend Indep. Sch. Dist. Litig. (TX), 89 F.3d 1205 (5th Cir. 1996); Blytheville Sch. Dist. Litig. (AR), 71 F.3d 1382 (8th Cir. 1995); U.S. v. Jones Litig. (AL), 57 F.3d 1020 (11th Cir. 1995); Democratic Party of Ark. Litig. (AR), 902 F.2d 15 (8th Cir. 1990); Baytown Litig. (TX), 840 F.2d 1240 (5th Cir. 1988); Abilene Litig. (TX), 725 F.2d 1017 (5th Cir. 1984); Lubbock Litig. (TX), 727 F.2d 364 (5th Cir. 1984); Opelika Litig. (AL), 748 F.2d 1473 (11th Cir. 1984); City of Minneapolis Litig., No. 02-1139(JRT/FLN), 2004 WL 2212044 (D. Minn. Sept. 30, 2004); Perry Litig., 298 F. Supp. 2d 451 (E.D. Tex. 2004); Albany County Litig., No. 03-CV-502, 2003 WL 21524820 (N.D.N.Y. July 7, 2003); City of New Rochelle Litig., 308 F. Supp. 2d 152 (S.D.N.Y. 2003); St. Bernard Parish Sch. Bd. Litig., No. CIV.A. 02-2209, 2002 WL 2022589 (E.D. La. Aug. 26, 2002); City of Chi.-Barnett Litig., 17 F. Supp. 2d 753 (N.D. Ill. 1998); African-American Voting Rights LDF Litig., 994 F. Supp. 1105 (E.D. Mo. 1997); Chickasaw County II Litig., No. CIV.A. 1:92CV142-JAD, 1997 WL 33426761 (N.D. Miss. Oct. 28, 1997); Jenkins v. Red Clay Sch. Dist. Litig., 116 F.3d 685 (D. Del. 1997); Rural West I Litig., 877 F. Supp. 1096 (W.D. Tenn. 1995); Texarkana Litig., 861 F. Supp. 756 (W.D. Ark. 1992); Rockford Bd. of Educ. Litig., No. 89 C 20168, 1991 WL 299104 (N.D. Ill. Sept. 12, 1991); Holbrook Unified Sch. Dist. Litig., 703 F. Supp. 56 (D. Ariz. 1989); Baldwin Bd. of Educ. Litig., 686 F. Supp. 1459 (M.D. Ala. 1988); Smith-Crittenden County Litig., 687 F. Supp. 1310 (E.D. Ark. 1988); Dallas County Comm'n Litig., 636 F. Supp. 704 (S.D. Ala. 1986); Marengo County Litig., 623 F. Supp. 33 (S.D. Ala. 1985); El Paso Indep. Sch. Dist. Litig., 591 F. Supp. 802 (W.D. Tex. 1984); Dean Litig., 555 F. Supp. 502 (D.R.I. 1982).

Another 7 did so based upon defendants' stipulation to a history of official discrimination, 5 of these in covered jurisdictions. Chisom Litig. (LA), 501 U.S. 380 (1991); Westwego Litig. (LA), 946 F.2d 1109 (5th Cir. 1991); City of Woodville Litig. (MS), 881 F.2d 1327 (5th Cir. 1989); Mehfoud Litig., 702 F. Supp. 588 (E.D. Va. 1988); Edgefield County Litig., 650 F. Supp. 1176 (D.S.C. 1986); Texarkana Litig., 861 F. Supp. 756 (W.D. Ark. 1992); Rockford Bd. of Educ. Litig., No. 89 C 20168, 1991 WL 299104 (N.D. Ill. Sept. 12, 1991).

270. *See, e.g.*, Dillard v. Crenshaw Litig., 640 F. Supp. 1347, 1356–60 (M.D. Ala. 1986).

taken by public officials;[271] 24 (21.6%) discussed expert testimony;[272] 16 (14.4%) mentioned history books, newspapers or scholarly articles,[273] 15 (13.5%) mentioned other witness testimony.[274] Some listed the jurisdiction's status as a covered (or non-covered) jurisdiction under Section 5 of the Voting Rights Act.[275]

Fifty-six lawsuits (50.5% of those finding Factor 1) looked to prior judicial decisions identifying official discrimination in a range of conduct.[276] Some of these decisions found such discrimination in education, housing, employment. Others specifically addressed claims of discrimination in voting, including a jurisdiction's failure to comply with the requirements of Section 5 of the VRA.[277] Numerous cases addressing Factor 1 cited as evidence the Factor 1 findings from a prior Section 2 case in the same state or jurisdiction.[278] This earlier decision typically engaged in lengthy analysis of the historical record, and the subsequent suit in the state cited back to that decision, sometimes without making further findings.[279]

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271. *See, e.g.*, Bone Shirt Litig., 336 F. Supp. 2d 976, 1026 (D.S.D. 2004); Jeffers Litig., 730 F. Supp. 196, 210 (E.D. Ark. 1989).

272. Repeat players cited by courts include: Chandler Davidson, Richard Engstrom, Morgan Kousser, Peyton McCrary, Raphael Cassimere, Jr., David Sansing, Allan Lichtman, Jerrell Shofner, Gary Mormino, Thomas Hofeller, Philip Hauser, William Rogers, Stephan Thernstrom, Abigail Thernstrom, Dr. Mollenkopf, and Lilian Williams. Most experts cited by courts in their Factor 1 discussion were trained historians or university professors with degrees in history or sociology.

273. *See, e.g.*, Berks County Litig., 277 F. Supp. 2d 570, 577 (E.D. Pa. 2003) (citing local newspaper articles); Town of Babylon Litig., 914 F. Supp. 843, 885 n.36 (E.D.N.Y. 1996) (citing ABIGAIL M. THERNSTROM, WHOSE VOTES COUNT? AFFIRMATIVE ACTION AND MINORITY VOTING RIGHTS (1987)); Marylanders Litig., 849 F. Supp. 1022, 1062 (D. Md. 1994) (citing Chandler Davidson, *The Voting Rights Act: A Brief History*, *in* CONTROVERSIES IN MINORITY VOTING: THE VOTING RIGHTS ACT IN PERSPECTIVE 7, 25 n.63 (Bernard Grofman & Chandler Davidson eds., 1992)); Harris Litig., 695 F. Supp. 517, 522 n.5 (M.D. Ala. 1988) (citing J. MORGAN KOUSSER, THE SHAPING OF SOUTHERN POLITICS: SUFFRAGE RESTRICTION AND THE ESTABLISHMENT OF THE ONE-PARTY SOUTH, 1880–1910 (1974)).

274. *See, e.g.*, Charleston County Litig., 316 F. Supp. 2d 268, 288 n.23 (D.S.C. 2003); Harris Litig., 695 F. Supp. 517, 525 (M.D. Ala. 1988); Terrazas Litig., 581 F. Supp. 1329, 1349–50 (N.D. Tex. 1984).

275. *See, e.g.*, Town of Babylon Litig., 914 F. Supp. 843, 885 n.38 (E.D.N.Y. 1996); City of Greenwood Litig., 599 F. Supp. 397, 401 (N.D. Miss. 1984).

276. *See, e.g.*, Marengo County Litig. (AL), 731 F.2d 1546, 1568 (11th Cir. 1984).

277. *See, e.g.*, City of Greenwood Litig., 599 F. Supp. 397, 401 (N.D. Miss. 1984).

278. *See, e.g.*, Mallory-Ohio Litig., 38 F. Supp. 2d 525, 541–42 (S.D. Ohio 1997).

279. *See, e.g.*, Jeffers Litig., 730 F. Supp. 196, 204 (E.D. Ark. 1989); Clark Litig., 725 F. Supp. 285, 295 (M.D. La. 1988). *Compare* Chickasaw County II Litig., No. CIV.A. 1:92CV142-JAD, 1997 WL 33426761, at *3 (N.D. Miss. Oct. 28, 1997) (finding Factor 1 and "tak[ing] judicial notice of Mississippi's and Chickasaw County's history of discrimination in the area of voting . . . through the use of poll takes, literacy tests, good moral tests, and other policies and laws," without requiring plaintiffs to establish contemporary political effect), *with* Chickasaw County I Litig., 705 F. Supp. 315, 320 (N.D. Miss. 1989) (finding Factor 1 not met because plaintiffs had not shown current "political detriment").

Twenty-three lawsuits (20.7% of all lawsuits finding the factor) included within their Factor 1 analysis examples of private or unofficial discrimination, although no court relied exclusively on such evidence in finding Factor 1.[280]

Forty-one lawsuits addressed but did not find Factor 1.[281] Some courts deemed instances of discrimination "too remote in time" to count towards Factor 1.[282] Some found that plaintiffs presented no evidence of official discrimination, and refused to take judicial notice of this factor absent such evidence.[283] Several courts deemed Section 5 coverage alone insufficient to satisfy Factor 1, and instead have demanded evidence of official discrimination in the specific locality in question.[284] Courts in covered and non-covered jurisdictions alike have deemed evidence of intentional discrimination in a neighboring locality inadequate, even when that discrimination was of recent vintage.[285]

Thirty of the lawsuits addressing but not finding Factor 1 parsed the factor into two components, namely a history of official discrimination, and a showing that this history "touched" the contemporary right to vote.[286] These courts found the requisite history,

280. *See, e.g.*, De Grandy Litig., 815 F. Supp. 1550, 1573–74 (N.D. Fla. 1992) (citing both English-only legal initiatives and "suspension of a supermarket clerk for speaking Spanish in front of customers and the refusal of a personnel agency to refer people with foreign accents to job openings at a Miami bank" as relevant to showing a history of official discrimination against Latinos in Florida); Armour Litig., 775 F. Supp. 1044, 1055 (N.D. Ohio 1991) (including within Factor 1 the media's use of racial labels to describe an African-American candidate in 1985, the failure in the same year of party officials to support a minority candidate and the 1970 bombing of the house of the first African-American member of the Youngstown School Board in Youngstown, Ohio).

281. *See* VRI Database Master List, *supra* note 39.

282. City of Chi.-Barnett Litig., 969 F. Supp. 1359, 1446 (N.D. Ill. 1997); *see also* Cousin Litig. (TN), 145 F.3d 818, 832 (6th Cir. 1998) (considering relevant to Factor 1 only examples occurring within the last thirty years).

283. Belle Glade Litig. (FL), 178 F.3d 1175 (11th Cir. 1999); Salt River Project Litig. (AZ), 109 F.3d 586, 596 (9th Cir. 1997); St. Louis Bd. of Educ. Litig. (MO), 90 F.3d 1357 (8th Cir. 1996); Watsonville Litig. (CA), 863 F.2d 1407, 1419 (9th Cir. 1988); Suffolk County Litig., 268 F. Supp. 2d 243 (E.D.N.Y. 2003); City of Phila. Litig., 824 F. Supp. 514, 532 (E.D. Pa. 1993); Chapman v. Nicholson Litig., 579 F. Supp. 1504, 1510–12 (N.D. Ala. 1984).

284. *See, e.g.*, Chapman v. Nicholson Litig., 579 F. Supp. 1504, 1510 (N.D. Ala. 1984) ("There was certainly no evidence that black citizens in Jasper have had as much difficulty in voting as has been experienced by black citizens in some Southern communities.").

285. *See, e.g., id.*; Rodriguez Litig., 308 F. Supp. 2d 346, 435 (S.D.N.Y. 2004) (acknowledging as "troubling" the evidence from recent litigation in Yonkers, but deeming this insufficient to establish Factor 1 because Yonkers made up only a fraction of the challenged district); Kent County Litig. (MI), 790 F. Supp. 738, 745 (W.D. Mich. 1992) (finding evidence of a city's official discrimination was not relevant to a challenge to county action).

286. *See* cases cited *supra* note 173.

but deemed evidence of accompanying effect insufficient.[287] In the *Liberty County Commissioners* litigation, for example, the defendants conceded an extensive history of official discrimination and the court recounted this history in detail.[288] The court concluded that this history of discrimination did not "still affect[] the rights of blacks to have equal access to the political process."[289] The primary example of more recent official discrimination was a school employment lawsuit decided in 1986, which "indicate[d] lingering prejudice on the part of whites even in their official capacity . . . [but] did not touch the issues involved in a determination of whether the Voting Rights Act is being violated."[290]

For some courts, affirmative steps taken by a jurisdiction to improve voting rights ameliorated historic discrimination.[291] Others deemed the absence of contemporary examples of discrimination reason to discount evidence of past conduct. For example, a 1997 Massachusetts case noted that "[t]he 1995 election witnessed the complete absence of election-related problems that plagued elections in the 1980's."[292]

For other courts, the very prevalence of discrimination meant it should be discounted. Thus, while some courts in Southern states assumed or outlined a long local and state history of official discrimination,[293] others maintained that this discrimination was too common and too widespread to weigh heavily within the Section 2

287. *Id.*; *see, e.g.*, Monroe County Litig., 740 F. Supp. 417, 422 (N.D. Miss. 1990) ("The court finds no evidence that black voter registration is presently impeded by any historical official discrimination.").

288. Liberty County Comm'rs Litig., 957 F. Supp. 1522, 1557–59 (N.D. Fla. 1997) (upheld by Liberty County Comm'rs Litig., 221 F.3d 1218 (11th Cir. 2000) (affirming district court's finding of no violation)).

289. *Id.* at 1558.

290. *Id.* at 1559 n.86.

291. Aldasoro v. Kennerson Litig., 922 F. Supp. 339, 363–64 (S.D. Cal. 1995) (citing "the numerous laws enacted by the California Legislature in the last 30 years to improve minority voting participation and to liberalize the political process"); *see also* Butts v. NYC Litig. (NY), 779 F.2d 141, 150 (2d Cir. 1985).

292. City of Holyoke Litig., 960 F. Supp. 515, 526 (D. Mass. 1997); *see also* Tensas Parish Sch. Bd. Litig. (LA), 819 F.2d 609, 612 (5th Cir. 1987); City of Woodville Litig., 688 F. Supp. 255, 260 (S.D. Miss. 1988); City of Boston Litig., 609 F. Supp. 739, 745 (D. Mass. 1985).

293. *See* DeSoto County Litig. (FL), 204 F.3d 1335, 1443 (11th Cir. 2000); Brooks Litig. (GA), 158 F.3d 1230, 1233–34 (11th Cir. 1998); Mobile Sch. Bd. Litig. (AL), 706 F.2d 1103, 1104–07 (11th Cir. 1983); Ben Hill County Litig., 743 F. Supp. 864, 865–68 (M.D. Ga. 1990); City of Dallas Litig., 734 F. Supp. 1317, 1320–33, 1401–03 (W.D. Tex. 1990); Kirksey v. Allain Litig., 658 F. Supp. 1183, 1192–93 (S.D. Miss. 1987); Dillard v. Crenshaw Litig., 640 F. Supp. 1347, 1356–60 (M.D. Ala. 1986); Gretna Litig., 636 F. Supp. 1113, 1116–18 (E.D. La. 1986); LULAC-Midland Litig., 648 F. Supp. 596, 600–01, 613–21 (W.D. Tex. 1986); Major Litig., 574 F. Supp. 325, 339–40 (E.D. La. 1983).

analysis.[294] For instance, the court in *City of Woodville* explained that the city "has a past history of racial discrimination as does every other Mississippi town or city."[295]

Some courts in Northern states minimized a local history of discriminatory practices by contrasting that history with the record of what occurred in the South. In the *Butts* litigation, for example, the appellate court took issue with the district court's suggestion that racial discrimination in voting is hardly confined to the South,[296] stating that "[u]nlike many of the jurisdictions typically involved in Voting Rights Act cases, New York has ensured to black citizens the right to vote on the same terms as whites since 1874 (when the fifteenth amendment was ratified)."[297] In another New York lawsuit against the Town of Babylon, the district court noted that "[no]thing in the history of New York even remotely approaches the systematic exclusion of blacks from the political process that existed in the South."[298]

2. Extent of Racially Polarized Voting—Senate Factor 2 calls for an evaluation of the extent of legally significant racially polarized voting.[299] This Report discusses lawsuits finding this factor in the *Gingles* section, Part II.B above. That section includes a consideration of the 105 judicial findings of racially polarized voting since 1982, both before and after the Supreme Court's 1986 *Gingles* decision, for the sake of organizational clarity.

3. Use of Enhancing Practices: At-large Elections, Majority Vote Requirements—Factor 3 inquires about the "extent to which the state

294. *See, e.g.*, NAACP v. Fordice Litig. (MS), 252 F.3d 361, 367 (5th Cir. 2001); Calhoun County Litig. (MS), 88 F.3d 1393, 1399 (5th Cir. 1996); Fort Bend Indep. Sch. Dist. Litig. (TX), 89 F.3d 1205, 1220 (5th Cir. 1996); Little Rock Litig. (AR), 56 F.3d 904, 914 (8th Cir. 1995); U.S. v. Jones Litig. (AL), 57 F.3d 1020, 1025 (11th Cir. 1995); LULAC v. Clements Litig. (TX), 999 F.2d 831, 884 (5th Cir. 1993); Sw. Tex. Junior Coll. Dist. Litig. (TX), 964 F.2d 1542, 1555–56 (5th Cir. 1992); Tensas Parish Sch. Bd. Litig. (LA), 819 F.2d 609, 612 (5th Cir. 1987); Lafayette County Litig., 20 F. Supp. 2d 996, 1003 (N.D. Miss. 1998); LULAC–N.E. Indep. Sch. Dist. Litig., 903 F. Supp. 1071, 1085 (W.D. Tex. 1995); Armstrong v. Allain Litig., 893 F. Supp. 1320, 1332 (S.D. Miss. 1994).

295. City of Woodville Litigation, 688 F. Supp. 255, 260 (S.D. Miss. 1988); *see also* Hamrick Litig. (GA), 296 F.3d 1065, 1224 (11th Cir. 2002).

296. Butts v. NYC Litig., 614 F. Supp. 1527, 1544–45 (S.D.N.Y. 1985) (noting that "[c]ontrary to the popularly held belief that racial discrimination only takes place within the Fifth and Eleventh Circuits, plaintiffs' exhibits . . . support the finding that Black and Hispanic voters in New York City have been the subject of various procedures . . . which have had the effect of abridging their voting rights").

297. Butts v. NYC Litig. (NY), 779 F.2d 141, 150 (2d Cir. 1985) (overturning district court's prior finding of a Section 2 violation); *see also* France Litig., 71 F. Supp. 2d 317, 330 (S.D.N.Y. 1999).

298. Town of Babylon Litig., 914 F. Supp. 843, 886 (E.D.N.Y. 1996); *see also* City of Boston Litig. (MA), 784 F.2d 409, 412 (1st Cir. 1986).

299. SENATE REPORT, *supra* note 17, at 27–30.

or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group."[300] Courts in 52 lawsuits found that at least one practice existed that might enhance the opportunity for discrimination potentially resulting from the practice directly challenged in those lawsuits.[301]

Of the courts that found Factor 3, 36 lawsuits (or 69.2%) reached a favorable outcome for the plaintiff. Thirty-three (63.5%) of the lawsuits finding Factor 3 arose in covered jurisdictions. In 23 of these the plaintiffs ultimately succeeded. Of the 19 lawsuits (36.5%) finding this factor in non-covered jurisdictions, 13 resulted in plaintiff success.[302]

Thirty-four suits found majority-vote requirements, 26 found anti-single shot provisions, such as staggered terms and/or numbered-place requirements, 13 found the use of at-large elections, 11 found unusually large districts, and six found other enhancing practices, including the use of an automatic voter removal or "purge" law (based upon voting frequency), a short interval between an initial election and the runoff election, candidate registration fee, candidate residency requirement, or low financial compensation for elected officials.[303]

Factor 3 differs from the other Senate Factors in that courts addressing it usually engaged in virtually no analysis. Unlike, for example, identifying a racial appeal (Factor 6) or an exclusive slating process (Factor 4), identifying Factor 3 devices is almost always perfectly obvious. The jurisdiction either uses an at-large system or it does not. Most courts have found little to analyze and little to say apart from identifying the practice.

Even so, some courts that found Factor 3 discounted its import, typically by deeming the identified practice as having a minimally discriminatory effect on the ground. These courts suggested that

300. SENATE REPORT, *supra* note 17, at 29. Single shot voting is a practice by which voters can direct their votes to a single candidate running in a multi-member district, and choose not to cast their remaining votes for other candidates running at the same time. Doing so increases the relative weight of their votes by reducing the number of votes other candidates receive. An anti-single shot provision may prevent voters from doing this, typically by disqualifying any ballot where a voter has not used all available votes. *See* QUIET REVOLUTION, *supra* note 6, at 46.

301. *See* VRI Database Master List, *supra* note 39. Of the 52 lawsuits finding Factor 3, 25 were decided in the 1980s (20 violations), 22 in the 1990s (12 violations), and 6 since 2000 (3 violations). *Id.* Note that where a practice enumerated in the Factor 3 list was directly challenged in the lawsuit, a court did not always consider or find Factor 3 independently of the express challenge to the practice.

302. *Id.*

303. *Id.*

while Factor 3 practices may generally foster discriminatory results, no evidence establishing that effect was presented in the particular case.[304]

4. Candidate Slating—Factor 4 asks whether members of the minority group have been denied access to a candidate slating process, assuming such a process exists in the jurisdiction. While the term "slating" is not defined by the Senate Report, the Fifth Circuit has described it 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."[305] A denial of such access was an important component of a Section 2 claim prior to the 1982 amendments,[306] but the factor appears to be of diminished importance under the amended provision.

Courts in 10 lawsuits expressly found the existence of a discriminatory slating process. Of these, four originated in jurisdictions covered by Section 5. All but one also found a violation of Section 2.[307] An additional three courts identified slating-like conduct without expressly labeling it as such.[308] Courts finding Factor 4 have identified slating in four general circumstances.

Official Slating: Three courts identified official party action as discriminatory slating or slating-like conduct. The *Town of Hempstead* litigation documented a slating process under which the Republican Party Chairman for the County selected candidates to run for office subject to approval by the Party's 69-member executive committee, which invariably affirmed the Chairman's selections

304. *See, e.g.*, Kirksey v. Allain Litig., 658 F. Supp. 1183, 1194 (S.D. Miss. 1987) ("Although it is obvious that abolition of the majority vote requirements and post system without adoption of anti-single-shot voting laws would make it easier in some situations for black candidates to be elected, this Court cannot hold that these provisions as they now exist discriminate against blacks per se."); *see also* NAACP v. Fordice Litig. (MS), 252 F.3d 361, 365 (5th Cir. 2001); City of Rome Litig. (GA), 127 F.3d 1355 (11th Cir. 1997); Niagara Falls Litig. (NY), 65 F.3d 1002, 1020 (2d Cir. 1995); S. Christian Leadership Litig. (AL), 56 F.3d 1281 (11th Cir. 1995); Sw. Tex. Junior Coll. Dist. Litig. (TX), 964 F.2d 1542 (5th Cir. 1992); Alamosa County Litig., 306 F. Supp. 2d 1016 (D. Colo. 2004); City of Cleveland Litig., 297 F. Supp. 2d 901 (N.D. Miss. 2004); Chickasaw County II Litig., No. CIV.A. 1:92CV142-JAD, 1997 WL 33426761 (N.D. Miss. Oct. 28, 1997); Town of Babylon Litig., 914 F. Supp. 843 (E.D.N.Y. 1996); Jeffers Litig., 730 F. Supp. 196 (E.D. Ark. 1989); Terrell Litig., 565 F. Supp. 338 (N.D. Tex. 1983).

305. Westwego Litig. (LA), 946 F.2d 1109, 1116 n.5 (5th Cir. 1991).

306. *See, e.g.*, White v. Regester, 412 U.S. 755, 766–67 (1973); Turner v. McKeithen, 490 F.2d 191, 195 (5th Cir. 1973); Hendrix v. McKinney, 460 F. Supp. 626, 631–32 (M.D. Ala. 1978).

307. *See* VRI Database Master List, *supra* note 39.

308. *See, e.g.*, Marylanders Litig., 849 F. Supp. 1022, 1061 (D. Md. 1994); City of Phila. Litig., 824 F. Supp. 514, 537 & n.22 (E.D. Pa. 1993); Armour Litig., 775 F. Supp. 1044, 1056 (N.D. Ohio 1991).

without debate.[309] The only African-American candidate ever slated was not initially supported by a town-based organization of African-American Republicans, but instead was "a close friend and tennis partner" of the Party Chairman.[310] These circumstances led the appellate court to observe that, in this predominantly white, predominantly Republican town, the lack of access to the Republican slating process meant that "blacks simply are unable to have any preferred candidate elected to the Town Board."[311]

Similarly, in the *City of New Rochelle* litigation, the district court found that candidate selection by party members placed barriers on non-party affiliated candidates and limited the prospects for candidates preferred by the African-American community to gain access to the ballot.[312] So too, in the *Albany County* litigation the district court found a lack of access based on anecdotal evidence coupled with the major parties' failure ever to nominate a minority candidate for county-wide office.[313] Although not directly identified as slating, in the *Bridgeport* litigation, the appellate panel noted that while a black candidate won the 1983 mayoral primary, an influential group called the Democratic Town Committee failed to endorse him. The candidate went on to lose the general election in an overwhelmingly Democratic city.[314]

The *Marylanders* litigation also cited the practice through the mid-1980s of allowing state-funded, all-white fire departments on the Eastern Shore of Maryland to control the candidate slating process, although the court did not expressly address this evidence under Factor 4.[315]

Unofficial Party Slating or Backstabbing: Two courts found unofficial conduct by party officials to constitute slating.[316] In the *City of Springfield* litigation, the court called unofficial party endorsements and support in ostensibly nonpartisan elections "a subtle and covert" form of slating—one that contributed to the failure of African-American candidates to be elected.[317] In the *Bone Shirt* litigation the court cited informal activities by the party organizations that stymied Native American candidacies. The court highlighted the

309. Town of Hempstead Litig. (NY), 180 F.3d 476, 483–86 (2d Cir. 1999).

310. *Id.* at 486.

311. *Id.* at 496.

312. City of New Rochelle Litig., 308 F. Supp. 2d 152, 161 (S.D.N.Y. 2003).

313. Albany County Litig., No. 03-CV-502, 2003 WL 21524820, at *46 (N.D.N.Y. July 7, 2003).

314. Bridgeport Litig. (CT), 26 F.3d 271, 276 (2d Cir. 1994).

315. Marylanders Litig., 849 F. Supp. 1022, 1061 (D. Md. 1994).

316. Bone Shirt Litig., 336 F. Supp. 2d 976, 1036 (D.S.D. 2004); City of Springfield Litig., 658 F. Supp. 1015, 1030 (C.D. Ill. 1987).

317. City of Springfield Litig., 658 F. Supp. 1015, 1030 (C.D. Ill. 1987).

conduct of the chairman of the Democratic Central Committee, who campaigned against his party's nominees for county commissioner in the 2002 general election after Indian candidates unseated non-Indian incumbents in the primary.[318]

Although not expressly characterized as "slating," conduct documented in two other lawsuits may be similarly understood. In the *Armour* litigation, the court cited the failure of party officials to support minority candidates despite rules requiring such support.[319] The *City of Philadelphia* litigation cited campaign materials distributed by the Democratic Party listing all city council candidates running at-large except for one African American and one Latino candidate.[320]

Private Slating: Three courts found that conduct by private organizations denied minority candidates access to slating processes.[321] In the *City of Chicago Heights* litigation, the court cited the activities of an organization called the Concerned Citizens Group, a group that had no African-American members and chose candidates for city council elections. The court noted the absence of evidence showing either that black voters had input into this slating process or that they could gain access to the ballot absent access to that process.[322] In the *City of Gretna* litigation, the district court found that electoral success hinged on the endorsement of a local political faction known as the Miller-White Ticket, and that the Ticket routinely blocked black candidates.[323] In the *Pasadena Independent School District* litigation, the court noted that essential campaign contributions flowed to candidates endorsed by a group called Communities United for Better Schools ("CUBS"). Since a CUBS endorsement typically led to candidate success on Election Day, and because CUBS had only once endorsed a Latino candidate, the court concluded that Factor 4 was satisfied.[324]

Inference of Slating: One court inferred a denial of access to slating processes given the absence of African-American candidates running for office.[325]

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318. Bone Shirt Litig., 336 F. Supp. 2d 976, 1036 (D.S.D. 2004).

