California Voting Rights Act: Conversations Around Achieving Election Equity

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Thursday, October 9
(One of three options for the "Legal Issues" Session)

Introduction: J. Christine Dietrick, City Attorney, San Luis Obispo
California Voting Rights Act: Conversations Around Achieving Election Equity (2:45-3:45 p.m.)
The California Voting Rights Act (CVRA) continues to evolve, particularly following the California Supreme Court's decision in Pico Neighborhood Assoc. v. City of Santa Monica. This session will examine key legal questions surrounding standards of proof in CVRA litigation, the status of active cases, and the implications for cities navigating at-large and district-based election systems. Panelists will also discuss recent developments, including the 2024 FAIR MAPS Act, and explore what options remain for cities evaluating their obligations under the law. Attendees will gain insights into the legal landscape and strategies for addressing election-related challenges.
Facilitator/Moderator:

- Ryder Smith, President, Tripepi Smith

Speakers:

- Sheri Damon, City Attorney, Seaside
- Douglas Johnson, President, National Demographics Corporation
- Christopher Skinnell, Partner, Nielsen Merksamer, LLP

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The California Voting Rights Act (CVRA), enacted in 2002, stands as one of California's most impactful civil rights statutes, designed to address vote dilution and expand fair representation for minority communities across the state. This landmark law was prompted by allegations that at-large election systems in local jurisdictions often diminished the electoral strength of diverse populations, thereby failing to translate their political organizing into actual electoral victories. The CVRA builds on and goes further than its federal counterpart, lowering the barriers for successful legal challenges against at-large systems, including eliminating some of the geographic concentration requirements found in the federal Voting Rights Act.

Since its implementation, the CVRA has had a transformative effect on local governance in California. Hundreds of governmental agencies—including cities, school districts, and special districts—have shifted from at-large to district-based elections in response to litigation, demand letters, or the threat thereof. As of 2025, out of California's 483 incorporated cities, 233—nearly half—have adopted district-based council elections This wave of conversion has been particularly pronounced among the state's largest municipalities, but it has widely impacted smaller cities too: 85 cities under 50,000 in population have made the transition to by-district elections following passage of CVRA.

II. Patterns of Legal Challenge and Enforcement Since 2002

Since its enactment in 2002, the California Voting Rights Act (CVRA) has driven a sustained wave of litigation, threatened litigation, and voluntary transitions away from at-large city council election systems. The CVRA's strict liability framework (at least as

previously understood), combined with lower evidentiary burdens than its federal counterpart, has made it extremely difficult for California cities to successfully defend at-large elections once challenged. To date, no city has prevailed in a CVRA lawsuit. So far, cities that have attempted litigation have uniformly lost or settled, often at substantial financial cost.

Many cities chose a preemptive switch to by-district elections after receiving demand letters that outlined potential CVRA violations. These letters explain the litigation risk, often allege patterns of racially polarized voting in the city, and offer a short statutory window (typically 45 days) for the city to adopt a resolution stating its intent to change its election system. High-profile, costly settlements have further motivated city councils to act quickly. The cities of Palmdale, Santa Clara, and Modesto engaged in prolonged court battles and eventually paid seven-figure plaintiff attorney fee awards. The specter of such outcomes now drives many jurisdictions to choose conversion over contest, fueling a "quiet tsunami" in California local government.

III. Current Status (2025): Adoption, Trends, and Map

By September 2025, 233 of California's 483 cities (48.2%) had adopted some form of district-based city council election system—compared to just 23 (4.8%) before the CVRA's passage. This pace sharply accelerated post-2016, as legal risks and attorney demand letters multiplied. Trends vary by city size:

- Very large cities (population >200,000): All 22 have adopted district-based elections.
- Large cities (75,001–200,000): 82% are now by-district.
- Medium cities (35,001–75,000): Over 60% use by-district systems.
- Small cities (≤35,000): Only 6% have converted, with the majority still using at-large systems.

Regionally, Southern California exemplifies this trend, with the vast majority of its most populous cities operating via district elections by 2024. Figures and maps from the Rose Institute illustrate both the historical at-large dominance and the contemporary rise of district-based systems, particularly in larger urban areas. Hybrid and "from-district" systems, where some seats remain elected citywide, persist but are increasingly rare.

The Fair Mapping Act: Enhanced Safeguards for Local Redistricting

The Fair Mapping Act (FMA), codified as Assembly Bill 849 (2019) and strengthened through subsequent amendments such as AB 764 (2024), establishes robust procedural and substantive requirements for districting and redistricting by California cities, counties, and (as of 2024) educational and special districts. The Act supplements the California Voting Rights Act by ensuring that any shift to by-district elections—whether prompted voluntarily or via CVRA demand—is conducted transparently and equitably, with meaningful public engagement throughout the process.

The FMA prescribes a hierarchy of line-drawing criteria, mandating that districts:

- Be of substantially equal population
- Comply with the Federal Voting Rights Act
- Be geographically contiguous
- Preserve neighborhoods and "communities of interest" (areas with shared policy, social or economic interests)

- Have easily identifiable boundaries and
- Be reasonably compact

To promote fairness and guard against abuse, the FMA prohibits drawing lines for the purpose of favoring or discriminating against incumbents and—in its most recent versions—emphasizes transparency, public outreach obligations (including workshops and translation services), and robust opportunities for public input on draft maps.

Recent legislation extends the FAIR MAPS Act requirements to educational and special districts, with some different timelines and procedures depending on jurisdiction size and type. Although not all local governments are yet required to use independent redistricting commissions, reformers continue to advocate that these be made mandatory.

Agencies that fail to follow the FMA's procedures expose themselves to additional legal challenges and public scrutiny – a critical consideration for cities transitioning under the pressure of a CVRA demand letter.

IV. Demand Letters Under the CVRA: Process and Volume

Elections Code § 10010 sets a clear process: upon receiving a written demand alleging a violation of the CVRA, a city has 45 days to declare its intent to switch to by-district elections, and then another 90 days to adopt a plan. This window enables cities to convert by ordinance, bypassing voter approval, and greatly limits potential legal exposure if the timeline is met. Cities may negotiate additional time with the attorney who sent the letter, but different attorneys have shown different levels of openness to such arrangements.

Outcomes are nearly uniform: cities overwhelmingly comply with demand letters, aware that contesting a CVRA suit is both expensive and, so far, lacking a clear path to success. Typical legal costs for cities fighting unsuccessfully can easily run into the millions, covering both their own defense and the plaintiff's attorney fees if the court finds a violation—even if a settlement is reached. In cases of settlement or preemptive action, fees are generally lower but still substantial compared to routine city litigation.

Thus, the statutory "demand letter" provision has become the principal lever driving change—yielding one of the most rapid and widespread municipal policy realignments in California history.

V. Growing Resistance: Recent Trends and Strategies

Between 2022 and 2025, California saw a surge in organized resistance to California Voting Rights Act (CVRA) demand letters. An increasing number of cities have begun pushing back by publicly challenging the validity of threat letters or otherwise rejecting the demand to change their election system.

For example, cities like Rancho Santa Margarita and Laguna Niguel refused full payment of fees to plaintiff attorneys following their mandated switch to district elections, arguing over the scope of reimbursement and the appropriateness of some claims. In other cities, elected officials have delayed compliance with the demand letter process or adopted resolutions contesting the assertion that racially polarized voting exists in their communities.

Legal resistance strategies include:

- Questioning the sufficiency of plaintiff evidence regarding racially polarized voting
- Asserting that certain cities lack sufficient minority populations to trigger CVRA protections
- Raising home rule or charter city protections—though these have thus far failed in court

Three cities have active litigation opposing plaintiff demands that they change to by-district elections:

- Huntington Beach, scheduled for November 24, 2025
- Burbank, scheduled for July 2026, and
- Santa Monica's second trial is scheduled for October 2026.

In the lengthy Santa Monica litigation, the original complaint was filed in April of 2016. Santa Monica's first trial concluded in February of 2019, with an Appeals Court ruling issued in July of 2020, overturning the trial court's judgment. That was followed quickly by a California State Supreme Court order de-publishing the Appeals Court ruling and agreeing to hear the case. The State Supreme Court then waited nearly three years to hear the case, as it finally held a hearing June 27, 2023, and issued its ruling (sending the case back down for reconsideration) September 20, 2023. A second Superior Court trial is now scheduled to begin October 26, 2026, but proceedings are temporarily stayed until February 2, 2026, to allow time for a possible decision from the U.S. Supreme Court in *Louisiana v. Callais*, a case under Section 2 of the federal Voting Rights Act that could have an impact on the application of the CVRA. The trial court has indicated that it intends a bifurcated trial: a first phase focused on determining whether elections continue to be racially-polarized in Santa Monica, recognizing that the focus of the CVRA is the present electoral system; and, if the plaintiffs prevail in the first phase, a second phase focused on whether the City's electoral system "dilutes" Latinos' voting power relative to alternative electoral systems.

The Huntington Beach case was filed in early May 2024. In December of last year the trial court denied the City's motion for summary judgment, finding there to be triable issues of fact concerning the existence of both racially-polarized voting and vote dilution. A jury trial was initially set for August 2025, but the plaintiffs successfully moved to strike the request for a jury, so the case will be tried to the court. The trial date has also been postponed a couple of times, first to mid-September and most recently to November 24.

Finally, the Burbank case was filed in October 2023, and the following January the court sustained a demurrer on the ground that the plaintiff had failed to identify the "protected class" on whose behalf the case was brought—an essential element of a CVRA claim—and because if failed to allege facts to show intentional discrimination, as an equal protection claim requires. A demurrer to the first amended complaint was also sustained in response to the City's arguments that the plaintiff failed to allege facts to support a finding of racially-polarized voting in Burbank or to support a showing of dilution. Again, the plaintiff was given leave to amend. In August of last year, the court again dismissed plaintiff's equal protection claim, this time without leave to amend, but allowed the CVRA cause of action to go forward. As noted, trial is scheduled for next July, and the parties are currently engaged in discovery.

Several bills have also been introduced in the 2025 legislative session, including SB 689 and AB 1079, which would alter appellate procedures, create new safe-harbor periods for small cities, and modify provisions related to attorney fees and court orders during appeal. One key provision in AB 1079, which has passed both houses of the Legislature and is currently pending before the Governor, would eliminate 'the normal rule in litigation that certain "prohibitory" judgments in the plaintiffs' favor are automatically stayed pending appeal.

VI. Implications and Emerging Legal Issues

The rapid and widespread transition to by-district elections has had far-reaching effects on community representation. Some cities have seen an increase in minority representation on their councils, particularly in larger jurisdictions with well-defined minority communities. Many cities have seen a significant increase in the number of elections with only one candidate running. And the process of creating district boundaries has also introduced fresh legal and political controversies over potential gerrymandering, "safe seats," and the fragmented representation of cohesive neighborhoods.

Charter cities continue to explore whether their charters can shield them from CVRA requirements, but so far courts have held that state law preempts conflicting charter provisions in this area. As more cities transition, concerns have grown about a "next wave" of litigation: challenges to the fairness of district lines, claims that new maps dilute new or emerging communities of interest, and even the possibility of federal lawsuits in cases where state law might clash with narrowing interpretations of federal voting rights from the Supreme Court.

Attention is also focused on potential CVRA reform. Several proposals—backed by both local government groups and some state lawmakers—would clarify definitions of key terms, provide new safe harbors or exemptions for very small cities, and introduce mediation or expert review for disputed demand letters. So far, however, most legislative reforms have favored expanding rather than restricting CVRA application.

VII. Practitioner Takeaways and Best Practices

Given the losses so far for cities in contested CVRA cases, and the significant costs of litigation, recommended best practices for practitioners include:

- Proactively reviewing local elections for CVRA vulnerabilities before receiving a demand letter
- Conducting a data-driven assessment of racially polarized voting and elections, consulting expert demographers and counsel early in the process
- Responding promptly to demand letters and leveraging safe harbor timelines to prevent runaway attorney fee awards
- Actively engaging the public and underrepresented communities in district map drawing to minimize further legal challenges
- Providing candid legal analyses and estimates of likely outcomes and costs to governing bodies before considering litigation
- Coordinating with peer jurisdictions and League of California Cities legal resources on draft policy, reform proposals, and court watch efforts

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Conclusion

California's CVRA landscape has experienced radical transformation over the past two decades and is now entering a period of heightened legal contest, strategic resistance, and possible reform. The next year could be pivotal, with appellate courts, the legislature, and potentially even the U.S. Supreme Court considering changes that will shape local election law for years to come. City attorneys must remain vigilant, prepare for evolving threats, and advise city leaders on both the risks of delay and the importance of fair and legally compliant representation structures.

Attachments

1. California Voting Rights Act text
2. 2023 FAIR MAPS Act text (AB764)
3. California Supreme Court ruling in *Pico Neighborhood Association v. Santa Monica*
4. California Fifth District ruling in *Sanchez v. City of Modesto*
5. U.S. Supreme Court 1985 ruling in *Thornburg v. Gingles*
6. Timeline of *Pico Neighborhood Association v. Santa Monica*
7. Rose Institute of State and Local Government 2016 paper on the impact of CVRA
8. Central Coast Democratic Socialist of America email to City of Seaside
9. Seaside City Attorney response to Central Coast DSA
10. Seaside demographer's summary report

BILL NUMBER: SB 976 CHAPTERED
BILL TEXT

CHAPTER 129
FILED WITH SECRETARY OF STATE JULY 9, 2002
APPROVED BY GOVERNOR JULY 9, 2002
PASSED THE SENATE JUNE 24, 2002
PASSED THE ASSEMBLY JUNE 20, 2002
AMENDED IN ASSEMBLY JUNE 11, 2002
AMENDED IN ASSEMBLY APRIL 9, 2002
AMENDED IN ASSEMBLY MARCH 18, 2002
AMENDED IN SENATE MAY 1, 2001

INTRODUCED BY Senator Polanco

FEBRUARY 23, 2001

An act to add Chapter 1.5 (commencing with Section 14025) to Division 14 of the Elections Code, relating to voting rights.

LEGISLATIVE COUNSEL'S DIGEST

SB 976, Polanco. Elections: rights of voters.

Existing law provides for political subdivisions that encompass areas of representation within the state. With respect to these areas, public officials are generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based).

Existing law generally allows the voters of the entire political subdivision to determine whether the elected public officials are elected by divisions or by the entire political subdivision.

This bill would provide that an at-large method of election, as defined, may not be imposed or applied in a manner that results in the dilution or abridgment of the right of registered voters who are members of a protected class, as defined, by impairing their ability to elect candidates of their choice or to influence the outcome of an election.

This bill would provide that a violation of its provisions shall be established if it is shown that racially polarized voting, as defined, occurs in elections for governing board members of a political subdivision, among other things. It would provide that an intent to discriminate against a protected class, as defined, is not required to establish a violation of this bill.

This bill would authorize a court to impose appropriate remedies, including district-based elections, and to award a prevailing nonstate or nonlocal government plaintiff party reasonable attorney's fees and expenses consistent with specified case law as part of the costs.

This bill would permit a member of a protected class to file an action pursuant to this bill under specified circumstances.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Chapter 1.5 (commencing with Section 14025) is added to Division 14 of the Elections Code, to read:

CHAPTER 1.5. RIGHTS OF VOTERS

14025. This act shall be known and may be cited as the California Voting Rights Act of 2001.

14026. As used in this chapter:

(a) "At-large method of election" means any of the following methods of electing members to the governing body of a political subdivision:

(1) One in which the voters of the entire jurisdiction elect the members to the governing body.

(2) One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.

(3) One which combines at-large elections with district-based elections.

(b) "District-based elections" means a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.

(c) "Political subdivision" means a geographic area of representation created for the provision of government services, including, but not limited to, a city, a school district, a community college district, or other district organized pursuant to state law.

(d) "Protected class" means a class of voters who are members of a race, color or language minority group, as this class is referenced and defined in the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.).

(e) "Racially polarized voting" means voting in which there is a difference, as defined in case law regarding enforcement of the

federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.), in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

14027. An at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class, as defined pursuant to Section 14026.

14028. (a) A violation of Section 14027 is established if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision. Elections conducted prior to the filing of an action pursuant to Section 14027 and this section are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action.

(b) The occurrence of racially polarized voting shall be determined from examining results of elections in which at least one candidate is a member of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of a protected class. One circumstance that may be considered in determining a violation of Section 14027 and this section is the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class, as determined by an analysis of voting behavior, have been elected to the governing body of a political subdivision that is the subject of an action based on Section 14027 and this section. In multiseat at-large election districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative groupwide support received by candidates from members of a protected class shall be the basis for the racial polarization analysis.

(c) The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy.

(d) Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

(e) Other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns are probative, but not necessary factors to establish a violation of Section 14027 and this section.

14029. Upon a finding of a violation of Section 14027 and Section 14028, the court shall implement appropriate remedies, including the imposition of district-based elections, that are tailored to remedy the violation.

14030. In any action to enforce Section 14027 and Section 14028, the court shall allow the prevailing plaintiff party, other than the state or political subdivision thereof, a reasonable attorney's fee consistent with the standards established in Serrano v. Priest (1977) 20 Cal.3d 25, 48-49, and litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

14031. This chapter is enacted to implement the guarantees of Section 7 of Article I and of Section 2 of Article II of the California Constitution.

14032. Any voter who is a member of a protected class and who resides in a political subdivision where a violation of Sections 14027 and 14028 is alleged may file an action pursuant to those sections in the superior court of the county in which the political subdivision is located.

Filed 12/6/06

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

ENRIQUE SANCHEZ et al., Plaintiffs and Appellants, v. CITY OF MODESTO et al., Defendants and Respondents.	F048277 (Super. Ct. No. 347903) **OPINION**

APPEAL from a judgment of the Superior Court of Stanislaus County. Roger M. Beauchesne, Judge.

Heller Ehrman, George H. Brown, Warrington S. Parker, III, Peter E. Gratzinger, Nicholas S. Campins, Stephen A. Tuggy, and Ronald A. Valenzuela; Lawyers' Committee for Civil Rights, Robert Rubin and Nicholas Espiritu; Seattle University School of Law, Joaquin G. Avila, for Plaintiffs and Appellants.

Bill Lockyer, Attorney General, Louis R. Mauro, Assistant Attorney General, Christopher E. Krueger and Douglas J. Woods, Deputy Attorneys General, for State of California as Amici Curiae on behalf of Plaintiffs and Appellants.

Kathay Feng for California Common Cause and FairVote as Amici Curiae on behalf of Plaintiffs and Appellants.

Alan Smith, City Attorney; Hogan and Hartson, John W. Borkowski, Joseph G. Krauss, Nichelle Billips, Chhaya Malik, and Monica Sahaf, for City of Watsonville as Amici Curiae on behalf of Plaintiffs and Appellants.

Howrey, John E. McDermott; Richard Rudnansky, Interim City Attorney (Modesto), Roland R. Stevens, Assistant City Attorney, for Defendants and Respondents.

Gilbert Trujillo, City Attorney, for City of Santa Maria as Amici Curiae on behalf of Defendants and Respondents.

Patrick Whitnell for League of California Cities as Amici Curiae on behalf of Defendants and Respondents.

The trial court granted the defense's motion for judgment on the pleadings after ruling that the California Voting Rights Act of 2001 was facially invalid under the equal protection clauses of the state and federal Constitutions. It entered judgment against plaintiff Latino voters, who allege that, because of racially polarized voting in Modesto, they are precluded from electing any candidates in the city's at-large city council elections. No evidence has been presented in support of or in opposition to this claim. Rather, at a preliminary stage of the litigation, the trial court struck down the CVRA, ruling that any possible application would necessarily involve unconstitutional racial discrimination. As we will explain, Modesto's arguments do not support disposing of the Legislature's act in this summary manner.

Courts make two kinds of decisions about the constitutionality of laws: decisions about whether a law is invalid on its face and in all of its conceivable applications (called "facial" invalidity), and about whether a particular application of a law is invalid (called "as-applied" invalidity). In this case, the City of Modesto attempted to show that the CVRA is unconstitutional because it is facially invalid. Modesto's arguments cannot establish facial invalidity. The city may, however, use similar arguments to attempt to show *as-applied* invalidity later if liability is proven and a specific application or remedy

is considered that warrants the attempt. For example, if the court entertains a remedy that uses race, such as a district-based election system in which race is a factor in establishing district boundaries, defendants may again assert the meaty constitutional issues they have raised here. In doing so, at that time they can ask the court to decide whether the particular application or remedy is discriminatory.

Why do Modesto's arguments fail to show that the CVRA is facially unconstitutional? Modesto takes the position that the CVRA is unconstitutional because it uses "race" to identify the polarized voting that causes vote dilution and prevents groups from electing candidates. Modesto claims that this use of race constitutes reverse racial discrimination and is a form of unconstitutional affirmative action benefiting only certain racial groups. However, this is not an accurate characterization of what the CVRA requires. The CVRA is race-neutral. It does not favor any race over others or allocate burdens or benefits to any groups on the basis of race. It simply gives a cause of action to members of *any* racial or ethnic group that can establish that its members' votes are diluted though the combination of racially polarized voting and an at-large election system—like the election system used in Modesto. In this respect, it is similar to other long-standing statutes that create causes of action for racial discrimination, such as the federal Civil Rights Act or California's Fair Employment and Housing Act.