319. *See* Armour Litig., 775 F. Supp. 1044, 1056 (N.D. Ohio 1991).

320. City of Phila. Litig., 824 F. Supp. 514, 537 & n.22 (E.D. Pa. 1993).

321. City of Chi. Heights Litig., Nos. 87 C 5112, 88 C 9800, 1997 WL 102543 (N.D. Ill. Mar. 5, 1997); Pasadena Indep. Sch. Dist. Litig., 958 F. Supp. 1196 (S.D. Tex. 1997); Gretna Litig., 636 F. Supp. 1113 (E.D. La. 1986); *see also* Abilene Litig. (TX), 725 F.2d 1017, 1022 (5th Cir. 1984).

322. City of Chi. Heights Litig., Nos. 87 C 5112, 88 C 9800, 1997 WL 102543, at *9 (N.D. Ill. Mar. 5, 1997).

323. Gretna Litig. (LA), 834 F.2d 496, 499 (5th Cir. 1987).

324. Pasadena Indep. Sch. Dist. Litig., 958 F. Supp. 1196, 1223–24 (S.D. Tex. 1997).

325. City of LaGrange Litig., 969 F. Supp. 749, 777 (N.D. Ga. 1997).

Slating Not Found: In 13 cases, plaintiffs introduced what they contended was evidence of slating but courts did not find that minority candidates had been denied access. Courts in six cases rejected evidence regarding private slating processes either because the activities of the group in question did not fit the court's definition of a slating organization[326] or because the slating organizations were defunct by the time litigation was initiated.[327] Anecdotal evidence of slating was conclusorily rejected in another two lawsuits.[328]

Three lawsuits viewed electoral success by minority candidates as evidence of access to slating processes.[329] Additionally, in the *Alamosa County* litigation,[330] the court assumed without deciding that the Democratic Central Committee played a functional role in the selection of county commission candidates, but concluded that anecdotal testimony about ethnically biased comments and "boorish behavior" by some members of the committee was insufficient to establish a "policy or practice" that denied non-white candidates access to slating.[331] Finally, two lawsuits attributed the exclusion of minority candidates from slating processes to partisanship rather than race.[332]

5. Ongoing Effects of Discrimination (Education, Employment, Health)—The fifth Senate Factor calls for evaluation of "the extent to which members of the minority group bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process."[333] Of the 133 lawsuits addressing this factor, 88 found the factor to be met, 45 of which originated in covered jurisdictions. Fifty-eight lawsuits finding Factor 5 ended favorably for the plaintiffs.[334] Courts have evaluated Factor 5 in several different ways.

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326. *See* City of Rome Litig. (GA), 127 F.3d 1355, 1369 (11th Cir. 1997); Westwego Litig. (LA), 946 F.2d 1109, 1115–16 (5th Cir. 1991); Marengo County Litig. (AL), 731 F.2d 1546, 1569 (11th Cir. 1984); City of Norfolk Litig., 605 F. Supp. 377, 390–91 (E.D. Va. 1984).

327. City of Dallas Litig., 734 F. Supp. 1317, 1322 (N.D. Tex. 1990); County of Big Horn (Windy Boy) Litig., 647 F. Supp. 1002, 1016 (D. Mont. 1986).

328. City of Phila. Litig., 824 F. Supp. 514, 533 (E.D. Pa. 1993); Little Rock Litig., 831 F. Supp. 1453, 1460 (E.D. Ark. 1993).

329. Liberty County Comm'rs Litig., 221 F.3d 1218, 1222 (11th Cir. 2000); Jenkins v. Red Clay Sch. Dist. Litig., 780 F. Supp. 221, 235 (D. Del. 1991); City of Austin Litig., No. A-84-CA-189, 1985 WL 19986, at *8 (W.D. Tex. 1985).

330. Alamosa County Litig., 306 F. Supp. 2d 1016 (D. Colo. 2004).

331. *Id.* at 1034.

332. *See, e.g.*, LULAC v. Clements Litig. (TX), 999 F.2d 831, 880 (5th Cir. 1993); City of Fort Lauderdale Litig., 617 F. Supp. 1093, 1103 (S.D. Fla. 1985).

333. SENATE REPORT, *supra* note 17, at 29.

334. *See* VRI Database Master List, *supra* note 39.

Depressed Socioeconomic Status Alone: Twelve courts found Factor 5 when there was a history of discrimination and a showing that the minority group experienced comparatively low socioeconomic status.[335]

Nexus Between Discrimination and Participation: Most courts required some kind of nexus not only between a history of discrimination and lowered socioeconomic status, but also between depressed socioeconomic status and the ability to participate in the political process. In 31 cases, courts assumed or deduced, sometimes aided by expert testimony, that lower socioeconomic status hindered the minority group's ability to participate effectively in the political process and found the factor met.[336] These courts pointed out, for example, that depressed socioeconomic status hinders one's ability to raise money and mount a campaign,[337] and

335. *See* Blaine County Litig. (MT), 363 F.3d 897, 914 (9th Cir. 2004); Westwego Litig. (LA), 946 F.2d 1109, 1115 (5th Cir. 1991); Albany County Litig., No. 03-CV-502, 2003 WL 21524820, at *12 (N.D.N.Y July 7, 2003); City of New Rochelle Litig., 308 F. Supp. 2d 152, 159–60 (S.D.N.Y. 2003); Montezuma-Cortez Sch. Dist. Litig., 7 F. Supp. 2d 1152, 1169–70 (D. Colo. 1998); City of Holyoke Litig., 880 F. Supp. 911, 917–19 (D. Mass. 1995); Emison Litig., 782 F. Supp. 427, 438 (D. Minn. 1992); Garza v. L.A. Litig., 756 F. Supp. 1298, 1339–41 (C.D. Cal. 1990); Baytown Litig., 696 F. Supp. 1128, 1132, 1136 (S.D. Tex. 1987); Houston v. Haley Litig., 663 F. Supp. 346, 352–54 (N.D. Miss. 1987); Wamser Litig., 679 F. Supp. 1513, 1531 (E.D. Mo. 1987); Halifax County Litig., 594 F. Supp. 161, 166–71 (E.D.N.C. 1984).

336. *See* Metts Litig. (RI), 347 F.3d 346, 349 (1st Cir. 2003); Old Person Litig. (MT), 230 F.3d 1113, 1129 (9th Cir. 2000); Davis v. Chiles Litig. (FL), 139 F.3d 1414, 1419 & n.10 (11th Cir. 1998); City of Rome Litig. (GA), 127 F.3d 1355, 1370–71, 1385–86 (11th Cir. 1997); Sanchez-Colo. Litig. (CO), 97 F.3d 1303, 1322–24 (10th Cir. 1996); Blytheville Sch. Dist. Litig. (AR), 71 F.3d 1382, 1390 (8th Cir. 1995); Lubbock Litig. (TX), 727 F.2d 364, 383 (5th Cir. 1984); Berks County Litig., 277 F. Supp. 2d 570, 575, 581 (E.D. Pa. 2003); St. Bernard Parish Sch. Bd. Litig., No. CIV.A. 02-2209, 2002 WL 2022589, at *8–10 (E.D. La. Aug. 26, 2002); Rural West II Litig., 29 F. Supp. 2d 448, 459 (W.D. Tenn. 1998); Chickasaw County II Litig., No. CIV.A. 1:92CV142-JAD, 1997 WL 33426761, at *4 (N.D. Miss. Oct. 28, 1997); City of LaGrange Litig., 969 F. Supp. 749, 757, 776 (N.D. Ga. 1997); Cousin Litig., 904 F. Supp. 686, 708–10 (E.D. Tenn. 1995); LULAC–N.E. Indep. Sch. Dist. Litig., 903 F. Supp. 1071, 1085–86 (W.D. Tex. 1995); Marylanders Litig., 849 F. Supp. 1022, 1060–61 (D. Md. 1994); Rural West I Litig., 836 F. Supp. 453, 461–62 (W.D. Tenn. 1993); Brunswick County, VA Litig., 801 F. Supp. 1513, 1518, 1524 (E.D. Va. 1992); De Grandy Litig., 794 F. Supp. 1076, 1079 (N.D. Fla. 1992); Magnolia Bar Association Litig., 793 F. Supp. 1386, 1409 (S.D. Miss. 1992); Hall Litig., 757 F. Supp. 1560, 1562–63 (M.D. Ga. 1991); City of Dallas Litig., 734 F. Supp. 1317, 1403–05 (N.D. Tex. 1990); Chisom Litig., No. 86-4057, 1989 WL 106485, at *8–9 (E.D. La. Sept. 19, 1989); White Litig., No. 88-0568-R, 1989 U.S. Dist. LEXIS 16117, at *9–11, 22–23 (E.D. Va. Aug. 31, 1989); Baldwin Bd. of Educ. Litig., 686 F. Supp. 1459, 1466–67 (M.D. Ala. 1988); City of Jackson, TN Litig., 683 F. Supp. 1515, 1533–1534 (W.D. Tenn. 1988); Clark Litig., 725 F. Supp. 285, 290–91, 299 (M.D. La. 1988); Mehfoud Litig., 702 F. Supp. 588, 594–95 (E.D. Va. 1988); Smith-Crittenden County Litig., 687 F. Supp. 1310, 1317 (E.D. Ark. 1988); Kirksey v. Allain Litig., 658 F. Supp. 1183, 1194–95 (S.D. Miss. 1987); Operation Push Litig., 674 F. Supp. 1245, 1253–54, 1264–65 (N.D. Miss. 1987); Gretna Litig., 636 F. Supp. 1113, 1116–20 (E.D. La. 1986).

337. *See, e.g.*, Rural West II Litig., 29 F. Supp. 2d 448, 459 (W.D. Tenn. 1998); Cousin Litig., 904 F. Supp. 686, 708–10 (E.D. Tenn. 1995); Chisom Litig., No. 86-4057, 1989 WL

to campaign in large districts.[338] Some noted that lower socioeconomic status may create geographic and social isolation from other members of the community—connection with whom may be critical to engage in effective political action.[339] One district court specifically noted that depressed socioeconomic status makes it difficult for minority candidates to run for particularly low paying public positions.[340]

In the majority of lawsuits, however, courts required concrete evidence of depressed participation, measured through voter registration and turnout statistics. In finding Factor 5, courts in 14 lawsuits in covered jurisdictions documented minority voter registration rates that lag behind the white voter registration rate, compared with three such lawsuits in non-covered jurisdictions.[341] Thirteen lawsuits in non-covered jurisdictions identified lower rates of minority voter turnout notwithstanding equivalent voter registration rates.[342] Courts in five lawsuits in covered jurisdictions found

106485, at *8–9 (E.D. La. Sept. 19, 1989); Mehfoud Litig., 702 F. Supp. 588, 594–95 (E.D. Va. 1988).

338. *See, e.g.*, City of Rome Litig. (GA), 127 F.3d 1355, 1370–71, 1385–86 (11th Cir. 1997); Cousin Litig., 904 F. Supp. 686, 708–10 (E.D. Tenn. 1995); Columbus County Litig., 782 F. Supp. 1097, 1103–05 (E.D.N.C. 1991); City of Dallas Litig., 734 F. Supp. 1317, 1403–04 (N.D. Tex. 1990).

339. *See, e.g.*, Terrell Litig., 565 F. Supp. 338, 342 (N.D. Tex. 1983) ("It is clear to the Court that a major reason for the white majority's lack of familiarity with many black candidates is the severe de facto segregation of housing in Terrell.").

340. City of Dallas Litig., 734 F. Supp. 1317, 1403–05 (N.D. Tex. 1990) ("The ridiculous pay for Council Members—$50.00 for each meeting—further exacerbates the discriminatory effect of these disparities by limiting the pool of African-Americans and Hispanics who can financially afford to serve on the Council where they would, in effect, volunteer their full time service.").

341. For covered jurisdictions, see City of Rome Litig. (GA), 127 F.3d 1355, 1371 (11th Cir. 1997); Attala County Litig. (MS), 92 F.3d 283, 294 (5th Cir. 1996); Operation Push Litig. (MS), 932 F.2d 400, 405 (5th Cir. 1991); Marengo County Litig. (AL), 731 F.2d 1546, 1552 (11th Cir. 1984); Bone Shirt Litig., 336 F. Supp. 2d 976 (D.S.D. 2004); City of LaGrange Litig., 969 F. Supp. 749, 768 (N.D. Ga. 1997); Mehfoud Litig., 702 F. Supp. 588, 594 (E.D. Va. 1988); Neal Litig., 689 F. Supp. 1426, 1428 (E.D. Va. 1988); LULAC-Midland Litig., 648 F. Supp. 596, 600 (W.D. Tex. 1986); Jordan Litig., 604 F. Supp. 807, 812 (N.D. Miss. 1984); Terrazas Litig., 581 F. Supp. 1329, 1350 (N.D. Tex. 1984); Buskey v. Oliver Litig., 565 F. Supp. 1473, 1476 (M.D. Ala. 1983); Major Litig., 574 F. Supp. 325, 342 (E.D. La. 1983); Mobile Sch. Bd. Litig., 542 F. Supp. 1078, 1093 (S.D. Ala. 1982).

In the three non-covered cases, the courts made general, non-quantitative statements about lower minority registration. *See* Little Rock Litig., 831 F. Supp 1453, 1460 (E.D. Ark. 1993) (quoting expert testimony that blacks "suffer lower voter registration and lower voter turnout" than whites); De Grandy Litig., 794 F. Supp. 1076, 1084 (N.D. Fla. 1992); Garza v. L.A. Litig., 756 F. Supp. 1298, 1323 (C.D. Cal. 1990) (Latino voter registration and turnout in Los Angeles is "considerably lower" than that of non-Hispanics).

342. Blaine County Litig. (MT), 363 F.3d 897, 910–11 (9th Cir. 2004); Sanchez-Colo. Litig. (CO), 97 F.3d 1303, 1324 (10th Cir. 1996); Blytheville Sch. Dist. Litig. (AR), 71 F.3d 1382, 1388 (8th Cir. 1995); Nipper Litig. (FL), 39 F.3d 1494, 1507 (11th Cir. 1994); Democratic Party of Ark. Litig. (AR), 890 F.2d 1423, 1431–33 (8th Cir. 1989); City of Holyoke Litig., 880 F. Supp. 911, 925 (D. Mass. 1995); Marylanders Litig., 849 F. Supp. 1022, 1061 (D. Md.

lower turnout alone,[343] while four additional lawsuits in covered jurisdictions found both low minority registration and low minority turnout.[344] In contrast, 11 courts, with six in covered jurisdictions and five in non-covered, found the factor unsatisfied when presented with nearly equal voting participation rates.[345] As a measure of political participation, several courts view turnout as more probative than registration rates.[346]

In two lawsuits, courts made conclusory assertions that socioeconomic disadvantage did not hinder political participation by the minority group in question.[347] In 10 lawsuits, courts did not find Factor 5 because plaintiffs failed to present sufficient evidence to show the minority group actually suffered from lower political participation.[348]

1994); Bridgeport Litig., Civ. No. 3:93CV1476 (PCD), 1993 U.S. Dist. LEXIS 19741, at *7 (D. Conn. October 27, 1993); City of Phila. Litig., 824 F. Supp. 514, 536 (E.D. Pa. 1993); Columbus County Litig., 782 F. Supp. 1097, 1104 (E.D.N.C. 1991); Jenkins v. Red Clay Sch. Dist. Litig., 780 F. Supp. 221, 234 (D. Del. 1991); City of Jackson, TN Litig., 683 F. Supp. 1515, 1534 (W.D. Tenn. 1988); City of Springfield Litig., 658 F. Supp. 1015, 1027 (C.D. Ill. 1987).

343. Charleston County Litig. (SC), 365 F.3d 341, 344 (4th Cir. 2004); Dallas County Comm'n Litig. (AL), 739 F.2d 1529, 1538 (11th Cir. 1984); Gretna Litig., 636 F. Supp. 1113, 1119 (E.D. La. 1986); Edgefield County Litig., 650 F. Supp. 1176 (D.S.C. 1986); City of Greenwood Litig., 599 F. Supp. 397, 401 (N.D. Miss 1984).

344. Bone Shirt Litig., 336 F. Supp. 2d 976, 1039 (D.S.D. 2004); Neal Litig., 689 F. Supp. 1426, 1428 (E.D. Va. 1988); Mehfoud Litig., 702 F. Supp. 588, 594 (E.D. Va. 1988); Terrazas Litig., 581 F. Supp. 1329, 1350 (N.D. Tex. 1984).

345. Covered cases include: NAACP v. Fordice Litig. (MS), 252 F.3d 361, 367–68 (5th Cir. 2001); France Litig., 71 F. Supp. 2d 317, 332 (S.D.N.Y. 1999); S. Christian Leadership Litig., 785 F. Supp. 1469, 1473, 1486 (M.D. Ala. 1992); Monroe County Litig., 740 F. Supp. 417, 423–24 (N.D. Miss. 1990); City of Norfolk Litig., 605 F. Supp. 377, 391–92 (E.D. Va. 1984); Rocha Litig., No. V-79-26, 1982 U.S. Dist. LEXIS 15164, at *21–22 (S.D. Tex. Aug. 23, 1982). Non-covered cases: Liberty County Commissioners Litig. (FL), 865 F.2d 1566, 1582 (11th Cir. 1988); Metro Dade County Litig., 805 F. Supp. 967, 981, 991–92 (S.D. Fla. 1992); City of Starke Litig., 712 F. Supp. 1523, 1529 (M.D. Fla. 1989); City of Boston Litig., 609 F. Supp. 739, 744–45 (D. Mass. 1985); City of Fort Lauderdale Litig., 617 F. Supp. 1093, 1104–05 (S.D. Fla. 1985).

346. *See, e.g.*, Nipper Litig. (FL), 39 F.3d 1494, 1507–08 (11th Cir. 1994); Dallas County Comm'n Litig. (AL), 739 F.2d 1529, 1537–38 (11th Cir. 1984); Columbus County Litig., 782 F. Supp. 1097, 1103–05 (E.D.N.C. 1991) (finding depressed socioeconomic status and lower levels of minority voter turnout, despite roughly equivalent voter registration numbers); County of Big Horn (Windy Boy) Litig., 647 F. Supp. 1002, 1016–17 (D. Mont. 1986) (same); Gretna Litig., 636 F. Supp. 1113, 1116–20 (E.D. La. 1986) (same).

347. *See* Fort Bend Indep. Sch. Dist. Litig. (TX), 89 F.3d 1205, 1220 (5th Cir. 1996); Town of Hempstead Litig., 956 F. Supp. 326, 342 (E.D.N.Y. 1997).

348. *See* McCarty Litig. (TX), 749 F.2d 1134, 1135–37 (5th Cir. 1984); Rodriguez Litig., 308 F. Supp. 2d 346, 435 (S.D.N.Y. 2004); Alamosa County Litig., 306 F. Supp. 2d 1016, 1035–38 (D. Colo. 2003); Suffolk County Litig., 268 F. Supp. 2d 243, 265 (E.D.N.Y. 2003); City of Chi. Heights Litig., Nos. 87 C 5112, 88 C 9800, 1997 WL 102543, at *10 (N.D. Ill. Mar. 5, 1997); Mallory-Ohio Litig., 38 F. Supp. 2d 525, 542, 566 (S.D. Ohio 1997); Town of Babylon Litig., 914 F. Supp. 843, 887–89 (E.D.N.Y. 1996); Kent County Litig., 790 F. Supp 738,

Other courts looked beyond registration and turnout statistics when assessing Factor 5. Six courts, for example, examined the effect of various forms of de facto racial segregation on the ability of minority groups to participate in the political process.[349] Thus, the district court in the *Charleston County* litigation noted severe societal and housing segregation and found that this ongoing racial separation "makes it especially difficult for African-American candidates seeking county-wide office to reach out to and communicate with the predominately white electorate from whom they must obtain substantial support to win an at-large elections [sic]."[350] The district court in the *Neal* litigation likewise concluded that similar segregation meant "that whites in the County have historically had little personal knowledge of or social contact with blacks . . . . Quite simply, whites do not know blacks and are, as a result, highly unlikely to vote for black candidates."[351]

Causation: Five courts found Factor 5 unsatisfied despite specific evidence of both depressed socioeconomic status and low levels of political participation.[352] These courts required additional evidence showing discrimination directly caused depressed participation.

Some defendants have argued that low participation results not from discrimination, but instead from voter apathy. Courts in four lawsuits agreed.[353] At least five other courts, however, attributed voter apathy to the sources of discrimination Factor 5 identifies.[354] In the *City of Gretna* litigation, for example, the district court noted

744, 749 (W.D. Mich. 1992); Turner Litig., 784 F. Supp. 553, 576–77 (E.D. Ark. 1991); Chickasaw County I Litig., 705 F. Supp. 315, 320–21 (N.D. Miss. 1989).

349. *See* County of Thurston Litig. (NE), 129 F.3d 1015, 1023 (8th Cir. 1997); LULAC v. Clements Litig. (TX), 986 F.2d 728, 782 & n.41 (5th Cir. 1993); Charleston County Litig., 316 F. Supp. 2d 268, 282–92 (D.S.C. 2003); Neal Litig., 689 F. Supp. 1426, 1428–31 (E.D. Va. 1988); Terrazas Litig., 581 F. Supp. 1329, 1348–51 (N.D. Tex. 1984); Terrell Litig., 565 F. Supp. 338, 341–342 (N.D. Tex. 1983).

350. Charleston County Litig., 316 F. Supp. 2d 268, 291 (D.S.C. 2003).

351. Neal Litig., 689 F. Supp. 1426, 1430 (E.D. Va. 1988).

352. City of St. Louis Litig., 896 F. Supp. 929, 942–43 (E.D. Mo. 1995) (notwithstanding socio-economic disparities, differences in turnout could be attributable to voter apathy); Armstrong v. Allain Litig., 893 F. Supp. 1320, 1332–33 (S.D. Miss. 1994) (same); City of Columbia Litig., 850 F. Supp. 404, 423 (D.S.C. 1993) (same); Sw. Tex. Junior Coll. Dist. Litig., No. DR-88-CA-18, 1991 WL 367969, at *3–7 (W.D. Tex. Feb. 25, 1991) (same); *see also* Carrollton NAACP Litig. (GA), 829 F.2d 1547, 1561 (11th Cir. 1987) (finding that the defendant had sufficiently carried its burden to disprove "any causal connection between economic disparities and reduced political participation by minorities").

353. *See id.*

354. Bone Shirt Litig., 336 F. Supp. 2d 976, 1040 (D.S.D. 2004) ("People living on a day-to-day basis wonder if they can heat their home. Those are not the kinds of people who are the most predisposed to go out and engage in a great deal of political campaigning or activity." (internal quotation omitted)); Attala County Litig. (MS), 92 F.3d 283, 293–95 (5th Cir. 1996); Gretna Litig., 636 F. Supp. 1113, 1120 (E.D. La. 1986); Terrazas Litig., 581 F. Supp. 1329, 1348–51 (N.D. Tex. 1984); Major Litig., 574 F. Supp. 325, 339–41 (E.D. La. 1983).

that "[d]epressed levels of participation in voting and candidacy are inextricably involved in the perception of futility and impotence" engendered by "severe historical disadvantage."[355] The court concluded that "[t]hese historical disadvantages continue through the present day and undoubtedly hinder the ability of the black community to participate effectively in the political process within the City of Gretna."[356]

In two lawsuits, courts required plaintiffs to establish that official discrimination by the defendant jurisdiction caused the current socioeconomic disparities.[357] In three cases, district courts discounted evidence of low socioeconomic status among Latinos because the evidence did not distinguish recent immigrants from longstanding residents. This approach posits that new immigrants cannot bear the effects of discrimination in housing, employment or health within the meaning of Factor 5 and thus the failure to distinguish them from other members of the minority group leaves courts unable to find the factor satisfied.[358]

Intransigence of Inequality: Some courts viewed low socioeconomic status as too intransigent to receive significant weight.[359] In the *Magnolia Bar Association* litigation, the district court concluded that Factor 5 described a condition too common to weigh heavily in plaintiffs' favor. The court observed that because "the socioeconomic standing of blacks vis-à-vis whites has changed little and it is unlikely that standing will improve markedly in the foreseeable future," continuing socioeconomic effects of discrimination "will be a factor on which the plaintiffs in voting rights cases will always win in the foreseeable future."[360]

6. Racial Appeals in Campaigns—The sixth factor in the Senate Report instructs courts to assess whether political campaigns have been characterized by overt or subtle racial appeals.[361] In 33 cases courts identified one or more such appeals and found the factor

355. Gretna Litig., 636 F. Supp. 1113, 1120 (E.D. La. 1986).

356. *Id.*

357. Milwaukee NAACP Litig., 935 F. Supp. 1419, 1427, 1433 (E.D. Wis. 1996) (finding no evidence had traced the continuing socioeconomic disparities to discrimination in the challenged county or state of Wisconsin); Cincinnati Litig., No. C-1-92-278, 1993 WL 761489, at *11 (S.D. Ohio July 8, 1993) ("While the effects of discrimination in such areas as education, employment and housing do hinder the ability of some African-Americans personally to finance political campaigns, the defendants have neither created these conditions nor do they intentionally maintain them.").

358. *See* Pasadena Indep. Sch. Dist. Litig., 958 F. Supp. 1196, 1225 (S.D. Tex. 1997); Aldasoro v. Kennerson Litig., 922 F. Supp. 339, 365 (S.D. Cal. 1995); El Paso Indep. Sch. Dist. Litig., 591 F. Supp. 802, 807, 809–10 (W.D. Tex. 1984).

359. *See, e.g.*, Calhoun County Litig., 813 F. Supp. 1189, 1200–01 (N.D. Miss. 1993).

360. *See* Magnolia Bar Ass'n Litig., 793 F. Supp. 1386, 1409 (S.D. Miss. 1992).

361. SENATE REPORT, *supra* note 17, at 29.

met. Eighteen (or 54.5%) of these 33 lawsuits were in covered jurisdictions, while 15 were in non-covered jurisdictions. Of the 20 successful lawsuits finding this factor, 12 (or 60%) occurred in covered jurisdictions.[362]

Some courts noted that campaigns generally have been marked by racial appeals,[363] but most decisions finding Factor 6 identified appeals in specific campaign years. These courts identified racial appeals in 73 specific elections occurring in 1950, 1954, 1960, 1968, 1970, 1972–1977, 1982–1985, 1987–1992, 1994, 1995, 2000 and 2002.[364] Courts finding Factor 6 identified 47 specific racial appeals or campaigns characterized by racial appeals since 1982. Of these, 30 occurred in covered jurisdictions.[365]

While some courts have stated without elaboration that specific elections have been marked by racial appeals,[366] others have identified racial appeals in a wide range of conduct. Courts have disagreed, however, as to what conduct should be considered a racial appeal.

Identification of the Candidate's Race: In six lawsuits, courts identified as racial appeals a variety of statements in which a candidate's race was identified, including comments by white candidates or their campaign workers that their opponent was black,[367] statements by minority candidates in which they identified their minority status,[368] and newspaper articles that mentioned the race of the candidates.[369]

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362. *See* VRI Database Master List, *supra* note 39.

363. *See, e.g.*, Columbus County Litig., 782 F. Supp. 1097, 1105 (E.D.N.C. 1991).

364. *See Racial Appeals Documented in Section 2 Litigation: Timeline and Citations*, Ellen Katz and the Voting Rights Initiative (2006), *at* http://www.votingreport.org.

365. *See id.*

366. *See, e.g.*, Dillard v. Crenshaw Litig., 649 F. Supp. 289, 295 (M.D. Ala. 1986).

367. *See* LULAC v. Clements Litig. (TX), 999 F.2d 831, 879 (5th Cir. 1993) (finding that a judicial candidate had been labeled a "Black Muslim" by his opponent); City of Dallas Litig., 734 F. Supp. 1317, 1339 (N.D. Tex. 1990) (finding in the 1972 Precinct 7 Constable's race, the incumbent used ads describing his African-American opponent in this manner: "*A black man* (no qualifications of any kind)").

368. *See* Alamosa County Litig., 306 F. Supp. 2d 1016, 1025–26 (D. Colo. 2004) (identifying as a "subtle ethnic appeal" Marguerite Salazar's 1992 campaign for county commission in which "she ran as a designated Hispanic role model immediately after joining the Hispanic Leadership Institute").

369. *See* Bone Shirt Litig., 336 F. Supp. 2d 976, 1041 (D.S.D. 2004) (characterizing as a racial appeal the headline in the state's largest newspaper, trumpeting "HUNHOFF PICKS INDIAN WOMAN AS RUNNING MATE"); Armour Litig., 775 F. Supp. 1044, 1056 (N.D. Ohio 1991) ("[T]hroughout the [1985] primary race, the media focused on Starks' race, consistently describing him as the black candidate for Mayor."); Neal Litig., 689 F. Supp. 1426, 1431–32 (E.D. Va. 1988) (noting a racial appeal in an editorial that identified two candidates as black and "clearly favored the re-election of the 'more experienced' incumbents.").

Photographs: Numerous courts have identified the use of photographs in campaign flyers and advertisements as racial appeals. The majority of these cases involved campaign materials distributed by a white candidate or the candidate's supporters that featured the photograph of an African-American opponent.[370]

No court has deemed the decision by a newspaper to publish candidates' photographs a racial appeal.[371] In the *City of Jackson* litigation, for example, the district court acknowledged that the publication of candidates' photographs might prompt "some white voters [to] vote for a white candidate and some black voters [to] vote for a black candidate," but, the court concluded, "that is merely a fact of political life in Jackson."[372]

Two lawsuits characterized as racial appeals the manipulation of photographs to darken the skin of opposing candidates, be they minority or white. The *Charleston County* litigation recounted the use of this tactic in three separate campaigns occurring in 1988, 1990, and 1992. In each instance, white candidates and their campaigns distributed official campaign literature or placed newspaper ads featuring the darkened photos of African-American opponents.[373] The *City of Philadelphia* litigation discussed the use of similar tactics in two different campaigns. In a state senate campaign in the early 1990s, one white candidate published a brochure containing a darkened photograph of his white opponent next to a photograph of Philadelphia's black mayor.[374] The other involved a televised campaign advertisement in the 1985 district attorney campaign that portrayed light-skinned African-American candidates as having much darker skin.[375]

The Specter of Minority Governance: Courts have held Factor 6 satisfied by a variety of allusions or threats of minority control of

370. *See* S. Christian Leadership Litig. (AL), 56 F.3d 1281, 1290 n.17 (11th Cir. 1995); LULAC v. Clements Litig. (TX), 999 F.2d 831, 879 (5th Cir. 1993); Charleston County Litig., 316 F. Supp. 2d 268, 294–97 (D.S.C. 2003); White v. Ala. Litig., 867 F. Supp. 1519, 1556 (M.D. Ala. 1994); Brunswick County, VA Litig., 801 F. Supp. 1513, 1518 (E.D. Va. 1992); Magnolia Bar Ass'n Litig., 793 F. Supp. 1386, 1410 (S.D. Miss. 1992); Mehfoud Litig., 702 F. Supp. 588, 595 (E.D. Va. 1988); *see also* Charleston County Litig., 316 F. Supp. 2d 268, 295 (D.S.C. 2003) (classifying as a racial appeal a campaign flyer from a race involving two white candidates that featured the photograph of an African-American elected official unassociated with either of the white candidates).

371. *See, e.g.*, Jenkins v. Red Clay Sch. Dist. Litig., 780 F. Supp. 221, 237 (D. Del. 1991) (concluding that a newspaper article with accompanying photographs of black and white candidates was not a racial appeal because the "candidates [were] not referred to in any disparaging manner"); City of Jackson, TN Litig., 683 F. Supp. 1515, 1534–35 (W.D. Tenn. 1988).

372. City of Jackson, TN Litig., 683 F. Supp. 1515, 1534–35 (W.D. Tenn. 1988).

373. Charleston County Litig., 316 F. Supp. 2d 268, 294–97 (D.S.C. 2003).

374. City of Phila. Litig., 824 F. Supp. 514, 537 (E.D. Pa. 1993).

375. *Id.*

government. Conduct of this sort includes references by white candidates or their campaigns that minority voters will engage in "bloc voting" and turn out in high numbers,[376] that a minority will be elected if whites do not turn out,[377] and that minority candidates, when elected, will appoint other minorities to positions of power.[378]

Statements by white candidates that the minority community wants to "take over" the local government and the country are similarly characterized.[379] In the *Armour* litigation, for example, campaign workers for a white 1985 mayoral candidate went door-to-door telling voters that if the black candidate was elected, "his cabinet would be black."[380] They also drove a sound truck around Youngstown announcing that should the minority candidate be elected "we will have a black police chief, we will have a black fire chief," and adding "we cannot have that."[381] More recently, in the *Bone Shirt* litigation, the district court identified racial appeals occurring during the 2002 primary elections for county commission, in which three Native American candidates confronted accusations that Indians were seeking to "take over the county politically . . . [and] trying to take land back and put it in trust."[382]

In-group and Out-group: Two courts identified as racial appeals campaign advertisements making reference to a candidate's being "one of us"[383] or promising to stand against vandalism and crime

376. *See, e.g.*, City of Dallas Litig., 734 F. Supp. 1317, 1339 n.34 (N.D. Tex. 1990) (noting that a white slating group warned of the "Mass Block Voting Tactics" in the black areas of South Dallas in 1970); *id.* at 1348 ("Folsom also distributed a leaflet charging that Weber was attempting to win the election with a 'massive black turnout,' and threatening that 'Garry Weber's South Dallas Machine is going to elect the next mayor' thanks to the efforts of 'professional black campaigners who will turn out unprecedented numbers of blacks voting for Weber.' "); Neal Litig., 689 F. Supp. 1426, 1431–32 (E.D. Va. 1988) (quoting newspaper editorial statement that a black candidate's campaign was " 'of great concern to many county residents' because [he] could earn 'solid black support' to defeat the veteran incumbent").

377. *See, e.g.*, Jeffers Litig., 730 F. Supp. 196, 212 (E.D. Ark. 1989) ("In the Mayor's race in Pine Bluff in 1975, for example, a supporter of a white candidate publicly warned that if white voters didn't turn out, there would be a black mayor.").

378. *See, e.g.*, Armour Litig., 775 F. Supp. 1044, 1056 (N.D. Ohio 1991).

379. *See, e.g.*, City of Phila. Litig., 824 F. Supp. 514, 536 n.19 (E.D. Pa. 1993) ("In the 1983 mayoral election, Mayor Goode testified that his opponent, former Mayor Frank Rizzo, attempted to associate Mayor Goode with Jesse Jackson and Harold Washington, implying that Mayor Goode's candidacy was part of 'a movement by blacks to take over all across the country.' ").

380. Armour Litig., 775 F. Supp. 1044, 1056 (N.D. Ohio 1991).

381. *Id.*

382. Bone Shirt Litig., 336 F. Supp. 2d 976, 1041 (D.S.D. 2004).

383. Jordan Litig., 604 F. Supp. 807, 813 n.8 (N.D. Miss. 1984) ("One campaign television commercial sponsored by the white candidate whose slogan was 'He's one of us' opened and closed with a view of Confederate monuments accompanied by this audio message: You know, there's something about Mississippi that outsiders will never, ever

that "drive our people and our businesses out" of the community.[384] In the *City of Holyoke* litigation the district court categorized as a racial appeal the "us versus them" sentiment featured in one candidate's 1987 campaign materials where "[t]he 'us' was fairly clearly the longtime white residential community, the 'them' the more recent Hispanic minority."[385] The district court noted, for example, the campaign's focus on "teach[ing] the 'Spanish' English . . . as an answer to increasing crime and vandalism" and featured an advertisement with a "large picture of an Hispanic young man, cigarette dangling from his lips and the caption 'The people who really should read this, can't.' "[386]

Race-baiting: In the *Charleston County* litigation, the district court identified as a racial appeal the efforts to increase turnout among voters perceived to be "anti-black."[387] In 1990, the campaign of a candidate for Lieutenant Governor of South Carolina paid Benjamin Hunt, Jr., "a nearly illiterate African-American man" to run in a congressional primary.[388] The candidate took no part in the campaign beyond allowing his picture to be taken while standing in front of a Kentucky Fried Chicken restaurant. The would-be Lieutenant Governor's campaign mailed out thousands of leaflets featuring this picture with the caption "Hunt for Congress."[389]

Also counting as racial appeals are statements suggesting racial strife or even violence will ensue if minority candidates or candidates associated with minority interests were supported or elected.[390]

Guilt by Association: Efforts to link a candidate with polarizing figures or organizations have been deemed racial appeals. Three courts, for example, have identified as racial appeals statements by white candidates linking a minority candidate with Jesse Jackson or

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understand. The way we feel about our family and God, and the traditions that we have. There is a new Mississippi, a Mississippi of new jobs and new opportunity for all our citizens. [video pan of black factory workers] We welcome the new, but we must never, ever forget what has gone before. [video pan of Confederate monuments] We cannot forget a heritage that has been sacred through our generations.").

384. City of Holyoke Litig., 880 F. Supp. 911, 922 (D. Mass. 1995).

385. *Id.*

386. *Id.*

387. Charleston County Litig., 316 F. Supp. 2d 268, 296 (D.S.C. 2003).

388. *Id.*

389. *Id.*

390. *See, e.g.*, City of Dallas Litig., 734 F. Supp. 1317, 1368 (W.D. Tex. 1990) (counting as a racial appeal a 1989 newspaper column indicating that "a 'protest vote' for lawyer and 'civic gadfly,' Peter Lesser . . . could lead to racial violence and white flight"); *id.* at 1348 (citing a leaflet that accused opponent's campaign of "planting lies and rekindling old fires that could set Black/White relations back 20 years," and told black voters "[n]o one, Black or White, will benefit from the hostilities between the Races [that] Garry Weber's hate-campaign is trying to force").

Louis Farrakhan and the Nation of Islam.[391] Another characterized as a racial appeal statements by an African-American candidate that his white opponent was supported by the Ku Klux Klan.[392]

Courts have also found evidence supporting a finding of Factor 6 in efforts to link a white opponent with minority elected officials or issues of minority concern. For example, two district courts classified as racial appeals the campaign literature of white candidates who featured photographs of their opponents, also white, alongside pictures of African-American elected officials.[393] Another district court identified as a racial appeal a private slating organization's reference to a white candidate's association with a black candidate and his support for voter registration in the minority community.[394]

Discussion of Racially Charged Issues: In five lawsuits courts identified as racial appeals candidates' statements on certain racially

391. *See, e.g.*, Metro Dade County Litig., 805 F. Supp. 967, 981–82 (S.D. Fla. 1992) ("Recent elections demonstrate how successfully candidates and their supporters have engaged in a tactic of 'guilt by association' to defeat Black opponents. . . . For example, voters have been told that Black candidates share common goals with Jesse Jackson or Nelson Mandela, two political figures strongly supported in the Black community, but opposed in some Cuban and Jewish communities."); City of Phila. Litig., 824 F. Supp. 514, 536 n.19 (E.D. Pa. 1993) ("Mayor Goode testified that in the 1987 mayoral primary election, Ed Rendell, Goode's opponent, attempted to associate Mayor Goode with Louis Farrakhan, a controversial Muslim leader."); City of Dallas Litig., 734 F. Supp. 1317, 1365 (N.D. Tex. 1990) ("On March 4, 1988, a Dallas Morning News article reported that a candidate for Criminal District Court No. 2, who was running against the African-American incumbent, mailed 77,000 fliers criticizing her opponent because he had changed his name to 'Baraka' after converting to Islam and becoming 'a follower of Malcolm X, the slain Islamic leader and black nationalist.'").

392. Wamser Litig., 679 F. Supp. 1513, 1515 (E.D. Mo. 1987) ("In his 1987 primary campaign, Roberts [an African-American] made overt racial appeals to black voters. Roberts accused a white opponent–Osborn–of being backed by 'the Klan.'").

393. Charleston County Litig., 316 F. Supp. 2d 268, 295 (D.S.C. 2003) (noting a campaign flyer from a 2000 race involving two white candidates that featured the darkened photograph of an African-American school board member from a separate district whose permission to use the picture had neither been sought nor granted); City of Phila. Litig., 824 F. Supp. 514, 537 n.20 (E.D. Pa. 1993) (mentioning campaign material distributed in an early 1990s state senate race between two white candidates where one candidate published a darkened picture of his white opponent in a brochure along with the picture of Philadelphia's black mayor).

394. City of Dallas Litig., 734 F. Supp. 1317, 1339 n.34 (W.D. Tex. 1990) ("During the run-off election for two State Representative districts in June of 1970, the 'Democratic Committee for Responsible Government' attacked a white candidate . . . because he was 'running in South Dallas . . . as a team' with a black candidate . . . and because he had raised money 'for voter registration activities, mostly in predominately Black or Latin-American neighborhoods.'"); *see also* Gingles Litig., 590 F. Supp. 345, 364 (E.D.N.C. 1984) (noting crude cartoons and pamphlets of the campaigns marked by outright white supremacy in the 1890s which featured white political opponents in the company of black political leaders and later appeals with the same theme).

charged issues. These issues included illegal immigration,[395] low income housing,[396] busing and school desegregation,[397] and crime.[398] In the *Town of Hempstead* litigation, the district court found a racial appeal in a campaign brochure distributed by a candidate for town council in 1987. The brochure noted the candidate's awareness of "his community's proximity to the City of New York," his opposition to those who would seek to "Queensify" the town, and his concern about the danger of "urban crime spilling over the county border." The brochure celebrated the candidate's efforts to "sensitize[] local patrolmen to the special concerns of the community," a statement the court identified as a reference to an "unofficial border patrol policy" under which the police were to stop black youth from Queens, "find out their business and ensure that they 'go back where they belong.' "[399]

One district court identified as a racial appeal public debate on a racially charged issue, absent any linkage to any particular candidate or campaign.[400] Another viewed such debate as evidence supporting the inference that other campaigns are characterized by racial appeals.[401]

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395. Garza v. L.A. Litig., 756 F. Supp. 1298, 1341 (C.D. Cal. 1990) ("Mr. Brophy distributed mailers which included Mr. Alatorre's photograph and alluded that Alatorre was sympathetic to undocumented aliens.").

396. City of Holyoke Litig., 880 F. Supp. 911, 922 (D. Mass. 1995) ("Proulx, for his part, attacked Dunn for not calling for a moratorium on all subsidized housing programs in Holyoke. Proulx explained that he supported such a moratorium with one important exception—subsidized elderly housing. The vast majority of government subsidized elderly housing in Holyoke was occupied by white non-Hispanic senior citizens."); Butts v. NYC Litig., 614 F. Supp. 1527, 1531 (S.D.N.Y. 1985) ("Badillo's opponents distributed literature misrepresenting or emphasizing Badillo's position on issues said to have racial connotations, such as scatter site subsidized housing.").

397. Town of Hempstead Litig., 956 F. Supp. 326, 342 (E.D.N.Y. 1997) ("In a late 1970s campaign for a State Senate seat from an Assembly District within the Town, the incumbent Republican appealed to the fears of Town residents that black students from Queens would be bused to schools in the Town. The campaign literature used pictures of black children in school buses to convey the message that voting for the Democratic opponent would result in such busing."); City of Dallas Litig., 734 F. Supp. 1317, 1348 (N.D. Tex. 1990) ("In *Place 9* [city council elections in 1976], Jesse Price campaigned against Bill Blackburn on a platform that included opposition to busing for school desegregation—and opposition to any court order requiring busing—saying he intended to 'hang Blackburn's stand on busing around his neck.' ").

398. Town of Hempstead Litig., 956 F. Supp. 326, 342–43 (E.D.N.Y. 1997); City of Holyoke Litig., 880 F. Supp. 911, 922 (D. Mass. 1995) ("Dunn's campaign literature featured the slogan 'It takes guts,' coupled with a teach the 'Spanish' English theme as an answer to increasing crime and vandalism.").

399. Town of Hempstead Litig., 956 F. Supp. at 343.

400. City of LaGrange Litig., 969 F. Supp. 749, 777 (N.D. Ga. 1997) ("[P]ublic debate about the consolidation of the local schools was marked by racial appeals and arguments.").

401. City of Greenwood Litig., 599 F. Supp. 397, 403 (N.D. Miss. 1984).

Not all courts treat the presence of racially charged issues in campaigns or general public debate as racial appeals. Three district courts rejected plaintiffs' contentions that candidates' discussion of busing and school desegregation should be classified as racial appeals.[402] The district court in the *City of Norfolk* litigation stated that the inclusion of such issues in campaigns was of "legitimate public concern and not an appeal to racial prejudices," and noted that both black and white candidates addressed the issue of busing "reluctantly and often only when questioned by the public about their stance."[403] Similarly, the court in the *St. Louis Board of Education* litigation stated that while school desegregation has "an undeniable racial dimension," plaintiffs presented no evidence that the issue was raised "in an effort to appeal to members of a particular race."[404] In the *Jenkins v. Red Clay School District* litigation, plaintiffs introduced into evidence a candidate's flyer that warned of increasing percentages of minority students at local high schools and the potential for "*major disruption* for our children!!!" While the court characterized the flyer as "shrill," it declined to characterize it as a racial appeal because it did not identify the race of any candidate nor "malign" them because of it.[405]

One district court refused to characterize debate about at-large and single-member districts as a racial appeal.[406] Another district court refused to "consider every discussion of or question about" Indian exemption from certain taxes a racial appeal, notwithstanding the district court's recognition that "white voters harbor a resentment over this issue, making white support for Indian candidates unlikely."[407]

Racial Bias in Press Coverage: Racial bias exhibited by the press has been deemed a racial appeal in two cases. In the *Bone Shirt* litigation, the court credited as evidence of racial appeals unsubstantiated and false news stories circulating throughout 2002 linking Native Americans to voter fraud.[408] Likewise, in the *City of Dallas* litigation, a 1989

402. St. Louis Bd. of Educ. Litig., 896 F. Supp. 929, 943 (E.D. Mo. 1995); Jenkins v. Red Clay Sch. Dist. Litig., 780 F. Supp. 221, 237–38 (D. Del. 1991); City of Norfolk Litig., 605 F. Supp. 377, 392 (E.D. Va. 1984).

403. City of Norfolk Litig., 605 F. Supp. 377, 392 (E.D. Va. 1984).

404. St. Louis Bd. of Educ. Litig.,896 F. Supp. 929, 943 (E.D. Mo. 1995).

405. Red Clay Sch. Dist. Litig., 780 F. Supp. 221, 237–38 (D. Del. 1991).

406. City of Austin Litig. (TX), 871 F.2d 529, 534 (5th Cir. 1989) (noting the lower court's dismissal of "appellants' contention that subliminal racial appeals accompanied the voters' rejection in 1985 of an amendment proposing single-member districts").

407. County of Big Horn (Windy Boy) Litig., 647 F. Supp. 1002, 1017–18 (D. Mont. 1986) ("Unlike plaintiffs, this court does not consider every discussion of or question about the taxation issue to be a racial campaign appeal.").

408. Bone Shirt Litig., 336 F. Supp. 2d 976, 1041 (D.S.D. 2004).

newspaper column warning that a vote for the African-American candidate running against the incumbent white mayor "could lead to racial violence and white flight" was classified as a racial appeal.[409]

Candidate Intimidation: Some courts have characterized as racial appeals conduct directed at minority candidates as opposed to voters. In the *Jeffers* litigation, for example, the court termed a racial appeal a black candidate's receipt of anonymous calls where the caller used obscenities and racial slurs as well as a later incident in which the same candidate was run off the road by a group of individuals wearing hoods.[410] *Jeffers* also deemed government retaliation against an unsuccessful minority candidate to be a racial appeal. Prior to his political involvement, the candidate had enjoyed a business relationship with the county that was terminated after his campaign.[411]

In the *Garza v. Los Angeles* litigation, the district court cited "substantial evidence" of racial appeals including hostility directed at a Latino candidate for city council who "had doors slammed in his face" while campaigning in a predominantly white neighborhood, and had his campaign literature destroyed.[412]

Racial Slurs or Stereotypes: Courts have also deemed a racial appeal the public use of racial epithets and slurs by white candidates running against black candidates.[413] One district court found a white official's admission before the court in 2002 that he casually and regularly used the word "nigger" to be a racial appeal, even though the plaintiffs made no allegation that racial appeals existed.[414]

So too, courts have identified stereotypes about minority candidates' lack of qualifications as racial appeals. The district court in the *Brunswick County, VA* litigation pointed to materials distributed in a 1991 election for Virginia State Senate. Although ultimately successful, the African-American female candidate was referred to as "'a welfare bureaucrat' and 'an inner-city resident' in her opponent's campaign literature."[415]

Additional examples described by the district court in the *City of Dallas* litigation include a 1970 advertisement where the white

409. City of Dallas Litig., 734 F. Supp. 1317, 1368 (N.D. Tex. 1990).

410. Jeffers Litig., 730 F. Supp. 196, 212–13 (E.D. Ark. 1989).

411. *Id.*

412. Garza v. L.A. Litig., 756 F. Supp. 1298, 1341 (C.D. Cal. 1990).

413. Jeffers Litig., 730 F. Supp. 196, 212 (E.D. Ark. 1989) ("[A]t a public rally [a white candidate running against a black candidate] used profanity and a racial epithet—not in his actual speech, to be sure, but in open conversation.").

414. St. Bernard Parish Sch. Bd. Litig., No. 02-2209, 2002 U.S. Dist. LEXIS 16540, at *33–34 (E.D. La. Aug. 26, 2002).

415. Brunswick County, VA Litig., 801 F. Supp. 1513, 1518 (E.D. Va. 1992).

incumbent described his opponent simply as "*A black man* (no qualifications of any kind)."[416] In the same case, the district court noted a boast made by a white female candidate and printed in the League of Women Voters 1972 voter guide that "[e]vidence of [her] proven ability" was the fact that no white men had filed to run against her, and that her only opponents were black men.[417] The district court in the *Neal* litigation identified a similar type of racial appeal in an editorial run in the local newspaper. The editorial announced the race of two black candidates only to go on to urge voters "not to vote on account of race, but rather on merit." Still, the editorial noted that one of the elections involving an African-American candidate was "of great concern to many county residents" because the black candidate could win "solid black support" and defeat the white incumbent. The editorial weighed in for the re-election of the "more experienced" incumbents.[418]

In most cases, plaintiffs seeking to prove Factor 6 introduce campaign literature and advertisements from previous elections, documentation of media coverage, and witness testimony from minority and non-minority candidates, elected officials, and community members. In the *Wamser* litigation, the district court looked beyond these usual sources of evidence and appeared to dismiss the defendant's expert testimony on racial appeals, based on the judge's own experience—"Dr. Wendel's observation that other political campaigns are devoid of racial appeals would be most credible perhaps to persons who were not in St. Louis during the recent campaign for the City school board."[419]

Several lawsuits identifying racial appeals discounted their import. Some characterized the appeals as merely "isolated" incidents.[420] Others called the appeals ineffective because the targeted candidate was elected, at times with significant white

416. City of Dallas Litig., 734 F. Supp. 1317, 1339 (N.D. Tex. 1990).

417. *Id.*

418. Neal Litig., 689 F. Supp. 1426, 1432 (E.D. Va. 1988).

419. Wamser Litig., 679 F. Supp. 1513, 1527 (E.D. Mo. 1987).

420. LULAC v. Clements Litig. (TX), 999 F.2d 831, 879 (5th Cir. 1993) (en banc) ("Nothing in the district court's opinion indicates that these racial appeals were anything more than isolated incidents."); Milwaukee NAACP Litig., 935 F. Supp. 1419, 1433 (E.D. Wis. 1996) ("[P]laintiffs . . . are able to point to only one judicial election which appears to have involved racial appeals: the 1996 general election between Judge Stamper and Robert Crawford. Assuming that the Stamper/Crawford election did, in fact, involve hostile racial conduct, one election in the past 25 years is hardly enough to prove a pattern."); City of Springfield Litig., 658 F. Supp. 1015, 1032 (C.D. Ill. 1987) (noting a racial slur directed at a black candidate at a luncheon meeting in 1982 and stating that this "single occurrence cannot support a claim that political campaigns in Springfield are carried out through subtle or overt racial appeals").

support.[421] In the *Alamosa County* litigation, the court identified "a fundamental electoral truth—that to be elected in Alamosa County, a candidate must appeal to both Anglo and Hispanic voters."[422] Racial appeals by Latino candidates certainly did not weigh in favor of a finding of vote dilution.

Eight lawsuits held that racial appeals occurred too long ago to be probative in contemporary claims.[423] Appeals deemed too remote include those occurring more than 30 years earlier,[424] as well as those occurring a decade past.[425] Two courts discounted evidence of racial appeals as outdated by noting a new political reality characterized by "racial harmony."[426]

In the *Charleston County* litigation, the court identified numerous racial appeals, but concluded without explanation that "[e]vidence of racial appeals has not materially assisted the Court in reaching a conclusion" on Section 2 liability.[427] Likewise, in the *Magnolia Bar Association* litigation, the district court acknowledged the presence of both overt and subtle racial appeals in campaigns, while concluding that "the appeal for voters by both black and white candidates crosses racial lines, thereby minimizing the importance of this factor under the totality of the circumstances."[428]

7. *Success of Minority Candidates*—Under Senate Factor 7, courts must evaluate the "extent to which members of the minority group have been elected to public office in the jurisdiction."[429] Of the lawsuits analyzed, 143 specifically addressed this factor, and 90 found a lack of minority candidate success.[430] Of these, 66 (or 73.3%) also

421. S. Christian Leadership Litig. (AL), 56 F.3d 1281, 1290 (11th Cir. 1995) (finding that appeals were "ineffective" as targeted black candidates won their races); LULAC v. Clements Litig. (TX), 999 F.2d 831, 879 (5th Cir. 1993) (en banc) ("In the only judicial election affected by a racial appeal, Judge Baraka, the black candidate, won both the Republican primary and the general election, winning a majority of the white vote in both elections."); Alamosa County Litig., 306 F. Supp. 2d 1016, 1025–26 (D. Colo. 2004) (noting ethnic appeals only by minority candidates who subsequently lost their elections).

422. Alamosa County Litig., 306 F. Supp. 2d 1016, 1025–26 (D. Colo. 2004).

423. City of Chi.-Barnett Litig., 969 F. Supp. 1359, 1449 (N.D. Ill. 1997); Liberty County Comm'rs Litig., 957 F. Supp. 1522, 1565 (N.D. Fla. 1997); Town of Babylon Litig., 914 F. Supp. 843, 889 (E.D.N.Y. 1996); Sanchez-Colo. Litig., 861 F. Supp. 1516, 1529 (D. Colo. 1994); City of Columbia Litig., 850 F. Supp. 404, 424 (D.S.C. 1993); Chattanooga Litig., 722 F. Supp. 380, 396 (E.D. Tenn. 1989); City of Boston Litig., 609 F. Supp. 739, 744–45 (D. Mass. 1985); El Paso Indep. Sch. Dist. Litig., 591 F. Supp. 802, 810 (W.D. Tex. 1984).

424. El Paso Indep. Sch. Dist. Litig., 591 F. Supp. 802, 810 (W.D. Tex. 1984).

425. Town of Babylon Litig., 914 F. Supp. 843, 889 (E.D.N.Y. 1996).

426. City of Columbia Litig., 850 F. Supp. 404, 424. (D.S.C. 1993); *see also* City of Boston Litig., 609 F. Supp. 739, 745 (D. Mass. 1985).