The reality in California is that no racial group forms a majority.[1] As a result, *any* racial group can experience the kind of vote dilution the CVRA was designed to combat, including Whites. Just as non-Whites in majority-White cities may have a cause of action under the CVRA, so may Whites in majority-non-White cities. Both demographic

[1]We take judicial notice of this fact, which was revealed by the 2000 census. (See <http://factfinder.census.gov/servlet/QTTable?_bm=y&-qr_name=DEC_2000_SF1_U_DP1&-geo_id=04000US06&-ds_name=DEC_2000_SF1_U&-_lang=en&-_sse=on> [census table reporting non-Hispanic Whites as 46.7 percent of state population].)

situations exist in California, even within our own San Joaquin Valley, and the CVRA applies to each in exactly the same way.

The trial court also found facially unconstitutional the portion of the CVRA that allows attorney fees to be awarded to prevailing plaintiffs. The trial court reached this issue even though it was moot—plaintiffs never had an opportunity to seek attorney fees, since they lost—and the city only briefed the issue after the trial court asked it to do so. Further, in reaching its decision, the court focused on an improbable set of hypothetical facts. The asserted invalidity of a single hypothetical application is not a proper basis for finding the fee clause invalid on its face.

The judgment is reversed and the case is remanded to the trial court.

FACTUAL AND PROCEDURAL HISTORIES

Plaintiffs are Latino voters who reside in Modesto. They filed a complaint in Superior Court on June 3, 2004, alleging that, because of racially polarized voting, the city's at-large method of electing city council members diluted their votes. The complaint named as defendants the City of Modesto, the city clerk, the mayor, and each member of the city council.

According to the complaint, in Modesto's at-large election system, candidates for city council run for individual seats to which numbers are arbitrarily assigned and for each of which all the city's voters may vote. To win, a candidate must receive a majority of the votes cast for the seat for which he or she has chosen to run. A runoff between the top two vote-getters for a seat occurs if no candidate receives a majority. The complaint alleges that this system, combined with a pattern of racially polarized voting, regularly prevented Latino voters from electing any candidates of their choice or influencing city government. Although Latinos were 25.6 percent of the city's population of 200,000, only one Latino had been elected to the city council since 1911.

The complaint alleged one cause of action, a violation of the CVRA (Elec. Code, §§ 14025-14032),[2] and prayed for the imposition of a district-based system as a remedy. The CVRA provides a private right of action to members of a protected class where, because of "dilution or the abridgement of the rights of voters," an at-large election system "impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election …." (§§ 14027, 14032.) To prove a violation, plaintiffs must show racially polarized voting. They do not need to show that members of a protected class live in a geographically compact area or demonstrate an intent to discriminate on the part of voters or officials. (§ 14028.)

Some background on federal voting rights law is helpful to provide context for the CVRA. Like the CVRA, section 2 of the Federal Voting Rights Act (FVRA) (42 U.S.C. § 1973) creates liability for vote dilution. A violation of the FVRA is established if "the political processes leading to nomination or election in [a] State or political subdivision [of a state] are not equally open to participation by members of a [protected] class … in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." (42 U.S.C. § 1973(b).) Amendments to the FVRA passed by Congress in 1982 made it clear that intentional discrimination by officials is not required to show a violation. (*Shaw v. Reno* (1993) 509 U.S. 630, 641 (*Shaw*); *Thornburg v. Gingles* (1986) 478 U.S. 30, 35 (*Gingles*).) Later, after noting that it has "long recognized" that at-large elections and multi-member districts can """minimize or cancel out the voting strength""" of minorities (*Gingles, supra,* at p. 47), the Supreme Court delineated the elements of a vote-dilution violation under the FVRA:

> "First, the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district.… Second, the minority group must be able to show that it

[2]Subsequent statutory references are to the Elections Code unless otherwise noted.

> is politically cohesive.… Third, the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it … usually to defeat the minority's preferred candidate." (*Gingles, supra*, 478 U.S. at pp. 50-51 (fn. omitted).)

Section 2 of the FVRA does not allow states to use race however they want to in remedying vote dilution. In fact, the Supreme Court has recognized constitutional limitations on race-based districting plans adopted by state and local governments attempting to avoid section 2 liability. For example, in *Shaw, supra,* 509 U.S. 630, the court considered a new district map for the State of North Carolina, created by the state legislature after the results of the 1990 census gave the state a right to an additional member of the House of Representatives. The new districting plan included two majority-Black districts. The plaintiffs claimed the plan constituted an unconstitutional racial gerrymander. (*Id.* at pp. 633-634, 641.) Among the justifications the state offered for the plan was that the two majority-Black districts were needed to avoid liability for vote dilution under section 2 of the FVRA. (*Shaw, supra,* at p. 655.) Reversing the trial court's order dismissing the case, the Supreme Court held that the plaintiffs had stated a valid claim for relief under the equal protection clause of the Fourteenth Amendment. (*Shaw, supra,* at pp. 637-639, 642.) It stated that, because the majority-Black districts' shapes were so bizarre, they could not "rationally … be understood as anything other than an effort to separate voters into different districts on the basis of race," and the redistricting plan should be subjected by the trial court to strict scrutiny, just like "other state laws that classify citizens by race." (*Id.* at pp. 644, 649.)

Later cases explained that a finding that race was the "predominant" factor in creating a district—to which other factors were "subordinated"—is what triggers strict scrutiny. (*Bush v. Vera* (1996) 517 U.S. 952, 958-959 (plur. opn. of O'Connor, J.) (*Vera*).) *Shaw* and its progeny therefore stand for the following proposition: While state and local governments are commanded not to permit racial vote dilution that violates section 2 of the FVRA, they are also forbidden to use race as the predominant factor in a

redistricting scheme designed to avoid a violation unless that use of race passes strict scrutiny. The court has assumed without deciding that race-conscious measures undertaken to avoid section 2 liability pass strict scrutiny if those measures use race no more than is reasonably necessary to achieve section 2 compliance. (*Vera, supra*, 517 U.S. at pp. 976-979.)

The legislative history of the CVRA indicates that the California Legislature wanted to provide a broader cause of action for vote dilution than was provided for by federal law. Specifically, the Legislature wanted to eliminate the *Gingles* requirement that, to establish *liability* for dilution under section 2 of the FVRA, plaintiffs must show that a compact majority-minority district is possible. That said, the bill that ultimately became the CVRA did intend to allow geographical compactness to be a consideration at the *remedy* stage. A bill analysis prepared by staff for the Assembly Committee on Judiciary reflects this fact:

> "This bill would allow a showing of dilution or abridgement of minority voting rights by showing the first two *Thornburg* [*v. Gingles, supra*, 478 U.S. 30] requirements without an additional showing of geographical compactness.… This bill recognizes that geographical concentration is an appropriate question at the *remedy* stage. However, geographical compactness would not appear to be an important factor in assessing whether the voting rights of a minority group have been diluted or abridged by an at-large election system. Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown)." (Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001-2002 Reg. Sess.) as amended Apr. 9, 2002, p. 3 (italics added).)

Another point emphasized in the legislative history is California's lack of a racial majority group. The Assembly Judiciary Committee analysis says "[t]he author states that [the bill] 'addresses the problem of racial block voting, which is particularly harmful to a state like California due to its diversity.… In California, we face a unique situation where we are all minorities. We need statutes to ensure that our electoral system is fair

and open. This measure gives us a tool to move us in that direction.…" (Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001-2002 Reg. Sess.) as amended Apr. 9, 2002, p. 2.)

The bill ultimately became sections 14025 to 14032 of the Elections Code. Here is a synopsis of those provisions:

- Section 14027 sets forth the prohibited government conduct:

  "An at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgement of the rights of voters who are members of a protected class, as defined pursuant to Section 14026."

- A protected class is a class of voters "who are members of a race, color or language minority group, as this class is referenced and defined in the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.)." (§ 14026, subd. (d).)
- Section 14032 gives a right of action to voters in protected classes.
- Section 14028 lists facts relevant to proving a violation: The dilution or abridgement described in section 14027 is established by showing racially polarized voting. (§ 14028, subd. (a).) Circumstances to be considered in determining whether there is racially polarized voting are described. (§ 14028, subd. (b).) Lack of geographical concentration of protected class members and lack of discriminatory intent by the government are not factors in determining liability. (§ 14028, subds. (c), (d).) Certain other probative factors are included. (§ 14028, subd. (e).)
- The court shall "implement appropriate remedies, including the imposition of district-based elections," if it finds liability. (§ 14029.)

- Prevailing plaintiffs shall be awarded attorney fees. Prevailing defendants can recover only costs, and then only if the action was frivolous. (§ 14030.)

According to plaintiffs, the CVRA enlarges the potential for relief beyond that available under the FVRA in a number of ways, of which the elimination of the geographically compact majority-minority district requirement as an element of liability is only the beginning. First, freed of that requirement, a court could craft a remedy involving a crossover or coalition district. A crossover district is one in which, although members of the plaintiffs' group do not constitute a majority, that group can elect candidates of its choice by joining forces with dissident members of the racial majority who also live in the district. A coalition district is similar, except that members of the plaintiffs' group join forces with members of another racial minority group.

Second, a court could impose a remedy not involving districts at all, relying instead on one of several alternative at-large voting systems. In one of these, called cumulative voting, each voter has as many votes as there are open seats and may distribute them among several candidates or give them all to one candidate. In a cumulative voting system, a politically cohesive but geographically dispersed minority group can elect a single candidate by giving all its votes to that candidate, although it would be unable to elect any candidates in a conventional winner-take-all at-large system and could not form a majority in any feasible district in a district system.

Defendants in this case filed a motion for judgment on the pleadings, arguing that the CVRA was facially invalid under the equal protection clause of the Fourteenth Amendment and article I, section 7 (i.e., the equal protection provision) of the California Constitution. In response to a request by the trial court, defendants filed a supplemental brief arguing that the CVRA's attorney-fee provision also violated article XVI, section 6, of the California Constitution, which prohibits gifts of public funds. The trial court

agreed with defendants on both points. It granted the motion and entered a judgment of dismissal.

DISCUSSION

The standard of review for an order granting judgment on the pleadings is the same as that for an order sustaining a general demurrer: We treat as admitted all material facts properly pleaded, give the complaint's factual allegations a liberal construction, and determine de novo whether the complaint states a cause of action under any legal theory. (*DiPirro v. American Isuzu Motors, Inc.* (2004) 119 Cal.App.4th 966, 972.) We may rely on any applicable legal theory in affirming or reversing because we "'review the trial court's disposition of the matter, not its reasons for the disposition.'" (*Burnett v. Chimney Sweep* (2004) 123 Cal.App.4th 1057, 1065.)

Where reasonably possible, we are obliged to adopt an interpretation of a statute that renders it constitutional in preference to an interpretation that renders it unconstitutional. (*Palermo v. Stockton Theatres, Inc.* (1948) 32 Cal.2d 53, 60; *Martin v. Santa Clara Unified School Dist.* (2002) 102 Cal.App.4th 241, 254.) Even judicial reformation of a statute is preferable to invalidation where reformation would better serve the intent of the Legislature. (*Kopp v. Fair Pol. Practices Com.* (1995) 11 Cal.4th 607, 660-661.) Principles of judicial self-restraint similarly require us to avoid deciding a case on constitutional grounds unless absolutely necessary; nonconstitutional grounds must be relied on if they are available. (*People v. Pantoja* (2004) 122 Cal.App.4th 1, 10.)

I. City's standing to challenge statute

As a threshold issue, plaintiffs contend that defendants are not entitled to bring their constitutional challenge to the CVRA. We disagree. Plaintiffs rely on a settled line of cases barring cities from mounting equal protection challenges to state statutes, but a second line of cases establishes an exception, into which this case falls. In light of our

conclusion that defendants' equal protection challenge fails on its merits, we could decide this appeal without reaching the standing issue. We choose to address it, however, because the equal protection issue will likely arise on remand if the case reaches the remedy stage, and the standing question will surface again.

Defendants moved to strike the footnote in plaintiffs' reply brief in which standing was first raised and argued that we should not address it. We disagree because standing can be raised at any time. (*Payne v. Anaheim Memorial Medical Center, Inc.* (2005) 130 Cal.App.4th 729, 745; *Marshall v. Pasadena Unified School Dist.* (2004) 119 Cal.App.4th 1241, 1251; *People v. Leung* (1992) 5 Cal.App.4th 482, 490, fn. 2.) The issue of standing here does not come up in the traditional context, as we shall explain; however, it is sufficiently similar to warrant application of the rule that it may be raised at any time.

Further, defendants have had two opportunities to brief the issue. They did so first in their motion to strike the footnote, where they requested leave to submit additional briefing, and included a supplemental brief as a section of their motion. This request is granted and the supplemental discussion in the motion is deemed filed. Defendants also submitted a supplemental brief on the issue in response to our briefing letter dated June 30, 2006. For these reasons, defendants cannot legitimately claim to be prejudiced by any lack of opportunity to inform the court of their position. We hold that addressing the issue is appropriate and deny the motion to strike.[3] We now turn to the merits.

Plaintiffs invoke the "well-established rule that subordinate political entities, as 'creatures' of the state, may not challenge state action as violating the entities' rights under the due process or equal protection clauses of the Fourteenth Amendment or under the contract clause of the federal Constitution." (*Star-Kist Foods, Inc. v. County of Los*

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[3]In addition to the motion to strike and request for leave to submit supplemental briefing, a number of requests for judicial notice are pending. These requests, which we list in the Disposition, are granted.

Angeles (1986) 42 Cal.3d 1, 6 (*Star-Kist*).) The concept of standing at issue here is not the usual one limiting the rights of plaintiffs, but a special one pertaining to cities and counties attempting, as plaintiffs or defendants, to challenge state laws:

> "The term 'standing' in this context refers not to traditional notions of a plaintiff's entitlement to seek judicial resolution of a dispute, but to a narrower, more specific inquiry focused upon the internal political organization of the state: whether counties and municipalities may invoke the federal Constitution to challenge a state law which they are otherwise duty-bound to enforce." (*Star-Kist, supra*, 42 Cal.3d at pp. 5-6, fn. omitted.)

The rule against city and county standing in cases of this kind derives from the United States Supreme Court's holdings in *Williams v. Mayor* (1933) 289 U.S. 36, 40 (*Williams*) and a number of earlier cases. In *Williams*, the Maryland Legislature exempted a railroad from local taxes. (*Id.* at pp. 37-38.) The railroad was in the hands of a receiver appointed by a federal district court. Two cities filed claims in the receivership proceedings in the district court seeking taxes due. They challenged the tax-exemption statute under the equal protection clause of the Fourteenth Amendment. (*Williams, supra,* 289 U.S. at pp. 39-40.) The Supreme Court reversed a lower court decision invalidating the statute. Its explanation of this holding is simply: "A municipal corporation, created by a state for the better ordering of government, has no privileges or immunities under the federal constitution which it may invoke in opposition to the will of its creator." (*Id*. at p. 40.) The court cited several of its own earlier cases, none of which explained the rule in any greater detail. (See, e.g., *Newark v. New Jersey* (1923) 262 U.S. 192, 196 [city not entitled to raise 14th Amend. equal protection challenge to state's imposition of water use fee]; *Trenton v. New Jersey* (1923) 262 U.S. 182, 185-188, 192 [city not entitled to challenge same fee under due process clause of 14th Amend. or under contract clause of art. I, § 10, of the U.S. Const.].)

California courts have applied the rule in a variety of contexts. (*Mallon v. City of Long Beach* (1955) 44 Cal.2d 199, 209 [city cannot rely on contract clause to obtain

invalidation of a state statute allegedly impairing a preexisting contract between city and state]; *City of Burbank v. Burbank-Glendale-Pasadena Airport Authority* (1999) 72 Cal.App.4th 366, 380 [airport authority, as political subdivision of state, had no standing to challenge under due process clause of 14th Amend. a state statute allowing a city to review authority's development plans]; *Board of Supervisors v. McMahon* (1990) 219 Cal.App.3d 286, 296-297 (*McMahon*) [county had no power to challenge under due process clause of 14th Amend. a state law requiring it to contribute county funds for welfare payments]; *City of Los Angeles v. City of Artesia* (1977) 73 Cal.App.3d 450, 457 [City and County of Los Angeles could not seek invalidation under due process clause of 14th Amend. or contract clause of retroactive application of state law limiting amount counties could charge Lakewood Plan cities for police protection].) The Ninth Circuit in California has applied the rule as well. (*City of South Lake Tahoe v. California Tahoe* (9th Cir. 1980) 625 F.2d 231, 233-234 [city lacked standing to challenge under 14th Amend. a planning agency's land use rules promulgated pursuant to state statute].)

The California Supreme Court has held that the no-standing rule does not apply to a political subdivision's claim that a state statute encroaches on the power of Congress to regulate interstate commerce under the commerce clause of the United States Constitution. (*Star-Kist, supra*, 42 Cal.3d at pp. 4, 8-9.) It relied in part on federal cases holding that the no-standing rule also does not apply to challenges based on the supremacy clause of the United States Constitution. (*Id.* at p. 8.) The court did not, however, disturb the doctrine with respect to the equal protection and due process clauses of the Fourteenth Amendment and the contract clause, the areas in which it traditionally has been applied. (*Id.* at pp. 5-6.)

A second line of cases establishes an exception to the no-standing rule for situations in which the claim of a city or county is best understood as a practical means of asserting the individual rights of its citizens. The first of these cases, *Drum v. Fresno County Dept. of Public Works* (1983) 144 Cal.App.3d 777 (*Drum*), involved a county's

due-process challenge to its own inadequate notice to a building project's neighbors of a zoning-variance hearing. The county approved a request for a variance to enable a homeowner to build a garage. The notices of the variance hearing received by the neighbors described the garage. Later, the owner decided to add a second story with living quarters to the garage and requested a permit for the new design. The county issued the permit. When construction began, neighbors complained that they had not been informed about the second story. The county reversed its decision to issue the permit and issued a stop-work order. In the ensuing litigation between the owner and county, the county argued that the permit it issued for a two-story garage was invalid because it was not within the scope of the variance of which the neighbors had received notice; the neighbors' due process rights had therefore been violated. (*Id.* at pp. 779-781, 782.) We agreed with this position, rejecting the owner's argument that the county was not entitled to assert individual citizens' due process rights:

> "It would serve no legitimate interest to hold that appellant may not invoke lack of notice to its citizens in order to enjoin construction of respondents' building. Surely it should be able to invoke its own requirements of notice in order to preserve the public interest in preserving community patterns established by zoning laws." (*Drum, supra*, 144 Cal.App.3d at pp. 784-785.)

Admittedly, *Drum* did not involve a local government's challenge to a state law and dealt with statutory rather than constitutional due process rights. (*Drum, supra*, 144 Cal.App.3d at p. 783.) It did not discuss or cite any of the no-standing cases we mention above. But the next case in the line, *Selinger v. City Council* (1989) 216 Cal.App.3d 259 (*Selinger*), relied on *Drum*, among other authorities, in expressly asserting an exception to the no-standing rule.

In *Selinger*, a subdivision developer obtained a writ of mandate from the superior court requiring a city to acknowledge that his subdivision map was deemed approved by operation of law—because one year had elapsed without city action on his application—under the Permit Streamlining Act, a state statute. (*Selinger, supra*, 216 Cal.App.3d at

p. 263.) Among other things, the city argued that the Permit Streamlining Act violated adjacent landowners' right to due process of law by allowing a development plan to be automatically approved without notice and a hearing. (*Id.* at p. 270.) The Court of Appeal agreed, rejecting the developer's argument that the city lacked standing to contest the validity of the statute. The court noted the no-standing rule as stated in *Star-Kist, supra*, 42 Cal.3d at page 6, but it cited *Drum, supra*, 144 Cal.App.3d 777 in support of making an exception. (*Selinger, supra*, 216 Cal.App.3d at pp. 270, 271.)

More powerfully, the court relied on the Supreme Court's doctrine of third-party standing as set forth in *Singleton v. Wulff* (1976) 428 U.S. 106. In that case, the Supreme Court explained that constitutional rights usually must be asserted by the person to whom they belong, but that a litigant may assert them on behalf of a third party under exceptional circumstances. (*Id.* at p. 114.) In addition to the requirement that the litigant must sustain an injury of its own, two factual elements are relevant in determining whether the litigant should be allowed to assert a third party's rights. One tests whether the litigant and third party are related closely enough to ensure that the litigant's interest in asserting the right is genuine and its advocacy will be effective:

> "The first [element] is the relationship of the litigant to the person whose right he seeks to assert. If the enjoyment of the right is inextricably bound up with the activity the litigant wishes to pursue, the court at least can be sure that its construction of the right is not unnecessary in the sense that the right's enjoyment will be unaffected by the outcome of the suit. Furthermore, the relationship between the litigant and the third party may be such that the former is fully, or very nearly, as effective a proponent of the right as the latter." (*Singleton v. Wulff, supra*, 428 U.S. at pp. 114-115.)

The second element concerns the reasons why the third party is not asserting or cannot assert the right in question for itself:

> "The other factual element to which the Court has looked is the ability of the third party to assert his own right. Even where the relationship is close, the reasons for requiring persons to assert their own rights will generally still apply. If there is some genuine obstacle to such assertion, however, the third party's absence from court loses its tendency

> to suggest that his right is not truly at stake, or truly important to him, and the party who is in court becomes by default the right's best available proponent." (*Singleton v. Wulff, supra*, 428 U.S. at pp. 115-116.)

In *Selinger*, the Court of Appeal thought the two elements supported the city's standing. Local citizens' right to notice and a hearing was "inextricably bound up" with the city's interest in reviewing and conditioning subdivision applications on its own timetable based on local needs. (*Selinger, supra*, 216 Cal.App.3d at p. 271.) Also, there was a high obstacle to local citizens' ability to litigate their rights: Without notice, adjacent landowners would be likely to miss the 90-day statutory deadline for legal challenges to the approval of subdivision maps. (*Ibid*.)