427. Charleston County Litig., 316 F. Supp. 2d 268, 304 (D.S.C. 2004).

428. Magnolia Bar Ass'n Litig., 793 F. Supp. 1386, 1410 (S.D. Miss. 1992).

429. SENATE REPORT, *supra* note 17, at 29.

430. *See* VRI Database Master List, *supra* note 39.

resulted in a favorable outcome for the plaintiffs. Fifty-one (56.7%) of the Factor 7 findings were in covered jurisdictions, while 39 (43.3%) were in non-covered jurisdictions.[431]

Courts evaluating Factor 7 generally examined minority success over the course of several elections, typically spanning decades.[432] Several cases distinguished elections occurring before the lawsuit was initiated from those occurring afterward, and often discounted evidence of post-filing minority success as the result of a strategic effort to frustrate the lawsuit.[433]

Unsurprisingly, Factor 7 weighed heavily in the plaintiffs' favor in cases where electoral results revealed a total failure or near-total failure of minority candidates to be elected.[434] Conversely, Factor 7 favored defendants where electoral results showed significant minority candidate success.[435]

A complete lack of modern electoral success was found more often in covered than in non-covered jurisdictions. In covered jurisdictions, 24 lawsuits challenging 32 governing bodies specifically found that no minority candidate had ever been elected in the post-1964 era.[436] Fourteen lawsuits in non-covered jurisdictions

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431. *See id.*

432. *See, e.g.*, Sanchez-Colo. Litig. (CO), 97 F.3d 1303, 1319 (10th Cir. 1996); Jefferson Parish I Litig. (LA), 926 F.2d 487 (5th Cir. 1991).

433. *See, e.g.*, City of Santa Maria Litig. (CA), 160 F.3d 543, 548 (9th Cir. 1998); Chickasaw County II Litig., No. CIV.A. 1:92CV142-JAD, 1997 WL 33426761, at *4 (N.D. Miss. Oct. 28, 1997); City of Springfield Litig., 658 F. Supp. 1015, 1031 (C.D. Ill. 1987).

434. *See, e.g.*, Seastrunk Litig. (LA), 772 F.2d 143, 153 (5th Cir. 1985); Albany County Litig., No. 03-CV-502, 2003 WL 21524820, at *11 (N.D.N.Y. July 7, 2003).

435. *See, e.g.*, Little Rock Litig., 831 F. Supp. 1453, 1460 (E.D. Ark. 1993).

436. *See* Hardee County Litig. (FL), 906 F.2d 524, 525 (11th Cir. 1990); Carrollton NAACP Litig. (GA), 829 F.2d 1547, 1559–61 (11th Cir. 1987); Seastrunk Litig. (LA), 772 F.2d 143, 153 (5th Cir. 1985); Lubbock Litig. (TX), 727 F.2d 364, 383–84 (5th Cir. 1984); Marengo County Litig. (AL), 731 F.2d 1546, 1572 (11th Cir. 1984); Opelika Litig. (AL), 748 F.2d 1473, 1476 (11th Cir. 1984); St. Bernard Parish Sch. Bd. Litig., No. CIV.A. 02-2209, 2002 WL 2022589, at *10 (E.D. La. Aug. 26, 2002); LULAC–N.E. Indep. Sch. Dist. Litig., 903 F. Supp. 1071, 1084–85 (W.D. Tex. 1995); Calhoun County Litig., 813 F. Supp. 1189, 1193 (N.D. Miss. 1993); Holder v. Hall Litig., 757 F. Supp. 1560, 1564–65 (M.D. Ga. 1991); Monroe County Litig., 740 F. Supp. 417, 424 (N.D. Miss. 1990); Westwego Litig., NO. 84-5599, 1989 WL 73332, at *5 (E.D. La. June 28, 1989); Chickasaw County I, 705 F. Supp. 315, 319–20 (N.D. Miss. 1989); Jefferson Parish I Litig., 691 F. Supp. 991, 995 (E.D. La. 1988); Mehfoud Litig., 702 F. Supp. 588, 590 (E.D. Va. 1988); Baytown Litig., 696 F. Supp. 1128, 1136 (S.D. Tex. 1987); Houston v. Haley Litig., 663 F. Supp. 346, 354 (N.D. Miss. 1987); Dillard v. Crenshaw Litig., 640 F. Supp. 1347, 1360 (M.D. Ala. 1986); Gretna Litig., 636 F. Supp. 1113, 1122 (E.D. La. 1986); Halifax County Litig., 594 F. Supp. 161, 165 (E.D.N.C. 1984); Jordan Litig., 604 F. Supp. 807, 812 (N.D. Miss. 1984); City of Greenwood Litig., 534 F. Supp. 1351, 1354 (N.D. Miss. 1982); Dallas County Comm'n Litig., 548 F. Supp. 794, 850–51 (S.D. Ala. 1982); Rocha Litig., No. V-79-26, 1982 U.S. Dist. LEXIS 15164, at * 16–17 (S.D. Tex. Aug. 23, 1982).

challenging 17 governing bodies made the same finding.[437] In 22 suits, courts in non-covered areas found significant and sustained electoral success in the defendant jurisdictions[438] while the same finding was made in only eight covered suits.[439]

Electoral results do not constitute the entire inquiry under Factor 7. Numerous courts have also considered the record of minority electoral success in conjunction with population statistics. While Section 2 is explicit that the statute provides no right to proportional representation,[440] some courts have viewed proportional minority representation (or its absence) as informing the Factor 7 inquiry. Several courts deemed the absence of such representation to suggest a lack of minority electoral success under Factor 7,[441]

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437. *See* Blaine County Litig. (MT), 363 F.3d 897, 900 (9th Cir. 2004); Davis v. Chiles Litig. (FL), 139 F.3d 1414, 1417–18 (11th Cir. 1998); Sanchez-Colo. Litig. (CO), 97 F.3d 1303, 1319 (10th Cir. 1996); Watsonville Litig. (CA), 863 F.3d 1407, 1417 (9th Cir. 1988); Escambia County Litig. (FL), 638 F.2d 1239, 1240–41 (5th Cir. 1981); Montezuma-Cortez Sch. Dist. Litig., 7 F. Supp. 2d 1152, 1170 (D. Colo. 1998); Cousin Litig., 840 F. Supp. 1210, 1219 (E.D. Tenn. 1994); DeSoto County Litig., 868 F. Supp. 1376, 1380 (M.D. Fla. 1994); Emison v. Growe, 782 F. Supp. 427, 437 (D. Minn. 1992); Armour Litig., 775 F. Supp. 1044, 1056 (N.D. Ohio 1991); City of Jackson, TN Litig., 683 F. Supp. 1515, 1535 (W.D. Tenn. 1988); Smith-Crittendon County Litig., 687 F. Supp. 1310, 1311 (E.D. Ark. 1988); City of Springfield Litig., 658 F. Supp. 1015, 1031 (C.D. Ill. 1987); Haywood County Litig., 544 F. Supp. 1122, 1135 (W.D. Tenn. 1982).

438. Old Person Litig. (MT), 230 F.3d 1113, 1129 (9th Cir. 2000); Jenkins v. Red Clay Sch. Dist. Litig. (DE), 116 F.3d 685, 695–96 (3d Cir. 1997); Little Rock Litig. (AR), 56 F.3d 904, 911 (8th Cir. 1995); Nat'l City Litig. (CA), 976 F.2d 1293, 1294 (9th Cir. 1992); City of Fort Lauderdale Litig. (FL), 787 F.2d 1528, 1533 (11th Cir. 1986); Alamosa County Litig., 306 F. Supp. 2d 1016, 1024 (D. Colo. 2004); Black Political Task Force Litig., 300 F. Supp. 2d 291, 313 (D. Mass. 2004); Rodriguez Litig., 308 F. Supp. 2d 346, 436–37 (S.D.N.Y 2004); Guy Litig., No. Civ.A. 00-831-KAJ, 2003 WL 22005853, at *3 (D. Del. Aug. 20, 2003); African-American Voting Rights LDF Litig., 994 F. Supp. 1105, 1125 (E.D. Mo. 1997); City of Chi.-Barnett Litig., 969 F. Supp. 1359, 1449 (N.D. Ill. 1997) (finding for both Barnett and Bonilla plaintiffs' suits); City of Holyoke Litig., 960 F. Supp. 515, 526 (D. Mass. 1997); Milwaukee NAACP Litig., 935 F. Supp. 1419, 1433 (E.D. Wis. 1996); Aldasoro Litig., 922 F. Supp. 339, 343–44 (S.D. Cal. 1995); Cincinnati Litig., No. C-1-92-278, 1993 WL 761489, at *23 (S.D. Ohio July 8, 1993); City of Phila. Litig., 824 F. Supp. 514, 537–58 (E.D. Pa. 1993); Kent County Litig., 790 F. Supp. 738, 748–49 (W.D. Mich. 1992); Nash Litig., 797 F. Supp. 1488, 1506 (W.D. Mo. 1992); Orange County Litig., 783 F. Supp. 1348, 1359–60 (M.D. Fla. 1992); Stockton Litig., No. S-87-1726 EJG, 1988 U.S. Dist. LEXIS 17601, at *18 (E.D. Cal. Mar. 10, 1988); City of Boston Litig., 609 F. Supp. 739, 748 (D. Mass. 1985).

439. City of Rome Litig. (GA), 127 F.3d 1355, 1381 (11th Cir. 1997); Lucas Litig. (GA), 967 F.2d 549, 553 (11th Cir. 1992); City of Austin Litig. (TX), 871 F.2d 529, 538 (5th Cir. 1989); City of Cleveland Litig., 297 F. Supp. 2d 901, 907–08 (N.D. Miss. 2004); Perry Litig., 298 F. Supp. 2d 451, 499–500 (E.D. Tex. 2004); S.C. Democratic Party Litig., No. 4-04-CV-2171-25, 2004 U.S. Dist. LEXIS 27299, at *7 (D.S.C. Sept. 3, 2004); City of Columbia Litig., 850 F. Supp. 404, 425 (D.S.C. 1993); Butts v. NYC Litig., 614 F. Supp. 1527, 1547 (S.D.N.Y. 1985).

440. *See* 42 U.S.C. § 1973(b) (2005) (providing 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").

441. *See, e.g.*, Bridgeport Litig., No. 3:93CV1476 (PCD), 1993 WL 742750, at *3 (D. Conn. Oct. 27, 1993); Operation Push Litig., 674 F. Supp. 1245, 1265 (N.D. Miss. 1987).

while others viewed evidence that minority officeholders approached or exceeded the proportion of minorities in the electorate as proof of minority electoral success.[442]

The nature and prominence of the offices to which minority candidates had been elected also informed the Factor 7 inquiry. Some courts deemed the absence of minority candidates in top offices evidence of a lack of minority success, notwithstanding minority election to "lesser" positions.[443] Other courts viewed minority success in these "lesser" elections as sufficient evidence of minority electoral success, even where minority candidates did not win top offices.[444]

Many courts compared minority electoral success in endogenous elections to elections for governing bodies not challenged in the same suit. For some courts, the success of minority candidates in exogenous elections was sufficient evidence of minority electoral success, even where minority candidates did not win any office in the challenged jurisdiction.[445] Most, however, emphasized that such exogenous elections were less probative of electoral difficulty or success.[446] Some courts accorded almost no weight to exogenous electoral evidence,[447] and several appellate courts reversed district court decisions which found plaintiffs had failed to meet Factor 7 based on exogenous electoral success.[448]

Some courts cited the appointment of minority officials to support a finding that Factor 7 had,[449] or had not been met.[450] Where, for instance, minority electoral "success" hinges on the advantages of incumbency secured through appointment, some courts have found that such "success" has little bearing on the ability of minority candidates to win elections generally.[451]

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442. *See, e.g.*, City of Rome Litig. (GA), 127 F.3d 1355, 1381 (11th Cir. 1997); Suffolk County Litig., 268 F. Supp. 2d 243, 266 (E.D.N.Y. 2003). *But see* Old Person Litig. (MT), 312 F.3d 1036, 1048 (9th Cir. 2002); Terrazas Litig., 581 F. Supp. 1329, 1355–56 (N.D. Tex. 1984).

443. *See, e.g.*, Bridgeport Litig., No. 3:93CV1476 (PCD), 1993 WL 742750, at *3 (D. Conn. Oct. 27, 1993).

444. *See, e.g.*, Butts v. NYC Litig. (NY), 779 F.2d 141, 150 (2d Cir. 1985).

445. *See, e.g.*, Meza Litig., 322 F. Supp. 2d 52, 72 (D. Mass. 2004).

446. *See, e.g.*, NAACP v. Fordice Litig. (MS), 252 F.3d 361, 370 (5th Cir. 2001); Lafayette County Litig., 20 F. Supp. 2d 996, 1003 (N.D. Miss. 1998).

447. *See, e.g.*, Smith-Crittenden County Litig., 687 F. Supp. 1310, 1317 (E.D. Ark. 1988); City of Jackson, TN Litig., 683 F. Supp. 1515, 1535 (W.D. Tenn. 1988).

448. *See, e.g.*, Sanchez-Colo. Litig. (CO), 97 F.3d 1303, 1324–25 (10th Cir. 1996); Carrollton NAACP Litig. (GA), 829 F.2d 1547, 1560–61 (11th Cir. 1987).

449. *See, e.g.*, Bone Shirt Litig., 336 F. Supp. 2d 976, 1042–43 (D.S.D. 2004); Metro Dade County Litig., 805 F. Supp. 967, 982 (S.D. Fla. 1992).

450. *See* City of Rome Litig. (GA), 127 F.3d 1355, 1384 n.18 (11th Cir. 1997); Niagara Falls Litig. (NY), 65 F.3d 1002, 1021 (2d Cir. 1995).

451. *See, e.g.*, Town of Hempstead Litig. (NY), 180 F.3d 476, 495 (2d Cir. 1999).

Several lawsuits looked beyond electoral results to assess the number of minority candidates participating in given races. Some courts noted that the failure of minority citizens to "offer themselves" as candidates weighed against finding a lack of minority electoral success.[452] Other courts, however, considered the possibility that a dearth of minority candidates might itself stem from "the very barriers to political participation that Congress has sought to remove"[453] and weighed the small number of minority candidates in favor of plaintiffs.[454] A few lawsuits included within the Factor 7 inquiry undertake an examination of the qualifications of successful and unsuccessful minority candidates. Evidence suggesting that minority candidates were not serious or viable weighed against plaintiffs in the *Fort Bend Independent School District* litigation,[455] while the defeat of well-qualified minority candidates contributed to findings of a lack of minority electoral success in a small number of cases.[456] The failure of prominent white Democrats to rally behind a minority candidate contributed to finding Factor 7 in at least one case.[457]

Under certain circumstances, courts discounted evidence of minority electoral success or an apparent lack thereof. Some lawsuits, for example, viewed the defeat of minority candidates by relatively small margins as mitigating evidence of limited minority electoral success.[458] At least one lawsuit discounted the election of a minority candidate where that candidate was "emphatically not the candidate of choice of the county's African-American voters."[459]

Several courts examining Factor 7 tended to discount minority electoral success absent evidence that the minority candidate received the support of white voters. Apparently agreeing with the Supreme Court's characterization of the majority-minority district as the "politics of second best,"[460] these courts seemed to place more weight on minority success in at-large elections than in majority-minority districts.[461] So too, a few courts discounted as

452. *See, e.g.*, McCarty Litig. (TX), 749 F.2d 1134, 1135 (5th Cir. 1984); Jenkins v. Red Clay Sch. Dist. Litig., 780 F. Supp. 221, 226 n.2 (D. Del. 1991).

453. Calhoun County Litig. (MS), 88 F.3d 1393, 1398 (5th Cir. 1996).

454. *See, e.g., id.*; City of LaGrange Litig., 969 F. Supp. 749, 776 (N.D. Ga. 1997).

455. Fort Bend Indep. Sch. Dist. Litig. (TX), 89 F.3d 1205, 1215 (5th Cir. 1996).

456. Blaine County Litig. (MT), 363 F.3d 897, 900, 914 (9th Cir. 2004); Gretna Litig., 636 F. Supp. 1113, 1122 (E.D. La. 1986).

457. *See* Bridgeport Litig., 26 F.3d 271, 276 (2d Cir. 1994).

458. *See, e.g.*, Niagara Falls Litig. (NY), 65 F.3d 1002, 1022 (2d Cir. 1995); City of Pomona Litig., 665 F. Supp. 853, 861 (C.D. Cal. 1987).

459. Charleston County Litig., 316 F. Supp. 2d 268, 279 n.14 (D.S.C. 2003).

460. *See* De Grandy Litigation, 512 U.S. 997, 1020 (1994) (internal citation omitted).

461. *See, e.g.*, NAACP v. Fordice Litig. (MS), 252 F.3d 361, 371 (5th Cir. 2001); Stockton Litig. (CA), 956 F.2d 884, 891 (9th Cir. 1992); City of Cleveland Litig., 297 F. Supp. 2d 901,

evidence of minority electoral success the experience of an African-American official, first appointed to the city board and then re-elected because the official not only enjoyed the benefits of incumbency but also never faced a white opponent.[462] Conversely, another court credited as evidence of minority electoral success the election of candidates who had originally been appointed to office where these candidates subsequently developed "sustained biracial coalitions" and retained their positions through more than "sheer power of incumbency."[463]

8. Significant Lack of Responsiveness—In addition to the seven "typical" factors listed above, the Senate Report adds two additional factors "that in some cases have had probative value" in establishing a Section 2 violation. The first is whether there "is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group."[464] Of the lawsuits surveyed, 107 lawsuits addressed this factor and 20 (or 18.7%) found responsiveness lacking.[465] Of those finding the factor, 15 (or 75%) ended favorably for the plaintiffs.[466] Ten (50%) of the lawsuits that found a significant lack of responsiveness were in jurisdictions covered under Section 5; 10 (50%) were not.[467]

The Senate Report did not define responsiveness, and courts have rarely attempted a general definition, opting instead to evaluate Factor 8 based on case-specific examples.[468] The cases nevertheless suggest that courts have viewed responsiveness as having a substantive and procedural component.

Substantive Responsiveness: Most courts addressing Factor 8 have examined the substantive policies enacted or implemented by the jurisdiction. Evidence of affirmative discrimination directed at the minority group has unsurprisingly been found to establish a lack of

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908 (N.D. Miss. 2004); Niagara Falls Litig., 913 F. Supp. 722, 748–49 (W.D.N.Y 1994); City of Boston Litig., 609 F. Supp. 739, 748 (D. Mass. 1985).

462. *See, e.g.*, Texarkana Litig., 861 F. Supp. 756, 764 (W.D. Ark. 1992); Columbus County Litig., 782 F. Supp. 1097, 1102 (E.D.N.C. 1991); Clark Litig., 725 F. Supp. 285, 299 (M.D. La. 1988); Terrell Litig., 565 F. Supp. 338, 347–48 (N.D. Tex. 1983).

463. *See, e.g.*, City of Rome Litig. (GA), 127 F.3d 1355, 1384 n.18 (11th Cir. 1997).

464. SENATE REPORT, *supra* note 17, at 29.

465. *See* VRI Database Master List, *supra* note 39.

466. *See id.*

467. *See id.*

468. *But see* Holder v. Hall Litig. (GA), 117 F.3d 1222, 1227 (11th Cir. 1997) ("An official is responsive if he/she ensures that minorities are not excluded from municipal posts, even-handedly allocates municipal services, and addresses minority complaints."); Niagara Falls Litig. (NY), 65 F.3d 1002, 1023 n.24 (2d Cir. 1995) ("The 'responsiveness' inquiry here involves review of tangible efforts of elected officials and the impact of these efforts on particular members of the community.").

responsiveness,[469] while 24 lawsuits found the absence of such evidence sufficient proof that elected officials are responsive.[470] In lawsuits challenging judicial elections, courts similarly equated nondiscrimination with responsiveness, with none of the eight lawsuits to address unresponsiveness in this context finding Factor 8.[471] Courts have also deemed as responsive efforts by local officials to address or correct discriminatory practices,[472] while the failure of localities to make such efforts supports finding Factor 8.[473]

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469. Jenkins v. Red Clay Sch. Dist. Litig. (DE), 116 F.3d 685, 698 (3d Cir. 1997); Marengo County Litig. (AL), 731 F.2d 1546, 1572 (11th Cir. 1984); Town of Hempstead Litig., 956 F. Supp. 326, 344 (E.D.N.Y. 1997); Bridgeport Litig., No. 3:93CV1476 (PCD), 1993 U.S. Dist. LEXIS 19741 (D. Conn. Oct. 27, 1993); City of Phila. Litig., 824 F. Supp. 514, 538 (E.D. Penn. 1993); Baldwin Bd. of Educ. Litig., 686 F. Supp. 1459, 1467 (M.D. Ala. 1988); City of Jackson, TN Litig., 683 F. Supp. 1515, 1535 (W.D. Tenn. 1988); Terrell Litig., 565 F. Supp. 338, 343 (N.D. Tex. 1983); Mobile Sch. Bd. Litig., 542 F. Supp. 1078, 1104–07 (S.D. Ala. 1982).

470. NAACP v. Fordice Litig. (MS), 252 F.3d 361, 372 (5th Cir. 2001); Holder v. Hall Litig. (GA), 117 F.3d 1222, 1227 (11th Cir. 1997); City of Woodville Litig. (MS), 881 F.2d 1327, 1335 (5th Cir. 1989); Baytown Litig. (TX), 840 F.2d 1240, 1250–51 (5th Cir. 1988); Houston v. Haley Litig. (MS), 859 F.2d 341, 347 (5th Cir. 1988); Dallas County Bd. of Educ. Litig. (AL), 739 F.2d 1529, 1540 (11th Cir. 1984); Escambia County Litig. (FL), 748 F.2d 1037, 1045 (5th Cir. 1984); Opelika Litig. (AL), 748 F.2d 1473, 1476 (11th Cir. 1984); Alamosa County Litig., 306 F. Supp. 2d 1016, 1039 (D. Colo. 2004); Hamrick Litig., 155 F. Supp. 2d 1355, 1378 (N.D. Ga. 2001); City of LaGrange Litig., 969 F. Supp. 749, 770 (N.D. Ga. 1997); Harris v. Houston Litig., 10 F. Supp. 2d 721, 726 (S.D. Tex. 1997); Texarkana Litig., 861 F. Supp. 756, 765 (W.D. Ark. 1992); Chickasaw County I Litig., 705 F. Supp. 315, 321 (N.D. Miss. 1989); City of Starke Litig., 712 F. Supp. 1523, 1538 (M.D. Fla. 1989); Jeffers Litig., 730 F. Supp. 196, 213 (E.D. Ark. 1989); Westwego Litig., No. 84-5599, 1989 U.S. Dist. LEXIS 7298, at *14 (E.D. La. 1989); City of Norfolk Litig., 679 F. Supp. 557, 585 (E.D. Va. 1988); City of Woodville Litig., 688 F. Supp. 255, 257 (S.D. Miss. 1988); Pomona Litig., 665 F. Supp. 853, 862 (C.D. Cal. 1987); City of Austin Litig., No. A-84-CA-189, 1985 WL 19986, at *12 (W.D. Tex. Mar. 12, 1985); City of Fort Lauderdale Litig., 617 F. Supp. 1093, 1107 (S.D. Fla. 1985); Terrell Litig., 565 F. Supp. 338, 343 (N.D. Tex. 1983); City of Greenwood Litig., 534 F. Supp. 1351 (N.D. Miss. 1982).

471. Cousin Litig. (TN), 145 F.3d 818, 833 (6th Cir. 1998); S. Christian Leadership Litig. (AL), 56 F.3d 1281, 1295 (11th Cir. 1995); Nipper Litig. (FL), 39 F.3d 1494, 1591–92 (11th Cir. 1994); Mallory-Ohio Litig., 38 F. Supp. 2d 525, 543 (S.D. Ohio 1997); Bradley v. Work Litig., 916 F. Supp. 1446, 1467 (S.D. Ind. 1996); Milwaukee NAACP Litig., 935 F. Supp. 1419, 1433 (E.D. Wis. 1996); Chisom Litig., No. 86-4057, 1989 WL 106485, at *11 (E.D. La. Sept. 19, 1989); Kirksey v. Allain Litig., 658 F. Supp. 1183, 1203 (S.D. Miss. 1987).

472. *See, e.g.*, Fort Bend Indep. Sch. Dist. Litig. (TX), 89 F.3d 1205, 1220 (5th Cir. 1996); Cincinnati Litig., No. C-1-92-278, 1993 U.S. Dist. LEXIS 21009, at *36 (S.D. Ohio July 8, 1993); Monroe County Litig., 740 F. Supp. 417, 424 (N.D. Miss. 1990); Houston v. Haley Litig., 663 F. Supp. 346, 355 (N.D. Miss. 1987); City of Fort Lauderdale Litig., 617 F. Supp. 1093, 1107 (S.D. Fla. 1985); City of Norfolk Litig., 605 F. Supp. 377, 394 (E.D. Va. 1984); Dallas County Bd. of Educ. Litig., 548 F. Supp. 794, 821 (S.D. Ala. 1982).

473. *See, e.g.*, Bridgeport Litig., No. 3:93CV1476 (PCD), 1993 U.S. Dist. LEXIS 19741, at *15–16 (D. Conn. Oct. 27, 1993); Jenkins v. Red Clay Sch. Dist. Litig., 780 F. Supp. 221, 240 (D. Del. 1991); Operation Push Litig., 674 F. Supp. 1245, 1265 (N.D. Miss. 1987); Citizen Action Litig., No. N 84–431, 1984 U.S. Dist. LEXIS 24869, at *12 (D. Conn. Sept. 27, 1984); Terrell Litig., 565 F. Supp. 338, 347 (N.D. Tex. 1983); Mobile Sch. Bd. Litig., 542 F. Supp. 1078, 1106 (S.D. Ala. 1982).

Many lawsuits suggested, though, that nondiscrimination alone was insufficient to establish responsiveness and looked instead for evidence of affirmative measures serving the minority community. Under this approach, the failure to adopt an affirmative action policy signaled unresponsiveness,[474] while adopting such a plan suggested responsiveness.[475] The failure to hire or to appoint minority employees showed a lack of responsiveness,[476] and some lawsuits found inclusive hiring practices an indication of responsiveness.[477] So too, the provision of bilingual education supported a finding of responsiveness.[478]

Some courts have suggested that equal funding of particular projects—road paving in particular—is insufficient to establish responsiveness, where the needs of minority communities had long been neglected.[479] Some courts found a lack of responsiveness where elected officials failed to fund projects in minority neighborhoods,[480] (particularly while funding comparable projects in white neighborhoods),[481] or failed to participate in federal programs which would fund such projects.[482] Courts have found responsiveness where officials provided minority communities dis-

474. *See, e.g.*, Town of Hempstead Litig. (NY), 180 F.3d 476, 487 (2d Cir. 1999); Bridgeport Litig., No. 3:93CV1476 (PCD), 1993 U.S. Dist. LEXIS 19741 (D. Conn. Oct. 27, 1993).

475. *See, e.g.*, Niagara Falls Litig. (NY), 65 F.3d 1002, 1023 (2d Cir. 1995); El Paso Indep. Sch. Dist. Litig., 591 F. Supp. 802, 811 (W.D. Tex. 1984).

476. *See, e.g.*, Town of Hempstead Litig. (NY), 180 F.3d 476, 487 (2d Cir. 1999); Carrollton NAACP Litig. (GA), 829 F.2d 1547, 1561 (11th Cir. 1987); Columbus County Litig., 782 F. Supp. 1097, 1105 (E.D.N.C. 1991); Chickasaw County I Litig., 705 F. Supp. 315, 321 (N.D. Miss. 1989); City of Starke Litig., 712 F. Supp. 1523, 1538 (M.D. Fla. 1989); Operation Push Litig., 674 F. Supp. 1245, 1265 (N.D. Miss. 1987).

477. *See, e.g.*, Holder v. Hall Litig. (GA), 117 F.3d 1222, 1227 (11th Cir. 1997); City of Austin Litig. (TX), 871 F.2d 529, 534 (5th Cir. 1989); Houston v. Haley Litig. (MS), 859 F.2d 341, 347 (5th Cir. 1988); City of Chi.-Barnett Litig., 969 F. Supp. 1359, 1449 (N.D. Ill. 1997); Niagara Falls Litig., 913 F. Supp. 722, 749 (W.D.N.Y. 1994); Calhoun County Litig., 813 F. Supp. 1189, 1201 (N.D. Miss. 1993); City of Columbia Litig., 850 F. Supp. 404, 425 (D.S.C. 1993).

478. Aldasoro v. Kennerson Litig., 922 F. Supp. 339, 366 (S.D. Cal. 1995); El Paso Indep. Sch. Dist. Litig., 591 F. Supp. 802, 811 (W.D. Tex. 1984); Rybicki Litig., 574 F. Supp. 1082, 1122 (N.D. Ill. 1982).