The Court of Appeal applied the exception to the no-standing rule again in *Central Delta Water Agency v. State Water Resources Control Bd.* (1993) 17 Cal.App.4th 621 (*Central Delta Water*). Two local water agencies sued the State Water Resources Control Board, mounting an equal-protection challenge to discharge fees imposed on them under a state statute and regulations. (*Id.* at pp. 627-629, 630.) The Court of Appeal rejected the defendant's claim that, as political subdivisions, the agencies lacked standing to challenge the statute and regulations. It stated that the equal protection rights of the agencies' constituent water users were inextricably bound up with the agencies' duty to supply water. (*Id.* at pp. 630-631.) The court did not explain what obstacles prevented the constituents from suing on their own behalf.

We believe these courts have reasoned correctly in establishing an exception to the no-standing rule for those situations in which the usual standards for third-party standing are satisfied. As previously mentioned, we acknowledge that there was no challenge to a state statute in *Drum*, and therefore the principle that a political subdivision cannot challenge the will of its creator was not implicated. Consequently, the citation of *Drum* by the *Selinger* court was a stretch. But the reasoning stated in *Selinger* and applied in *Central Delta Water* is sound. Although a local government has no equal protection rights of its own to assert against the state, there is no reason why it cannot act as a

mouthpiece for its citizens, who unquestionably have those rights, where the third-party-standing doctrine would allow it.

We recognize that the third-party-standing doctrine is the key to the exception; that the doctrine is addressed to the standing of plaintiffs to sue in federal court; and that we deal here neither with the standing of plaintiffs nor with federal court. The doctrine is a sound basis for the exception in spite of these omissions. The point of the no-standing rule is to prevent local governments, whether as plaintiffs or defendants, from using certain provisions of the federal Constitution to obtain invalidation of laws passed by their creator, the state. This notion has no application where the truly interested parties—citizens or constituents of the local government entity—undisputedly do have standing and the entity merely asserts rights on their behalf.

This case falls into the exception to the no-standing rule established in these cases. As the Supreme Court explained in *Shaw*, *supra*, 509 U.S. 630, the constitutional interest at stake in an equal-protection challenge to race-related changes in a voting system arises from the fact that changes of that kind may "reinforce … racial stereotypes and threaten … to undermine our system of representative democracy by signaling to elected officials that they represent a particular racial group rather than their constituency as a whole." (*Id.* at p. 650.) Individual voters are entitled to assert this interest through litigation testing state laws, as they did in *Shaw*. The city's assertion of equal protection rights in this case is best understood as a means of asserting those rights on behalf of its citizens.

The requirements of third-party standing are satisfied here. First, the relationship between the city and individual citizens or voters is of the appropriate kind. The city's vigorous litigation up to this point has shown its zealousness in asserting the claimed right. Plaintiffs' complaint has informed us that city voters rejected district-based elections by a large margin in a referendum in 2001, so the city likely is acting with substantial constituent support for its position. A cross-complaint filed by the individual

defendants, seeking a judgment declaring the CVRA unconstitutional, shows that at least those individuals want to have the city pursue the matter on their behalf. Finally, the claimed equal-protection interest of individual citizens is "inextricably bound up" (*Singleton v. Wulff, supra*, 428 U.S. at p. 114) with the city's interest in continuing its present election system.

Second, there are genuine obstacles to citizens asserting their own rights. It is not clear how a lawsuit could be structured to enable citizens to mount the facial challenge made by the city. Prior to any change in the city's voting system, whom would these citizens sue, and for what? Making citizens wait until after some remedy is ordered or adopted would involve other obstacles, including the possibility that elections could be held under the remedy before the litigation is concluded. Even after adoption of a change in the system, an individual voter's stake in the matter would be small in relation to the economic burdens of litigation, and this could be a substantial deterrent. (See *Powers v. Ohio* (1991) 499 U.S. 400, 415 [venire person dismissed in criminal case for racially discriminatory reason has little incentive to pursue costly litigation to vindicate his or her equal protection rights, so criminal defendant must be permitted to assert those rights].) While these obstacles would not make it impossible for individual voters to sue the city if some alteration in its voting system is adopted, a showing of impossibility is not required. (See *Singleton v. Wulff, supra,* 428 U.S. at p. 116, fn. 6 [dis. opn. argued that third parties must face insuperable obstacles; maj. replied that "our cases do not go that far"].)

For these reasons, we reject plaintiffs' contention that defendants are not entitled to assert an equal protection challenge to the CVRA. The city is entitled to do so on behalf of its citizens.

II. Equal protection

A. Principles

We begin our examination of defendants' equal-protection claim with a brief review of the basic constitutional principles at issue. Federal and California equal-

protection standards are not the same for all purposes. (See *Warden v. State Bar* (1999) 21 Cal.4th 628, 652-653 (dis. opn. of Kennard, J.); *Butt v. State of California* (1992) 4 Cal.4th 668, 683, 685.) Here, however, the parties' briefs rely on federal case law and do not claim that any different standards apply to these facts under the state Constitution. We will, therefore, focus on principles developed in federal cases.

1. Suspect classifications, fundamental rights, strict scrutiny, and rational-basis review

A state's use of a classification is subject to strict scrutiny under the equal protection clause of the Fourteenth Amendment if it is a suspect classification or if it burdens a fundamental right. (*Plyler v. Doe* (1982) 457 U.S. 202, 216-218 & fns. 14 & 15.) Otherwise, the classification is subject only to rational-basis review. (*Vacco v. Quill* (1997) 521 U.S. 793, 799.) Race is a suspect classification (*Johnson v. California* (2005) 543 U.S. 499, 505 (*Johnson*)), and the right to vote is a fundamental right (*Kramer v. Union School District* (1969) 395 U.S. 621, 626-628) for equal protection purposes.

A law subject to strict scrutiny is upheld only if it is *narrowly tailored* to promote a *compelling* governmental interest. (*Johnson, supra*, 543 U.S. at p. 505.) Under rational-basis review, by contrast, a law need only bear a *rational relationship* to a *legitimate* governmental interest. (*Vacco v. Quill, supra*, 521 U.S. at p. 799.) (The third level of review—intermediate scrutiny, which applies to sex discrimination—is not at issue in this case.)

2. Facial invalidity standard

Defendants' challenge claims that the statute is facially invalid. In *United States v. Salerno* (1987) 481 U.S. 739, 745 (*Salerno*), the Supreme Court stated that "[a] facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." The court explained that the fact the federal Bail Reform Act, subject in that case to a substantive due-process challenge, "might operate

unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid, since we have not recognized an 'overbreadth' doctrine outside the limited context of the First Amendment." (*Ibid.*)

Defendants assert that the *Salerno* standard does not apply here because *Salerno* was not cited in certain cases involving affirmative action laws (see, e.g., *Richmond v. J. A. Croson Co.* (1989) 488 U.S. 469 [municipal ordinance establishing affirmative action program for city contracting]); laws creating specific election districts (see, e.g., *Shaw, supra,* 509 U.S. 630 [bizarrely shaped congressional district boundaries designed to create majority-Black districts]); and laws involving explicit use of racial segregation (see, e.g., *Johnson, supra*, 543 U.S. 499 [racial segregation of prisoners during initial evaluation]). Various justices of the Supreme Court, not amounting in any instance to a majority, have taken differing positions on the scope and applicability of the *Salerno* doctrine. (*Chicago v. Morales* (1999) 527 U.S. 41, 55, fn. 22 (conc. opn. of Stevens, J., joined by Souter, J. and Ginsburg, J.) [*Salerno* formulation is dictum and need not be followed, especially by state courts]; *id*. at pp. 77-80 & fns. 1-3 (dis. opn. of Scalia, J.) [*Salerno* states the correct standard for all cases but First Amendment overbreadth challenges].)

The only cases of which we are aware where it has been definitively stated that a facial challenge could succeed on a showing falling short of the *Salerno* standard, however, are those where the overbreadth of a law violated the First Amendment by chilling protected speech (*Salerno, supra,* 481 U.S. at p. 745) and where a law imposed an undue burden on the right to have an abortion (*Planned Parenthood of Southern Arizona v. Lawall* (9th Cir. 1999) 180 F.3d 1022, 1026 [asserting that in *Planned Parenthood of Southern PA v. Casey* (1992) 505 U.S. 833, U.S. Supreme Court overruled *Salerno* in context of facial challenges to abortion restrictions]). Outside these areas, California courts apply a *Salerno*-type approach to facial constitutional challenges in general. (See, e.g., *East Bay Asian Local Development Corp. v. State of California*

(2000) 24 Cal.4th 693, 709; *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 338; *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084.) We agree there is no warrant for refusing to apply *Salerno* outside the First Amendment overbreadth and abortion areas until a majority of the Supreme Court gives clear direction to do so. (*Hotel & Motel Ass'n of Oakland v. City of Oakland* (9th Cir. 2003) 344 F.3d 959, 972.) Consequently, we hold that the *Salerno* standard for facial invalidation applies here, and defendants can succeed in their facial challenge only by showing that the CVRA can be validly applied under no circumstances.

B. Analysis

With this background, the two basic reasons for rejecting defendants' challenge to the CVRA are easy to state. First, because the statute is nondiscriminatory, it is subject only to rational-basis review, not strict scrutiny; and it passes rational-basis review. Second, although the *Shaw*-*Vera* line of cases reveals the potential for unconstitutional applications of the statute, that potential does not show there can be no valid applications and therefore cannot establish that the statute is facially invalid. We consider these two reasons in turn.

1. The CVRA is nondiscriminatory, not subject to strict scrutiny, and passes rational basis review

Like the FVRA, the CVRA involves race and voting, but, also like the FVRA, it does not allocate benefits or burdens on the basis of race or any other suspect classification and does not burden anyone's right to vote. Like the FVRA, the CVRA confers on voters of any race a right to sue for an appropriate alteration in voting conditions when racial vote dilution exists.

The CVRA vote-dilution cause of action differs from the FVRA version in important ways, specifically, that the need to prove the possibility of creating a geographically compact majority-minority district is eliminated. The differences do not introduce a racial classification or a burden on the right to vote, however. Therefore, the

facial terms of the statute are not subject to strict scrutiny. Only rational-basis review applies, and the CVRA readily passes it. Curing vote dilution is a legitimate government interest and creation of a private right of action like that in the CVRA is rationally related to it. Major portions of defendants' briefs are devoted to showing that the CVRA fails strict scrutiny. We need not address these points because strict scrutiny does not apply.

a. The CVRA is not a law that imposes a racial classification on individuals and then uses it to confer a burden or benefit on all

Defendants argue that strict scrutiny applies here because it applies to any statute that refers to race or calls for any sort of race-conscious remedy or other action, even if it does not affect different races in different ways. They rely on cases like *Loving v. Virginia* (1967) 388 U.S. 1 (*Loving*) and *Johnson, supra*, 543 U.S. 499, which applied strict scrutiny to state laws that employed racial classifications but burdened persons of different races equally. In *Loving*, the Supreme Court invalidated a state law forbidding persons of different races to marry one another. The law was subject to strict scrutiny even though its burden was generally distributed. (*Loving, supra*, 388 U.S. at p. 8.) In *Johnson*, a policy of segregating state prison inmates by race during an initial evaluation period was held to be subject to strict scrutiny even though all prisoners were equally affected by it. (*Johnson, supra*, 543 U.S. at p. 506.)

What those cases hold is that a law classifying individuals by race and then imposing some kind of burden or benefit on the basis of the classification is subject to strict scrutiny even if persons of all races bear the burden or receive the benefit equally. In *Johnson*, for instance, the court rejected the state's argument that "strict scrutiny should not apply because all prisoners are 'equally' segregated." (*Johnson, supra*, 543 U.S. at p. 506.) It stated that this argument "ignores our repeated command that 'racial classifications receive close scrutiny even when they may be said to burden or benefit the races equally.'" (*Ibid.*)

What the cases do not hold is that a statute is automatically subject to strict scrutiny because it involves race consciousness even though it does not discriminate among individuals by race and does not impose any burden or confer any benefit on any particular racial group or groups. The CVRA confers on members of any racial group a cause of action to seek redress for a race-based harm, vote dilution. The creation of that kind of liability does not constitute the imposition of a burden or conferral of a benefit on the basis of a racial classification. If the CVRA were subject to strict scrutiny because of its reference to race, so would every law be that creates liability for race-based harm, including the FVRA, the federal Civil Rights Act, and California's Fair Employment and Housing Act.

Defendants argue that these antidiscrimination laws are, in fact, subject to strict scrutiny, but cite no cases subjecting them to it. Lacking that authority, they instead cite lower court cases subjecting federal antidiscrimination laws to analysis under the congruence and proportionality test of *City of Boerne v. Flores* (1997) 521 U.S. 507 (*Boerne*), which they describe as "obviously very similar to strict scrutiny." For example, the Court of Appeals subjected a provision of Title VII of the federal Civil Rights Act to a *Boerne* analysis in *In re Employment Discrimination Litigation* (11th Cir. 1999) 198 F.3d 1305, 1319-1324.

This argument does not work. The *Boerne* test has nothing to do with strict scrutiny. It has nothing in particular to do with the equal protection clause. It is about the source of constitutional power for Congress's enactment of certain types of statutes, not the constitutional right of individuals to be free from discrimination.

Briefly, the question presented in *Boerne* was whether Congress had authority under section 5 of the Fourteenth Amendment (the amendment's enforcement clause) to enact by statute a standard for protecting the free exercise of religion that was far more stringent than the standard the Supreme Court established under the free exercise clause of the First Amendment in an earlier case. Congress claimed the action was within its

power under section 5 of the Fourteenth Amendment to enforce the due process clause of the Fourteenth Amendment, which in turn incorporated the First Amendment and its free exercise clause. (*Boerne, supra*, 521 U.S. at pp. 512-517.) The court held that Congress lacked this authority because the standard Congress adopted was not congruent and proportional to the scope of the First Amendment right as the court itself had earlier defined it. (*Id*. at pp. 519-520, 532.)

From this summary, it can be seen that the fact that an antidiscrimination law like Title VII has been subjected by some courts to a *Boerne* analysis does not even remotely imply that laws of that kind violate individuals' rights against discrimination unless they pass strict scrutiny. Defendants go so far as to imply that the only reason strict scrutiny has never been applied to federal antidiscrimination laws is that the *Boerne* test applies to those laws instead; strict scrutiny is the test appropriate for state legislation while *Boerne* applies in federal law. This cannot be true. Strict scrutiny applies to all racially discriminatory laws. It does not apply to antidiscrimination laws because, like CVRA, they are not racially discriminatory.

Defendants argue that the "sky will not fall" if strict scrutiny is applied to antidiscrimination laws. It will not fall because those laws, unlike the CVRA, generally impose liability only upon a showing of intentional discrimination, and for that reason the laws would likely be upheld under strict scrutiny. This argument collapses as soon as it is applied to the FVRA. As noted above, section 2 of the FVRA does not require a showing of intentional discrimination. No court has ever suggested, to our knowledge, that strict scrutiny applies to section 2 of the FVRA and that it would fail for this reason.

Also unhelpful to defendants is the argument that *Shaw* and *Vera* stand for the proposition that strict scrutiny can be triggered by an anti-vote-dilution law even though it does not burden the rights of the White plaintiffs. Responding to Justice Souter's dissenting view in *Shaw* that race-based districting should not trigger strict scrutiny unless another race's voting strength is harmed, the *Shaw* majority explained that

"reapportionment legislation that cannot be understood as anything other than an effort to classify and separate voters by race injures voters in other ways. It reinforces racial stereotypes and threatens to undermine our system of representative democracy by signaling to elected officials that they represent a particular racial group rather than their constituency as a whole." (*Shaw, supra*, 509 U.S. at p. 650.) Similarly, in *Vera*, the plurality responded to a dissenting comment by Justice Souter—that race-based, dilution-combating districts do not harm any class of voters—by referring to "harmful and divisive stereotypes" that the use of race may foster even if it does not involve any voting-related harm to the plaintiffs. (*Vera, supra,* 517 U.S. at pp. 983-984.)

Contrary to defendants' view, these statements do not mean the CVRA is subject to strict scrutiny even though it does not confer benefits or impose burdens on any particular racial group and does not burden anyone's right to vote. They only mean that districting plans that use race as the predominant line-drawing factor—and therefore amount to segregation of voters by race—are subject to strict scrutiny. A court might wish to impose that kind of districting plan as a CVRA remedy. Even so, as we will explain, applications of the statute not involving that type of remedy are readily conceivable, so this potential problem is not a basis for a *facial* challenge.

b. The CVRA does not deny anyone standing on the basis of membership in any group

So far we have only addressed the main thrust of defendants' argument in support of applying strict scrutiny: that the statute's reference to race is itself a racial classification. We turn next to a series of related minor arguments. The first of these is based on the trial court's view that the statute is racially discriminatory on its face because its definition of "protected class" excludes some racial or ethnic groups. The CVRA defines a protected class as persons "who are members of a race, color or language minority group, as this class is referenced and defined in the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.)." (§ 14026, subd. (d).)

The trial court took issue with the inclusion of "language minority group" in this definition. Its objection is based on an error made in reviewing the federal standard that the CVRA incorporates. Its order quoted Title 42 United States Code section 1973b(f)(1), a provision stating congressional findings on the deleterious effects of English-only elections. The provision states that "voting discrimination against citizens of language minorities is pervasive" and that "[s]uch minority citizens are from environments in which the dominant language is other than English." The trial court believed this was the federal statutory definition of "language minority group" to which the CVRA refers. On that basis, it concluded that the CVRA denies standing to English speakers. Then the trial court quoted 28 Code of Federal Regulations part 51.2 (2003), which states that "language minority group" means "persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage." The court believed this further restricted the meaning of the term, so as to exclude, for example, speakers of Polish or Portuguese. These restrictions, the court ruled, denied standing to ethnic groups who speak the purportedly excluded languages. That, in turn, triggered strict scrutiny, which the statute failed.

In reality, the regulation the court referred to merely restated the *actual* federal statutory definition of "language minority group," which is found at Title 42 United States Code section 1973l(c)(3): "The term 'language minorities' or 'language minority group' means persons who are American Indian, Asian American, Alaskan Natives or of Spanish heritage." This provision uses and defines the precise phrase ("language minority group") contained in the CVRA. The only logical conclusion is that this is the definition the Legislature intended to incorporate. There is no reason to think it also meant to include the language from Title 42 United States Code section 1973b(f)(1) about "environments in which the dominant language is other than English," which does not use the phrase "language minority group" and which states a congressional finding, not a definition.

Consequently, despite its name, the classification "language minority group" does not define any group in terms of language, and the trial court relied on a mistaken understanding of the statute. The term simply identifies four specific racial or ethnic groups as belonging to a protected class. The definition refers to these as racial or ethnic groups ("persons who are American Indian," etc.), not in terms of their language. As plaintiffs explain, the category "language minority group" was added to the FVRA in 1975 for the purpose of ensuring that courts would not mistakenly exclude American Indians, Asian Americans, Alaskan Natives, and Hispanics from coverage under the statute, even though each group was already included in the category "race." (See Sen.Rep. No. 94-925, 1st Sess. (1975), reprinted in 1975 U.S. Code Cong. & Admin. News, pp. 774, 814 ["The Department of Justice and the United States Commission on Civil Rights have both expressed the position that all persons defined in this title as 'language minorities' are members of a 'race or color' group …."].)

The four language minority groups are, therefore, on the same footing as Whites, persons of Polish or Portuguese ancestry, or any other racial or ethnic group. In a variety of contexts, the Supreme Court has held that the term "race" is expansive and covers all ethnic and racial groups. (*Rice v. Cayetano* (2000) 528 U.S. 495, 512 [15th Amendment's prohibition on abridgment of right to vote on account of race "grants protection to all persons, not just members of a particular race"]; *Saint Francis College v. Al-Khazraji* (1987) 481 U.S. 604, 610, 613 [prohibition of racial discrimination in 42 U.S.C. § 1981 protects all persons from discrimination based on their "ancestry or ethnic characteristics"; court is "quite sure" White people are protected]; *McDonald v. Santa Fe Trail Transp. Co.* (1976) 427 U.S. 273, 280 [prohibition on discrimination because of race in Title VII applies to Whites and non-Whites alike].) The inclusion of "language minority groups," as defined by the statute, only reinforces the proposition that American Indians, Asian Americans, Alaskan Natives, and Hispanics are among the racial or ethnic groups that can constitute a protected class. It does not deny standing to anyone.

The trial court cited *Polish American Congress v. City of Chicago* (N.D.Ill. 2002) 211 F.Supp.2d 1098 for the proposition that "the federal courts have interpreted the definition of protected class under 42 U.S.C. [section] 1973 so as to exclude Polish speakers from those having standing to sue," but that is not what that case held. The court simply stated that Polish-Americans were not one of the four groups included in the statutory definition of "language minority group." (*Polish American Congress v. City of Chicago, supra,* at p. 1107.) The court did not consider whether Polish-Americans had standing under the FVRA as a "race" and the plaintiffs apparently did not argue that they did. A case is not authority for a proposition it did not consider. (*City and County of San Francisco v. Sainez* (2000) 77 Cal.App.4th 1302, 1318.)

The trial court's view would likely justify strict scrutiny and facial invalidation if it represented a correct reading of the statute, but it does not. Even if it were a *plausible* reading of the statute, it would be both possible and necessary under the constitutional avoidance doctrine to construe it as we have: All persons have standing under the CVRA to sue for race-based vote dilution because all persons are members of a race.

c. The CVRA is not an affirmative action law

Defendants characterize the CVRA as an affirmative action statute and rely on affirmative action cases to argue that it is subject to strict scrutiny. The CVRA is not an affirmative action statute because, unlike affirmative action laws the Supreme Court has struck down, it does not identify any races for conferral of preferences. In *Gratz v. Bollinger* (2003) 539 U.S. 244, for instance, the Supreme Court applied strict scrutiny and struck down a university's affirmative action admission program. The program conferred 20 points, on a scale of 1 to 150, on applicants belonging to a specified set of racial groups. This advantage could increase a low waitlist score to an automatic admit score. (*Id.* at pp. 251, 255). In *Richmond v. J. A. Croson Co., supra*, 488 U.S. 469, the court applied strict scrutiny and struck down a city's program of affirmative action in government contracting. The program commanded that 30 percent of the money spent on

city building contracts be paid to subcontracting firms owned by members of a specified set of racial groups. (*Id.* at pp. 477-478, 511.) The CVRA does nothing similar. We cannot subject the CVRA to strict scrutiny on the ground that affirmative action programs are subject to strict scrutiny.

d. The CVRA does not burden the fundamental right to vote

As we have said, strict scrutiny under the equal protection clause can be triggered by a classification used to burden a fundamental right, and voting is treated as a fundamental right in this context. Separately from their racial discrimination argument, defendants contend that the CVRA is subject to strict scrutiny because it "impos[es] liability on the basis of voting …." This is not correct. It is true that the CVRA requires a showing of racially polarized voting as an element of liability, but that does not mean any person or group of people is held liable for voting or for how they voted. The liability is that of the government entity that maintains the voting system, and it is imposed because of dilution of the plaintiffs' votes.

A prime example of a violation of the equal protection clause through a burden on the right to vote is malapportioned districts, i.e., those that violate the one-person, one-vote rule by having unequal populations. (*Reynolds v. Sims* (1964) 377 U.S. 533, 568.) The CVRA involves nothing similar. Cases reviewing districts created predominantly on the basis of race presumably are another example, even though the opinions in those cases focus on the suspect racial classification rather than on the fundamental right to vote. However, the possibility of some court imposing an unconstitutional remedy under the CVRA in some cases is not, as we have said, a basis for *facial* invalidation.

e. The CVRA does not burden any First Amendment right

Defendants also argue that the CVRA is subject to strict scrutiny because it burdens fundamental rights protected by the First Amendment:

> "Voter preferences that underlie racially polarized voting, moreover, are political views protected against infringement by the First Amendment. The votes themselves are expressions of political preferences about

> candidates and ballot measures. Bloc voting, then, represents a coalition of political interests that lie close to the core of the freedom of political association."

Defendants may be correct in arguing that racially polarized voting constitutes political expression protected by the First Amendment. But the CVRA does not burden anyone's right to engage in racially polarized voting. It only makes racially polarized voting part of the predicate for a government entity's liability for racial vote dilution. In doing so, it is comparable to the FVRA. The *effect* of racially polarized voting—election of monoracial city councils and the like—may be and is intended to be reduced by the application of the CVRA. But no voter has a right to a voting system that chronically and systematically brings about that effect. We do not understand defendants to argue the contrary.

f. The fact that the CVRA addresses a racial issue does not show that the Legislature acted with an invidious purpose

A facially neutral law is subject to strict scrutiny if it was adopted for a racially discriminatory purpose. (*Miller v. Johnson* (1995) 515 U.S. 900, 913.) Defendants argue that, even if the CVRA is facially neutral, it is subject to strict scrutiny because it was "enacted solely for racial purposes, i.e., to remedy racial bloc voting in at-large" voting systems. Defendants contend that plaintiffs admit this by "assert[ing] that the [CVRA] is an antidiscrimination statute intended to remedy" racially polarized voting.

This is incorrect for essentially the same reason that defendants are mistaken in claiming that the statute is subject to strict scrutiny because it contains a facial reference to race. A legislature's intent to remedy a race-related harm constitutes a racially discriminatory purpose no more than its use of the word "race" in an antidiscrimination statute renders the statute racially discriminatory. An intent to remedy a race-related harm may well be combined with an improper use of race, as in an affirmative action program that uses race in an improper way. The CVRA does not, however, have the

latter component. Upon a finding of liability, it calls only for "appropriate remedies" (§ 14029), not for any particular, let alone any improper, use of race.

g. Differences between the CVRA and the FVRA do not automatically render the CVRA unconstitutional

Defendants devote almost half of the argument portion of their brief to attempting to show that the CVRA contains "dramatic departures from the FVRA" which amount to an "extraordinary expansion of federal law." To the extent that this may be intended as an independent argument that the CVRA is unconstitutional, it is without merit. There is no rule that a state legislature can never extend civil rights beyond what Congress has provided. State law may, of course, be preempted by federal law if inconsistent with it, but defendants have not made a preemption argument. To the extent that this discussion may be intended to make the narrower point that the CVRA is not narrowly tailored to effectuate a compelling government interest—i.e., that it fails strict scrutiny—we will disregard it, since we hold that strict scrutiny does not apply.

2. Potential unconstitutional applications cannot show facial invalidity

Defendants' arguments are partially based on Supreme Court cases that struck down specific redistricting plans drawn up partly to avoid racial vote dilution that might violate section 2 of the FVRA. Because those cases only address specific actions taken by states to cure racial vote dilution (i.e., the creation of particular districts), their impact here relates only to the validity of specific applications of the CVRA—applications that at this point are hypothetical. Under the facial-invalidity standard set forth in *Salerno, supra*, 481 U.S. at page 745, therefore, the cases cannot establish that the CVRA is facially invalid. (To be sure, defendants contend that none of their arguments are addressed to mere remedies issues and that all are instead addressed to the criteria for

liability under the CVRA and prove that those criteria are subject to strict scrutiny. As explained earlier, they are not subject to strict scrutiny.)

Shaw, supra, 509 U.S. 630 was the first in this line of cases. It held, as mentioned earlier, that a redistricting plan was subject to strict scrutiny because it could not rationally be understood as anything but an effort to separate voters on the basis of race. The plurality opinion in *Vera* made a similar point. There is no doubt that any district-based remedy the trial court might impose using race as a factor in drawing district lines would be subject to analysis under the *Shaw*-*Vera* line of cases. In reviewing a district-based remedy, it would be necessary to determine whether race was the predominant factor used in drawing the district lines. If it was, the plan would be subject to strict scrutiny.

It is equally apparent that this does not mean the CVRA must pass strict scrutiny in order to withstand a facial challenge. Whether one potential remedy under a statute would be subject to strict scrutiny if imposed is not the test for facial invalidity of the statute. Defendants' argument, to be successful, would have to be not only that unconstitutional remedies are consistent with the CVRA, but that they are mandated by it. They are not.

III. Gift of public funds

Although no fee motion was ever made, the trial court found the CVRA's attorney-fee provision to be invalid. That provision states as follows:

> "In any action to enforce Section 14027 and Section 14028, the court shall allow the prevailing plaintiff party, other than the state or political subdivision thereof, a reasonable attorney's fee consistent with the standards established in Serrano v. Priest (1977) 20 Cal.3d 25, 48-49, and litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation." (§ 14030.)

Relying on *Jordan v. Department of Motor Vehicles* (2002) 100 Cal.App.4th 431, 450-451 (*Jordan*), the trial court ruled that this section violated article XVI, section 6, of

the California Constitution, which forbids the Legislature to "make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation …." The court interpreted *Jordan* to mean that "[a] lawsuit against a public entity which results in no change whatever in the status quo ante serves no public purpose, and does not constitute a valid claim against the public for attorney fee and cost purposes."

The court then applied this purported rule to a hypothetical:

> "If a California city has at large city council election plus one (1) voter of Alaskan native ancestry who repeatedly runs for the council and always gets just one vote (his own) and files suit under the California Voting Rights Act, he would be a prevailing party under the Act though no remedy is possible, and so be entitled to attorney fees and expenses. Defendants contend, and Plaintiffs do not dispute, that a local government cannot be required to carve an electoral district for an impossibly small number of voters (such as this hypothetical's one Alaskan native). [Citations.] While it is doubtful this hypothetical city could be sued every day under the Act in this situation, it could probably be sued every election cycle, and have to pay attorney fees over and over for a situation it cannot remedy or avoid."

The court violated two rules of constitutional decisionmaking in invalidating the section. First, a court should not decide constitutional questions unless required to do so. (*People v. Pantoja, supra*, 122 Cal.App.4th at p. 10.) Here, no party moved for attorney fees, so the validity of the fee statute was not at issue. The court should not have addressed or answered the question.

Second, the court's ability to think of a single hypothetical in which the application of a statute would violate a constitutional provision is not grounds for facial invalidation. Facial invalidation is justified only where the statute could be validly applied under *no* circumstances. (*East Bay Asian Local Development Corp. v. State of California, supra*, 24 Cal.4th at p. 709.) Circumstances in which the objection the court raises would not be present are easy to imagine. If, on remand, the court finds liability *in this case* but is unable to formulate a permissible remedy *in this case*, then the court will have an opportunity to decide whether the application of section 14030 would be

unconstitutional *in this case*. It has not had that opportunity yet. We express no opinion here on whether a fee award would be barred under those circumstances since doing so is premature.

IV. Issues on remand

The parties have raised several issues in this appeal that the trial court never decided and that we need not decide now. We repeat them here for convenience:

- What elements must be proved to establish liability under the CVRA?
- Is the court precluded from employing crossover or coalition districts (i.e., districts in which the plaintiffs' protected class does not comprise a majority of voters) as a remedy?
- Is the court precluded from employing any alternative at-large voting system as a remedy?
- Does the particular remedy under contemplation by the court, if any, conform to the Supreme Court's vote-dilution-remedy cases?

The court's answers to these questions will determine the scope of relief, if any, available to plaintiffs. The logical limit in one direction would be a conclusion that plaintiffs can obtain under the CVRA only the same relief that they could have obtained under the FVRA. The logical limit in the other direction would be the conclusion that, upon proof of racially polarized voting, plaintiffs will be entitled to the most appropriate remedy, among the remedies we have discussed, that does not result in unconstitutionally drawn districts under the Supreme Court's rulings.

DISPOSTION

The judgment is reversed and the case remanded to the trial court for further proceedings. Plaintiffs shall recover their costs on appeal.

Defendants' motion to strike, filed February 10, 2006, is denied. The request for leave to submit supplemental briefing included in the motion to strike is granted and the supplemental brief incorporated in the motion is deemed filed.

The following requests are granted: Motion of Appellants Requesting Judicial Notice (filed September 15, 2005); Supplemental Motion of Appellants Requesting Judicial Notice (filed January 31, 2006); Second Motion of Respondents Requesting Judicial Notice (filed February 6, 2006); Request for Judicial Notice contained in defendants' Answer to Brief of Amici Curiae Common Cause and FairVote (filed March 22, 2006); Third Motion of Respondents Requesting Judicial Notice (filed July 20, 2006).

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Wiseman, J.

WE CONCUR:

_____
Harris, Acting P. J.

_____
Cornell, J.

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Quiet Revolution in California Local Government Gains Momentum

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A low-profile revolution in local government is happening this November as twenty-one California cities hold their first by-district city council elections. Prior to the 2002 passage of the California Voting Rights Act, only twenty-nine of California's nearly 500 cities held by-district elections: twenty-seven in purely by-district elections, and Downey and Oakland electing one councilmember "at large" (or citywide) and the rest of the council by-district (in Downey and Oakland the citywide councilmember is not the mayor). Between passage of the Act in 2002 and June of 2016, the CVRA prompted nine more cities to hold their first by-district elections. This November the total number of cities using by-district elections is jumping to fifty-nine.

From statehood in 1850 to passage of CVRA in 2002, all but the very largest cities in California tended to use at-large council election systems. In the fourteen short years since CVRA's passage, the number of cities using by-district elections has more than doubled.

This quiet tectonic shift in local government is accelerating. In eight more cities the voters are deciding in November 2016 whether to make the change; three other cities already made the change and their district elections will begin in 2018; in one city voters will decide in 2018 whether to make the change; and three cities currently are actively working toward changing to by-district elections for 2017 or 2018. If voters approve those changes or the councils follow through on their announced intentions to change, the number of cities electing by-district will increase from twenty-nine before CVRA to at least seventy-four by 2018 - an increase of 155 percent.

The California Voting Rights Act was written to promote the use of by-district elections to encourage the election of candidates preferred by previously "under-represented" voters such as Latinos and Asian-Americans. The law was slow to have effect. Signed by Governor Davis in 2002, it was almost immediately suspended by a superior court ruling that the law was unconstitutional. The law was then restored in a 2006 appeals court ruling. The shift to by-district city council elections began to gain momentum after Modesto agreed to a $3 million settlement in 2008, and accelerated after Palmdale agreed to a $4.5 million settlement in 2015.

This report presents the preliminary findings of a long-term Rose Institute research project considering the effects of the California Voting Rights Act. Future research plans include looking at the cities currently making the change to by-district elections; looking at the over 135 school districts that have made the change in election systems; reviewing the Community College and Special District jurisdictions that have made the change; expanding our review to include changes in the number of Asian-American and African-American candidates elected; comparing the changes in the newly by-district cities to those in cities staying at-large or already in districts; and studying what characteristics, demographics or dynamics cause some jurisdictions to see significant gains in Latino representation after the change, while others do not. For more information on the project, contact Douglas Johnson or Justin Levitt at the Rose Institute.

Overall, the move to by-district elections has increased the number of Latinos elected to city councils, but that change has been driven by significant gains in a few cities (such as Sanger and Chula Vista) that offset a lack of any increase in others (such as Escondido and Wildomar).

Any analysis of municipal elections in California is challenging due to the independence of the state's nearly 500 cities and the lack of a certified central repository of municipal election results. Our research is indebted to the Center for California Studies at Sacramento State University for its efforts to compile a comprehensive list of local election results. Rose Institute researchers have supplemented the Center's data with reviews of County Registrar and City Clerk online records, and have added data from National Demographics Corporation. The database remains a work in progress and we encourage anyone with additional information to contact the Rose Institute.

Identifying ethnicities of elected officials is a less than perfect art, in no small part because the definition of "Latino" or "Hispanic" is not universally agreed upon and, for that and other reasons, some individuals change their self-identification over time. To identify Latino officeholders, we relied the listing of Latino officeholders compiled each year by the National Association of

Latino Elected and Appointed Officials (NALEO), supplemented by news reports and online biographies of the officeholders. To identify Latino candidates, we relied on news reports and online biographies of those candidates.

This Rose Institute initial analysis reviews ten cities: nine that have held at least one election by district since CVRA prompted them to change their election system, and Wildomar, which is holding its first election in November, but it is included since both seats are uncontested and, thus, already known. This initial review identifies which cities have seen increases in Latino representation.

For each city, the numbers and the citywide Latino percentage of Citizens of Voting Age (CVAP) in the city is provided. We look at CVAP because the courts in Voting Rights Act litigation tend to use the CVAP counts from the Census Bureau as the best available measure of eligible voters. Follow up research will narrow that data to analyze the Latino (and other "protected class" population) percentages of CVAP in each district, but we have not yet compiled that data for all the cities.

Some of the advantages of by-district elections are that they make it easier for candidates to run and to get to know voters. Because there are fewer voters in a district than city at large, the cost of putting a candidate statement in the sample ballot decreases significantly and the pool of people who can run against a given candidate is restricted to the others who reside in the district. These advantages of shrinking the voter pool for a given election also come with a risk: with fewer people eligible to run, there is an increase in uncontested elections. In the nine cities that have held new district elections, this review has identified 58 district seats up for election over 22 election cycles (including those held this November in those nine cities). Of those 58 contests, 47 were contested and 11 (19 percent) were uncontested (meaning no more than one candidate ran for that district). It is notable, however, that 8 of the 11 uncontested elections were in the City of Madera. In the eight cities other than Madera, 48 seats have been up for election with 45 contested and 3 (6 percent) uncontested. Among those jurisdictions that changed to by-district elections and that are holding election this November, our review identified 57 district seats up for election, with 47 contested and 10 (18 percent) uncontested.

Another significant effect of the California Voting Rights Act is the financial cost it has imposed on cities--many challenges so far have resulted in settlements or legal awards over one million dollars. Arguably, these financial risks were a major reason some (and likely most) of the cities made the change to by-district elections, independent of actual or perceived violations of voting rights. The influence of the Act's penalty provisions on city governments will be part of the Rose Institute's ongoing research.

In summary, 2016 saw a significant expansion in the number of cities changing their elections from at-large to by-district elections, and we expect that rate of change to accelerate in coming years. It is likely, but far from guaranteed, that the change in election systems will increase the number of Latinos elected, as most, but not all, cities changing previously have seen such increases. While acknowledging that determining the ethnicity of elected officials is difficult, we estimate that number of Latinos elected to city councils in nine cities that have held by-district elections (and the one city where both 2016 districts are uncontested) increased the number of Latinos councilmembers in seven of the ten cities. The total number of Latinos on those ten city councils increased from seven after the last at-large election to eighteen elected by district so far.

The tables below display the CVAP data compiled from the 2010 to 2014 American Community Survey Special Tabulation data, which we have disaggregated to the Census Block level of geography and then aggregated by City.

Table 1: Changes in Latinos Elected in Ten Changed Cities With Election Results
(Listed by Latino % of Citizen Voting Age Population)

City	Population	LatinoCVAP	Latinos_Pre_Change	Latinos_Post_Change	Elections Held	Seats Up	Contested	uncontested
Sanger	24,270	74%	1	4	3 + 2016	9	8	1
Whittier	85,331	60%	0	1	1	2	1	1
Madera	61,416	60%	0	2	2 + 2016	10	2	8
Chula Vista	243,916	51%	1	3	1 + 2016	2	2	0
Compton	96,455	48%	1	2	2	7	7	0
Tulare	59,278	43%	0	1 (+2?)	2 + 2016	8	7	1
Escondido	143,911	30%	1	1	1 + 2016	4	4	0
Wildomar	32,176	29%	1	1	2016	2	0	1
Modesto	201,165	26%	1	1	4	13	13	0
Santa Barbara	88,410	24%	1	2	1	3	3	0

Table 2: Twenty-One Cities Holding Their First District Elections in 2016

Notes: In King City, one Latino is running unopposed, another district has two candidates but both are Latino, and a Latino is running against a non-Latino in the third district that is contested this year. In Turlock, only Latino candidates are running in one district, and a Latino is running against a non-Latino in another district that is up for election this year. Wildomar is in this table because its first election is in 2016, though it is also in Table 1 because both seats are uncontested so the results are already known.