479. *See, e.g.*, City of Dallas Litig., 734 F. Supp. 1317, 1407 (N.D. Tex 1990).

480. *See, e.g.*, Town of Hempstead Litig., 956 F. Supp. 326, 344 (E.D.N.Y. 1997); Columbus County Litig., 782 F. Supp. 1097, 1105 (E.D.N.C. 1991). *But see* City of LaGrange Litig., 969 F. Supp. 749, 770 (N.D. Ga. 1997) ("Several of Plaintiff's witnesses testified that the council had failed to address certain problems within the African-American community. However, these examples seemed to reflect the typical shortcomings of government entities rather than an institutional unresponsiveness to the minority community.").

481. *See, e.g.*, City of Phila. Litig., 824 F. Supp. 514, 538 (E.D. Pa. 1993); *see also* City of Jackson, TN Litig., 683 F. Supp. 1515, 1535 (W.D. Tenn. 1988) (historical evidence).

482. *See, e.g.*, Terrell Litig., 565 F. Supp. 338, 343 (N. D. Tex. 1983); Rocha Litig., No. V-79-26, 1982 U.S. Dist. LEXIS 15164, at *18 (S.D. Tex. Aug. 23, 1982).

proportionately large amounts of funding[483] and directed funds to minority neighborhoods for improvements.[484] A few courts viewed the acceptance of federal aid or efforts to secure such aid directed to minority interests as evidence of responsiveness,[485] while others viewed the same conduct as "suspect" because it required no actual commitment on the part of the jurisdiction to minority interests.[486]

Procedural Responsiveness: A number of courts viewed responsiveness more as a question of process than of outcome. Here, courts focus on communication between elected officials and their minority constituents and the extent to which elected representatives advocate for measures that serve the particularized needs of the minority community. The effort to secure enactment or implementation of such measures matters as much as, if not more than, achieving the desired outcome.

Officials are unresponsive under this model when they actively oppose or otherwise evince hostility to the desires of the minority community,[487] when they are unable to identify any concerns particular to their constituent minority community,[488] when they fail to address these concerns, and when they do not respond to requests from or advocate for the needs of the minority community.[489] For instance, the *Jeffers* litigation considered the reluctance of white legislators to co-sponsor "bills of interest to black voters," the

483. *See, e.g.*, City of Austin Litig. (TX), 871 F.2d 529, 534–35 (5th Cir. 1989); Rural West II Litig., 29 F. Supp. 2d 448, 459–60 (W.D. Tenn. 1998); Chickasaw County II Litig., No. 1:92CV142-JAD, 1997 U.S. Dist. LEXIS 22087, at *8 (N.D. Miss. Oct. 28, 1997); Town of Babylon Litig., 914 F. Supp. 843, 890 (E.D.N.Y. 1996); Sanchez-Colo. Litig., 861 F. Supp. 1516, 1530 (D. Colo. 1994); City of Columbia Litig., 850 F. Supp. 404, 425 (D.S.C. 1993); Monroe County Litig., 740 F. Supp. 417, 424 (N.D. Miss. 1990).

484. *See, e.g.*, McCarty Litig. (TX), 749 F.2d 1134, 1137 (5th Cir. 1984); Hamrick Litig., 155 F. Supp. 2d 1355, 1378 (N.D. Ga. 2001); Liberty County Comm'rs Litig., 957 F. Supp. 1522, 1566 (N.D. Fla. 1997); City of Springfield Litig., 658 F. Supp. 1015, 1032 (C.D. Ill. 1987); Houston v. Haley Litig., 663 F. Supp. 346, 355 (N.D. Miss. 1987).

485. *See, e.g.*, Houston v. Haley Litig. (MS), 859 F.2d 341, 347 (5th Cir. 1988); Dallas County Comm'n Litig. (AL), 739 F.2d 1529, 1540 (11th Cir. 1984); Hamrick Litig., 155 F. Supp. 2d 1355, 1378 (N.D. Ga. 2001); El Paso Indep. Sch. Dist. Litig., 591 F. Supp. 802, 811 (W.D. Tex. 1984).

486. City of Dallas Litig., 734 F. Supp. 1317, 1407 (N.D. Tex. 1990); *see also* Lubbock Litig. (TX), 727 F.2d 364, 382 (5th Cir. 1984).

487. Bone Shirt Litig., 336 F. Supp. 2d 976, 1044 (D.S.D. 2004) (discussing numerous legislative bills that affect the Indian community; noting the consistent opposition by certain members of the legislature to any legislation that the Indian community lobbied for, including voting against bills with overwhelming support and no organized opposition, and keeping bills that affect only the minority community from reaching a floor vote).

488. *See, e.g.*, Mehfoud Litig., 702 F. Supp. 588, 595 (E.D. Va. 1988).

489. *See, e.g.*, Town of Hempstead Litig. (NY), 180 F.3d 476, 487 (2d Cir. 1999); Sisseton Indep. Sch. Dist. Litig. (SD), 804 F.2d 469, 477 (8th Cir. 1986); Montezuma-Cortez Sch. Dist. Litig., 7 F. Supp. 2d 1152, 1170 (D. Colo. 1998); Sanchez-Colo. Litig., 861 F. Supp. 1516, 1530 (D. Colo. 1994); Columbus County Litig., 782 F. Supp. 1097, 1105 (E.D.N.C. 1991); City of Springfield Litig., 658 F. Supp. 1015, 1032 (C.D. Ill. 1987).

difficulties faced by both black constituents and black members of the Arkansas State Legislature when lobbying for such support, and the practice of at least one white state representative to refer black constituents to black members of the state legislature, rather than meeting with them.[490]

By contrast, responsiveness is shown when an official knows and supports causes favored by minority voters,[491] meets with minority constituents,[492] and seeks out minority groups or otherwise purposely includes them in the decision making process.[493] In 12 lawsuits, courts found responsiveness when an elected official was dependent on minority votes either for election or to implement a desired policy.[494]

Such "dependent" officials tend to meet with their minority constituents, seek out their views, familiarize themselves with their concerns, and advocate on their behalf. In the same way, the Supreme Court in the recent *Perry* litigation suggested that a lack of responsiveness may be shown by the simple fact that minority voters refuse to support an elected official.[495]

According to judicial findings, responsive officials actively solicit minority votes, either via "door-knocking" or seeking endorsements from minority organizations.[496] They promote voter

490. Jeffers Litig., 730 F. Supp. 196, 214 (E.D. Ark. 1989).

491. *See, e.g.*, Black Political Task Force Litig., 300 F. Supp. 2d 291, 313 (D. Mass. 2004); Cincinnati Litig., No. C-1-92-278, 1993 U.S. Dist. LEXIS 21009, at *37–38 (S.D. Ohio July 8, 1993); Monroe County Litig., 740 F. Supp. 417 (N.D. Miss. 1990); *see also* Jeffers Litig., 730 F. Supp. 196, 213 (E.D. Ark. 1989) ("Members of the House like Representatives Cunningham, McGinnis, Flanagin, and Dawson are anything but unresponsive. They are well aware that a large proportion of their constituency is black, and they make assiduous and sincere efforts to represent these voters.").

492. *See, e.g.*, Holder v. Hall Litig. (GA), 117 F.3d 1222, 1227 (11th Cir. 1997); Liberty County Comm'rs Litig., 957 F. Supp. 1522, 1567 (N.D. Fla. 1997); Niagara Falls Litig., 913 F. Supp. 722, 749 (W.D.N.Y. 1994).

493. *See, e.g.*, Black Political Task Force Litig., 300 F. Supp. 2d 291, 313 (D. Mass. 2004); Calhoun County Litig., 813 F. Supp. 1189, 1201 (N.D. Miss. 1993); Terrazas Litig., 581 F. Supp. 1329, 1350 (N.D. Tex. 1984).

494. City of Rome Litig. (GA), 127 F.3d 1355, 1386–87 (11th Cir. 1997); Ketchum Litig. (IL), 740 F.2d 1398, 1405 (7th Cir. 1984); Hamrick Litig., 155 F. Supp. 2d 1355, 1378 (N.D. Ga. 2001); City of Chi.–Bonilla Litig., 969 F. Supp. 1359, 1450 (N.D. Ill. 1997); Town of Babylon Litig., 914 F. Supp. 843, 890 (E.D.N.Y. 1996); Attala County Litig., No. 1:91CV209-D-D, 1995 U.S. Dist. LEXIS 21569, at *19 (N.D. Miss. Mar. 20, 1995); Rural West I Litig., 877 F. Supp. 1096, 1106 (W.D. Tenn. 1995); Calhoun County Litig., 813 F. Supp. 1189, 1201 (N.D. Miss. 1993); Cincinnati Litig., No. C-1-92-278, 1993 U.S. Dist. LEXIS 21009, at *36 (S.D. Ohio July 8, 1993); Armour Litig., 775 F. Supp. 1044, 1058 (N.D. Ohio 1991); Rybicki Litig., 574 F. Supp. 1147, 1151 (N.D. Ill. 1983); City of Greenwood Litig., 534 F. Supp. 1351 (N.D. Miss. 1982).

495. Perry Litig. (TX), 126 S. Ct. 2594, 2622 (2006).

496. Rural West II Litig., 29 F. Supp. 2d 448, 459–60 (W.D. Tenn. 1998); Rural West I Litig., 836 F. Supp. 453, 463 (W.D. Tenn. 1993); City of Jackson, TN Litig., 683 F. Supp. 1515, 1535 (W.D. Tenn. 1988); Houston v. Haley Litig., 663 F. Supp. 346, 354 (N.D. Miss. 1987).

registration, or otherwise encourage political participation by the minority community.[497] By contrast, a lack of responsiveness has been found when jurisdictions did not facilitate minority political participation by failing, for instance, to establish a polling place in a minority community or to appoint as volunteer registrars minority community members offering their services.[498]

9. Tenuous Policy Justification for the Challenged Practice—The second additional factor the Senate Report lists for consideration, called in this report Factor 9, is "whether the policy underlying the . . . practice . . . is tenuous."[499] Governmental policy underlying a practice is "less important under the results test" than it was under the intent test.[500] It remains relevant, however, both because a bad purpose or policy "is circumstantial evidence that the device has a discriminatory result," and because "the tenuousness of the justification for a state policy may indicate that the policy is unfair."[501]

Of the lawsuits analyzed, 67 considered whether the policy underlying the challenged practice or procedure was tenuous. Twenty-three of these lawsuits, 13 coming from Section 5-covered jurisdictions and 10 from non-covered jurisdictions, held the identified justification to be tenuous. Of this total, 22 lawsuits also reached a favorable outcome for the plaintiffs. The vast majority of lawsuits ending favorably for the plaintiffs, however, did not find Factor 9: most did not consider tenuousness, and the remainder accepted the justification proffered.[502]

Twelve lawsuits addressed Factor 9 in cases where defendants offered no justification for the challenged policy, with eight courts deeming this non-justification tenuous.[503] Four did not, either

497. *See* France Litig., 71 F. Supp. 2d 317, 333 (S.D.N.Y. 1999); Chickasaw County II Litig., No. 1:92CV142-JAD, 1997 U.S. Dist. LEXIS 22087, at *8 (N.D. Miss. Oct. 28, 1997); City of LaGrange Litig., 969 F. Supp. 749, 770 (N.D. Ga. 1997); Calhoun County Litig., 813 F. Supp. 1189, 1201 (N.D. Miss. 1993); El Paso Indep. Sch. Dist. Litig., 591 F. Supp. 802, 811 (W.D. Tex. 1984); Terrazas Litig., 581 F. Supp. 1329, 1350 (N.D. Tex. 1984).

498. Marengo County Litig. (AL), 731 F.2d 1546, 1572 (11th Cir. 1984); Operation Push Litig., 674 F. Supp. 1245, 1265 (N.D. Miss. 1987); Citizen Action Litig., No. N 84-431, 1984 U.S. Dist. LEXIS 24869, at *12–13 (D. Conn. Sept. 27, 1984); Terrell Litig., 565 F. Supp. 338, 343 (N.D. Tex. 1983).

499. SENATE REPORT, *supra* note 17, at 29.

500. Marengo County Litig. (AL), 731 F.2d 1546, 1571 (11th Cir. 1984).

501. *Id.*

502. *See* VRI Database Master List, *supra* note 39.

503. Marengo County Litig. (AL), 731 F.2d 1546, 1571 (11th Cir. 1984); Armour Litig., 775 F. Supp. 1044, 1058 (N.D. Ohio 1991); Monroe County Litig., 740 F. Supp. 417, 424 (N.D. Miss. 1990); Baldwin Bd. of Educ. Litig., 686 F. Supp. 1459, 1467 (M.D. Ala. 1988); Wamser Litig., 679 F. Supp. 1513, 1531–32 (E.D. Mo. 1987), *rev'd and dismissed for lack of standing by*, 883 F.2d 617 (8th Cir. 1989); City of Greenwood Litig., 599 F. Supp. 397, 404 (N.D. Miss. 1984); El Paso Indep. Sch. Dist. Litig., 591 F. Supp. 802, 811–12 (W.D. Tex. 1984); Major v. Treen Litig., 574 F. Supp. 325, 352 (E.D. La. 1983).

because the plaintiffs presented no evidence on tenuousness, or because the court itself came up with what it deemed to be a legitimate justification for the policy.[504]

Defendants offered a number of substantive justifications for plans challenged under Section 2. Most courts accepted these justifications as not tenuous. Those that did not generally deemed the reason proffered to be (1) false, (2) impermissible, or (3) outweighed by other considerations.

In a number of cases, for example, defendants claimed challenged districting plans preserved municipal and other political boundaries. Most courts accepted this justification as non-tenuous,[505] although one deemed this goal tenuous where the jurisdiction did not consistently adhere to it.[506] So too, when defendants claimed the challenged policy was based on political will, some courts accepted this justification,[507] but others did not when they found it was not the true underlying reason for the policy.[508]

Several jurisdictions defended their at-large districts on the ground that the practice fostered accountability and responsiveness among elected representatives. Many courts accepted this policy justification as non-tenuous,[509] but some did not, including a few that rejected the argument because they had already found the jurisdiction was unresponsive under Factor 8.[510] Courts, however, have consistently upheld as non-tenuous the claim that defendant jurisdictions designed at-large judicial election systems to prevent judges from being too responsive to particular constituents.[511]

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504. Lubbock Litig. (TX), 727 F.2d 364, 383 (5th Cir. 1984); McCarty Litig. (TX), 749 F.2d 1134 (5th Cir. 1984); Smith-Crittenden County Litig., 687 F. Supp. 1310 (E.D. Ark. 1988); City of Jackson, TN Litig., 683 F. Supp. 1515 (W.D. Tenn. 1988).

505. *See, e.g.*, Forest County Litig., 194 F. Supp. 2d 867 (E.D. Wis. 2002); Rural West I Litig., 836 F. Supp. 453 (W.D. Tenn. 1993); Chattanooga Litig., 722 F. Supp. 380 (E.D. Tenn. 1989); City of Jackson, TN Litig., 683 F. Supp. 1515 (W.D. Tenn. 1988).

506. Rural West II Litig. (TN), 209 F.3d 835 (6th Cir. 2000).

507. Liberty County Comm'rs Litig. (FL), 221 F.3d 1218 (11th Cir. 2000); Town of Babylon Litig., 914 F. Supp. 843 (E.D.N.Y. 1996); Niagara Falls Litig., 913 F. Supp. 722 (W.D.N.Y. 1994); City of Austin Litig., No. A-84-CA-189, 1985 WL 19986 (W.D. Tex. Mar. 12, 1985).

508. *See, e.g.*, Bone Shirt Litig., 336 F. Supp. 2d 976, 1048 (D.S.D. 2004); Terrell Litig., 565 F. Supp. 338, 341 (N.D. Tex. 1983).

509. City of Rome Litig. (GA), 127 F.3d 1355 (11th Cir. 1997); Jenkins v. Red Clay Sch. Dist. Litig. (DE), 116 F.3d 685 (3d Cir. 1997); City of Holyoke Litig., 960 F. Supp. 515 (D. Mass. 1997); Pasadena Indep. Sch. Dist. Litig., 958 F. Supp. 1196 (S.D. Tex. 1997); Holder v. Hall Litig., 757 F. Supp. 1560 (M.D. Ga. 1991); City of Dallas Litig., 734 F. Supp. 1317 (N.D. Tex. 1990); City of Norfolk Litig., 679 F. Supp. 557 (E.D. Va. 1988).

510. Blaine County Litig. (MT), 363 F.3d 897, 914 (9th Cir. 2004); Escambia County Litig. (FL), 748 F.2d 1037, 1045 (5th Cir. 1984); Town of Hempstead Litig., 956 F. Supp. 326, 346 (E.D.N.Y. 1997); City of Springfield Litig., 658 F. Supp. 1015, 1033 (C.D. Ill. 1987).

511. *See, e.g.*, Prejean Litig. (LA), 227 F.3d 504, 516 (5th Cir. 2000); Davis v. Chiles Litig. (FL), 139 F.3d 1414, 1421 (11th Cir. 1998); S. Christian Leadership Litig. (AL), 56 F.3d 1281, 1295 (11th Cir. 1995); Nipper Litig. (FL), 39 F.3d 1494, 1534 (11th Cir. 1994); LULAC

Many jurisdictions defended their districting choices or other electoral practices on the ground that the plans or practices protected incumbents or other political allies. Some courts accepted this justification as non-tenuous.[512] And yet, a number of courts, including the Supreme Court in the recent *Perry* litigation, deemed this justification tenuous when protecting white incumbents necessarily diluted minority voting strength and the defendant was aware of this consequence.[513] Indeed, some courts have concluded that these policies amount to intentional racial discrimination.[514]

In several lawsuits, jurisdictions defended challenged practices on grounds of efficiency or ease of administration, and many courts accepted these justifications.[515] The court in the *Operation Push* litigation, however, found the "administrative ease" justification for a dual registration system to be tenuous, concluding that "[m]ere inconvenience to the state is no justification for burdening citizens in the exercise of their protected right to register to vote."[516]

In several lawsuits, jurisdictions invoked historical practice to justify challenged electoral practices. Most courts accepted this justification as nontenuous.[517] In the *Milwaukee NAACP* litigation, for example, the court noted that Wisconsin's historic practice of electing judges at-large, a practice dating to 1848, set the default basis for what was reasonable in the state.[518] In the *Kirksey v. Allain* litigation, however, the court found historic practice to be a

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v. Clements Litig. (TX), 999 F.2d 831, 857–58 (5th Cir. 1993); France Litig., 71 F. Supp. 2d 317, 333 (S.D.N.Y. 1999); Cousin Litig. (TN), 904 F. Supp. 686, 712 (E.D. Tenn. 1995); Magnolia Bar Ass'n Litig., 793 F. Supp. 1386, 1411 (S.D. Miss. 1992).

512. *See, e.g.*, Prejean Litig. (LA), 83 F. App'x 5, 11 (5th Cir. 2003); Escambia County Litig. (FL), 638 F.2d 1239, 1245 (5th Cir. 1981); Fund for Accurate & Informed Representation Litig., 796 F. Supp. 662, 670, 672 (N.D.N.Y. 1992).

513. *See, e.g.*, Perry Litig. (TX), 126 S. Ct. 2594, 2623 (2006); *see also* Gingles Litig., 590 F. Supp. 345, 374 (E.D.N.C. 1984).

514. *See, e.g.*, Ketchum Litig. (IL), 740 F.2d 1398, 1408 (7th Cir. 1984); Black Political Taskforce Litig., 300 F. Supp. 2d 291, 313 (D. Mass. 2004); Buskey v. Oliver Litig., 565 F. Supp. 1473, 1483 (M.D. Ala. 1983).

515. *See, e.g.*, NAACP v. Fordice Litig. (MS), 252 F.3d 361, 373–74 (5th Cir. 2001); City of Phila. Litig. (PA), 28 F.3d 306, 334–35 (3d Cir. 1994); Cincinnati Litig. (OH), 40 F.3d 807, 814 (6th Cir. 1994); Aldasoro v. Kennerson Litig., 922 F. Supp. 339, 366, 377 (S.D. Cal. 1995); Armstrong v. Allain Litig., 893 F. Supp. 1320, 1336 (S.D. Miss. 1994); Calhoun County Litig., 813 F. Supp. 1189, 1202 (N.D. Miss. 1993); Lafayette County Litig., 841 F. Supp. 751, 768 (N.D. Miss. 1993).

516. Operation Push Litig., 674 F. Supp. 1245, 1266 (N.D. Miss. 1987).

517. *See, e.g.*, Holder v. Hall Litig., 757 F. Supp. 1560, 1565 (M.D. Ga. 1991); Houston v. Haley Litig., 663 F. Supp. 346, 347 (N.D. Miss. 1987); Dallas County Comm'n Litig., 636 F. Supp. 704, 709 (S.D. Ala. 1986); City of Fort Lauderdale Litig., 617 F. Supp. 1093, 1107 (S.D. Fla. 1985).

518. Milwaukee NAACP Litig. (WI), 116 F. 3d 1194 (7th Cir. 1997).

tenuous justification for using a numbered post system because other judicial bodies in the state no longer used it.[519]

Some jurisdictions defended challenged practices on the ground that the Fourteenth Amendment and the VRA required the adopted policy. Some courts have held such claims to be non-tenuous.[520] In the *Bone Shirt* litigation, however, the district court found this justification to be tenuous, holding that Section 2 did not require South Dakota to create a district that was 90% Native American, and rejecting the State's claim that low turnout among Native American voters rendered such a district necessary in order for Native Americans to elect their preferred candidate. *Bone Shirt* held that Section 2 does not compel a district with this concentration of minority residents, and that the statute in fact prohibits packing of this sort as a form of racial vote dilution.[521]

10. Proportionality as a Tenth Factor?—In 1994, *Johnson v. De Grandy* introduced "proportionality" as a consideration in the totality of the circumstances analysis.[522] The Court stated that proportionality—which "links the number of majority-minority voting districts to minority members' share of the relevant population"—is not a "safe harbor" insulating a jurisdiction from liability under Section 2, but that its existence weighs against a finding of vote dilution.[523]

Eighteen lawsuits both considered and made a finding on proportionality or the lack thereof, treating it as a distinct factor under the totality of the circumstances test.[524] The 10 lawsuits that found

519. Kirksey v. Allain Litig., 658 F. Supp. 1183, 1195–96 (S.D. Miss. 1987).

520. *See, e.g.*, Sanchez-Colo. Litig. (CO), 97 F.3d 1303, 1325 (10th Cir. 1996); Terrazas Litig., 581 F. Supp. 1329, 1357 (N.D. Tex. 1984).

521. Bone Shirt Litig., 336 F. Supp. 2d 976, 1048 (D.S.D. 2004).

522. As explained by the Court, proportionality is distinct from proportional representation, which links the proportion of minority officeholders to the minority group's share of the relevant population. *See* De Grandy Litig. (FL), 512 U.S. 997, 1014 n.11 (1994).

523. *Id.*

524. Old Person Litig. (MT), 312 F.3d 1036 (9th Cir. 2002); Liberty County Comm'rs Litig. (FL), 221 F.3d 1218 (11th Cir. 2000); Rural West II Litig. (TN), 209 F.3d 835 (6th Cir. 2000); City of Chi.-Bonilla Litig. (IL), 141 F.3d 699 (7th Cir. 1998); County of Thurston Litig. (NE), 129 F.3d 1015 (8th Cir. 1997); St. Louis Bd. of Educ. Litig. (MO), 90 F.3d 1357 (8th Cir. 1996); City of St. Louis Litig. (MO), 54 F.3d 1345 (8th Cir. 1995); Little Rock Litig. (AR), 56 F.3d 904 (8th Cir. 1995); City of Columbia Litig. (SC), 33 F.3d 52, 1994 WL 449081 (4th Cir. Aug. 22, 1994) (unpublished table decision); Black Political Task Force Litig., 300 F. Supp. 2d 291 (D. Mass. 2004); Bone Shirt Litig., 336 F. Supp. 2d 976 (D.S.D. 2004); Perry Litig., 298 F. Supp. 2d 451 (E.D. Tex. 2004); Rodriguez Litig., 308 F. Supp. 2d 346 (S.D.N.Y. 2004); Campuzano Litig., 200 F. Supp. 2d 905 (N.D. Ill. 2002); African-American Voting Rights LDF Litig., 994 F. Supp. 1105 (E.D. Mo. 1997); City of Holyoke Litig., 960 F. Supp. 515 (D. Mass. 1997); Rural West I Litig., 877 F. Supp. 1096 (W.D. Tenn. 1995); City of Austin Litig., 857 F. Supp. 560 (E.D. Mich. 1994).

proportionality identified no violation of Section 2.[525] Five lawsuits found a lack of proportionality,[526] and of these four identified a Section 2 violation.[527] One lawsuit found neither proportionality nor a violation of Section 2.[528] Most courts considered proportionality one of many factors, although in the *City of St. Louis* litigation, the appellate court affirmed the grant of summary judgment in favor of defendants solely on the basis of "sustained proportionality."[529]

De Grandy spoke of proportionality as involving districts with a "clear majority" of minority voters.[530] Some courts assessing proportionality have consequently refused to consider the presence of "opportunity" or "coalition" districts,[531] or districts with a majority minority population where low voter turnout or other factors means the majorities in these districts are not "effective."[532]

De Grandy found proportionality by comparing the number of majority-Hispanic districts to the proportion of Hispanics of voting age living in the Miami-Dade area, as opposed to making that comparison statewide.[533] Lower courts have generally followed this approach.[534] The *Rural West I* court acknowledged the difficulty it faced "in using regional statistics . . . because there are several equally valid ways to decide precisely which districts should be included in a regional analysis."[535] In *Rural West II,* the Sixth Circuit

525. Liberty County Comm'rs Litig. (FL), 221 F.3d 1218 (11th Cir. 2000); St. Louis Bd. of Educ. Litig. (MO), 90 F.3d 1357 (8th Cir. 1996); City of St. Louis Litig. (MO), 54 F.3d 1345 (8th Cir. 1995); Little Rock Litig. (AR), 56 F.3d 904 (8th Cir. 1995); City of Columbia Litig. (SC), 33 F.3d 52 (4th Cir. 1994); Rodriguez Litig., 308 F. Supp. 2d 346 (S.D.N.Y. 2004); Campuzano Litig., 200 F. Supp. 2d 905 (N.D. Ill. 2002); City of Holyoke Litig., 960 F. Supp. 515 (D. Mass. 1997); African-American Voting Rights LDF Litig., 994 F. Supp. 1105 (E.D. Mo. 1997); Austin Litig., 857 F. Supp. 560 (E.D. Mich. 1994).

526. Old Person Litig. (MT), 312 F.3d 1036 (9th Cir. 2002); Rural West II Litig. (TN), 209 F.3d 835 (6th Cir. 2000); County of Thurston Litig. (NE), 129 F.3d 1015 (8th Cir. 1997); Black Political Task Force Litig., 300 F. Supp. 2d 291 (D. Mass. 2004); Bone Shirt Litig., 336 F. Supp. 2d 976 (D.S.D. 2004).

527. Rural West II Litig. (TN), 209 F.3d 835 (6th Cir. 2000); County of Thurston Litig. (NE), 129 F.3d 1015 (8th Cir. 1997); Black Political Task Force Litig., 300 F. Supp. 2d 291 (D. Mass. 2004); Bone Shirt Litig., 336 F. Supp. 2d 976 (D.S.D. 2004).

528. Old Person Litig. (MT), 312 F.3d 1036, 1050 (9th Cir. 2002).

529. City of St. Louis Litig. (MO), 54 F.3d 1345, 1357 (8th Cir. 1995).

530. De Grandy Litig. (FL), 512 U.S. 997, 1023 (1994).

531. *See, e.g.*, Black Political Task Force Litig., 300 F. Supp. 2d 291, 312 (D. Mass. 2004).