City	Population	LatinoCVAP	Latinos_Pre_Change	Latinos_Post_Change	Seats Up	Contested	Uncontested
King City	12,874	79%	0	2 or 3	3	2	1
Los Banos	35,972	55%	0	Up to 2	2	2	0
Chino	77,983	48%	0	0	2	0	2
Palmdale	152,750	46%	2	Up to 3	4	4	0
Patterson	20,413	45%	1	Up to 1	2	1	1
Riverbank	22,678	44%	3	1	2	1	1
Visalia	124,442	37%	0	0	2	2	0
Merced	78,958	37%	3	Up to 2	3	3	0
Highland	53,104	36%	0	Up to 2	4	4	0
Eastvale	53,683	36%	0	Up to 1	3	3	0
Anaheim	336,265	35%	1	Up to 4	4	4	0
Woodland	55,468	35%	1	Up to 2	3	3	0
Buena Park	80,530	29%	0	Up to 1	2	1	1
Wildomar	32,176	29%	1	1	2	0	1
Turlock	68,549	27%	1	0	2	2	0
Hemet	78,657	27%	0	Up to 1	3	3	0
Dixon	18,351	27%	0	Up to 1	2	2	0
Banning	29,603	26%	0	1	3	1	2
Garden Grove	170,883	24%	0	Up to 2	4	4	0
Yucaipa	51,367	23%	0	0	3	3	0
San Juan Capistrano	34,593	19%	1	Up to 1	2	2	0

Table 3: Eight Cities Voting in 2016 on Whether to Change to By-District Elections

City	Population	LatinoCVAP	Wht.CVAP	Blk.CVAP	Asn.CVAP
Bellflower	76,616	44%	28%	16%	11%
Corona	152,374	33%	47%	6%	12%
Costa Mesa	109,960	21%	65%	2%	11%
El Cajon	99,478	22%	63%	7%	4%
Eureka	27,191	6%	80%	3%	4%
Fullerton	135,161	25%	48%	3%	22%
Placentia	50,533	26%	54%	2%	17%
Rancho Cucamonga	165,269	33%	47%	9%	10%

Table 4: Six Cities Already Working to Change to By-District Elections for 2017 or 2018

City	1stElection	Population	LatinoCVAP	Wht.CVAP	Blk.CVAP	Asn.CVAP
Ceres	2017	45,417	43%	45%	2%	7%
Hesperia	2018	90,173	39%	50%	7%	2%
La Mirada	2017	48,527	36%	42%	2%	18%
Upland	2018	73,732	31%	54%	6%	9%
Redlands	2018	68,747	24%	61%	6%	7%
San Marcos	2018	83,781	23%	63%	3%	10%

Table 5: Uncontested Elections So Far

City	Population	Latino_CVAP	Latinos_Pre_Change	Latinos_Post_Change	Elections Held	Seats Up	Contested	Uncontested
Madera	61,416	60%	0	2	2 + 2016	10	2	8
Sanger	24,270	74%	1	4	3 + 2016	9	8	1
Whittier	85,331	60%	0	1	1	2	1	1
Tulare	59,278	43%	0	1 (+2?)	2 + 2016	8	7	1
Chula Vista	243,916	51%	1	3	1 + 2016	2	2	0
Compton	96,455	48%	1	2	2	7	7	0
Escondido	143,911	30%	1	1	1 + 2016	4	4	0
Modesto	201,165	26%	1	1	4	13	13	0
Santa Barbara	88,410	24%	1	2	1	3	3	0

Table 6: Twenty-Seven Cities Holding By-District Elections Prior to Passage of CVRA

City	Population	Latino_CVAP	Wht_CVAP	Blk_CVAP	Asn_CVAP
Los Angeles	3,792,621	33%	41%	13%	13%
San Diego	1,307,402	21%	54%	7%	16%
San Jose	945,942	24%	37%	4%	33%
San Francisco	805,235	11%	48%	6%	32%
Fresno	494,665	37%	40%	9%	12%
Sacramento	466,488	20%	44%	15%	18%
Long Beach	462,257	29%	38%	16%	14%
Bakersfield	347,483	36%	47%	9%	6%
Riverside	303,871	39%	43%	8%	8%
San Bernardino	209,924	48%	27%	18%	5%
Moreno Valley	193,365	45%	26%	21%	7%
Salinas	150,441	56%	30%	3%	10%
Pomona	149,058	57%	20%	11%	11%
Pasadena	137,122	25%	47%	13%	15%
Berkeley	112,580	9%	61%	10%	19%
Inglewood	109,673	35%	5%	57%	2%
San Leandro	84,950	20%	32%	13%	32%
Menifee	77,519	25%	62%	7%	5%
Redondo Beach	66,748	14%	68%	3%	13%
Hanford	53,967	36%	53%	5%	5%
Colton	52,154	64%	20%	10%	5%
Watsonville	51,199	64%	29%	1%	5%
Hollister	34,928	58%	36%	2%	2%
Seal Beach	24,168	11%	78%	1%	10%
Dinuba	21,453	75%	21%	0%	3%
Parlier	14,494	93%	5%	1%	1%
Bradbury	1,048	16%	55%	3%	27%

THORNBURG, ATTORNEY GENERAL OF NORTH CAROLINA, ET AL. *v.* GINGLES ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA

No. 83-1968. Argued December 4, 1985—Decided June 30, 1986

In 1982, the North Carolina General Assembly enacted a legislative redistricting plan for the State's Senate and House of Representatives. Appellees, black citizens of North Carolina who are registered to vote, brought suit in Federal District Court, challenging one single-member district and six multimember districts on the ground, *inter alia*, that the redistricting plan impaired black citizens' ability to elect representatives of their choice in violation of § 2 of the Voting Rights Act of 1965. After appellees brought suit, but before trial, § 2 was amended, largely in response to *Mobile* v. *Bolden*, 446 U. S. 55, to make clear that a violation of § 2 could be proved by showing discriminatory effect alone, rather than having to show a discriminatory purpose, and to establish as the relevant legal standard the "results test." Section 2(a), as amended, prohibits a State or political subdivision from imposing any voting qualifications or prerequisites to voting, or any standards, practices, or procedures that result in the denial or abridgment of the right of any citizen to vote on account of race or color. Section 2(b), as amended, provides that § 2(a) is violated where the "totality of circumstances" reveals that "the political processes leading to nomination or election . . . are not equally open to participation by members of a [protected class] . . . in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice," and that the extent to which members of a protected class have been elected to office is one circumstance that may be considered. The District Court applied the "totality of circumstances" test set forth in § 2(b) and held that the redistricting plan violated § 2(a) because it resulted in the dilution of black citizens' votes in all of the disputed districts. Appellants, the Attorney General of North Carolina and others, took a direct appeal to this Court with respect to five of the multimember districts.

Held: The judgment is affirmed in part and reversed in part.

590 F. Supp. 345, affirmed in part and reversed in part.

JUSTICE BRENNAN delivered the opinion of the Court with respect to Parts I, II, III-A, III-B, IV-A, and V, concluding that:

1. Minority voters who contend that the multimember form of districting violates § 2 must prove that the use of a multimember electoral structure operates to minimize or cancel out their ability to elect their preferred candidates. While many or all of the factors listed in the Senate Report may be relevant to a claim of vote dilution through submergence in multimember districts, unless there is a conjunction of the following circumstances, the use of multimember districts generally will not impede the ability of minority voters to elect representatives of their choice. Stated succinctly, a bloc voting majority must *usually* be able to defeat candidates supported by a politically cohesive, geographically insular minority group. The relevance of the existence of racial bloc voting to a vote dilution claim is twofold: to ascertain whether minority group members constitute a politically cohesive unit and to determine whether whites vote sufficiently as a bloc usually to defeat the minority's preferred candidate. Thus, the question whether a given district experiences legally significant racial bloc voting requires discrete inquiries into minority and white voting practices. A showing that a significant number of minority group members usually vote for the same candidates is one way of proving the political cohesiveness necessary to a vote dilution claim, and consequently establishes minority bloc voting within the meaning of § 2. And, in general, a white bloc vote that normally will defeat the combined strength of minority support plus white "crossover" votes rises to the level of legally significant white bloc voting. Because loss of political power through vote dilution is distinct from the mere inability to win a particular election, a pattern of racial bloc voting that extends over a period of time is more probative of a claim that a district experiences significant polarization than are the results of a single election. In a district where elections are shown usually to be polarized, the fact that racially polarized voting is not present in one election or a few elections does not necessarily negate the conclusion that the district experiences legally significant bloc voting. Furthermore, the success of a minority candidate in a particular election does not necessarily prove that the district did not experience polarized voting in that election. Here, the District Court's approach, which tested data derived from three election years in each district in question, and which revealed that blacks strongly supported black candidates, while, to the black candidates' usual detriment, whites rarely did, satisfactorily addresses each facet of the proper standard for legally significant racial bloc voting. Pp. 52–61.

2. The language of § 2 and its legislative history plainly demonstrate that proof that some minority candidates have been elected does not foreclose a § 2 claim. Thus, the District Court did not err, as a matter of law, in refusing to treat the fact that some black candidates have

succeeded as dispositive of appellees' § 2 claims. Where multimember districting generally works to dilute the minority vote, it cannot be defended on the ground that it sporadically and serendipitously benefits minority voters. Pp. 74–76.

3. The clearly-erroneous test of Federal Rule of Civil Procedure 52(a) is the appropriate standard for appellate review of ultimate findings of vote dilution. As both amended § 2 and its legislative history make clear, in evaluating a statutory claim of vote dilution through districting, the trial court is to consider the "totality of circumstances" and to determine, based upon a practical evaluation of the past and present realities, whether the political process is equally open to minority voters. In this case, the District Court carefully considered the totality of the circumstances and found that in each district racially polarized voting; the legacy of official discrimination in voting matters, education, housing, employment, and health services; and the persistence of campaign appeals to racial prejudice acted in concert with the multimember districting scheme to impair the ability of geographically insular and politically cohesive groups of black voters to participate equally in the political process and to elect candidates of their choice. Pp. 77–79.

JUSTICE BRENNAN, joined by JUSTICE MARSHALL, JUSTICE BLACKMUN, and JUSTICE STEVENS, concluded in Part III–C that for purposes of § 2, the legal concept of racially polarized voting, as it relates to claims of vote dilution—that is, when it is used to prove that the minority group is politically cohesive and that white voters will usually be able to defeat the minority's preferred candidates—refers only to the existence of a correlation between the race of voters and the selection of certain candidates. Plaintiffs need not prove causation or intent in order to prove a prima facie case of racial bloc voting, and defendants may not rebut that case with evidence of causation or intent. Pp. 61–73.

JUSTICE BRENNAN, joined by JUSTICE WHITE, concluded in Part IV–B, that the District Court erred, as a matter of law, in ignoring the significance of the sustained success black voters have experienced in House District 23. The persistent proportional representation for black residents in that district in the last six elections is inconsistent with appellees' allegation that black voters' ability in that district to elect representatives of their choice is not equal to that enjoyed by the white majority. P. 77.

JUSTICE O'CONNOR, joined by THE CHIEF JUSTICE, JUSTICE POWELL, and JUSTICE REHNQUIST, concluded that:

1. Insofar as statistical evidence of divergent racial voting patterns is admitted solely to establish that the minority group is politically cohesive and to assess its prospects for electoral success, such a showing cannot be rebutted by evidence that the divergent voting patterns may

be explained by causes other than race. However, evidence of the reasons for divergent voting patterns can in some circumstances be relevant to the overall vote dilution inquiry, and there is no rule against consideration of all evidence concerning voting preferences other than statistical evidence of racial voting patterns. Pp. 100–101.

2. Consistent and sustained success by candidates preferred by minority voters is presumptively inconsistent with the existence of a § 2 violation. The District Court erred in assessing the extent of black electoral success in House District 39 and Senate District 22, as well as in House District 23. Except in House District 23, despite these errors the District Court's ultimate conclusion of vote dilution is not clearly erroneous. But in House District 23 appellees failed to establish a violation of § 2. Pp. 101–105.

BRENNAN, J., announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II, III–A, III–B, IV–A, and V, in which WHITE, MARSHALL, BLACKMUN, and STEVENS, JJ., joined, an opinion with respect to Part III–C, in which MARSHALL, BLACKMUN, and STEVENS, JJ., joined, and an opinion with respect to Part IV–B, in which WHITE, J., joined. WHITE, J., filed a concurring opinion, *post*, p. 82. O'CONNOR, J., filed an opinion concurring in the judgment, in which BURGER, C. J., and POWELL and REHNQUIST, JJ., joined, *post*, p. 83. STEVENS, J., filed an opinion concurring in part and dissenting in part, in which MARSHALL and BLACKMUN, JJ., joined, *post*, p. 106.

Lacy H. Thornburg, Attorney General of North Carolina, *pro se*, argued the cause for appellants. With him on the briefs were *Jerris Leonard*, *Kathleen Heenan McGuan*, *James Wallace, Jr.*, Deputy Attorney General for Legal Affairs, and *Tiare B. Smiley* and *Norma S. Harrell*, Assistant Attorneys General.

Solicitor General Fried argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Assistant Attorney General Reynolds* and *Deputy Assistant Attorney General Cooper.*

Julius LeVonne Chambers argued the cause for appellees. With him on the briefs for appellees Gingles et al. were *Eric Schnapper*, *C. Lani Guinier*, and *Leslie J. Winner*. *C. Allen Foster*, *Kenneth J. Gumbiner*, *Robert N.*

Hunter, Jr., and *Arthur J. Donaldson* filed briefs for appellees Eaglin et al.*

JUSTICE BRENNAN announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II, III–A, III–B, IV–A, and V, an opinion with respect to Part III–C, in which JUSTICE MARSHALL, JUSTICE BLACKMUN, and JUSTICE STEVENS join, and an opinion with respect to Part IV–B, in which JUSTICE WHITE joins.

This case requires that we construe for the first time § 2 of the Voting Rights Act of 1965, as amended June 29, 1982. 42 U. S. C. § 1973. The specific question to be decided is whether the three-judge District Court, convened in the Eastern District of North Carolina pursuant to 28 U. S. C. § 2284(a) and 42 U. S. C. § 1973c, correctly held that the use in a legislative redistricting plan of multimember districts in five North Carolina legislative districts violated § 2 by impairing the opportunity of black voters "to participate in the political process and to elect representatives of their choice." § 2(b), 96 Stat. 134.

I

BACKGROUND

In April 1982, the North Carolina General Assembly enacted a legislative redistricting plan for the State's Senate

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**Daniel J. Popeo* and *George C. Smith* filed a brief for the Washington Legal Foundation as *amicus curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the American Civil Liberties Union Foundation, Inc., et al. by *Cynthia Hill, Maureen T. Thornton, Laughlin McDonald*, and *Neil Bradley;* for Common Cause by *William T. Lake;* for the Lawyer's Committee for Civil Rights Under Law et al. by *James Robertson, Harold R. Tyler, Jr., Norman Redlich, William L. Robinson, Frank R. Parker, Samuel Rabinove*, and *Richard T. Foltin;* for James G. Martin, Governor of North Carolina, by *Victor S. Friedman;* for Legal Services of North Carolina by *David H. Harris, Jr., Susan M. Perry, Richard Taylor*, and *Julian Pierce;* for the Republican National Committee by *Roger Allan Moore* and *Michael A. Hess;* and for Senator Dennis DeConcini et al. by *Walter J. Rockler.*

and House of Representatives. Appellees, black citizens of North Carolina who are registered to vote, challenged seven districts, one single-member[1] and six multimember[2] districts, alleging that the redistricting scheme impaired black citizens' ability to elect representatives of their choice in violation of the Fourteenth and Fifteenth Amendments to the United States Constitution and of § 2 of the Voting Rights Act.[3]

After appellees brought suit, but before trial, Congress amended § 2. The amendment was largely a response to this Court's plurality opinion in *Mobile* v. *Bolden*, 446 U. S. 55 (1980), which had declared that, in order to establish a violation either of § 2 or of the Fourteenth or Fifteenth Amendments, minority voters must prove that a contested electoral mechanism was intentionally adopted or maintained by state officials for a discriminatory purpose. Congress substantially revised § 2 to make clear that a violation could be proved by showing discriminatory effect alone and to establish as the relevant legal standard the "results test," applied by this Court in *White* v. *Regester*, 412 U. S. 755 (1973), and by other federal courts before *Bolden*, *supra*. S. Rep. No. 97–417, p. 28 (1982) (hereinafter S. Rep.).

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[1] Appellees challenged Senate District No. 2, which consisted of the whole of Northampton, Hertford, Gates, Bertie, and Chowan Counties, and parts of Washington, Martin, Halifax, and Edgecombe Counties.

[2] Appellees challenged the following multimember districts: Senate No. 22 (Mecklenburg and Cabarrus Counties—four members), House No. 36 (Mecklenburg County—eight members), House No. 39 (part of Forsyth County—five members), House No. 23 (Durham County—three members), House No. 21 (Wake County—six members), and House No. 8 (Wilson, Nash, and Edgecombe Counties—four members).

[3] Appellants initiated this action in September 1981, challenging the North Carolina General Assembly's July 1981 redistricting. The history of this action is recounted in greater detail in the District Court's opinion in this case, *Gingles* v. *Edmisten*, 590 F. Supp. 345, 350–358 (EDNC 1984). It suffices here to note that the General Assembly revised the 1981 plan in April 1982 and that the plan at issue in this case is the 1982 plan.

Section 2, as amended, 96 Stat. 134, reads as follows:

> "(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), as provided in subsection (b).
>
> "(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population." Codified at 42 U. S. C. § 1973.

The Senate Judiciary Committee majority Report accompanying the bill that amended § 2 elaborates on the circumstances that might be probative of a § 2 violation, noting the following "typical factors":[4]

> "1. the extent of any history of official discrimination in the state or political subdivision that touched the right of

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[4] These factors were derived from the analytical framework of *White* v. *Regester*, 412 U. S. 755 (1973), as refined and developed by the lower courts, in particular by the Fifth Circuit in *Zimmer* v. *McKeithen*, 485 F. 2d 1297 (1973) (en banc), aff'd *sub nom. East Carroll Parish School Board* v. *Marshall*, 424 U. S. 636 (1976) *(per curiam)*. S. Rep., at 28, n. 113.

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 the 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.

"Additional factors that in some cases have had probative value as part of plaintiffs' evidence to establish a violation are:

"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.

"whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous." S. Rep., at 28–29.

The District Court applied the "totality of the circumstances" test set forth in § 2(b) to appellees' statutory claim, and, relying principally on the factors outlined in the Senate

Report, held that the redistricting scheme violated § 2 because it resulted in the dilution of black citizens' votes in all seven disputed districts. In light of this conclusion, the court did not reach appellees' constitutional claims. *Gingles* v. *Edmisten*, 590 F. Supp. 345 (EDNC 1984).

Preliminarily, the court found that black citizens constituted a distinct population and registered-voter minority in each challenged district. The court noted that at the time the multimember districts were created, there were concentrations of black citizens within the boundaries of each that were sufficiently large and contiguous to constitute effective voting majorities in single-member districts lying wholly within the boundaries of the multimember districts. With respect to the challenged single-member district, Senate District No. 2, the court also found that there existed a concentration of black citizens within its boundaries and within those of adjoining Senate District No. 6 that was sufficient in numbers and in contiguity to constitute an effective voting majority in a single-member district. The District Court then proceeded to find that the following circumstances combined with the multimember districting scheme to result in the dilution of black citizens' votes.

First, the court found that North Carolina had officially discriminated against its black citizens with respect to their exercise of the voting franchise from approximately 1900 to 1970 by employing at different times a poll tax, a literacy test, a prohibition against bullet (single-shot) voting,[5]

[5] Bullet (single-shot) voting has been described as follows:

"'Consider [a] town of 600 whites and 400 blacks with an at-large election to choose four council members. Each voter is able to cast four votes. Suppose there are eight white candidates, with the votes of the whites split among them approximately equally, and one black candidate, with all the blacks voting for him and no one else. The result is that each white candidate receives about 300 votes and the black candidate receives 400 votes. The black has probably won a seat. This technique is called single-shot voting. Single-shot voting enables a minority group to win some at-large seats if it concentrates its vote behind a limited number of candidates and if

and designated seat plans[6] for multimember districts. The court observed that even after the removal of direct barriers to black voter registration, such as the poll tax and literacy test, black voter registration remained relatively depressed; in 1982 only 52.7% of age-qualified blacks statewide were registered to vote, whereas 66.7% of whites were registered. The District Court found these statewide depressed levels of black voter registration to be present in all of the disputed districts and to be traceable, at least in part, to the historical pattern of statewide official discrimination.

Second, the court found that historic discrimination in education, housing, employment, and health services had resulted in a lower socioeconomic status for North Carolina blacks as a group than for whites. The court concluded that this lower status both gives rise to special group interests and hinders blacks' ability to participate effectively in the political process and to elect representatives of their choice.

Third, the court considered other voting procedures that may operate to lessen the opportunity of black voters to elect candidates of their choice. It noted that North Carolina has a majority vote requirement for primary elections and, while acknowledging that no black candidate for election to the State General Assembly had failed to win solely because of this requirement, the court concluded that it nonetheless presents a continuing practical impediment to the opportunity of black voting minorities to elect candidates of their choice. The court also remarked on the fact that North Carolina does not have a subdistrict residency requirement for members of the General Assembly elected from multimember

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the vote of the majority is divided among a number of candidates.'" *City of Rome* v. *United States*, 446 U. S. 156, 184, n. 19 (1980), quoting United States Commission on Civil Rights, The Voting Rights Act: Ten Years After, pp. 206–207 (1975).

[6] Designated (or numbered) seat schemes require a candidate for election in multimember districts to run for specific seats, and can, under certain circumstances, frustrate bullet voting. See, *e. g.*, *City of Rome*, *supra*, at 185, n. 21.

districts, a requirement which the court found could offset to some extent the disadvantages minority voters often experience in multimember districts.

Fourth, the court found that white candidates in North Carolina have encouraged voting along color lines by appealing to racial prejudice. It noted that the record is replete with specific examples of racial appeals, ranging in style from overt and blatant to subtle and furtive, and in date from the 1890's to the 1984 campaign for a seat in the United States Senate. The court determined that the use of racial appeals in political campaigns in North Carolina persists to the present day and that its current effect is to lessen to some degree the opportunity of black citizens to participate effectively in the political processes and to elect candidates of their choice.

Fifth, the court examined the extent to which blacks have been elected to office in North Carolina, both statewide and in the challenged districts. It found, among other things, that prior to World War II, only one black had been elected to public office in this century. While recognizing that "it has now become possible for black citizens to be elected to office at all levels of state government in North Carolina," 590 F. Supp., at 367, the court found that, in comparison to white candidates running for the same office, black candidates are at a disadvantage in terms of relative probability of success. It also found that the overall rate of black electoral success has been minimal in relation to the percentage of blacks in the total state population. For example, the court noted, from 1971 to 1982 there were at any given time only two-to-four blacks in the 120-member House of Representatives—that is, only 1.6% to 3.3% of House members were black. From 1975 to 1983 there were at any one time only one or two blacks in the 50-member State Senate—that is, only 2% to 4% of State Senators were black. By contrast, at the time of the District Court's opinion, blacks constituted about 22.4% of the total state population.

With respect to the success in this century of black candidates in the contested districts, see also Appendix B to opinion, *post*, p. 82, the court found that only one black had been elected to House District 36—after this lawsuit began. Similarly, only one black had served in the Senate from District 22, from 1975–1980. Before the 1982 election, a black was elected only twice to the House from District 39 (part of Forsyth County); in the 1982 contest two blacks were elected. Since 1973 a black citizen had been elected each 2-year term to the House from District 23 (Durham County), but no black had been elected to the Senate from Durham County. In House District 21 (Wake County), a black had been elected twice to the House, and another black served two terms in the State Senate. No black had ever been elected to the House or Senate from the area covered by House District No. 8, and no black person had ever been elected to the Senate from the area covered by Senate District No. 2.