532. Perry Litig., 298 F. Supp. 2d 451, 494, 495 & n.134 (E.D. Tex. 2004).

533. De Grandy Litig. (FL), 512 U.S. 997, 1022 (1994). As such the Court "[had] no occasion to decide which frame of reference should have been used" had the matter not already been agreed upon by the parties in the district court. *Id.*

534. Rural West II Litig. (TN), 209 F.3d 835, 843–44 (6th Cir. 2000); Bone Shirt Litig., 336 F. Supp. 2d 976, 1048–49 (D.S.D. 2004); Rural West I Litig., 877 F. Supp. 1096, 1109–10 (W.D. Tenn. 1995); Austin Litig., 857 F. Supp. 560, 570–71 (E.D. Mich. 1994).

535. Rural West I Litig., 877 F. Supp. 1096, 1109–10 (W.D. Tenn. 1995).

explained its regional, rather than statewide, focus, finding that "neither over-proportionality in one area of the State nor substantial proportionality in the State as a whole should ordinarily be used to offset a problem of vote dilution in one discrete area of the State."[536] The district court in *Austin* offered a distinct explanation for its regional focus, pointing out that it limited "the geographic scope of [its] assessment to Wayne and Oakland Counties, because the plaintiffs d[id] not dispute the State's drawing of district lines except in those areas."[537]

Still, the district court in *Perry* examined proportionality statewide,[538] an approach the Supreme Court ratified this past June.[539] The Court noted that plaintiffs had alleged "statewide vote dilution based on a statewide plan," which made examination of proportionality on a statewide basis the appropriate measure.[540]

Two courts substituted proportional representation for proportionality when confronted with challenges to at-large elections for which no majority-minority districts existed.[541] The district court in the *Liberty County* litigation made the same substitution,[542] but the appellate court reversed, emphasizing that proportionality and proportional representation are distinct concepts, and that "Section 2 explicitly disclaims any 'right to have members of a protected class elected in numbers equal to their proportion in the population.' "[543]

CONCLUSION

This June, the Supreme Court handed down its first major Section 2 decision in a number of years. *LULAC v. Perry* held that Texas violated Section 2 when it adopted a districting plan that placed part of the City of Laredo into one congressional district and the rest into another.[544] That action displaced nearly 100,000 Latino residents from a congressional district that previously en-

536. Rural West II Litig. (TN), 209 F.3d 835, 843 (6th Cir. 2000).

537. Austin Litig., 857 F. Supp. 560, 569 (E.D. Mich. 1994).

538. Perry Litig., 298 F. Supp. 2d 451, 494 (E.D. Tex. 2004).

539. Perry Litig. (TX), 126 S. Ct. 2594, 2620 (2006).

540. *Id.*

541. Blytheville Sch. Dist. Litig. (AR), 71 F.3d 1382, 1389 n.6 (8th Cir. 1995); City of St. Louis Litig., 896 F. Supp. 929, 943 (E.D. Mo. 1995).

542. Liberty County Comm'rs Litig., 957 F. Supp. 1522, 1570 (N.D. Fla. 1997).

543. Liberty County Comm'rs Litig. (FL), 221 F.3d 1218, 1224 n.5 (11th Cir. 2000) (quoting 42 U.S.C. § 1973(b)).

544. Perry Litig. (TX), 126 S. Ct. 2594 (2006).

compassed Laredo and in which Latino voters refused to support the Republican incumbent. At the same time, the Justices let stand the dismantling of a so-called "coalition" district in Fort Worth. Leaving open the question whether Section 2 protects coalition districts—where minority voters comprising a minority of the district's population enjoy effective control in deciding the district's representative—Justice Kennedy's controlling opinion in *Perry* holds that African-American voters in Fort Worth did not exercise such control, mainly because the Democrat incumbent whom they supported never faced a challenger in the Democratic primary.[545]

Perry highlights many ways in which opportunities for minority political participation have both changed and remained the same in the years since Congress amended the statute in 1982. Prior to that amendment, African-American voters were unable to exercise meaningful influence in Mobile, Alabama, where white Democrats long controlled city government and the at-large elections in which city commissioners were elected. A quarter century later, the Republican-controlled Texas government finds it cannot splinter the vibrant, "politically-active" Latino community in Laredo into two single-member districts, but that it may shatter a safe, Democratic district in Fort Worth, where the elected representative consistently received African-American support both in the primary and the general election.

Shortly after the Supreme Court handed down *Perry*, President Bush signed into law a twenty-five year extension of the expiring provisions of the Voting Rights Act.[546] His signature shifted the debate on reauthorization from the question whether Congress should reauthorize the statute to the question whether it has the power to do so. The legal challenge to reauthorization that is certain to be brought will assert that discrimination in covered jurisdictions is no longer sufficiently dire to warrant the retention of preclearance, and that covered jurisdictions are no longer sufficiently different from non-covered ones to justify keeping only covered jurisdictions subject to Section 5.

Perry highlights why these claims are difficult to assess, and in particular the extent to which the preclearance process constrains behavior in covered jurisdictions to a significant degree.[547] These

545. *Id.* at 2624–25.

546. The Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Aemdnemtns Act of 2006, Pub. L. No. 109-246, 120 Stat. 577 (2006).

547. *See, e.g.*, Henderson v. Perry, 399 F. Supp. 2d 756, 773 (E.D. Tex. 2005) ("By the time the plan now under attack was first proposed, the Voting Rights Act had effectively taken six Democratic Party seats off the table, rendering them untouchable . . . ."); Tex. House Journal, 78th Leg., 3rd Sess. 462 (Tex. 2003) (statement by Representative Phil King)

constraints shape present opportunities for minority political participation in covered jurisdictions and render predicting the nature and scope of such opportunities absent preclearance a challenging task.

Decisions like *Perry* nevertheless provide an important lens through which to consider this prospect. Judicial findings in such decisions offer a basis upon which to evaluate opportunities for minority political participation in covered and non-covered jurisdictions alike. Analysis of these findings gives rise to a complex portrait of political participation nationwide, and a footing that can be used to compare jurisdictions subject to Section 5 and those that operate free from its constraints.

To be sure, the resulting portrait is necessarily incomplete, reflecting the limits that inhere in relying on published Section 2 decisions as a source describing political participation nationwide. Claims must be filed, resources devoted to their prosecution, and judgments must be reached and published. Attorneys involved vary in skill, diligence, and their access to resources, while judges adjudicating these claims have differing inclinations to read the statute expansively or narrowly, articulate the findings they make, and publish the judgments they reach. And yet, the Section 2 cases themselves suggest that these factors may well vary in similar ways nationwide. If so, the differences in judicial findings in Section 2 lawsuits in covered and non-covered jurisdictions suggest real differences operating on the ground, differences that should inform and shape the current debate on reauthorization.

("quite frankly, it's very, very difficult to draw a district in South Texas because of the Voting Rights Act and the only way you can do it, is to do it in the manner in which we did"); *see also* Karlan, *supra* note 28, at 16 ("Jurisdictions that know that a change will not be precleared may decide not even to attempt making it.").

ACKNOWLEDGEMENTS

The Voting Rights Initiative is the product of the extraordinary efforts of many people. We are particularly grateful to University of Michigan Law School Dean Evan Caminker and Associate Dean Steven Croley, Deans of Students David Baum and Charlotte Johnson, and to Michael Barr, Amy Bishop, Daniel Halberstam, Mary Lebert, Margaret Leary, Tara Perry, MaryAnn Sarosi, Hannah Smotrich, and Sandy Zeff. Special thanks to Shawn DeLoach, Kurt Kaiser, Diana Perpich and the entire Sitemaker team at the University of Michigan, Westlaw, LexisNexis and Toree Randall, and web designers Jeff Christy and Travis Schau. The Voting Rights Initiative benefited immeasurably from guidance given by several experts in the voting rights field: Debo Adegbile, Chandler Davidson, Julie Fernandes, Jon Greenbaum, Daniel Levitas, Peyton McCrary, Laughlin McDonald, and Nina Perales. For financial support, VRI thanks the Law School Fund and the Office of Public Service at the University of Michigan Law School, and the Earl Warren Institute for Race, Ethnicity and Diversity, Boalt Hall School of Law, U.C. Berkeley. VRI also thanks the Michigan Election Law Project for supporting this research. Finally, VRI owes great appreciation to the Journal of Law Reform editorial board, especially Robert Koch, Joshua Meeuwse, Jason Weinstein, and Kate Zell. The VRI Database and Master List are located at http://www.votingreport.org.

The Voting Rights Initiative, January 2005–May 2006

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APPENDIX

This Appendix includes three tables providing an abridged view of the master list and the Section 2 lawsuits analyzed in this study. For the full data included in the master list, visit: http://www.votingreport.org.

Table A provides basic data on the lawsuits. Table B lists Senate Factor and legal findings. Table C offers a timeline of citations for racial appeals in campaigns, cited in Part II.C.6. The below guides give an explanation of the field contents of Tables A and B.

GUIDE TO TABLE A

Field Name	Explanation of Contents
Litigation Title	Shorthand reference title for each lawsuit or litigation string of cases.
Citation	The citation of the final word case is given for ease of reference, but is used to represent all opinions in the lawsuit analyzed as a whole. Shepardize or key-cite this citation to find all related opinions in the lawsuit that may include factor findings.
Court	Abbreviation for the court making the final published merits or success determination.
Year	Year the final word case was decided.
State	State where the lawsuit was filed. Note that some states are fully covered and some are partially covered by Section 5, so some lawsuits brought in a covered county may originate in a state which is not fully covered.
Jurisd.	y = Suit was brought in a jurisdiction covered by Section 5, requiring that all voting changes be precleared. n = Non-covered jurisdiction.
Type	Case Type = L refers to Liability (the final word case is one where the legal question before the court was whether or not the defendant had violated Section 2); P = Preliminary (where the question before the court was a pre-merits question, such as whether to grant a preliminary injunction); R = Remedy (where the question was how to craft a remedy after a Section 2 violation was found); S = Settlement (where the question was whether to approve a consent decree or settlement agreement between the parties); F = Fees (where the question was whether to grant a prevailing plaintiff or intervenor attorney's fees).
Gov. Body	Governing Body is the level of government responsible for the practice challenged in the lawsuit. For example, if the plaintiff is challenging the at-large election of school board officials, "school" is in this column.
Practice	Practice Challenged is the electoral law or practice which the plaintiff claims violates Section 2. At-large = At-large election system. Elec. Procedure = Election administration procedures or requirements for voting, voter registration, or running for office. Reapp = Reapportionment or redistricting plan. MV = Majority vote requirement. Other includes all other practices challenged, such as felon disfanchisement statutes, annexation, appointment of public officials.

TABLE A: BASIC DATA FOR SECTION 2 LAWSUITS, 1982–2005, BY LITIGATION TITLE

Litigation Title	Citation	Court	Year	State	Jurisd.	Type	Gov. Body	Practice
Abilene	*725 F.2d 1017*	*5th Cir.*	*1984*	*TX*	*y*	*L*	*city*	*At-large*
African American Citizens for Change	24 F.3d 1052	8th Cir.	1994	MO	n	P	city	Other: appointment of police commissioners
African American Legal Defense Fund	8 F.Supp.2d 330	S.D.N.Y.	1998	NY	y	L	city	Other: public school system funding and appointment of NY Bd of Educ.
African-American Voting Rights LDF	994 F. Supp. 1105	E.D. Mo.	1997	MO	n	L	state	At-large
Ahoskie	998 F.2d 1266	4th Cir.	1993	NC	y	R	city	At-large
Alamance County	99 F.3d 600	4th Cir.	1996	NC	n	L	county	At-large
Alamo Heights Indep. School District	168 F.3d 848	5th Cir.	1999	TX	y	L	school	At-large
Alamosa County	306 F. Supp. 2d 1016	D. Colo.	2004	CO	n	L	county	At-large
Albany County	2003 WL 21524820	N.D.N.Y.	2003	NY	n	P	county	Reapp
Aldasoro v. Kennerson	922 F.Supp. 339	S.D. Cal.	1995	CA	n	L	school	At-large
Al-Hakim	892 F. Supp. 1464	M.D. Fla.	1995	FL	y	L	county	At-large
Anson County	1990 WL 123822	W.D.N.C.	1990	NC	y	S	school	At-large (staggered)
Anthony	35 F.Supp. 2d 989	E.D. Mich.	1999	MI	n	L	county	Other: merger of courts
Arakaki	314 F.3d 1091	9th Cir.	2002	HI	n	L	state	Elec. Procedure: race-specific req't for candidacy for public office/OHA
Armour	775 F.Supp. 1044	N.D. Ohio	1991	OH	n	L	state	Reapp
Armstrong v. Allain	893 F.Supp. 1320	S.D. Miss.	1994	MS	y	L	school	Majority Vote Requirement (60%)
Ashe v. NYC	1988 WL 95427	E.D.N.Y.	1988	NY	y	P	city	Elec. Procedure: challenging discrim. voting registration and voting procedure

TABLE A, CONTINUED

Litigation Title	Citation	Court	Year	State	Jurisd.	Type	Gov. Body	Practice
Attala County	92 F.3d 283	5th Cir.	1996	MS	y	L	city	Reapp
Austin	857 F.Supp. 560	E.D. Mich.	1994	MI	n	L	state	Reapp
Autauga County Board of Education	858 F. Supp. 1118	M.D. Ala.	1994	AL	y	F	school	At-large
Baines	288 F.Supp.2d 376	W.D.N.Y.	2003	NY	n	L	city	At-large, Reapp
Baker	85 F.3d 919	2d Cir.	1996	NY	n	L	state	Other: Felon disenfranchisement
Balderas	2001 U.S. Dist. LEXIS 25006	E.D. Tex.	2001	TX	y	L	state	Reapp
Baldwin Board of Education	686 F. Supp. 1459	M.D. Ala.	1988	AL	y	L	school	At-large
Baldwin County Commission	376 F. 3d 1260	11th Cir.	2004	AL	y	L	county	At-large
Bandemer	603 F. Supp. 1479	S.D. Ind.	1984	IN	n	L	state	Reapp
Baytown	840 F.2d 1240	5th Cir.	1988	TX	y	L	city	At-large, MV
Beaufort County	936 F.2d 159	4th Cir.	2004	NC	y	S	county	At-large
Belle Glade	178 F.3d 1175	11th Cir.	1999	FL	n	L	city	Other: Housing Authority's decision not to annex an African American-dominated housing project to the city
Ben Hill County	743 F.Supp. 864	M.D. Ga.	1990	GA	y	P	school	Elec. Procedure: using grand juries to select members of county boards of education
Benavidez	34 F.3d 825	9th Cir.	1994	CA	n	P	state	Reapp
Berks County	277 F. Supp. 2d 570	E.D. Pa.	2003	PA	n	L	county	Elec. Procedure: regarding the way poll officials acted toward Hispanic voters
Bexar County	385 F.3d 853	5th Cir.	2004	TX	y	L	county	Reapp
Black Political Task Force	300 F. Supp. 2d 291	D. Mass.	2004	MA	n	L	state	Reapp

TABLE A, CONTINUED

Litigation Title	Citation	Court	Year	State	Jurisd.	Type	Gov. Body	Practice
Black v. McGuffage	209 F.Supp.2d 889	N.D. Ill.	2002	IL	n	P	state	Elec. Procedure: 1) punch card voting systems, 2) voting systems that lack effective error notification, 3) voting systems with inadequate education of voters, inadequate training of and assistance from elec. judges, and inadequate ballot delivery
Bladen County	1989 WL 253428	E.D.N.C.	1989	NC	y	F	county	At-large
Blaine County	363 F.3d 897	9th Cir.	2004	MT	n	L	county	At-large
Blytheville School District	71 F.3d 1382	8th Cir.	1995	AR	n	L	school	At-large, MV
Bond	875 F.2d 1488	10th Cir.	1989	CO	n	L	county	At-large
Bone Shirt	336 F.Supp.2d 976	D.S.D.	2004	SD	y	L	state	Reapp
Bradley v. Work	154 F.3d 704	7th Cir.	1998	IN	n	L	county	Other: Judicial appointment: Nominating cmte sends names to Gov.; retention election held later
Brewer	876 F.2d 448	5th Cir.	1989	TX	y	L	school	At-large
Bridgeport	512 U.S. 1283	U.S.	1994	CT	n	P	city	Reapp
Brooks	158 F.3d 1230	11th Cir.	1998	GA	y	L	state	Majority Vote Requirement for primary elections
Brunswick County, NC	1996 U.S. App. LEXIS 20237	4th Cir.	1996	NC	n	L	county	At-large (modified)
Brunswick County, VA	984 F.2d 1393	4th Cir.	1993	VA	y	L	county	Reapp
Buskey v. Oliver	565 F. Supp. 1473	M.D. Ala.	1983	AL	y	L	city	Reapp
Butts v. NYC	779 F.2d 141	2d Cir.	1985	NY	y	L	city	Majority Vote Requirement
Calhoun County	88 F.3d 1393	5th Cir.	1996	MS	y	L	county	Reapp
Cambridge	799 F.2d 137	4th Cir.	1996	MD	n	P	city	At-large

TABLE A, CONTINUED

Litigation Title	Citation	Court	Year	State	Jurisd.	Type	Gov. Body	Practice
Campaign for a Progressive Bronx	631 F.Supp. 975	S.D.N.Y.	1986	NY	y	F	city	Elec. Procedure: voter regis. & voting problems in prim elec.
Campos v. Houston	113 F.3d 544	5th Cir.	1997	TX	y	L	city	At-large
Campuzano	*200 F.Supp.2d 905*	*N.D. Ill.*	*2002*	*IL*	*n*	*L*	*state*	*Reapp*
Cano	211 F. Supp. 2d 1208	C.D. Cal.	2002	CA	n	L	state	Reapp
Carr	1994 U.S. Dist. LEXIS 11087/ 1994 WL 419856	D. La.	1994	LA	y	P	state	Other: Judicial appointment ad hoc
Carrollton NAACP	829 F.2d 1547	11th Cir.	1987	GA	y	L	county	At-large (single comm'r)
Chapman v. Nicholson	579 F. Supp. 1504	N.D. Ala.	1984	AL	y	L	city	At-large
Charles Mix County	386 F.Supp.2d 1108	D.S.D.	2005	SD	n	P	county	Reapp
Charleston County	365 F.3d 341	4th Cir.	2004	SC	y	L	county	At-large
Chatman	44 F.3d 923	11th Cir.	1995	GA	y	S	city	At-large
Chattanooga	722 F. Supp. 380	E.D. Tenn.	1989	TN	n	L	city	At-large
Chickasaw County I	705 F.Supp. 315	N.D. Miss.	1989	MS	y	L	county	Reapp
Chickasaw County II	1997 U.S. Dist. LEXIS 22087; 1997 WL 33426761	*N.D. Miss.*	*1997*	*MS*	*y*	*L*	*county*	*Reapp*
Chilton County Board of Education	868 F.2d 1274	11th Cir.	1989	AL	y	S	county	At-large, MV
Chisom	970 F.2d 1408	5th Cir.	1992	LA	y	S	state	Reapp
Chula Vista	*723 F. Supp. 1384*	*S.D. Cal.*	*1989*	*CA*	*n*	*L*	*city*	*At-large*
Cincinnati	40 F.3d 807	6th Cir.	1994	OH	n	L	city	At-large
Citizen Action	1984 U.S. Dist. Lexis 24869	D. Conn.	1984	CT	n	P	city	Elec. Procedure: denial of requests to blacks & Latinos wanting to be voter registrars
City of Arcadia	868 F.Supp. 1376	M.D. Fla.	1994	FL	n	L	city	At-large
City of Austin	871 F.2d 529	5th Cir.	1989	TX	y	L	city	At-large, MV
City of Boston	784 F.2d 409	1st Cir.	1986	MA	n	L	city	Reapp

TABLE A, CONTINUED

Litigation Title	Citation	Court	Year	State	Jurisd.	Type	Gov. Body	Practice
City of Chicago Heights	1997 WL 102543	N.D. Ill.	1997	IL	n	L	city	At-large
City of Chicago-Barnett	17 F.Supp.2d 753	N.D. Ill.	1998	IL	n	L	city	Reapp
City of Chicago-Bonilla	141 F.3d 699	7th Cir.	1998	IL	n	L	city	Reapp
City of Cleveland	297 F.Supp.2d 901	N.D. Miss.	2004	MS	y	L	city	Reapp, At-large, Other
City of Cocoa	117 F.3d 1238	11th Cir.	1997	FL	n	S	city	At-large
City of Columbia	33 F.3d 52	4th Cir.	1994	SC	y	L	city	At-large
City of Crystal Springs	626 F.Supp. 987	S.D. Miss.	1986	MS	y	F	city	Reapp
City of Dallas	734 F. Supp. 1317	N.D. Tex.	1990	TX	y	L	city	At-large (8-3)
City of Dover	123 F.R.D. 85	D. Del.	1988	DE	n	F	city	At-large, Elec. Procedure dual registration system
City of Fort Lauderdale	804 F.2d 611 / 1986 U.S. App. LEXIS 37448 (787 F.2d 1528)	11th Cir.	1986	FL	n	L	city	At-large
City of Greenville	1998 WL 930709	N.D. Miss.	1998	MS	y	F	city	Reapp
City of Greenwood	599 F.Supp. 397	N.D. Miss.	1984	MS	y	L	city	At-large
City of Hampton	919 F.Supp. 212	E.D. Va.	1996	VA	y	P	city	At-large
City of Holyoke	960 F. Supp. 515	D. Mass.	1997	MA	n	L	city, school	At-large
City of Houston	806 F.2d 634	5th Cir.	1986	MS	y	R	city	At-large
City of Indianapolis	976 F.2d 357	7th Cir.	1992	IN	n	L	city	At-large
City of Jackson, MS	714 F.2d 42	5th Cir.	1983	MS	y	P	city	At-large
City of Jackson, TN	683 F.Supp. 1515	W.D. Tenn.	1988	TN	n	L	city	At-large
City of LaGrange	969 F. Supp. 749	N.D. Ga.	1997	GA	y	L	city	At-large
City of Miami Beach	113 F.3d 1563	11th Cir.	1997	FL	n	L	city	At-large
City of Minneapolis	2004 U.S. Dist. Lexis 19708	D. Minn.	2004	MN	n	L	city	Reapp
City of New Rochelle	308 F.Supp.2d 152	S.D.N.Y.	2003	NY	n	L	city	Reapp
City of Norfolk	883 F.2d 1232	4th Cir.	1989	VA	y	L	city	At-large

TABLE A, CONTINUED

Litigation Title	Citation	Court	Year	State	Jurisd.	Type	Gov. Body	Practice
City of Pearland	945 F.Supp. 1069	S.D.Tex.	1996	TX	y	P	city	Other: annexation
City of Peoria	659 F. Supp. 394	C.D. Ill.	1987	IL	n	P	school	At-large
City of Philadelphia	28 F.3d 306	3d Cir.	1994	PA	n	L	state	Elec. Procedure: voter purge law
City of Pine Bluff	794 F.2d 678	8th Cir.	1986	AR	n	P	city	At-large
City of Pittsburgh	686 F.Supp. 97	3d Cir.	1988	PA	n	S	city	At-large
City of Quitman	148 F.3d 472	5th Cir.	1998	MS	y	R	city	At-large
City of Roanoke	162 F. Supp. 2d 1335	M.D. Ala.	2001	AL	y	L	school	Other: Appointment
City of Rome	127 F.3d 1355	11th Cir.	1997	GA	y	L	city	At-large
City of San Antonio	937 F.Supp. 587	W.D. Tex.	1996	TX	y	L	city	Other: Term Limits Provision, Ordinance 73584
City of Santa Maria	160 F.3d 543	9th Cir.	1998	CA	n	P	city	At-large
City of Sarasota	611 F. Supp. 25	M.D. Fla.	1985	FL	n	R	city	At-large
City of Springfield	658 F.Supp. 1015	C.D. Ill.	1987	IL	n	L	city	At-large
City of St. Louis	54 F.3d 1345	8th Cir.	1995	MO	n	L	city	Reapp
City of Starke	712 F. Supp. 1523	M.D. Fla.	1989	FL	n	L	city	At-large
City of Statesville	606 F.Supp. 569	W.D.N.C.	1985	NC	n	S	city	At-large
City of Tampa	693 F.Supp. 1051	M.D. Fla.	1988	FL	y	S	city	At-large
City of Thomasville	401 F. Supp. 2d 489	M.D.N.C.	2005	NC	n	S	city	At-large
City of Woodville	881 F.2d 1327	5th Cir.	1989	MS	y	L	city	At-large
Clark	777 F.Supp. 445	M.D. La.	1990	LA	y	L	state	At-large
Cleveland County	142 F.3d 468	D.C. Cir.	1998	NC	y	S	county	At-large
Cleveland School District OH	193 F.3d 389	6th Cir.	1999	OH	n	P	school	Other: law changing election method for school dist and authority of the mayor
Coleman	990 F. Supp. 221	S.D.N.Y.	1997	NY	n	P	school	Elec. Procedure: discrim. distrib. of absentee ballots

TABLE A, CONTINUED

Litigation Title	Citation	Court	Year	State	Jurisd.	Type	Gov. Body	Practice
Columbus County	782 F.Supp. 1097	E.D.N.C.	1991	NC	n	L	county	At-large
Common Cause/California	2002 WL 1766436	C.D. Cal.	2002	CA	n	S	state	Elec. Procedure: punch card ballots
Common Cause/Georgia	406 F.Supp.2d 1326	N.D. Ga.	2005	GA	y	P	state	Elec. Procedure: voter ID
Concerned Citizens	63 F.3d 413	5th Cir.	1995	TX	y	L	county	Reapp
Corbett	202 F. Supp. 2d 972	E.D. Mo.	2002	MO	n	L	county	Reapp
County of Big Horn (Windy Boy)	647 F. Supp. 1002	D. Mont.	1986	MT	n	L	county	At-large
County of Thurston	129 F.3d 1015	8th Cir.	1997	NE	n	L	county	Reapp
Cousin	145 F.3d 818	6th Cir.	1998	TN	n	L	county	At-large
Cross	704 F.2d 143	5th Cir.	1983	GA	y	P	city	At-large
Cumberland County	927 F.2d 595	4th Cir.	1991	NC	y	P	county	At-large
Dallas County Board of Education	791 F.2d 831	11th Cir.	1986	AL	y	L	county	At-large
Dallas County Commission	636 F.Supp. 704	S.D. Ala.	1986	AL	y	L	county	At-large
Dallas Independent school District	2001 U.S. Dist. LEXIS 5837	N.D. Tex.	2001	TX	y	P	school	Reapp
Davis v. Chiles	139 F.3d 1414	11th Cir.	1998	FL	n	L	county	At-large
De Grandy	512 U.S. 997	U.S.	1994	FL	n	L	state	Reapp
Dean	555 F. Supp. 502	D.R.I.	1982	RI	n	P	city	Elec. Procedure: Poll location
Democratic Party of Arkansas	902 F.2d 15	8th Cir.	1990	AR	n	L	state	Majority Vote Requirement
Democratic Party of Virginia	323 F.Supp.2d 696	E.D. Va.	2004	VA	y	P	state	Elec. Procedure: refusal to allow cand. on ballot, ballot complaints
Denis	1994 U.S. Dist. LEXIS 15819	S.D.N.Y.	1994	NY	y	P	city	Elec. Procedure: ballot placement of a candidate & elec. irregularities
DeSoto County	204 F.3d 1335	11th Cir.	2000	FL	n	L	county	At-large
Detroit School Reform Board	293 F.3d 352	6th Cir.	2002	MI	n	L	school	Other: creation of replacement school board by the state.

TABLE A, CONTINUED

Litigation Title	Citation	Court	Year	State	Jurisd.	Type	Gov. Body	Practice
Dickinson	817 F.Supp. 737	S.D. Ind.	1992	IN	n	F	state	At-large
Dillard v. Crenshaw	640 F. Supp. 1347	M.D. Ala.	1986	AL	y	P	county	At-large
Dilworth v. Clark	129 F.Supp.2d 966	S.D. Miss.	2000	MS	y	P	state	Elec. Procedure: Candidate Denied Name on Ballot
Dorsey v. Barber	2005 WL 2211176	N.D. Ohio	2005	OH	n	P	local	Other: arrest interfered with voter reg.
Durham County	1997 U.S. App. LEXIS 31794 (129 F.3d 116)	4th Cir.	1997	NC	n	L	county	Reapp
Edgefield County	650 F. Supp. 1176	D.S.C.	1986	SC	y	L	county	At-large
El Paso Independent School District	591 F. Supp. 802	W.D. Tex.	1984	TX	y	L	school	At-large
Elections Board	793 F. Supp. 859	W.D. Wis.	1992	WI	n	L	state	Reapp
Emison	507 U.S. 25	U.S.	1993	MN	n	L	state	Reapp
Escambia County	748 F.2d 1037	11th Cir.	1984	FL	n	L	county	At-large
Farrakhan	359 F.3d 1116	9th Cir.	2004	WA	n	L	state	Other: felon disfranchisement law
Forest County	336 F. 3d 570	7th Cir.	2003	WI	n	L	county	Reapp
Forrest County	814 F.Supp. 1327	S.D. Miss.	1993	MS	y	P	county	Reapp
Fort Bend Independent School District	89 F.3d 1205	5th Cir.	1996	TX	y	L	school	At-large
France	71 F.Supp.2d 317	S.D.N.Y.	1999	NY	y	L	state, city	At-large
Fund for Accurate and Informed Representation	796 F.Supp. 662	N.D.N.Y.	1992	NY	n	L	state	Reapp
Gadsden County	691 F.2d 978	11th Cir.	1982	FL	n	L	school	At-large
Gaona	989 F.2d. 299	9th Cir.	1993	CA	n	P	state	Reapp
Garza v. Los Angeles	918 F.2d 763	9th Cir.	1990	CA	n	L	county	Reapp
Gingles	478 U.S. 30	U.S.	1986	NC	n	L	state	At-large
Granville County	860 F.2d 110	4th Cir.	1988	NC	y	R	county	At-large

TABLE A, CONTINUED

Litigation Title	Citation	Court	Year	State	Jurisd.	Type	Gov. Body	Practice
Green	1996 WL 524395	E.D.N.Y.	1996	NY	y	P	school	Other: suspension of elected *black school board member and* subsequent appointment
Grenada County	1989 WL 251321	N.D. Miss.	1989	MS	y	F	county	Reapp
Gretna	834 F.2d 496	5th Cir.	1987	LA	y	L	city	At-large, MV
Guy	2003 WL 22005853	D. Del.	2003	DE	n	P	city	At-large
Halifax County	594 F.Supp. 161	E.D.N.C.	1984	NC	y	P	county	At-large
Hall v. Virginia	385 F.3d 421	4th Cir.	2004	VA	y	P	state	Reapp
Hamrick	296 F.3d 1065	11th Cir.	2002	GA	y	L	city	At-large
Hardee County	906 F.2d 524	11th Cir.	1990	FL	y	L	county	At-large
Harris	695 F. Supp. 517	M.D. Ala.	1988	AL	y	L	state	Elec. Procedure: hiring of poll officials
Harris v. Houston	151 F.3d 186	5th Cir.	1998	TX	y	P	city	Other: annexation
Harrison	1992 WL 95909	E.D. Pa.	1992	PA	n	L	state	Reapp
Hastert Reapportionment	777 F.Supp. 634	N.D. Ill.	1991	IL	n	L	state	Reapp
Hayden	2004 WL 1335921	S.D.N.Y.	2004	NY	n	L	state	Other: felon disfranchisement
Haywood County	544 F. Supp. 1122	W.D. Tenn.	1982	TN	n	P	county	At-large
Hernandez	714 F. Supp. 963	N.D. Ill.	1989	IL	n	P	county	Elec. Procedure: practice of appointing only 2 deputy registrars
Hispanics v. NAACP	958 F.2d 24	2d Cir.	1992	NY	n	P	city	Reapp
Holbrook Unified School District	703 F. Supp. 56	D. Ariz.	1989	AZ	y	P	school	At-large
Holder v. Hall	512 U.S. 874	U.S.	1994	GA	y	L	county	At-large (single comm'r)
Houston v. Haley	869 F.2d 807	5th Cir.	1989	MS	y	L	city	Reapp, At-large
Howard	1994 WL 118211	D.D.C.	1994	DC	n	L	city	At-large
Howard v. Gilmore	2000 U.S. App. LEXIS 2680	4th Cir.	2000	VA	y	P	state	Other: felon disfranchisement

TABLE A, CONTINUED

Litigation Title	Citation	Court	Year	State	Jurisd.	Type	Gov. Body	Practice
Hudson County Board	949 F.2d 665	3d Cir.	1991	NJ	n	S	county	Elec. Procedure: discriminatory treatment of voters
Irby	889 F.2d 1352	4th Cir.	1989	VA	y	L	school	Other: Appointment
Jacksonville Coalition	351 F. Supp. 2d 1326	M.D. Fla.	2004	FL	n	P	county	Elec. Procedure: creation of only 5 early polling sites
Jeffers	730 F. Supp. 196	E.D. Ark.	1989	AR	n	L	state	Reapp
Jefferson Citizens - Parish II	2003 WL 1595167	E.D. La.	2003	LA	y	P	city	At-large (5-2)
Jefferson County	798 F.2d 134	5th Cir.	1986	TX	y	F	county	Reapp
Jefferson Parish I	926 F.2d 487	5th Cir.	1991	LA	y	L	city	At-large, Reapp
Jefferson Parish School Board	1989 WL 3801	E.D. La.	1989	LA	y	S	city	Reapp
Jenkins v. Red Clay School District	116 F.3d 685	D. Del.	1997	DE	n	L	county	At-large
Johnson v. Bush	405 F.3d 1214	11th Cir.	2005	FL	n	L	state	Other: felon disfranchisement
Jones v. Alabama	2001 U.S. Dist. LEXIS 3909	S.D. Ala.	2001	AL	y	P	state	Elec. Procedure: identifying party in primary
Jones v. Edgar	3 F.Supp.2d 979	C.D. Ill.	1998	IL	n	P	state	Other: felon disfranchisement
Jordan	604 F.Supp. 807	N.D. Miss.	1984	MS	y	L	state	Reapp
Joseph v. LaCoste	2005 WL 1838444	N.D. Ill.	2005	IL	n	P	school	Other: appointment
Kansas City	752 F. Supp. 897	W.D. Mo.	1990	MO	n	P	city	Other: Term limits amendment
Kent County	76 F.3d 1381	6th Cir.	1996	MI	n	L	county	Reapp
Kershaw County	838 F.Supp. 237	D.S.C.	1993	SC	y	R	county	At-large
Ketchum	740 F.2d 1398	7th Cir.	1984	IL	n	L	city	Reapp
Kingman Park	348 F.3d 1033	D.C. Cir.	2003	DC	n	L	city	Reapp
Kirksey v. Allain	658 F.Supp. 1183	S.D. Miss.	1987	MS	y	L	state	At-large, MV
Knight v. Alabama	1990 U.S. Dist. LEXIS 19604	N.D. Ala.	1990	AL	y	P	state	Other: Establishing satellite univ. campuses
Knox-Milwaukee County	607 F. Supp. 1112	E.D. Wis.	1985	WI	n	P	county	Reapp

TABLE A, CONTINUED

Litigation Title	Citation	Court	Year	State	Jurisd.	Type	Gov. Body	Practice
Kuhn v. Tompson	304 F.Supp.2d 1313	M.D. Ala.	2004	AL	y	P	state	Other: removal of Justice Roy Moore
Lafayette County	20 F.Supp.2d 996	N.D. Miss.	1998	MS	y	L	county	Reapp
LaPaille	786 F.Supp. 704	N.D. Ill.	1992	IL	n	L	state	Reapp
Lawrence County	814 F.Supp. 1346	S.D. Miss.	1993	MS	y	L	county	Reapp
Lawrimore County	121 F.3d 698	4th Cir.	1997	SC	y	F	city	Other: annexation
Liberty County Commissioners	221 F.3d 1218	11th Cir.	2000	FL	n	L	county	At-large
Little Rock	56 F.3d 904	8th Cir.	1995	AR	n	L	school	Reapp
Local Unions 20	223 F.Supp.2d 491	S.D.N.Y.	2002	NY	n	P	other	Other
Love	1992 WL 96307	S.D. Ga.	1992	GA	y	S	county	At-large
Lubbock	727 F.2d 364	5th Cir.	1984	TX	y	L	city	At-large
Lucas	967 F.2d 549	11th Cir.	1992	GA	y	L	school	Elec. Procedure: Timing and presentation of school bond referendum
LULAC - Midland	648 F. Supp. 596	W.D. Tex.	1986	TX	y	L	school	At-large (3-4 Plan/5-2 Plan)
LULAC - North East I.S.D.	903 F. Supp. 1071	W.D. Tex.	1995	TX	y	L	school	At-large
Lulac v. Clements: All 9 Counties	999 F.2d 831	5th Cir.	1993	TX	y	L	county	At-large
Lulac v. Roscoe I.S.D.	123 F.3d 843	5th Cir.	1997	TX	y	L	school	At-large
Madison County	610 F.Supp. 240	S.D. Miss.	1985	MS	y	L	county	Elec. Procedure: Ballot invalidation by Board of Elec. Comm'rs
Magnolia Bar Association	994 F.2d 1143	5th Cir.	1993	MS	y	L	state	Reapp
Major	574 F. Supp. 325	E.D. La.	1983	LA	y	L	state	Reapp
Maldonado v. Pataki	2005 WL 3454714	E.D.N.Y.	2005	NY	n	P	state	Other: state law creating additional judgeship
Mallory-Hamilton County	922 F.2d 1273	6th Cir.	1991	OH	n	S	county	At-large

TABLE A, CONTINUED

Litigation Title	Citation	Court	Year	State	Jurisd.	Type	Gov. Body	Practice
Mallory-Ohio	173 F.3d 377	6th Cir.	1999	OH	n	L	state	At-large
Marengo County	623 F. Supp. 33	S.D. Ala.	1985	AL	y	L	county	At-large
Marion County	2005 WL 1939910	S.D. Ind.	2005	IN	n	P	county	Reapp
Marks-Philadelphia	1994 WL 146113	E.D. Pa.	1994	PA	n	L	state	Elec. Procedure: involving improper use of absentee ballots
Martinez v. Bush	234 F. Supp. 2d 1275	S.D. Fla.	2002	FL	n	L	state	Reapp
Marylanders	849 F. Supp. 1022	D. Md.	1994	MD	n	L	state	Reapp
Maxey	1996 WL 529024	S.D.N.Y.	1996	NY	n	L	state	Reapp
McCarty	749 F.2d 1134	5th Cir.	1984	TX	y	L	school	At-large
Mehfoud	702 F. Supp. 588	E.D. Va.	1988	VA	y	L	county	Reapp
Merced	574 F.Supp. 498	S.D.N.Y.	1983	NY	y	L	city	Reapp
Metro Dade County	985 F.2d 1471	11th Cir.	1993	FL	n	L	county	At-large
Metts	363 F.3d 8	1st Cir.	2004	RI	n	P	state	Reapp
Mexican American Bar Association	755 F.Supp. 735	W.D. Tex.	1990	TX	y	P	state	At-large
Meza	322 F. Supp. 2d 52	D. Mass.	2004	MA	n	L	state	Reapp
Milwaukee NAACP	116 F. 3d 1194	7th Cir.	1997	WI	n	L	state	At-large
Mobile School Board	706 F.2d 1103	11th Cir.	1983	AL	y	L	school	At-large
Monroe County	740 F.Supp. 417	N.D. Miss.	1990	MS	y	L	county	Reapp
Montero	861 F.2d 603	10th Cir.	1988	CO	n	P	state	Other: Petition to get a proposed constitutional amendment on the ballot
Montezuma-Cortez School District	7 F. Supp. 2d 1152	D. Colo.	1998	CO	n	L	school	At-large
Montiel v. Davis	215 F. Supp. 2d 1279	S.D. Ala.	2002	AL	y	L	state	Reapp
Muntaqim	366 F.3d 102	2d Cir.	2004	NY	n	L	state	Other: felon disfranchisement
NAACP v. Fordice	252 F.3d 361	5th Cir.	2001	MS	y	L	state	Reapp

TABLE A, CONTINUED

Litigation Title	Citation	Court	Year	State	Jurisd.	Type	Gov. Body	Practice
Nash	797 F. Supp. 1488	W.D. Mo.	1992	MO	n	L	state	Reapp
National City	976 F.2d 1293	9th Cir.	1992	CA	n	L	city	At-large
Neal	689 F. Supp. 1426	E.D. Va.	1988	VA	y	L	county	At-large
Newman v. Hunt	787 F.Supp. 193	M.D. Ala.	1992	AL	y	P	state	Other: appointment of new white county comm'r by the Governor after death of black county comm'r
Niagara County	826 F.Supp. 664	W.D.N.Y.	1993	NY	n	S	county	Reapp
Niagara Falls	65 F.3d 1002	2d Cir.	1995	NY	n	L	city	At-large
Nipper	39 F.3d 1494	11th Cir.	1994	FL	n	L	county	At-large
Old Person	312 F.3d 1036	9th Cir.	2002	MT	n	L	state	Reapp
O'Lear	222 F.Supp. 2d 850	E.D. Mich.	2002	MI	n	P	state	Reapp
Opelika	748 F.2d 1473	11th Cir.	1984	AL	y	L	city	At-large
Operation Push	932 F.2d 400	5th Cir.	1991	MS	y	L	state	Elec. Procedure: Mississippi voter registration statute and accompanying proced.
Orange County	783 F. Supp. 1348	M.D. Fla.	1992	FL	n	L	county	At-large
Osburn	369 F.3d 1283	11th Cir.	2004	GA	y	L	state	Elec. Procedure: open primary
Page	144 F. Supp. 2d 346	D. N.J.	2001	NJ	n	L	state	Reapp
Parker v. Ohio	263 F. Supp. 2d 1100	S.D. Ohio	2003	OH	n	L	state	Reapp
Pasadena Independent School District	165 F.3d 368	5th Cir.	1999	TX	y	L	school	At-large (staggered, numbered post)
Perez	629 F.Supp. 734	S.D.N.Y.	1985	NY	y	F	city	Elec. Procedure: ballot placement of a candidate
Perry	548 U.S. Slip. Op.	U.S.	2006	TX	y	L	state	Reapp

TABLE A, CONTINUED

Litigation Title	Citation	Court	Year	State	Jurisd.	Type	Gov. Body	Practice
Phillips County	850 F.2d 406	8th Cir.	1988	AR	n	P	county	Elec. Procedure: ballot handling and counting, presence of black candidate representative in polls barred, poll official training
Pomona	883 F.2d 1418	9th Cir.	1989	CA	n	L	city	At-large
Prejean	83 Fed.Appx. 5	5th Cir.	2003	LA	y	L	state	Reapp
Prewitt v. Moore	840 F.Supp. 436	N.D. Miss.	1993	MS	y	L	state	Other: State statutes authorizing appointment of temporary judges
Quilter	507 U.S. 146	U.S.	1993	OH	n	L	state	Reapp
Ramos	1991 WL 18183	N.D. Ill.	1991	IL	n	P	state	Reapp
Rangel	8 F.3d 242	5th Cir.	1993	TX	y	L	state	At-large
Reyes v. Stefaniak	1995 WL 38958	N.D. Ill.	1995	IL	n	F	city	Reapp
Richmond County Board	1988 U.S. Dist. LEXIS 16729	E.D. Va.	1998	VA	y	R	county	Reapp
Rocha	1982 U.S. Dist. LEXIS 15164	S.D. Tex.	1982	TX	y	L	county	Reapp
Rockford Board of Education	1991 WL 299104	N.D. Ill.	1991	IL	n	P	school	Reapp
Rodriguez	308 F.Supp.2d 346	S.D.N.Y.	2004	NY	n	L	state	Reapp
Rural West I	877 F. Supp. 1096	W.D. Tenn.	1995	TN	n	L	state	Reapp
Rural West II	209 F.3d 835	6th Cir.	2000	TN	n	L	state	Reapp
Rybicki	574 F.Supp. 1147	N.D. Ill.	1983	IL	n	L	state	Reapp
Salt River Project	109 F.3d 586	9th Cir.	1997	AZ	y	L	county	Elec. Procedure: voter registration requirements
San Diego County	1993 WL 379838	9th Cir	1993	CA	n	L	county	Reapp
Sanchez-Colorado	97 F.3d 1303	10th Cir.	1996	CO	n	L	state	Reapp
Save Our Aquifer v. San Antonio	237 F. Supp. 2d 721	W.D. Tex.	2002	TX	y	P	city	Other: petition to oppose golf course

TABLE A, CONTINUED

Litigation Title	Citation	Court	Year	State	Jurisd.	Type	Gov. Body	Practice
Schweitzer	596 F.Supp. 935	E.D. Mo.	1984	MO	n	P	city	Other: individual city officials' comments about candidate for sheriff
Seastrunk	772 F.2d 143	5th Cir.	1985	LA	y	L	school	Reapp
Sensley	385 F.3d 591	5th Cir.	2004	LA	y	L	county	Reapp
Shelley	344 F.3d 914	9th Cir.	2003	CA	n	P	state	Elec. Procedure: punch-card ballots
Sisseton Independent School District	804 F.2d 469	8th Cir.	1986	SD	n	L	school	At-large, Elec. Procedure
Slagle	821 F. Supp. 1162	W.D. Tex.	1993	TX	y	P	state	Reapp
Smith-Crittenden County	687 F. Supp. 1310	E.D. Ark.	1988	AR	n	L	state	At-large
South Carolina Democratic Party	2004 U.S. Dist. LEXIS 27299 / 2004 WL 3262756	D.S.C.	2004	SC	y	L	state	Elec. Procedure: Decision to hold new primary elec. because of widespread fraud taking place during the original elec.
Southern Christian Leadership	56 F.3d 1281	11th Cir.	1995	AL	y	L	state	At-large, MV
Springfield Park District	851 F.2d 937	7th Cir.	1988	IL	n	L	city	At-large
St. Bernard Parish School Board	2002 U.S. Dist. LEXIS 16540; 2002 WL 2022589	D. La.	2002	LA	y	P	city	Reapp, at-large
St. Francisville	135 F.3d 996	5th Cir.	1998	LA	y	F	city	Reapp
St. Louis Board of Education	90 F.3d 1357	8th Cir.	1996	MO	n	L	county	At-large
Stewart v. Blackwell	444 F.3d 843	6th Cir.	2006	OH	n	P	state	Elec. Procedure: voting machines
Stockton	956 F.2d 884	9th Cir.	1992	CA	n	L	city	At-large, MV, Other
Suffolk County	268 F.Supp.2d 243	E.D.N.Y.	2003	NY	n	P	county	Reapp
Sumter County	775 F.2d 1509	11th Cir.	1985	GA	y	L	county	Reapp
SW Texas Junior College Dist.	964 F.2d 1542	5th Cir.	1992	TX	y	L	state	At-large
Tangipahoa	2004 WL 1638106	E.D. La.	2004	LA	y	P	city	Reapp

TABLE A, CONTINUED

Litigation Title	Citation	Court	Year	State	Jurisd.	Type	Gov. Body	Practice
Tensas Parish School Board	819 F.2d 609	5th Cir.	1987	LA	y	L	city	Reapp
Terrazas	581 F. Supp. 1329	N.D. Tex.	1984	TX	y	L	state	Reapp
Terrell	565 F. Supp. 338	N.D. Tex.	1983	TX	y	L	city	At-large, Other
Texarkana	861 F. Supp. 756.	W.D. Ark.	1992	AR	n	L	city	At-large
Town of Babylon	914 F.Supp. 843	E.D.N.Y.	1996	NY	n	L	city	At-large
Town of Cicero	2000 WL 34342276	N.D. Ill.	2000	IL	n	P	city	Elec. Procedure: 18-month residency requirement to become a candidate
Town of Hempstead	180 F.3d 476	2d Cir.	1999	NY	n	L	city	At-large
Town of North Johns	717 F. Supp. 1471	M.D. Ala.	1989	AL	y	L	city	Elec. Procedure: Plaintiff alleged that town intentionally withheld candidacy requirement information and forms from 2 African American candidates
Trevino	573 F. Supp. 806	N.D. Ind.	1983	IN	n	P	city	Elec. Procedure: realignment of precinct locations & registration barriers
Turner	784 F. Supp. 553	E.D. Ark..	1991	AR	n	L	state	Reapp
U.S. v. Jones	57 F.3d 1020	11th Cir	1995	AL	y	L	county	Elec. Procedure: Counting ballots from voters ineligible in jurisdiction
Upper San Gabriel	2000 WL 33254228	C.D. Cal.	2000	CA	n	P	county	Reapp
Val Verde County	967 F.Supp. 917	W.D.Tex.	1997	TX	y	P	county	Elec. Procedure: counting of improper mail-in ballots
Vander Linden v. Hodges	193 F.3d 268	4th Cir.	1999	SC	y	P	county	Other: county legislative delegation system
Varner v. Smitherman	1993 WL 663327 / 1993 U.S. Dist. LEXIS 17721	S.D. Ala.	1993	AL	y	L	city	At-large

TABLE A, CONTINUED

Litigation Title	Citation	Court	Year	State	Jurisd.	Type	Gov. Body	Practice
Walthall County	157 F.R.D. 388	S.D. Miss.	1994	MS	y	F	county	Reapp
Wamser	883 F.2d 617	8th Cir.	1989	MO	n	P	state	Elec. Procedure: punch card ballots
Warren County	802 F.2d 461	4th Cir.	1986	KY	n	P	city	At-large
Warrensville Heights	16 F. Supp. 2d 837	N.D. Ohio	1998	OH	n	P	city	Other: mayor's & police chief's use of police data against mayor's opponents
Washington County	653 F. Supp. 121	N.D. Fla.	1986	FL	n	R	county	At-large
Watsonville	863 F.2d 1407	9th Cir.	1988	CA	n	L	city	At-large
Welch v. McKenzie	765 F.2d 1311	5th Cir.	1985	MS	y	L	county	Elec. Procedure: Absentee Ballot Procedural Errors in a Primary Elec.
Wesch	785 F. Supp. 1491	S.D. Ala.	1992	AL	y	S	state	Reapp
Wesley	791 F.2d 1255	6th Cir.	1986	TN	n	L	state	Other: felon disfranchisement
West	786 F. Supp. 803	W.D. Ark.	1992	AR	n	L	county	At-large
Westwego	946 F.2d 1109	5th Cir.	1991	LA	y	L	city	At-large, MV
White	909 F.2d 99	4th Cir.	1990	VA	y	L	county	Reapp
White v. Alabama	74 F.3d 1058	11th Cir.	1996	AL	y	S	state	At-large, Reapp
Williams v. McKeithen	2005 WL 2037545	E.D. La.	2005	LA	y	P	state	At-large
Williams v. State Bd. of Elections	718 F.Supp. 1324	N.D. Ill.	1989	IL	n	L	county	Elec. Procedure: Slating Process
Winston-Salem/Forsyth County Board	1992 U.S. App. LEXIS 6221	4th Cir.	1992	NC	n	F	school	At-large
Worcester County	35 F.3d 921	4th Cir.	1994	MD	n	L	county	At-large

GUIDE TO TABLE B

Field Name	Explanation of Contents
Consid.	y = At least one court within this lawsuit considered Senate Factors under the totality of circumstances and/or *Gingles* test. For all findings, a blank field means that it was unclear from published opinions whether or not factors were considered or found.
1	y = At least one court within this lawsuit found Senate Factor 1 to be met (history of official discrimination), and this finding was not overturned.
2	y = At least one court within this lawsuit found Senate Factor 2 (racially polarized voting), and this finding was not overturned.
3	y = At least one court within this lawsuit found Senate Factor 3 (enhancing practices), and this finding was not overturned.
4	y = At least one court within this lawsuit found Senate Factor 4 (candidate slating), and this finding was not overturned.
5	y = At least one court within this lawsuit found Senate Factor 5 (socioeconomic effects of discrimination), and this finding was not overturned.
6	y = At least one court within this lawsuit found Senate Factor 6 (racial campaign appeals), and this finding was not overturned.
7	y = At least one court within this lawsuit found Senate Factor 7 (lack of candidate success), and this finding was not overturned.
8	y = At least one court within this lawsuit found Senate Factor 8 (lack of responsiveness), and this finding was not overturned.
9	y = At least one court within this lawsuit found Senate Factor 9 (tenuous policy), and this finding was not overturned.
G-I	y = At least one court within this lawsuit found *Gingles* I, and this finding was not overturned.
G-II	y = At least one court within this lawsuit found *Gingles* II, and this finding was not overturned.
G-III	y = At least one court within this lawsuit found *Gingles* III, and this finding was not overturned.
G-all	y = At least one court within this lawsuit found the *Gingles* test satisfied and this finding was not overturned.
Intent	y = A court in this lawsuit found the defendant had engaged in intentional voting discrimination. f = A court in this lawsuit made a finding of intentional discrimination, not necessarily connected to the lawsuit at hand.
Success	y = The ultimate outcome of this lawsuit was plaintiff success on the merits by proving a violation, or (if no published opinion stating a violation) in winning an injunction, attorney's fees, remedy or settlement.
Viol.	y = The court found or the defendant stipulated a violation of Section 2.