The court did acknowledge the improved success of black candidates in the 1982 elections, in which 11 blacks were elected to the State House of Representatives, including 5 blacks from the multimember districts at issue here. However, the court pointed out that the 1982 election was conducted after the commencement of this litigation. The court found the circumstances of the 1982 election sufficiently aberrational and the success by black candidates too minimal and too recent in relation to the long history of complete denial of elective opportunities to support the conclusion that black voters' opportunities to elect representatives of their choice were not impaired.

Finally, the court considered the extent to which voting in the challenged districts was racially polarized. Based on statistical evidence presented by expert witnesses, supplemented to some degree by the testimony of lay witnesses, the court found that all of the challenged districts exhibit severe and persistent racially polarized voting.

Based on these findings, the court declared the contested portions of the 1982 redistricting plan violative of § 2 and enjoined appellants from conducting elections pursuant to those portions of the plan. Appellants, the Attorney General of North Carolina and others, took a direct appeal to this Court, pursuant to 28 U. S. C. § 1253, with respect to five of the multimember districts—House Districts 21, 23, 36, and 39, and Senate District 22. Appellants argue, first, that the District Court utilized a legally incorrect standard in determining whether the contested districts exhibit racial bloc voting to an extent that is cognizable under § 2. Second, they contend that the court used an incorrect definition of racially polarized voting and thus erroneously relied on statistical evidence that was not probative of polarized voting. Third, they maintain that the court assigned the wrong weight to evidence of some black candidates' electoral success. Finally, they argue that the trial court erred in concluding that these multimember districts result in black citizens having less opportunity than their white counterparts to participate in the political process and to elect representatives of their choice. We noted probable jurisdiction, 471 U. S. 1064 (1985), and now affirm with respect to all of the districts except House District 23. With regard to District 23, the judgment of the District Court is reversed.

II

SECTION 2 AND VOTE DILUTION THROUGH USE OF MULTIMEMBER DISTRICTS

An understanding both of § 2 and of the way in which multimember districts can operate to impair blacks' ability to elect representatives of their choice is prerequisite to an evaluation of appellants' contentions. First, then, we review amended § 2 and its legislative history in some detail. Second, we explain the theoretical basis for appellees' claim of vote dilution.

A

SECTION 2 AND ITS LEGISLATIVE HISTORY

Subsection 2(a) prohibits all States and political subdivisions from imposing *any* voting qualifications or prerequisites to voting, or any standards, practices, or procedures which result in the denial or abridgment of the right to vote of any citizen who is a member of a protected class of racial and language minorities. Subsection 2(b) establishes that § 2 has been violated where the "totality of circumstances" reveal that "the political processes leading to nomination or election . . . are not equally open to participation by members of a [protected class] . . . in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." While explaining that "[t]he extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered" in evaluating an alleged violation, § 2(b) cautions that "nothing in [§ 2] establishes a right to have members of a protected class elected in numbers equal to their proportion in the population."

The Senate Report which accompanied the 1982 amendments elaborates on the nature of § 2 violations and on the proof required to establish these violations.[7] First and foremost, the Report dispositively rejects the position of the plurality in *Mobile* v. *Bolden*, 446 U. S. 55 (1980), which

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[7] The United States urges this Court to give little weight to the Senate Report, arguing that it represents a compromise among conflicting "factions," and thus is somehow less authoritative than most Committee Reports. Brief for United States as *Amicus Curiae* 8, n. 12, 24, n. 49. We are not persuaded that the legislative history of amended § 2 contains anything to lead us to conclude that this Senate Report should be accorded little weight. We have repeatedly recognized that the authoritative source for legislative intent lies in the Committee Reports on the bill. See, *e. g.*, *Garcia* v. *United States*, 469 U. S. 70, 76, and n. 3 (1984); *Zuber* v. *Allen*, 396 U. S. 168, 186 (1969).

required proof that the contested electoral practice or mechanism was adopted or maintained with the intent to discriminate against minority voters.[8] See, *e. g.*, S. Rep., at 2, 15–16, 27. The intent test was repudiated for three principal reasons—it is "unnecessarily divisive because it involves charges of racism on the part of individual officials or entire communities," it places an "inordinately difficult" burden of proof on plaintiffs, and it "asks the wrong question." *Id.*, at 36. The "right" question, as the Report emphasizes repeatedly, is whether "as a result of the challenged practice or structure plaintiffs do not have an equal opportunity to participate in the political processes and to elect candidates of their choice."[9] *Id.*, at 28. See also *id.*, at 2, 27, 29, n. 118, 36.

In order to answer this question, a court must assess the impact of the contested structure or practice on minority electoral opportunities "on the basis of objective factors." *Id.*, at 27. The Senate Report specifies factors which typically may be relevant to a §2 claim: the history of voting-related discrimination in the State or political subdivision; the extent to which voting in the elections of the State or political

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[8] The Senate Report states that amended §2 was designed to restore the "results test"—the legal standard that governed voting discrimination cases prior to our decision in *Mobile* v. *Bolden*, 446 U. S. 55 (1980). S. Rep., at 15–16. The Report notes that in pre-*Bolden* cases such as *White* v. *Regester*, 412 U. S. 755 (1973), and *Zimmer* v. *McKeithen*, 485 F. 2d 1297 (CA5 1973), plaintiffs could prevail by showing that, under the totality of the circumstances, a challenged election law or procedure had the effect of denying a protected minority an equal chance to participate in the electoral process. Under the "results test," plaintiffs are not required to demonstrate that the challenged electoral law or structure was designed or maintained for a discriminatory purpose. S. Rep., at 16.

[9] The Senate Committee found that "voting practices and procedures that have discriminatory results perpetuate the effects of past purposeful discrimination." *Id.*, at 40 (footnote omitted). As the Senate Report notes, the purpose of the Voting Rights Act was "'not only to correct an active history of discrimination, the denying to Negroes of the right to register and vote, but also to deal with the accumulation of discrimination.'" *Id.*, at 5 (quoting 111 Cong. Rec. 8295 (1965) (remarks of Sen. Javits)).

subdivision is racially polarized; the extent to which the State or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority vote requirements, and prohibitions against bullet voting; the exclusion of members of the minority group from candidate slating processes; the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process; the use of overt or subtle racial appeals in political campaigns; and the extent to which members of the minority group have been elected to public office in the jurisdiction. *Id.*, at 28–29; see also *supra*, at 36–37. The Report notes also that evidence demonstrating that elected officials are unresponsive to the particularized needs of the members of the minority group and that the policy underlying the State's or the political subdivision's use of the contested practice or structure is tenuous may have probative value. *Id.*, at 29. The Report stresses, however, that this list of typical factors is neither comprehensive nor exclusive. While the enumerated factors will often be pertinent to certain types of §2 violations, particularly to vote dilution claims,[10] other factors may also be relevant and may be considered. *Id.*, at 29–30. Furthermore, the Senate Committee observed that "there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other." *Id.*, at 29. Rather, the Committee determined that "the question whether the political processes are 'equally open' depends upon a searching practical evaluation of the 'past and present reality,'" *id.*, at 30 (footnote omitted), and on a "functional" view of the political process. *Id.*, at 30, n. 120.

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[10] Section 2 prohibits all forms of voting discrimination, not just vote dilution. S. Rep., at 30.

Although the Senate Report espouses a flexible, fact-intensive test for § 2 violations, it limits the circumstances under which § 2 violations may be proved in three ways. First, electoral devices, such as at-large elections, may not be considered *per se* violative of § 2. Plaintiffs must demonstrate that, under the totality of the circumstances, the devices result in unequal access to the electoral process. *Id.*, at 16. Second, the conjunction of an allegedly dilutive electoral mechanism and the lack of proportional representation alone does not establish a violation. *Ibid.* Third, the results test does not assume the existence of racial bloc voting; plaintiffs must prove it. *Id.*, at 33.

B

VOTE DILUTION THROUGH THE USE OF MULTIMEMBER DISTRICTS

Appellees contend that the legislative decision to employ multimember, rather than single-member, districts in the contested jurisdictions dilutes their votes by submerging them in a white majority,[11] thus impairing their ability to elect representatives of their choice.[12]

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[11] Dilution of racial minority group voting strength may be caused by the dispersal of blacks into districts in which they constitute an ineffective minority of voters or from the concentration of blacks into districts where they constitute an excessive majority. Engstrom & Wildgen, Pruning Thorns from the Thicket: An Empirical Test of the Existence of Racial Gerrymandering, 2 Legis. Stud. Q. 465, 465–466 (1977) (hereinafter Engstrom & Wildgen). See also Derfner, Racial Discrimination and the Right to Vote, 26 Vand. L. Rev. 523, 553 (1973) (hereinafter Derfner); F. Parker, Racial Gerrymandering and Legislative Reapportionment (hereinafter Parker), in Minority Vote Dilution 86–100 (Davidson ed., 1984) (hereinafter Minority Vote Dilution).

[12] The claim we address in this opinion is one in which the plaintiffs alleged and attempted to prove that their ability *to elect* the representatives of their choice was impaired by the selection of a multimember electoral structure. We have no occasion to consider 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

The essence of a § 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives. This Court has long recognized that multimember districts and at-large voting schemes may "'operate to minimize or cancel out the voting strength of racial [minorities in] the voting population.'"[13] *Burns* v. *Richardson*, 384 U. S.

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a single-member district, alleging that the use of a multimember district impairs its ability *to influence* elections.

We note also that we have no occasion to consider whether the standards we apply to respondents' claim that multimember districts operate to dilute the vote of geographically cohesive minority groups that are large enough to constitute majorities in single-member districts and that are contained within the boundaries of the challenged multimember districts, are fully pertinent to other sorts of vote dilution claims, such as a claim alleging that the splitting of a large and geographically cohesive minority between two or more multimember or single-member districts resulted in the dilution of the minority vote.

[13] Commentators are in widespread agreement with this conclusion. See, *e. g.*, Berry & Dye, The Discriminatory Effects of At-Large Elections, 7 Fla. St. U. L. Rev. 85 (1979) (hereinafter Berry & Dye); Blacksher & Menefee, From *Reynolds* v. *Sims* to *City of Mobile* v. *Bolden*, 34 Hastings L. J. 1 (1982) (hereinafter Blacksher & Menefee); Bonapfel, Minority Challenges to At-Large Elections: The Dilution Problem, 10 Ga. L. Rev. 353 (1976) (hereinafter Bonapfel); Butler, Constitutional and Statutory Challenges to Election Structures: Dilution and the Value of the Right to Vote, 42 La. L. Rev. 851 (1982) (hereinafter Butler); Carpeneti, Legislative Apportionment: Multimember Districts and Fair Representation, 120 U. Pa. L. Rev. 666 (1972) (hereinafter Carpeneti); Davidson & Korbel, At-Large Elections and Minority Group Representation, in Minority Vote Dilution 65; Derfner; B. Grofman, Alternatives to Single-Member Plurality Districts: Legal and Empirical Issues (hereinafter Grofman, Alternatives), in Representation and Redistricting Issues 107 (B. Grofman, R. Lijphart, H. McKay, & H. Scarrow eds., 1982) (hereinafter Representation and Redistricting Issues); Hartman, Racial Vote Dilution and Separation of Powers, 50 Geo. Wash. L. Rev. 689 (1982); Jewell, The Consequences of Single- and Multimember Districting, in Representation and Redistricting Issues 129 (1982) (hereinafter Jewell); Jones, The Impact of Local Election Systems on Political Representation, 11 Urb. Aff. Q. 345 (1976); Karnig,

73, 88 (1966) (quoting *Fortson* v. *Dorsey*, 379 U. S. 433, 439 (1965)). See also *Rogers* v. *Lodge*, 458 U. S. 613, 617 (1982); *White* v. *Regester*, 412 U. S., at 765; *Whitcomb* v. *Chavis*, 403 U. S. 124, 143 (1971). The theoretical basis for this type of impairment is that where minority and majority voters consistently prefer different candidates, the majority, by virtue of its numerical superiority, will regularly defeat the choices of minority voters.[14] See, *e. g.*, Grofman, Alternatives, in Representation and Redistricting Issues 113–114. Multimember districts and at-large election schemes, however, are not *per se* violative of minority voters' rights. S. Rep., at 16. Cf. *Rogers* v. *Lodge*, *supra*, at 617; *Regester*, *supra*, at 765; *Whitcomb*, *supra*, at 142. Minority voters who contend that the multimember form of districting violates § 2 must prove that the use of a multimember electoral structure operates to minimize or cancel out their ability to elect their preferred candidates. See, *e. g.*, S. Rep., at 16.

While many or all of the factors listed in the Senate Report may be relevant to a claim of vote dilution through submergence in multimember districts, unless there is a conjunction of the following circumstances, the use of multimember districts generally will not impede the ability of minority voters to elect representatives of their choice.[15] Stated succinctly,

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Black Resources and City Council Representation, 41 J. Pol. 134 (1979); Karnig, Black Representation on City Councils, 12 Urb. Aff. Q. 223 (1976); Parker 87–88.

[14] Not only does "[v]oting along racial lines" deprive minority voters of their preferred representative in these circumstances, it also "allows those elected to ignore [minority] interests without fear of political consequences," *Rogers* v. *Lodge*, 458 U. S., at 623, leaving the minority effectively unrepresented. See, *e. g.*, Grofman, Should Representatives Be Typical of Their Constituents?, in Representation and Redistricting Issues 97; Parker 108.

[15] Under a "functional" view of the political process mandated by § 2, S. Rep., at 30, n. 120, the most important Senate Report factors bearing on § 2 challenges to multimember districts are the "extent to which minority group members have been elected to public office in the jurisdiction" and the "extent to which voting in the elections of the state or political sub-

a bloc voting majority must *usually* be able to defeat candidates supported by a politically cohesive, geographically insular minority group. Bonapfel 355; Blacksher & Menefee 34; Butler 903; Carpeneti 696–699; Davidson, Minority Vote Dilution: An Overview (hereinafter Davidson), in Minority Vote Dilution 4; Grofman, Alternatives 117. Cf. *Bolden*, 446 U. S., at 105, n. 3 (MARSHALL, J., dissenting) ("It is obvious

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division is racially polarized." *Id.*, 28–29. If present, the other factors, such as the lingering effects of past discrimination, the use of appeals to racial bias in election campaigns, and the use of electoral devices which enhance the dilutive effects of multimember districts when substantial white bloc voting exists—for example antibullet voting laws and majority vote requirements, are supportive of, but *not essential to*, a minority voter's claim.

In recognizing that some Senate Report factors are more important to multimember district vote dilution claims than others, the Court effectuates the intent of Congress. It is obvious that unless minority group members experience substantial difficulty electing representatives of their choice, they cannot prove that a challenged electoral mechanism impairs their ability "to elect." § 2(b). And, where the contested electoral structure is a multimember district, commentators and courts agree that in the absence of significant white bloc voting it cannot be said that the ability of minority voters to elect their chosen representatives is inferior to that of white voters. See, *e. g.*, *McMillan* v. *Escambia County, Fla.*, 748 F. 2d 1037, 1043 (CA5 1984); *United States* v. *Marengo County Comm'n*, 731 F. 2d 1546, 1566 (CA11), appeal dism'd and cert. denied, 469 U. S. 976 (1984); *Nevett* v. *Sides*, 571 F. 2d 209, 223 (CA5 1978), cert. denied, 446 U. S. 951 (1980); *Johnson* v. *Halifax County*, 594 F. Supp. 161, 170 (EDNC 1984); Blacksher & Menefee; Engstrom & Wildgen 469; Parker 107. Consequently, if difficulty in electing and white bloc voting are not proved, minority voters have not established that the multimember structure interferes with their ability to elect their preferred candidates. Minority voters may be able to prove that they still suffer social and economic effects of past discrimination, that appeals to racial bias are employed in election campaigns, and that a majority vote is required to win a seat, but they have not demonstrated a substantial inability to elect caused by the use of a multimember district. By recognizing the primacy of the history and extent of minority electoral success and of racial bloc voting, the Court simply requires that § 2 plaintiffs prove their claim before they may be awarded relief.

that the greater the degree to which the electoral minority is homogeneous and insular and the greater the degree that bloc voting occurs along majority-minority lines, the greater will be the extent to which the minority's voting power is diluted by multimember districting"). These circumstances are necessary preconditions for multimember districts to operate to impair minority voters' ability to elect representatives of their choice for the following reasons. First, the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district.[16] If it is not, as would be the case in a substantially integrated district, the *multimember form* of the district cannot be responsible for minority voters' inability to elect its candidates.[17] Cf. *Rogers*, 458

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[16] In this case appellees allege that within each contested multimember district there exists a minority group that is sufficiently large and compact to constitute a single-member district. In a different kind of case, for example a gerrymander case, plaintiffs might allege that the minority group that is sufficiently large and compact to constitute a single-member district has been split between two or more multimember or single-member districts, with the effect of diluting the potential strength of the minority vote.

[17] The reason that a minority group making such a challenge must show, as a threshold matter, that it is sufficiently large and geographically compact to constitute a majority in a single-member district is this: Unless minority voters possess the *potential* to elect representatives in the absence of the challenged structure or practice, they cannot claim to have been injured by that structure or practice. The single-member district is generally the appropriate standard against which to measure minority group potential to elect because it is the smallest political unit from which representatives are elected. Thus, if the minority group is spread evenly throughout a multimember district, or if, although geographically compact, the minority group is so small in relation to the surrounding white population that it could not constitute a majority in a single-member district, these minority voters cannot maintain that they would have been able to elect representatives of their choice in the absence of the multimember electoral structure. As two commentators have explained:

"To demonstrate [that minority voters are injured by at-large elections], the minority voters must be sufficiently concentrated and politically cohe-

U. S., at 616. See also, Blacksher & Menefee 51–56, 58; Bonapfel 355; Carpeneti 696; Davidson 4; Jewell 130. Second, the minority group must be able to show that it is politically cohesive. If the minority group is not politically cohesive, it cannot be said that the selection of a multimember electoral structure thwarts distinctive minority group interests. Blacksher & Menefee 51–55, 58–60, and n. 344; Carpeneti 696–697; Davidson 4. Third, the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances, such as the minority candidate running unopposed, see, *infra*, at 57, and n. 26—usually to defeat the minority's preferred candidate. See, *e. g.*, Blacksher & Menefee 51, 53, 56–57, 60. Cf. *Rogers*, *supra*, at 616–617; *Whitcomb*, 403 U. S., at 158–159; *McMillan* v. *Escambia County, Fla.*, 748 F. 2d 1037, 1043 (CA5 1984). In establishing this last circumstance, the minority group demonstrates that submergence in a white multimember district impedes its ability to elect its chosen representatives.

Finally, we observe that the usual predictability of the majority's success distinguishes structural dilution from the mere loss of an occasional election. Cf. *Davis* v. *Bandemer*, *post*, at 131–133, 139–140 (opinion of WHITE, J.); *Bolden*, *supra*, at 111, n. 7 (MARSHALL, J., dissenting); *Whitcomb*, *supra*, at 153. See also Blacksher & Menefee 57, n. 333; Note, Geometry and Geography: Racial Gerrymandering and the Voting Rights Act, 94 Yale L. J. 189, 200, n. 66 (1984) (hereinafter Note, Geometry and Geography).

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sive that a putative districting plan would result in districts in which members of a racial minority would constitute a majority of the voters, whose clear electoral choices are in fact defeated by at-large voting. If minority voters' residences are substantially integrated throughout the jurisdiction, the at-large district cannot be blamed for the defeat of minority-supported candidates . . . . [This standard] thus would only protect racial minority votes from diminution proximately caused by the districting plan; *it would not assure racial minorities proportional representation.*" Blacksher & Menefee 55–56 (footnotes omitted; emphasis added).

III

RACIALLY POLARIZED VOTING

Having stated the general legal principles relevant to claims that § 2 has been violated through the use of multimember districts, we turn to the arguments of appellants and of the United States as *amicus curiae* addressing racially polarized voting.[18] First, we describe the District Court's treatment of racially polarized voting. Next, we consider appellants' claim that the District Court used an incorrect legal standard to determine whether racial bloc voting in the contested districts was sufficiently severe to be cognizable as an element of a § 2 claim. Finally, we consider appellants' contention that the trial court employed an incorrect definition of racially polarized voting and thus erroneously relied on statistical evidence that was not probative of racial bloc voting.

A

THE DISTRICT COURT'S TREATMENT OF RACIALLY POLARIZED VOTING

The investigation conducted by the District Court into the question of racial bloc voting credited some testimony of lay witnesses, but relied principally on statistical evidence presented by appellees' expert witnesses, in particular that offered by Dr. Bernard Grofman. Dr. Grofman collected and evaluated data from 53 General Assembly primary and general elections involving black candidacies. These elections were held over a period of three different election years in the six originally challenged multimember districts.[19] Dr. Grofman subjected the data to two complementary methods of analysis—extreme case analysis and bivariate eco-

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[18] The terms "racially polarized voting" and "racial bloc voting" are used interchangeably throughout this opinion.

[19] The 1982 reapportionment plan left essentially undisturbed the 1971 plan for five of the original six contested multimember districts. House District 39 alone was slightly modified. Brief for Appellees 8.

logical regression analysis[20]—in order to determine whether blacks and whites in these districts differed in their voting behavior. These analytic techniques yielded data concerning the voting patterns of the two races, including estimates of the percentages of members of each race who voted for black candidates.