TABLE B: FACTOR AND LEGAL FINDINGS IN SECTION 2 LAWSUITS, 1982–2005, BY LITIGATION TITLE

Litigation Title	Consid.	1	2	3	4	5	6	7	8	9	G-I	G-II	G-III	G-all	Intent	Success	Viol.
Abilene	y	y	n	y	n	n			n	n						n	n
African American Citizens for Change																n	n
African American Legal Defense Fund	y		n	n	n	n			n	n		n	n	n		n	n
African-American Voting Rights LDF	y	y	n	n	n	n		n	n	n	n	n	n	n		n	n
Ahoskie	y		y		n	n			n	n						y	y
Alamance County	y		n	n	n	n			n	n	y	y	n	n		n	n
Alamo Heights Indep. School District																n	n
Alamosa County	y	n		n	n	n	y	n	n	n	y	y	n	n		n	n
Albany County	y	y	y	n	y	y	n	y	n	y	y	y	y	y		y	y
Aldasoro v. Kennerson	y	n	n	n	n	n	n	n	n	n	n	n	n	n		n	n
Al-Hakim	y		n	n	n	n			n	n	n	n	n	n		n	n
Anson County	y		n		n	n			n	n	n	n	n	n		n	n
Anthony	y			n	n	n			n	n	y	y	n	n		n	n
Arakaki															y	y	y
Armour	y	y	y	n	n	y	y	y	y	y	y	y	y	y	y	y	y
Armstrong v. Allain	y	n	n	n	n	n	y	n	n	n		n	n	n		n	n
Ashe v. NYC																n	n
Attala County	y	y	y	n	n	y		y	n	n	y	y	y	y		y	y
Austin	y	y	n	n	n	n			n	n	n	n	n			n	n
Autauga County Board of Education																y	n
Baines	y		n	n	n	n			n	n						n	n
Baker	y		n	n	n	n			n	n						n	n
Balderas	y		n	n	n	n			n	n	n	n	n	n		n	n

TABLE B, CONTINUED

Litigation Title	Consld.	1	2	3	4	5	6	7	8	9	G-I	G-II	G-III	G-all	Intent	Success	Viol.
Baldwin Board of Education	y	y	y	y	n	y		y	y	y	y	y	y	y	y	y	y
Baldwin County Commission	y	y	n	n	n	y		y	n	n	n					n	n
Bandemer	y		n	n	n	n			n	n						n	n
Baytown	y	y	y	n	n	y		y	n	n	y	y	y	y		y	y
Beaufort County																y	y
Belle Glade	y	n	n	n	n	n	n		n	n	n	n	n	n		n	n
Ben Hill County																n	n
Benavidez																n	n
Berks County	y	y	n	n	n	y			n	n	n	n	n		f	y	y
Bexar County	y			n	n	n	n		n	n	y	y	n	n		n	n
Black Political Task Force	y	n	y	n	n	n	n	y	n	n	y	y	y	y	f	y	y
Black v. McGuffage																n	n
Bladen County																y	n
Blaine County	y	y	y	y	n	y		y	n	y	y	y	y	y		y	y
Blytheville School District	y	y	y	y	n	y		y	n	n	y	y	y	y		y	y
Bond	y			n	n	n	n	y	n	n	y	n	n	n		n	n
Bone Shirt	y	y	y	y	y	y	y	y	y	y	y	y	y	y	f	y	y
Bradley v. Work	y		n	n	n	n			n	n			n	n		n	n
Brewer	y	y	n	y	n	n			n	n	n	y	n	n		n	n
Bridgeport	y	y	y		n	y		y	y	n						n	n
Brooks	y	y	n	y	n	n			n	n	n	n	n	n		n	n
Brunswick County, NC																n	n
Brunswick County, VA	y	y	y		n	y	y		n	n	n	n	n	n		n	n
Buskey v. Oliver	y	y	y	n	n	y	n		n	n					y	y	y

TABLE B, CONTINUED

Litigation Title	Consid.	1	2	3	4	5	6	7	8	9	G-I	G-II	G-III	G-all	Intent	Success	Viol.
Butts v. NYC	y	y	y	n	n	n	y	n	n	n						n	n
Calhoun County	y	n	y	y	n	y		y	n	n	y	y	y	y		y	y
Cambridge																n	n
Campaign for a Progressive Bronx																y	n
Campos v. Houston	y			n	n	n			n	n	n	y	n	n		n	n
Campuzano	y		n	n	n	n			n	n	y	y	n	n		n	n
Cano	y		n	n	n	n			n	n	n	n	n	n		n	n
Carr																n	n
Carrollton NAACP	y	n	y	n	n	n		y	n	n	n	y	y	n		n	n
Chapman v. Nicholson	y	n	y	y	n	n	n	n	n	n						n	n
Charles Mix County																n	n
Charleston County	y	y	y	y	n	y	y	y	n	n	y	y	y	y	f	y	y
Chatman																y	n
Chattanooga	y	y	y	n	n	n	n	y	n	n	y	y	y	y		y	y
Chickasaw County I	y	n	y	n	n	n		y	n	n	y	y	y	y		y	y
Chickasaw County II	y	y	y	y	n	y		y	n	n	y	y	y	y		y	y
Chilton County Board of Education	y		y		n	n			n	n				y		y	y
Chisom	y	y	n	y	n	y	n	n	n	n		n	n	n		y	n
Chula Vista	y		n	n	n	n			n	n	n	n	n	n		n	n
Cincinnati	y	n		n	n	n	n	n	n	n	y	y	n	n		n	n
Citizen Action	y		n		n	n			y	n						y	n
City of Arcadia	y										y	y				n	n
City of Austin	y	y		n	n	n	n	n	n	n	y	n	n	n		n	n
City of Boston	y	n	y	n	n	n	n	n	n	n						n	n

TABLE B, CONTINUED

Litigation Title	Consid.	1	2	3	4	5	6	7	8	9	G-I	G-II	G-III	G-all	Intent	Success	Viol.
City of Chicago Heights	y	n	y	y	y	n			n	n	y	y	y	y		y	y
City of Chicago-Barnett	y	y	y	n	n	y		n	n	n	y	y	y	y		y	y
City of Chicago-Bonilla	y	n	y	n	n	y	n	n	n	n	y	y	y	y		n	n
City of Cleveland	y	n	n	y	n	n		n	n	n	y	y	n	n		n	n
City of Cocoa																n	n
City of Columbia	y	y	n	n	n	n	n	n	n	n	y	n	n	n		n	n
City of Crystal Springs																y	n
City of Dallas	y	y	y	y	n	y	y	y	y	n	y	y	y	y	f	y	y
City of Dover																y	n
City of Fort Lauderdale	y	n	n	n	n	n	n	n	n	n						n	n
City of Greenville																y	n
City of Greenwood	y	y	y	y	n	y	y	y	n	y						y	y
City of Hampton	y		n		n	n			n	n	y	y	n	n		n	n
City of Holyoke	y	n	n	n	n	y	y	n	n	n	y	y	n	n		n	n
City of Houston																y	y
City of Indianapolis	y		n	n	n	n			n	n						n	n
City of Jackson, MS																n	n
City of Jackson, TN	y	y	y	y	n	y	n	y	n	n	y	y	y	y		y	y
City of LaGrange	y	y	y	y	y	y	y	y	n	n	y	y	y	y		y	y
City of Miami Beach	y		n	n	n	n			n	n	n	n	n	n		n	n
City of Minneapolis	y	y		n	n	n			n	n	n	y	n	n		n	n
City of New Rochelle	y	y	y	n	y	y			n	n	y	y	y	y	y	y	y
City of Norfolk	y	y	y	n	n	n	n	y	n	n	y	y	y	y		y	y
City of Pearland																n	n

TABLE B, CONTINUED

Litigation Title	Consid.	1	2	3	4	5	6	7	8	9	G-I	G-II	G-III	G-all	Intent	Success	Viol.
City of Peoria																n	n
City of Philadelphia	y	n	n	y	n	y	y	n	y	n	n	n	n			n	n
City of Pine Bluff	y		n													n	n
City of Pittsburgh																y	n
City of Quitman																y	y
City of Roanoke																n	n
City of Rome	y	y		y	n	y		n	n	n	y	n	n	n		n	n
City of San Antonio																n	n
City of Santa Maria	y		n		n	n	n	y	n	n	n	n	n	n		n	n
City of Sarasota	y		y		n	n			n	n						y	y
City of Springfield	y	y	y	y	y	y	n	y	n	y	y	y	y	y		y	y
City of St. Louis	y		y								y	y	y	y		n	n
City of Starke	y	y	y	y	n	n	n	y	y	n	y	y	y	y		y	y
City of Statesville	y		y		n	n			n	n						y	y
City of Tampa	y		n		n	n			n	n	n	y	n	n		y	n
City of Thomasville	y		n	n	n	y	n	n			y	y	n	n		y	y
City of Woodville	y	y	y	n	n	y	n	y	n	n	y	n	n	n		n	n
Clark	y	y	y	n	n	y	y	y	n	n	y	y	y	y		y	y
Cleveland County																n	n
Cleveland School District (OH)																n	n
Coleman	y		n			y	y	n								n	n
Columbus County	y	y	y	y	n	y	y	y	y	n	y	y	y	y		y	y
Common Cause/California																y	n
Common Cause/Georgia																n	n

TABLE B, CONTINUED

Litigation Title	Consid.	1	2	3	4	5	6	7	8	9	G-I	G-II	G-III	G-all	Intent	Success	Viol.
Concerned Citizens																n	n
Corbett	y		y	n	n	n			n	n	y	y	y	y		y	y
County of Big Horn (Windy Boy)	y	y	y	y	n	y	y	y	n	n	n	n	n		f	y	y
County of Thurston	y	y	y			y		y		n	y	y	y	y	f	y	y
Cousin	y	y	y	n	n	y	n	n	n	n	n	n	n	n		n	n
Cross	y	y	y		n	n			n	n						n	n
Cumberland County																y	n
Dallas County Board of Education	y	y	y	y	n	y	n	y	n	n						n	n
Dallas County Commission	y	y	y	y	n	y	n	y	n	n						y	y
Dallas Independent school District																n	n
Davis v. Chiles	y	y	y	n	n	y		y	n	n	n	y	y	n		n	n
De Grandy	y	y	y	n	n	y		y	n	n	y	y	y	y		n	n
Dean	y	y	n		n	n			n	n					y	y	n
Democratic Party of Arkansas	y	y	y	n	n	y	n	y	n	n	n	n	n	n		n	n
Democratic Party of Virginia																n	n
Denis																n	n
DeSoto County	y	y	n	n	n	n		y	n	n	n	n	n	n		n	n
Detroit School Reform Board																n	n
Dickinson	y		n		n	n			n	n	n	n	n	n		y	n
Dillard v. Crenshaw	y	y	y		n	y	y	y	n	n	y	y	y	y	y	y	y
Dilworth v. Clark	y		n		n	n			n	n	n	n	n	n		n	n
Dorsey v. Barber																n	n
Durham County	y		n													n	n
Edgefield County	y	y	y	y	n	y		y	n	n	y	y	y	y		y	y

TABLE B, CONTINUED

Litigation Title	Consid.	1	2	3	4	5	6	7	8	9	G-I	G-II	G-III	G-all	Intent	Success	Viol.
El Paso Independent School District	y	y	y	y	n	n	n	y	n	y						y	y
Elections Board																y	y
Emison	y	y	n	n	n	y		y	n	n	n	n	n	n		n	n
Escambia County	y	y	y	y	n	y		y	n	y						y	y
Farrakhan	y	y	n	n	n	n			n	n	n	n	n			n	n
Forest County	y		n	n	n	n			n	n	y	n	n	n		n	n
Forrest County																n	n
Fort Bend Independent School District	y	y	n	n	n	n		y	n	n	y	n	n	n		n	n
France	y	n	n	n	n	n	n		n	n	n	y	n	n		n	n
Fund for Accurate and Informed Representation	y			n	n	n			n	n	y	n	n	n		n	n
Gadsden County	y		y					y	n						y	y	y
Gaona																n	n
Garza v. Los Angeles	y		y	n	n	y	y	y	n	n	n	y	y	n	y	y	y
Gingles	y	y	y	y	n	y	y	y	n	y	y	y	y	y		y	y
Granville County																y	y
Green	y	n	n		n	n			n	n	n	n	n	n		n	n
Grenada County																y	n
Gretna	y	y	y	y	y	y	n	y	n	n	y	y	y	y		y	y
Guy	y	n	n		n	n		n	n	n	n	n	n	n		n	n
Halifax County	y	y	y		n	y		y	n	n						y	n
Hall v. Virginia	y		n		n	n			n	n	n	n	n	n		n	n
Hamrick	y	y		n	n	y		n	n	n	n	y	n	n		n	n
Hardee County	y			n	n	n		y	n	n	y	n	n	n		n	n
Harris	y	y	n	y	n	n			n	n					y	y	y

TABLE B, CONTINUED

Litigation Title	Consid.	1	2	3	4	5	6	7	8	9	G-I	G-II	G-III	G-all	Intent	Success	Viol.
Harris v. Houston	y		n		n	n	n		n	n	y	n	n	n		n	n
Harrison	y			n	n	n			n	n	y	y	n	n		n	n
Hastert Reapportionment	y	y	y			y		y			y	y	y	y		y	n
Hayden																n	n
Haywood County	y	y	y		n	n		y	n	n	n	n	n		y	y	y
Hernandez																n	n
Hispanics v. NAACP																n	n
Holbrook Unified School District	y	y	n		n	n			n	n	n	n	n	n		n	n
Holder v. Hall	y	y	y	n	n	y		y	y	n	y	y	y	y	f	n	n
Houston v. Haley	y	y	n	n	n	y	n	y	n	n	y	n	n	n		n	n
Howard	y			n	n	n			n	n	y	n	n	n		n	n
Howard v. Gilmore																n	n
Hudson County Board	y	y	n		n	n			n	n	n	n	n			y	n
Irby	y		n	n	n	n		n	n	n						n	n
Jacksonville Coalition																n	n
Jeffers	y	y	y	y	n	y	y	y	n	n	y	y	y	y	y	y	y
Jefferson Citizens - Parish II																n	n
Jefferson County																y	n
Jefferson Parish I	y		y	y	n	n		y	n	n	y	y	y	y		y	y
Jefferson Parish School Board																y	n
Jenkins v. Red Clay School District	y	y	y	y	n	y	n	n	y	n	y	y	y	y		n	n
Johnson v. Bush	y		n	n	n	n			n	n						n	n
Jones v. Alabama																n	n
Jones v. Edgar	y	n	n		n	n			n	n						n	n

TABLE B, CONTINUED

Litigation Title	Consid.	1	2	3	4	5	6	7	8	9	G-I	G-II	G-III	G-all	Intent	Success	Viol.
Jordan	y	y	y	n	n	y	y	y	n	n						y	y
Joseph v. LaCoste																n	n
Kansas City	y		n		n	n	n		n	n	n	n	n			n	n
Kent County	y	n	n	n	n	n	y	n	n	n	n	n	n	n		n	n
Kershaw County																y	y
Ketchum	y	y	n	n	n	n			n	n						y	y
Kingman Park	y			n	n	n			n	n	y	n	n	n		n	n
Kirksey v. Allain	y	y	y	y	n	y	n	y	n	y	y	y	y	y		y	y
Knight v. Alabama																n	n
Knox-Milwaukee County																n	n
Kuhn v. Tompson																n	n
Lafayette County	y	n	y	n	n	n	n	y	n	n	y	y	y	y		y	y
LaPaille	y		n	n	n	n			n	n						n	n
Lawrence County	y		y	n	n	n			n	n	n	y	y	n		y	y
Lawrimore County																n	n
Liberty County Commissioners	y	n	y	n	n	n	n	n	n	n	y	y	y	y		n	n
Little Rock	y	y	y	n	n	y	n	n	n	n	n	n	n	n	f	n	n
Local Unions 20																n	n
Love																y	n
Lubbock	y	y	y	y	n	y		y	n	n						y	y
Lucas	y	y	n	n	n	n		n	n	n						n	n
LULAC - Midland	y	y	y	y	n	y	n	y	n	n	y	y	y	y	y	y	y
LULAC - North East I.S.D.	y	n	y	n	n	y		y	n	n	y	y	y	y		y	y
Lulac v. Clements: All 9 Counties	y	n	n	n	n	n	y	n	n	n	y	y	n	n		n	n

TABLE B, CONTINUED

Litigation Title	Consid.	1	2	3	4	5	6	7	8	9	G-I	G-II	G-III	G-all	Intent	Success	Viol.
Lulac v. Roscoe I.S.D.	y		n	n	n	n		n	n	n	n	n	n	n		n	n
Madison County																y	y
Magnolia Bar Association	y		n	n	n	y	y	n	n	n	y	y	n	n		n	n
Major	y	y	y	y	n	y		y	n	y						y	y
Maldonado v. Pataki																n	n
Mallory-Hamilton County																y	y
Mallory-Ohio	y	y	n	n	n	n	n	n	n	n	n	n	n	n		n	n
Marengo County	y	y	y	y	n	y	n	y	y	y						y	y
Marion County																n	n
Marks-Philadelphia															y	y	y
Martinez v. Bush	y		y	n	n	n			n	n	y	y	y	y		n	n
Marylanders	y	y	y	n	y	y		y	n	y	y	y	y	y	f	y	y
Maxey	y		n	n	n	n		n	n	n						n	n
McCarty	y	n	n	n	n	n		n	n	n						n	n
Mehfoud	y	y	y	n	n	y	y	y	y	n	y	y	y	y		y	y
Merced																n	n
Metro Dade County	y	n	y	n	n	y	y	y	y	n	y	y	y	y		y	y
Metts	y	n	n		n	y			n	n	n			n		n	n
Mexican American Bar Association																n	n
Meza	y	n	n	n	n	n		n	n	n	n	y	n	n		n	n
Milwaukee NAACP	y	n	n	n	n	n	n	n	n	n	y	y	n	n		n	n
Mobile School Board	y	y	y	y	n	y	n	y	y	y					y	y	y
Monroe County	y	n	y	y	n	n	n	y	n	y	y	y	y	y		y	y
Montero																n	n

TABLE B, CONTINUED

Litigation Title	Consid.	1	2	3	4	5	6	7	8	9	G-I	G-II	G-III	G-all	Intent	Success	Viol.
Montezuma-Cortez School District	y	y	y	n	n	y	n	y	n	n	y	y	y	y	f	y	y
Montiel v. Davis																n	n
Muntaqim	y		n	n	n	n			n	n						n	n
NAACP v. Fordice	y	n	y	y	n	n	n	n	n	n	y	y	y	y		n	n
Nash	y		n	n	n	n		n	n	n	y	y	n	n		n	n
National City	y			n	n	n		n	n	n	y	n	n	n		n	n
Neal	y	y	y	n	n	y	y	y	n	n	y	y	y	y		y	y
Newman v. Hunt																n	n
Niagara County	y		n		n	n	n		n	n						y	n
Niagara Falls	y	n	y	y	n	n		n	n	n	y	y	y	y		n	n
Nipper	y	n	y	n	n	y	n	y	n	n	n	y	n	n		n	n
Old Person	y	y	y	n	n	y	y	n	n	n	y	y	y	y		n	n
O'Lear	y		n		n	n			n	n	n	n	n	n		n	n
Opelika	y	y	n	n	n	n		y	n	n						n	n
Operation Push	y	y	n	n	n	y	n	y	n	y						y	y
Orange County	y		n	n	n	n		y	n	n	n	n	n	n		n	n
Osburn	y		n	n	n	n		n	n	n						n	n
Page	y			n	n	n			n	n	y	y	n	n		n	n
Parker v. Ohio	y		n								n	n	n	n		n	n
Pasadena Independent School District	y			n	y	n		y	n	n	n	y	n	n		n	n
Perez																n	n
Perry	y	y	y	n	n	y		n	y	y	y	y	y	y		y	y
Phillips County																n	n
Pomona	y	n		n	n	n	n	n	n	n	y	n	n	n		n	n

TABLE B, CONTINUED

Litigation Title	Consid.	1	2	3	4	5	6	7	8	9	G-I	G-II	G-III	G-all	Intent	Success	Viol.
Prejean																n	n
Prewitt v. Moore																n	n
Quilter	y	y	n	n	n	n			n	n	n	n	n	n		n	n
Ramos																n	n
Rangel	y			n	n	n		n	n	n	y	y	n	n		n	n
Reyes v. Stefaniak																y	n
Richmond County Board	y	y	n					y		n						y	y
Rocha	y		n	n	n	n		y	y	n						n	n
Rockford Board of Education	y	y	y		n	y			n	n	y	y	y	y		y	n
Rodriguez	y	n	y	n	n	n		n	n	n	n	y	y	n		n	n
Rural West I	y	y	y	n	n	y		y	n	n	y	y	y	y	f	n	n
Rural West II	y	y	y	n	n	y	n	y	n	y	y	y	y	y	f	y	y
Rybicki	y	n	n	n	n	n			y	n					f	y	y
Salt River Project	y		n	n	n	n	n		n	n	n	n	n	n		n	n
San Diego County	y			n	n	n			n	n	y	n	n	n		n	n
Sanchez-Colorado	y	y	y	n	n	y	n	y	n	n	y	y	y	y		y	y
Save Our Aquifer v. San Antonio																n	n
Schweitzer																n	n
Seastrunk	y	y	n	n	n	n	n	y	n	n						n	n
Sensley	y		y	n	n	n			n	n	n	y	y	n		n	n
Shelley	y		n		n	n			n	n	n	n	n			n	n
Sisseton Independent School District	y	y	n	y	n	n	n	n	n	n	y	y	n	n		n	n
Slagle																n	n
Smith-Crittenden County	y	y	y	n	n	y		y	n	n	y	y	y	y		y	y

TABLE B, CONTINUED

Litigation Title	Consid.	1	2	3	4	5	6	7	8	9	G-I	G-II	G-III	G-all	Intent	Success	Viol.
South Carolina Democratic Party	y		n	n	n	n		n	n	n	n	n	n	n		n	n
Southern Christian Leadership	y	y	n	y	n	y	y	n	n	n	n	y	n	n		n	n
Springfield Park District	y		n	n	n	n			n	n	n	n	n	n		n	n
St. Bernard Parish School Board	y	y	y	n	n	y	y	y	n	n	y	y	y	y		y	y
St. Francisville																y	n
St. Louis Board of Education	y	n	n	n	n	n			n	n	y	y	n	n		n	n
Stewart v. Blackwell																n	n
Stockton	y		n	y	n	n		n	n	n	n	n	n	n		n	n
Suffolk County	y	n	n		n	n	n	n	n	n	n	y	n	n		n	n
Sumter County																n	n
SW Texas Junior College Dist.	y	n		y	n	n		n	n	n	y	y	n	n		n	n
Tangipahoa																y	n
Tensas Parish School Board	y	y	y	n	n	n			n	n						n	n
Terrazas	y	y	n	n	n	y		y	n	n						n	n
Terrell	y	y	y	y	n	y	n	y	y	y					y	y	n
Texarkana	y	y	y	n	n	n	n	y	n	n	y	y	y	y		y	y
Town of Babylon	y	n	n	y	n	n	n	n	n	n	n	y	n	n		n	n
Town of Cicero	y	y	n		n	n			n	n					y	y	n
Town of Hempstead	y	y	y	y	y	n	y	y	y	y	y	y	y	y		y	y
Town of North Johns	y	y	n	n	n	n			n	n					y	y	y
Trevino																n	n
Turner	y		n	n	n	n			n	n	n	n	n	n		n	n
U.S. v. Jones	y	y	n	n	n	n			n	n						n	n
Upper San Gabriel																n	n

TABLE B, CONTINUED

Litigation Title	Consid.	1	2	3	4	5	6	7	8	9	G-I	G-II	G-III	G-all	Intent	Success	Viol.
Val Verde County	y		n		n	n			n	n	y	y	n	n		n	n
Vander Linden v. Hodges																n	n
Vamer v. Smitherman																n	n
Walthall County																y	n
Wamser	y		n		n	y	y		n	y	n	n	n			n	n
Warren County																n	n
Warrensville Heights																n	n
Washington County																y	y
Watsonville	y	n	y	n	n	n	n	y	n	n	y	y	y	y		y	y
Welch v. McKenzie																n	n
Wesch																y	n
Wesley	y	n	n	n	n	y			n	n	n	n	n			n	n
West	y		n	n	n	n			n	n	n	n	n	n		n	n
Westwego	y	y	y	n	n	y	n	y	n	y	y	y	y	y		y	y
White	y		n	n	n	y			n	n	n	n	n	n		n	n
White v. Alabama	y	y	y		n	n	y	y	n	n	y	y	y	y		y	y
Williams v. McKeithen	y		n		n	n			n	n	n	n	n	n		n	n
Williams v. State Bd. of Elections	y		n	n	n	n			n	n			n	n		n	n
Winston-Salem/Forsyth County Board																n	n
Worcester County	y	y	y	y	n	n			n	n	y	y	y	y		y	y

TABLE C
RACIAL APPEALS CITED IN SECTION 2 LITIGATION: TIMELINE AND CITATIONS

Seventy-three distinct racial appeals are identified in post-1982 opinions under Section 2 of the Voting Rights Act. Forty-two of these appeals occurred in covered jurisdictions while 31 occurred in non-covered ones. Of the 47 racial appeals identified in campaigns since 1982, 30 are from covered jurisdictions with the remaining 17 from non-covered jurisdictions.[548]

Year	Covered Jurisictions	Non-Covered Jurisdictions
1950		Gingles v. Edmisten, 590 F. Supp. 345, 364 (E.D.N.C 1984)
1954		*Gingles*, 590 F. Supp. at 364.
1960		*Gingles*, 590 F. Supp. 345 at 364.
1968		*Gingles*, 590 F. Supp. at 364 (2 campaigns).
1970	Williams v. Dallas, 734 F. Supp. 1317, 1339 (N.D. Tex. 1990) (3 campaigns).	
1971		Garza v. County of Los Angeles, 756 F. Supp. 1298, 1341 (C.D. Cal. 1990).
1972	*Dallas*, 734 F. Supp. at 1339.	*Gingles*, 590 F. Supp. at 364.
1973	U.S. v. Charleston County, 316 F. Supp. 2d 268, 295 (D.S.C. 2003); Butts v. New York, 614 F. Supp. 1527, 1531 (S.D.N.Y. 1985).	
1975	*Dallas*, 734 F. Supp. at 1347.	Jeffers v. Clinton, 730 F. Supp. 196, 212 (E.D. Ark. 1989).
1976	*Dallas*, 734 F. Supp. at 1348 (2 campaigns).	*Jeffers*, 730 F. Supp. at 212.
1977	Jordan v. Greenwood 599 F. Supp. 397, 403 (N.D. Miss. 1984); *Dallas*, 734 F. Supp. at 1349.	
1978		U.S. v. Alamosa County, 306 F. Supp. 2d 1016, 1026 (D. Colo. 2004).
1979		Reed v. Town of Babylon, 914 F. Supp. 843, 859 (E.D.N.Y. 1996).
1982	Southern Christian Leadership Conference v. Sessions, 56 F.3d 1281, 1290 (11th Cir. 1995); Jordan v. Winter, 604 F. Supp. 807, 813 (N.D. Miss 1984); White v. Alabama: 867 F.Supp. 1519, 1556 (M.D.Ala. 1994) *Dallas*, 734 F. Supp. at 1360.	Garza v. County of Los Angeles, 756 F. Supp. 1298, 1341 (C.D. Cal. 1990).

548. Years for otherwise specifically cited campaigns were not identified in the following four instances: Town of Hempstead Litig., 956 F. Supp. 326, 342 (E.D.N.Y. 1997); City of Phila. Litig., 824 F. Supp. 514, 537 (E.D. Pa. 1993) (2 campaigns); Magnolia Bar Ass'n Litig., 793 F. Supp. 1386, 1410 (S.D. Miss. 1992).

Year	Covered Jurisictions	Non-Covered Jurisdictions
1983	Clark v. Roemer, 777 F. Supp. 471 (M.D. La. 2001); Neal v. Colebum, 689 F.Supp. 1426, 1431-32 (E.D. Va. 1998) (2 campaigns); McDaniels v. Mehfoud, 702 F. Supp. 588, 595 (E.D. Va. 1988).	*County of Los Angeles*, 756 F. Supp at 1341; Ortiz v. City of Philadelphia, 824 F.Supp. 514, 537 (E.D. Pa. 1993).
1984		*Gingles*, 590 F. Supp. at 364; *Town of Babylon*, 914 F. Supp. at 860. Windy Boy v. County of Big Horn, 647 F. Supp. 1002, 1018 (D. Mont. 1986).
1985	Magnolia Bar Association v. Lee, 793 F. Supp. 1386, 1410 (S.D. Miss 1990); *Dallas*, 734 F. Supp at 1363.	Armour v. Ohio, 775 F.Supp. 1044, 1056 (N.D. Ohio 1991); *City of Philadelphia*, 824 F.Supp. 514 at 537.
1987	*Clark*, 777 F. Supp. at Appendix A; *Mehfoud*, 702 F. Supp. at 595.	*City of Philadelphia*, 824 F. Supp. at 537; Goosby v. Town of Hempstead, 956 F. Supp. 326, 342-43 (E.D.N.Y. 1997); Vecinos de Barrio Uno v. City of Holyoke, 880 F. Supp. 911, 927 (D. Mass. 1995); Roberts v. Wamser, 679 F. Supp. 1513, 1515 (E.D. Mo. 1987).
1988	U.S. v. Charleston County, 316 F. Supp. 2d 268, 295 (D.S.C. 2003); *Dallas*, 734 F. Supp. at 1365.	U.S. v. Alamosa County, 306 F. Supp. 2d 1016, 1026 (D. Colo. 2004).
1989	*Magnolia Bar Ass'n*, 793 F. Supp. at 1409-10; *Dallas*, 734 F. Supp at 1368.	
1990	*Southern Christian Leadership Conf.*, 56 F.3d at 1290; *Magnolia Bar Ass'n*, 793 F. Supp. at 1409-10; *Charleston County*, 316 F. Supp.2d at 295 (2 campaigns).	Meek v. Metro Dade County, 805 F. Supp 967, 982 (S.D. Fla. 1992).
1991	Smith v. Board of Sup'rs of Brunswick County, 801 F. Supp. 1513, 1518 (E.D. Va. 1992); *Magnolia Bar Ass'n*, 793 F. Supp. at 1410.	*City of Philadelphia*, 824 F. Supp. at 537.
1992	*Charleston County*, 316 F. Supp.2d at 295 (2 campaigns).	*Alamosa County*, 306 F. Supp. 2d at 1025.
1994	*White*, 867 F.Supp. at 1556.	
1995	Cofield v. City of LaGrange, 969 F. Supp. 749, 777 (N.D. Ga. 1997).	
1996		Coleman v. Board of Educ., 990 F. Supp. 221, 231-32 (S.D.N.Y. 1997).
1998	Shirt v. Hazeltine, 336 F. Supp. 2d 976, 1041 (D.S.D. 2004).	
2000	Charleston County, 316 F. Supp. 2d at 295.	
2002	St. Bernard Parish School Board, 2002 U.S. Dist. LEXIS 16540, at *33 (E.D. La. 2002).	