The court's initial consideration of these data took the form of a three-part inquiry: did the data reveal any correlation between the race of the voter and the selection of certain candidates; was the revealed correlation statistically significant; and was the difference in black and white voting patterns "substantively significant"? The District Court found that blacks and whites generally preferred different candidates and, on that basis, found voting in the districts to be racially correlated.[21] The court accepted Dr. Grofman's expert opinion that the correlation between the race of the voter and the voter's choice of certain candidates was statistically significant.[22] Finally, adopting Dr. Grofman's terminology, see

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[20] The District Court found both methods standard in the literature for the analysis of racially polarized voting. 590 F. Supp., at 367, n. 28, 368, n. 32. See also Engstrom & McDonald, Quantitative Evidence in Vote Dilution Litigation: Political Participation and Polarized Voting, 17 Urb. Law. 369 (Summer 1985); Grofman, Migalski, & Noviello, The "Totality of Circumstances Test" in Section 2 of the 1982 Extension of the Voting Rights Act: A Social Science Perspective, 7 Law & Policy 199 (Apr. 1985) (hereinafter Grofman, Migalski, & Noviello).

[21] The court used the term "racial polarization" to describe this correlation. It adopted Dr. Grofman's definition—"racial polarization" exists where there is "a consistent relationship between [the] race of the voter and the way in which the voter votes," Tr. 160, or to put it differently, where "black voters and white voters vote differently." *Id.*, at 203. We, too, adopt this definition of "racial bloc" or "racially polarized" voting. See *infra*, at 55–58.

[22] The court found that the data reflected positive relationships and that the correlations did not happen by chance. 590 F. Supp., at 368, and n. 30. See also D. Barnes & J. Conley, Statistical Evidence in Litigation 32–34 (1986); Fisher, Multiple Regression in Legal Proceedings, 80 Colum. L. Rev. 702, 716–720 (1980); Grofman, Migalski, & Noviello 206.

Tr. 195, the court found that in all but 2 of the 53 elections[23] the degree of racial bloc voting was "so marked as to be substantively significant, in the sense that the results of the individual election would have been different depending upon whether it had been held among only the white voters or only the black voters." 590 F. Supp., at 368.

The court also reported its findings, both in tabulated numerical form and in written form, that a high percentage of black voters regularly supported black candidates and that most white voters were extremely reluctant to vote for black candidates. The court then considered the relevance to the existence of legally significant white bloc voting of the fact that black candidates have won some elections. It determined that in most instances, special circumstances, such as incumbency and lack of opposition, rather than a diminution in usually severe white bloc voting, accounted for these candidates' success. The court also suggested that black voters' reliance on bullet voting was a significant factor in their successful efforts to elect candidates of their choice. Based on all of the evidence before it, the trial court concluded that each of the districts experienced racially polarized voting "in a persistent and severe degree." *Id.*, at 367.

B

THE DEGREE OF BLOC VOTING THAT IS LEGALLY SIGNIFICANT UNDER § 2

1

Appellants' Arguments

North Carolina and the United States argue that the test used by the District Court to determine whether voting patterns in the disputed districts are racially polarized to an extent cognizable under § 2 will lead to results that are inconsistent with congressional intent. North Carolina main-

[23] The two exceptions were the 1982 State House elections in Districts 21 and 23. 590 F. Supp., at 368, n. 31.

tains that the court considered legally significant racially polarized voting to occur whenever "less than 50% of the white voters cast a ballot for the black candidate." Brief for Appellants 36. Appellants also argue that racially polarized voting is legally significant only when it always results in the defeat of black candidates. *Id.*, at 39–40.

The United States, on the other hand, isolates a single line in the court's opinion and identifies it as the court's complete test. According to the United States, the District Court adopted a standard under which legally significant racial bloc voting is deemed to exist whenever "'the results of the individual election would have been different depending upon whether it had been held among only the white voters or only the black voters in the election.'" Brief for United States as *Amicus Curiae* 29 (quoting 590 F. Supp., at 368). We read the District Court opinion differently.

2

The Standard for Legally Significant Racial Bloc Voting

The Senate Report states that the "extent to which voting in the elections of the state or political subdivision is racially polarized," S. Rep., at 29, is relevant to a vote dilution claim. Further, courts and commentators agree that racial bloc voting is a key element of a vote dilution claim. See, *e. g.*, *Escambia County, Fla.*, 748 F. 2d, at 1043; *United States* v. *Marengo County Comm'n*, 731 F. 2d 1546, 1566 (CA11), appeal dism'd and cert. denied, 469 U. S. 976 (1984); *Nevett* v. *Sides*, 571 F. 2d 209, 223 (CA5 1978), cert. denied, 446 U. S. 951 (1980); *Johnson* v. *Halifax County*, 594 F. Supp. 161, 170 (EDNC 1984); Blacksher & Menefee; Engstrom & Wildgen, 465, 469; Parker 107; Note, Geometry and Geography 199. Because, as we explain below, the extent of bloc voting necessary to demonstrate that a minority's ability to elect its preferred representatives is impaired varies according to several factual circumstances, the degree of bloc voting which constitutes the threshold of legal significance will vary

from district to district. Nonetheless, it is possible to state some general principles and we proceed to do so.

The purpose of inquiring into the existence of racially polarized voting is twofold: to ascertain whether minority group members constitute a politically cohesive unit and to determine whether whites vote sufficiently as a bloc usually to defeat the minority's preferred candidates. See *supra*, at 48–51. Thus, the question whether a given district experiences legally significant racially polarized voting requires discrete inquiries into minority and white voting practices. A showing that a significant number of minority group members usually vote for the same candidates is one way of proving the political cohesiveness necessary to a vote dilution claim, Blacksher & Menefee 59–60, and n. 344, and, consequently, establishes minority bloc voting within the context of § 2. And, in general, a white bloc vote that normally will defeat the combined strength of minority support plus white "crossover" votes rises to the level of legally significant white bloc voting. *Id.*, at 60. The amount of white bloc voting that can generally "minimize or cancel," S. Rep., at 28; *Regester*, 412 U. S., at 765, black voters' ability to elect representatives of their choice, however, will vary from district to district according to a number of factors, including the nature of the allegedly dilutive electoral mechanism; the presence or absence of other potentially dilutive electoral devices, such as majority vote requirements, designated posts, and prohibitions against bullet voting; the percentage of registered voters in the district who are members of the minority group; the size of the district; and, in multimember districts, the number of seats open and the number of candidates in the field.[24] See, *e. g.*, Butler 874–876; Davidson 5; Jones, The Impact of Local Election Systems on Black Political Representation, 11 Urb. Aff. Q. 345 (1976); United States Commis-

[24] This list of factors is illustrative, not comprehensive.

sion on Civil Rights, The Voting Rights Act: Unfulfilled Goals 38–41 (1981).

Because loss of political power through vote dilution is distinct from the mere inability to win a particular election, *Whitcomb*, 403 U. S., at 153, a pattern of racial bloc voting that extends over a period of time is more probative of a claim that a district experiences legally significant polarization than are the results of a single election.[25] Blacksher & Menefee 61; Note, Geometry and Geography 200, n. 66 ("Racial polarization should be seen as an attribute not of a single election, but rather of a polity viewed over time. The concern is necessarily temporal and the analysis historical because the evil to be avoided is the subordination of minority groups in American politics, not the defeat of individuals in particular electoral contests"). Also for this reason, in a district where elections are shown usually to be polarized, the fact that racially polarized voting is not present in one or a few individual elections does not necessarily negate the conclusion that the district experiences legally significant bloc voting. Furthermore, the success of a minority candidate in a particular election does not necessarily prove that the district did not experience polarized voting in that election; special circumstances, such as the absence of an opponent, incumbency, or the utilization of bullet voting, may explain minority electoral success in a polarized contest.[26]

As must be apparent, the degree of racial bloc voting that is cognizable as an element of a § 2 vote dilution claim will

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[25] The number of elections that must be studied in order to determine whether voting is polarized will vary according to pertinent circumstances. One important circumstance is the number of elections in which the minority group has sponsored candidates. Where a minority group has never been able to sponsor a candidate, courts must rely on other factors that tend to prove unequal access to the electoral process. Similarly, where a minority group has begun to sponsor candidates just recently, the fact that statistics from only one or a few elections are available for examination does not foreclose a vote dilution claim.

[26] This list of special circumstances is illustrative, not exclusive.

vary according to a variety of factual circumstances. Consequently, there is no simple doctrinal test for the existence of legally significant racial bloc voting. However, the foregoing general principles should provide courts with substantial guidance in determining whether evidence that black and white voters generally prefer different candidates rises to the level of legal significance under § 2.

3

Standard Utilized by the District Court

The District Court clearly did not employ the simplistic standard identified by North Carolina—legally significant bloc voting occurs whenever less than 50% of the white voters cast a ballot for the black candidate. Brief for Appellants 36. And, although the District Court did utilize the measure of "substantive significance" that the United States ascribes to it—"'the results of the individual election would have been different depending on whether it had been held among only the white voters or only the black voters,'" Brief for United States as *Amicus Curiae* 29 (quoting 590 F. Supp., at 368)—the court did not reach its ultimate conclusion that the degree of racial bloc voting present in each district is *legally* significant through mechanical reliance on this standard.[27] While the court did not phrase the standard for legally significant racial bloc voting exactly as we do, a fair reading of the court's opinion reveals that the court's analysis conforms to our view of the proper legal standard.

The District Court's findings concerning black support for black candidates in the five multimember districts at issue

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[27] The trial court did not actually employ the term "legally significant." At times it seems to have used "substantive significance" as Dr. Grofman did, to describe polarization severe enough to result in the selection of different candidates in racially separate electorates. At other times, however, the court used the term "substantively significant" to refer to its ultimate determination that racially polarized voting in these districts is sufficiently severe to be relevant to a § 2 claim.

here clearly establish the political cohesiveness of black voters. As is apparent from the District Court's tabulated findings, reproduced in Appendix A to opinion, *post*, p. 80, black voters' support for black candidates was overwhelming in almost every election. In all but 5 of 16 primary elections, black support for black candidates ranged between 71% and 92%; and in the general elections, black support for black Democratic candidates ranged between 87% and 96%.

In sharp contrast to its findings of strong black support for black candidates, the District Court found that a substantial majority of white voters would rarely, if ever, vote for a black candidate. In the primary elections, white support for black candidates ranged between 8% and 50%, and in the general elections it ranged between 28% and 49%. See *ibid.* The court also determined that, on average, 81.7% of white voters did not vote for any black candidate in the primary elections. In the general elections, white voters almost always ranked black candidates either last or next to last in the multicandidate field, except in heavily Democratic areas where white voters consistently ranked black candidates last among the Democrats, if not last or next to last among all candidates. The court further observed that approximately two-thirds of white voters did not vote for black candidates in general elections, even after the candidate had won the Democratic primary and the choice was to vote for a Republican or for no one.[28]

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[28] In stating that 81.7% of white voters did not vote for any black candidates in the primary election and that two-thirds of white voters did not vote for black candidates in general elections, the District Court aggregated data from all six challenged multimember districts, apparently for ease of reporting. The inquiry into the existence of vote dilution caused by submergence in a multimember district is district specific. When considering several separate vote dilution claims in a single case, courts must not *rely* on data aggregated from all the challenged districts in concluding that racially polarized voting exists in each district. In the instant case, however, it is clear from the trial court's tabulated findings and from the exhibits that were before it, 1 App., Exs. 2–10, that the court relied on

While the District Court did not state expressly that the percentage of whites who refused to vote for black candidates in the contested districts would, in the usual course of events, result in the defeat of the minority's candidates, that conclusion is apparent both from the court's factual findings and from the rest of its analysis. First, with the exception of House District 23, see *infra*, at 77, the trial court's findings clearly show that black voters have enjoyed only minimal and sporadic success in electing representatives of their choice. See Appendix B to opinion, *post*, p. 82. Second, where black candidates won elections, the court closely examined the circumstances of those elections before concluding that the success of these blacks did not negate other evidence, derived from all of the elections studied in each district, that legally significant racially polarized voting exists in each district. For example, the court took account of the benefits incumbency and running essentially unopposed conferred on some of the successful black candidates,[29] as well as of the

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data that were specific to each individual district in concluding that each district experienced legally significant racially polarized voting.

[29] For example, the court found that incumbency aided a successful black candidate in the 1978 primary in Senate District 22. The court also noted that in House District 23, a black candidate who gained election in 1978, 1980, and 1982, ran uncontested in the 1978 general election and in both the primary and general elections in 1980. In 1982 there was no Republican opposition, a fact the trial court interpreted to mean that the general election was for all practical purposes unopposed. Moreover, in the 1982 primary, there were only two white candidates for three seats, so that one black candidate had to succeed. Even under this condition, the court remarked, 63% of white voters still refused to vote for the black incumbent—who was the choice of 90% of the blacks. In House District 21, where a black won election to the six-member delegation in 1980 and 1982, the court found that in the relevant primaries approximately 60% to 70% of white voters did *not* vote for the black candidate, whereas approximately 80% of blacks did. The court additionally observed that although winning the Democratic primary in this district is historically tantamount to election, 55% of whites declined to vote for the Democratic black candidate in the general election.

very different order of preference blacks and whites assigned black candidates,[30] in reaching its conclusion that legally significant racial polarization exists in each district.

We conclude that the District Court's approach, which tested data derived from three election years in each district, and which revealed that blacks strongly supported black candidates, while, to the black candidates' usual detriment, whites rarely did, satisfactorily addresses each facet of the proper legal standard.

C

EVIDENCE OF RACIALLY POLARIZED VOTING

1

Appellants' Argument

North Carolina and the United States also contest the evidence upon which the District Court relied in finding that voting patterns in the challenged districts were racially polarized. They argue that the term "racially polarized voting" must, as a matter of law, refer to voting patterns for which the *principal cause* is race. They contend that the District Court utilized a legally incorrect definition of racially polarized voting by relying on bivariate statistical analyses which merely demonstrated a *correlation* between the race of the voter and the level of voter support for certain candidates, but which did not prove that race was the primary determinant of voters' choices. According to appellants and the United States, only multiple regression analysis, which can take account of other variables which might also explain voters' choices, such as "party affiliation, age, religion, income[,] incumbency, education, campaign expenditures," Brief for

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[30] The court noted that in the 1982 primary held in House District 36, out of a field of eight, the successful black candidate was ranked first by black voters, but seventh by whites. Similarly, the court found that the two blacks who won seats in the five-member delegation from House District 39 were ranked first and second by black voters, but seventh and eighth by white voters.

Appellants 42, "media use measured by cost, . . . name, identification, or distance that a candidate lived from a particular precinct," Brief for United States as *Amicus Curiae* 30, n. 57, can prove that race was the primary determinant of voter behavior.[31]

Whether appellants and the United States believe that it is the voter's race or the candidate's race that must be the primary determinant of the voter's choice is unclear; indeed, their catalogs of relevant variables suggest both.[32] Age, religion, income, and education seem most relevant to the voter; incumbency, campaign expenditures, name identification, and media use are pertinent to the candidate; and party affiliation could refer both to the voter and the candidate. In either case, we disagree: For purposes of § 2, the legal concept of racially polarized voting incorporates neither causation nor intent. It means simply that the race of voters correlates with the selection of a certain candidate or candidates; that is, it refers to the situation where different races (or minority language groups) vote in blocs for different candidates. Grofman, Migalski, & Noviello 203. As we demonstrate *infra*, appellants' theory of racially polarized voting would thwart the goals Congress sought to achieve when it amended § 2 and would prevent courts from performing the "functional" analysis of the political process, S. Rep., at 30, n. 119, and the "searching practical evaluation of the 'past

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[31] Appellants argue that plaintiffs must establish that race was the primary determinant of voter behavior as part of their prima facie showing of polarized voting; the United States suggests that plaintiffs make out a prima facie case merely by showing a correlation between race and the selection of certain candidates, but that defendants should be able to rebut by showing that factors other than race were the principal causes of voters' choices. We reject both arguments.

[32] The Fifth Circuit cases on which North Carolina and the United States rely for their position are equally ambiguous. See *Lee County Branch of NAACP* v. *Opelika*, 748 F. 2d 1473, 1482 (1984); *Jones* v. *Lubbock*, 730 F. 2d 233, 234 (1984) (Higginbotham, J., concurring).

and present reality,'" *id.*, at 30 (footnote omitted), mandated by the Senate Report.

2

Causation Irrelevant to Section 2 Inquiry

The first reason we reject appellants' argument that racially polarized voting refers to voting patterns that are in some way *caused by race*, rather than to voting patterns that are merely *correlated with the race of the voter*, is that the reasons black and white voters vote differently have no relevance to the central inquiry of § 2. By contrast, the correlation between race of voter and the selection of certain candidates is crucial to that inquiry.

Both § 2 itself and the Senate Report make clear that the critical question in a § 2 claim is whether the use of a contested electoral practice or structure results in members of a protected group having less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. See, *e. g.*, S. Rep., at 2, 27, 28, 29, n. 118, 36. As we explained, *supra*, at 47–48, multimember districts may impair the ability of blacks to elect representatives of their choice where blacks vote sufficiently as a bloc as to be able to elect their preferred candidates in a black majority, single-member district and where a white majority votes sufficiently as a bloc usually to defeat the candidates chosen by blacks. It is the *difference* between the choices made by blacks and whites—not the reasons for that difference—that results in blacks having less opportunity than whites to elect their preferred representatives. Consequently, we conclude that under the "results test" of § 2, only the correlation between race of voter and selection of certain candidates, not the causes of the correlation, matters.

The irrelevance to a § 2 inquiry of the reasons why black and white voters vote differently supports, by itself, our rejection of appellants' theory of racially polarized voting. However, their theory contains other equally serious flaws

that merit further attention. As we demonstrate below, the addition of irrelevant variables distorts the equation and yields results that are indisputably incorrect under § 2 and the Senate Report.

3

Race of Voter as Primary Determinant of Voter Behavior

Appellants and the United States contend that the legal concept of "racially polarized voting" refers not to voting patterns that are merely *correlated with the voter's race*, but to voting patterns that are *determined primarily by the voter's race*, rather than by the voter's other socioeconomic characteristics.

The first problem with this argument is that it ignores the fact that members of geographically insular racial and ethnic groups frequently share socioeconomic characteristics, such as income level, employment status, amount of education, housing and other living conditions, religion, language, and so forth. See, *e. g.*, Butler 902 (Minority group "members' shared concerns, including political ones, are . . . a function of group status, and as such are largely involuntary. . . . As a group blacks are concerned, for example, with police brutality, substandard housing, unemployment, etc., because these problems fall disproportionately upon the group"); S. Verba & N. Nie, Participation in America 151–152 (1972) ("Socioeconomic status . . . is closely related to race. Blacks in American society are likely to be in lower-status jobs than whites, to have less education, and to have lower incomes"). Where such characteristics are shared, race or ethnic group not only denotes color or place of origin, it also functions as a shorthand notation for common social and economic characteristics. Appellants' definition of racially polarized voting is even more pernicious where shared characteristics are causally related to race or ethnicity. The opportunity to achieve high employment status and income, for example, is often influenced by the presence or absence of racial or ethnic discrimination. A definition of racially polarized voting which

holds that black bloc voting does not exist when black voters' choice of certain candidates is most strongly influenced by the fact that the voters have low incomes and menial jobs—when the reason most of those voters have menial jobs and low incomes is attributable to past or present racial discrimination—runs counter to the Senate Report's instruction to conduct a searching and practical evaluation of past and present reality, S. Rep., at 30, and interferes with the purpose of the Voting Rights Act to eliminate the negative effects of past discrimination on the electoral opportunities of minorities. *Id.*, at 5, 40.

Furthermore, under appellants' theory of racially polarized voting, even uncontrovertible evidence that candidates strongly preferred by black voters are *always* defeated by a bloc voting white majority would be dismissed for failure to prove racial polarization whenever the black and white populations could be described in terms of other socioeconomic characteristics.

To illustrate, assume a racially mixed, urban multimember district in which blacks and whites possess the same socioeconomic characteristics that the record in this case attributes to blacks and whites in Halifax County, a part of Senate District 2. The annual mean income for blacks in this district is $10,465, and 47.8% of the black community lives in poverty. More than half—51.5%—of black adults over the age of 25 have only an eighth-grade education or less. Just over half of black citizens reside in their own homes; 48.9% live in rental units. And, almost a third of all black households are without a car. In contrast, only 12.6% of the whites in the district live below the poverty line. Whites enjoy a mean income of $19,042. White residents are better educated than blacks—only 25.6% of whites over the age of 25 have only an eighth-grade education or less. Furthermore, only 26.2% of whites live in rental units, and only 10.2% live in households with no vehicle available. 1 App., Ex-44. As is the case in Senate District 2, blacks in this

hypothetical urban district have never been able to elect a representative of their choice.

According to appellants' theory of racially polarized voting, proof that black and white voters in this hypothetical district regularly choose different candidates and that the blacks' preferred candidates regularly lose could be rejected as not probative of racial bloc voting. The basis for the rejection would be that blacks chose a certain candidate, not principally because of their race, but principally because this candidate best represented the interests of residents who, because of their low incomes, are particularly interested in government-subsidized health and welfare services; who are generally poorly educated, and thus share an interest in job training programs; who are, to a greater extent than the white community, concerned with rent control issues; and who favor major public transportation expenditures. Similarly, whites would be found to have voted for a different candidate, not principally because of their race, but primarily because that candidate best represented the interests of residents who, due to their education and income levels, and to their property and vehicle ownership, favor gentrification, low residential property taxes, and extensive expenditures for street and highway improvements.

Congress could not have intended that courts employ this definition of racial bloc voting. First, this definition leads to results that are inconsistent with the effects test adopted by Congress when it amended § 2 and with the Senate Report's admonition that courts take a "functional" view of the political process, S. Rep. 30, n. 119, and conduct a searching and practical evaluation of reality. *Id.*, at 30. A test for racially polarized voting that denies the fact that race and socioeconomic characteristics are often closely correlated permits neither a practical evaluation of reality nor a functional analysis of vote dilution. And, contrary to Congress' intent in adopting the "results test," appellants' proposed definition could result in the inability of minority voters to establish a critical

element of a vote dilution claim, even though both races engage in "monolithic" bloc voting, *id.*, at 33, and generations of black voters have been unable to elect a representative of their choice.

Second, appellants' interpretation of "racially polarized voting" creates an irreconcilable tension between their proposed treatment of socioeconomic characteristics in the bloc voting context and the Senate Report's statement that "the extent to which members of the minority group . . . bear the effects of discrimination in such areas as education, employment and health" may be relevant to a § 2 claim. *Id.*, at 29. We can find no support in either logic or the legislative history for the anomalous conclusion to which appellants' position leads—that Congress intended, on the one hand, that proof that a minority group is predominately poor, uneducated, and unhealthy should be considered a factor tending to prove a § 2 violation; but that Congress intended, on the other hand, that proof that the same socioeconomic characteristics greatly influence black voters' choice of candidates should destroy these voters' ability to establish one of the most important elements of a vote dilution claim.

4

Race of Candidate as Primary Determinant of Voter Behavior

North Carolina's and the United States' suggestion that racially polarized voting means that voters select or reject candidates *principally* on the basis of the *candidate's race* is also misplaced.

First, both the language of § 2 and a functional understanding of the phenomenon of vote dilution mandate the conclusion that the race of the candidate *per se* is irrelevant to racial bloc voting analysis. Section 2(b) states that a violation is established if it can be shown that members of a protected minority group "have less opportunity than other members of the electorate to . . . elect representatives *of their choice.*"

(Emphasis added.) Because both minority and majority voters often select members of their own race as their preferred representatives, it will frequently be the case that a black candidate is the choice of blacks, while a white candidate is the choice of whites. Cf. Letter to the Editor from Chandler Davidson, 17 New Perspectives 38 (Fall 1985). Indeed, the facts of this case illustrate that tendency—blacks preferred black candidates, whites preferred white candidates. Thus, as a matter of convenience, we and the District Court may refer to the preferred representative of black voters as the "black candidate" and to the preferred representative of white voters as the "white candidate." Nonetheless, the fact that race of voter and race of candidate is often correlated is not directly pertinent to a § 2 inquiry. Under § 2, it is the *status* of the candidate as the *chosen representative of a particular racial group*, not the race of the candidate, that is important.

An understanding of how vote dilution through submergence in a white majority works leads to the same conclusion. The essence of a submergence claim is that minority group members prefer certain candidates whom they could elect were it not for the interaction of the challenged electoral law or structure with a white majority that votes as a significant bloc for different candidates. Thus, as we explained in Part III, *supra*, the existence of racial bloc voting is relevant to a vote dilution claim in two ways. Bloc voting by blacks tends to prove that the black community is politically cohesive, that is, it shows that blacks prefer certain candidates whom they could elect in a single-member, black majority district. Bloc voting by a white majority tends to prove that blacks will generally be unable to elect representatives of their choice. Clearly, only the race of the voter, not the race of the candidate, is relevant to vote dilution analysis. See, *e. g.*, Blacksher & Menefee 59–60; Grofman, Should Representatives be Typical?, in Representation and Redistricting Issues 98; Note, Geometry and Geography 207.

Second, appellants' suggestion that racially polarized voting refers to voting patterns where whites vote for white candidates because they prefer members of their own race or are hostile to blacks, as opposed to voting patterns where whites vote for white candidates because the white candidates spent more on their campaigns, utilized more media coverage, and thus enjoyed greater name recognition than the black candidates, fails for another, independent reason. This argument, like the argument that the race of the voter must be the primary determinant of the voter's ballot, is inconsistent with the purposes of § 2 and would render meaningless the Senate Report factor that addresses the impact of low socioeconomic status on a minority group's level of political participation.

Congress intended that the Voting Rights Act eradicate inequalities in political opportunities that exist due to the vestigial effects of past purposeful discrimination. S. Rep., at 5, 40; H. R. Rep. No. 97-227, p. 31 (1981). Both this Court and other federal courts have recognized that political participation by minorities tends to be depressed where minority group members suffer effects of prior discrimination such as inferior education, poor employment opportunities, and low incomes. See, *e. g.*, *White* v. *Regester*, 412 U. S., at 768-769; *Kirksey* v. *Board of Supervisors of Hinds County, Miss.*, 554 F. 2d 139, 145-146 (CA5) (en banc), cert. denied, 434 U. S. 968 (1977). See also S. Verba & N. Nie, Participation in America 152 (1972). The Senate Report acknowledges this tendency and instructs that "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," S. Rep., at 29 (footnote omitted), is a factor which may be probative of unequal opportunity to participate in the political process and to elect representatives. Courts and commentators have recognized further that candidates generally must spend more money in order to win

election in a multimember district than in a single-member district. See, *e. g.*, *Graves* v. *Barnes*, 343 F. Supp. 704, 720–721 (WD Tex. 1972), aff'd in part and rev'd in part *sub nom. White* v. *Regester*, *supra*. Berry & Dye 88; Davidson & Fraga, Nonpartisan Slating Groups in an At-Large Setting, in Minority Vote Dilution 122–123; Derfner 554, n. 126; Jewell 131; Karnig, Black Representation on City Councils, 12 Urb. Aff. Q. 223, 230 (1976). If, because of inferior education and poor employment opportunities, blacks earn less than whites, they will not be able to provide the candidates of their choice with the same level of financial support that whites can provide theirs. Thus, electoral losses by candidates preferred by the black community may well be attributable in part to the fact that their white opponents outspent them. But, the fact is that, in this instance, the economic effects of prior discrimination have combined with the multimember electoral structure to afford blacks less opportunity than whites to participate in the political process and to elect representatives of their choice. It would be both anomalous and inconsistent with congressional intent to hold that, on the one hand, the effects of past discrimination which hinder blacks' ability to participate in the political process tend to prove a § 2 violation, while holding on the other hand that, where these same effects of past discrimination deter whites from voting for blacks, blacks cannot make out a crucial element of a vote dilution claim. Accord, *Escambia County*, 748 F. 2d, at 1043 ("'[T]he failure of the blacks to solicit white votes may be caused by the effects of past discrimination'") (quoting *United States* v. *Dallas County Comm'n*, 739 F. 2d 1529, 1536 (CA11 1984)); *United States* v. *Marengo County Comm'n*, 731 F. 2d, at 1567.

5

Racial Animosity as Primary Determinant of Voter Behavior

Finally, we reject the suggestion that racially polarized voting refers only to white bloc voting which is caused by

white voters' *racial hostility* toward black candidates.[33] To accept this theory would frustrate the goals Congress sought to achieve by repudiating the intent test of *Mobile* v. *Bolden*, 446 U. S. 55 (1980), and would prevent minority voters who have clearly been denied an opportunity to elect representatives of their choice from establishing a critical element of a vote dilution claim.

In amending § 2, Congress rejected the requirement announced by this Court in *Bolden*, *supra*, that § 2 plaintiffs must prove the discriminatory intent of state or local governments in adopting or maintaining the challenged electoral mechanism.[34] Appellants' suggestion that the discriminatory intent of individual white voters must be proved in order to make out a § 2 claim must fail for the very reasons Congress rejected the intent test with respect to governmental bodies. See Engstrom, The Reincarnation of the Intent Standard: Federal Judges and At-Large Election Cases, 28 How. L. J. 495 (1985).

The Senate Report states that one reason the Senate Committee abandoned the intent test was that "the Committee . . . heard persuasive testimony that the intent test is unnecessarily divisive because it involves charges of racism on the part of individual officials or entire communities." S. Rep., at 36. The Committee found the testimony of Dr. Arthur S.

[33] It is true, as we have recognized previously, that racial hostility may often fuel racial bloc voting. *United Jewish Organizations* v. *Carey*, 430 U. S. 144, 166 (1977); *Rogers* v. *Lodge*, 458 U. S., at 623. But, as we explain in this decision, the actual motivation of the voter has no relevance to a vote dilution claim. This is not to suggest that racial bloc voting is race neutral; because voter behavior correlates with race, obviously it is not. It should be remembered, though, as one commentator has observed, that "[t]he absence of racial animus is but one element of race neutrality." Note, Geometry and Geography 208.

[34] The Senate Report rejected the argument that the words "on account of race," contained in § 2(a), create any requirement of purposeful discrimination. "[I]t is patently [clear] that Congress has used the words 'on account of race or color' in the Act to mean 'with respect to' race or color, and not to connote any required purpose of racial discrimination." S. Rep., at 27–28, n. 109.

Flemming, Chairman of the United States Commission on Civil Rights, particularly persuasive. He testified:

> "'[Under an intent test] [l]itigators representing excluded minorities will have to explore the motivations of individual council members, mayors, and other citizens. The question would be whether their decisions were motivated by invidious racial considerations. Such inquiries can only be divisive, threatening to destroy any existing racial progress in a community. It is the intent test, not the results test, that would make it necessary to brand individuals as racist in order to obtain judicial relief.'" *Ibid.* (footnote omitted).

The grave threat to racial progress and harmony which Congress perceived from requiring proof that racism caused the adoption or maintenance of a challenged electoral mechanism is present to a much greater degree in the proposed requirement that plaintiffs demonstrate that racial animosity determined white voting patterns. Under the old intent test, plaintiffs might succeed by proving only that a limited number of elected officials were racist; under the new intent test plaintiffs would be required to prove that most of the white community is racist in order to obtain judicial relief. It is difficult to imagine a more racially divisive requirement.

A second reason Congress rejected the old intent test was that in most cases it placed an "inordinately difficult burden" on §2 plaintiffs. *Ibid.* The new intent test would be equally, if not more, burdensome. In order to prove that a *specific factor*—racial hostility—*determined* white voters' ballots, it would be necessary to demonstrate that other potentially relevant *causal factors*, such as socioeconomic characteristics and candidate expenditures, do not correlate better than racial animosity with white voting behavior. As one commentator has explained:

> "Many of the[se] independent variables . . . would be all but impossible for a social scientist to operationalize as interval-level independent variables for use in a multiple regression equation, whether on a step-wise basis or not. To conduct such an extensive statistical analysis as this implies, moreover, can become prohibitively expensive.
>
> "Compared to this sort of effort, proving discriminatory intent in the adoption of an at-large election system is both simple and inexpensive." McCrary, Discriminatory Intent: The Continuing Relevance of "Purpose" Evidence in Vote-Dilution Lawsuits, 28 How. L. J. 463, 492 (1985) (footnote omitted).

The final and most dispositive reason the Senate Report repudiated the old intent test was that it "asks the wrong question." S. Rep., at 36. Amended §2 asks instead "whether minorities have equal access to the process of electing their representatives." *Ibid.*

Focusing on the discriminatory intent of the voters, rather than the behavior of the voters, also asks the wrong question. All that matters under §2 and under a functional theory of vote dilution is voter behavior, not its explanations. Moreover, as we have explained in detail, *supra*, requiring proof that racial considerations actually *caused* voter behavior will result—contrary to congressional intent—in situations where a black minority that functionally has been totally excluded from the political process will be unable to establish a §2 violation. The Senate Report's remark concerning the old intent test thus is pertinent to the new test: The requirement that a "court . . . make a separate . . . finding of intent, after accepting the proof of the factors involved in the *White* [v. *Regester*, 412 U. S. 755] analysis . . . [would] seriously clou[d] the prospects of eradicating the remaining instances of racial discrimination in American elections." *Id.*, at 37. We therefore decline to adopt such a requirement.

6

Summary

In sum, we would hold that the legal concept of racially polarized voting, as it relates to claims of vote dilution, refers only to the existence of a correlation between the race of voters and the selection of certain candidates. Plaintiffs need not prove causation or intent in order to prove a prima facie case of racial bloc voting and defendants may not rebut that case with evidence of causation or intent.

IV

THE LEGAL SIGNIFICANCE OF SOME BLACK CANDIDATES' SUCCESS

A

North Carolina and the United States maintain that the District Court failed to accord the proper weight to the success of some black candidates in the challenged districts. Black residents of these districts, they point out, achieved improved representation in the 1982 General Assembly election.[35] They also note that blacks in House District 23 have enjoyed proportional representation consistently since 1973 and that blacks in the other districts have occasionally enjoyed nearly proportional representation.[36] This electoral

[35] The relevant results of the 1982 General Assembly election are as follows. House District 21, in which blacks make up 21.8% of the population, elected one black to the six-person House delegation. House District 23, in which blacks constitute 36.3% of the population, elected one black to the three-person House delegation. In House District 36, where blacks constitute 26.5% of the population, one black was elected to the eight-member delegation. In House District 39, where 25.1% of the population is black, two blacks were elected to the five-member delegation. In Senate District 22, where blacks constitute 24.3% of the population, no black was elected to the Senate in 1982.

[36] The United States points out that, under a substantially identical predecessor to the challenged plan, see n. 15, *supra*, House District 21 elected a black to its six-member delegation in 1980, House District 39

success demonstrates conclusively, appellants and the United States argue, that blacks in those districts do not have "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U. S. C. § 1973(b). Essentially, appellants and the United States contend that if a racial minority gains proportional or nearly proportional representation in a single election, that fact alone precludes, as a matter of law, finding a § 2 violation.

Section 2(b) provides that "[t]he extent to which members of a protected class have been elected to office . . . is one circumstance which may be considered." 42 U. S. C. § 1973(b). The Senate Committee Report also identifies the extent to which minority candidates have succeeded as a pertinent factor. S. Rep., at 29. However, the Senate Report expressly states that "the election of a few minority candidates does not 'necessarily foreclose the possibility of dilution of the black vote,'" noting that if it did, "the possibility exists that the majority citizens might evade [§ 2] by manipulating the election of a 'safe' minority candidate." *Id.*, at 29, n. 115, quoting *Zimmer* v. *McKeithen*, 485 F. 2d 1297, 1307 (CA5 1973) (en banc), aff'd *sub nom. East Carroll Parish School Board* v. *Marshall*, 424 U. S. 636 (1976) *(per curiam)*. The Senate Committee decided, instead, to "'require an independent consideration of the record.'" S. Rep., at 29, n. 115. The Senate Report also emphasizes that the question whether "the political processes are 'equally open' depends upon a searching practical evaluation of the 'past and present reality.'" *Id.*, at 30 (footnote omitted). Thus, the language of § 2 and its legislative history plainly demonstrate that proof that some minority candidates have been elected does not foreclose a § 2 claim.

Moreover, in conducting its "independent consideration of the record" and its "searching practical evaluation of the 'past

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elected a black to its five-member delegation in 1974 and 1976, and Senate District 22 had a black Senator between 1975 and 1980.

and present reality,'" the District Court could appropriately take account of the circumstances surrounding recent black electoral success in deciding its significance to appellees' claim. In particular, as the Senate Report makes clear, *id.*, at 29, n. 115, the court could properly notice the fact that black electoral success increased markedly in the 1982 election—an election that occurred after the instant lawsuit had been filed—and could properly consider to what extent "the pendency of this very litigation [might have] worked a one-time advantage for black candidates in the form of unusual organized political support by white leaders concerned to forestall single-member districting."[37] 590 F. Supp., at 367, n. 27.

Nothing in the statute or its legislative history prohibited the court from viewing with some caution black candidates' success in the 1982 election, and from deciding on the basis of all the relevant circumstances to accord greater weight to blacks' relative lack of success over the course of several recent elections. Consequently, we hold that the District Court did not err, as a matter of law, in refusing to treat the fact that some black candidates have succeeded as dispositive of appellees' § 2 claim. Where multimember districting generally works to dilute the minority vote, it cannot be defended on the ground that it sporadically and serendipitously benefits minority voters.

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[37] See also *Zimmer* v. *McKeithen*, 485 F. 2d, at 1307 ("[W]e cannot endorse the view that the success of black candidates at the polls necessarily forecloses the possibility of dilution of the black vote. Such success might, on occasion, be attributable to the work of politicians, who, apprehending that the support of a black candidate would be politically expedient, campaign to insure his election. Or such success might be attributable to political support motivated by different considerations—namely that election of a black candidate will thwart successful challenges to electoral schemes on dilution grounds. In either situation, a candidate could be elected despite the relative political backwardness of black residents in the electoral district").

B

The District Court did err, however, in ignoring the significance of the *sustained* success black voters have experienced in House District 23. In that district, the last six elections have resulted in proportional representation for black residents. This persistent proportional representation is inconsistent with appellees' allegation that the ability of black voters in District 23 to elect representatives of their choice is not equal to that enjoyed by the white majority.

In some situations, it may be possible for § 2 plaintiffs to demonstrate that such sustained success does not accurately reflect the minority group's ability to elect its preferred representatives,[38] but appellees have not done so here. Appellees presented evidence relating to black electoral success in the last three elections; they failed utterly, though, to offer any explanation for the success of black candidates in the previous three elections. Consequently, we believe that the District Court erred, as a matter of law, in ignoring the sustained success black voters have enjoyed in House District 23, and would reverse with respect to that District.

V

ULTIMATE DETERMINATION OF VOTE DILUTION

Finally, appellants and the United States dispute the District Court's ultimate conclusion that the multimember districting scheme at issue in this case deprived black voters of an equal opportunity to participate in the political process and to elect representatives of their choice.

A

As an initial matter, both North Carolina and the United States contend that the District Court's ultimate conclusion that the challenged multimember districts operate to dilute

[38] We have no occasion in this case to decide what types of special circumstances could satisfactorily demonstrate that sustained success does not accurately reflect the minority's ability to elect its preferred representatives.

black citizens' votes is a mixed question of law and fact subject to *de novo* review on appeal. In support of their proposed standard of review, they rely primarily on *Bose Corp.* v. *Consumers Union of U. S., Inc.*, 466 U. S. 485 (1984), a case in which we reconfirmed that, as a matter of constitutional law, there must be independent appellate review of evidence of "actual malice" in defamation cases. Appellants and the United States argue that because a finding of vote dilution under amended § 2 requires the application of a rule of law to a particular set of facts it constitutes a legal, rather than factual, determination. Reply Brief for Appellants 7; Brief for United States as *Amicus Curiae* 18–19. Neither appellants nor the United States cite our several precedents in which we have treated the ultimate finding of vote dilution as a question of fact subject to the clearly-erroneous standard of Rule 52(a). See, *e. g.*, *Rogers* v. *Lodge*, 458 U. S., at 622–627; *City of Rome* v. *United States*, 446 U. S. 156, 183 (1980); *White* v. *Regester*, 412 U. S., at 765–770. Cf. *Anderson* v. *Bessemer City*, 470 U. S. 564, 573 (1985).

In *Regester*, *supra*, we noted that the District Court had based its conclusion that minority voters in two multimember districts in Texas had less opportunity to participate in the political process than majority voters on the totality of the circumstances and stated that

> "we are not inclined to overturn these findings, representing as they do a blend of history and an intensely local appraisal of the design and impact of the . . . multimember district in the light of past and present reality, political and otherwise." *Id.*, at 769–770.

Quoting this passage from *Regester* with approval, we expressly held in *Rogers* v. *Lodge*, *supra*, that the question whether an at-large election system was maintained for discriminatory purposes and subsidiary issues, which include whether that system had the effect of diluting the minority vote, were questions of fact, reviewable under Rule 52(a)'s

clearly-erroneous standard. 458 U. S., at 622–623. Similarly, in *City of Rome* v. *United States*, we declared that the question whether certain electoral structures had a "discriminatory effect," in the sense of diluting the minority vote, was a question of fact subject to clearly-erroneous review. 446 U. S., at 183.

We reaffirm our view that the clearly-erroneous test of Rule 52(a) is the appropriate standard for appellate review of a finding of vote dilution. As both amended § 2 and its legislative history make clear, in evaluating a statutory claim of vote dilution through districting, the trial court is to consider the "totality of the circumstances" and to determine, based "upon a searching practical evaluation of the 'past and present reality,'" S. Rep., at 30 (footnote omitted), whether the political process is equally open to minority voters. "'This determination is peculiarly dependent upon the facts of each case,'" *Rogers*, *supra*, at 621, quoting *Nevett* v. *Sides*, 571 F. 2d 209, 224 (CA5 1978), and requires "an intensely local appraisal of the design and impact" of the contested electoral mechanisms. 458 U. S., at 622. The fact that amended § 2 and its legislative history provide legal standards which a court must apply to the facts in order to determine whether § 2 has been violated does not alter the standard of review. As we explained in *Bose*, Rule 52(a) "does not inhibit an appellate court's power to correct errors of law, including those that may infect a so-called mixed finding of law and fact, or a finding of fact that is predicated on a misunderstanding of the governing rule of law." 466 U. S., at 501, citing *Pullman-Standard* v. *Swint*, 456 U. S. 273, 287 (1982); *Inwood Laboratories, Inc.* v. *Ives Laboratories, Inc.*, 456 U. S. 844, 855, n. 15 (1982). Thus, the application of the clearly-erroneous standard to ultimate findings of vote dilution preserves the benefit of the trial court's particular familiarity with the indigenous political reality without endangering the rule of law.

B

The District Court in this case carefully considered the totality of the circumstances and found that in each district racially polarized voting; the legacy of official discrimination in voting matters, education, housing, employment, and health services; and the persistence of campaign appeals to racial prejudice acted in concert with the multimember districting scheme to impair the ability of geographically insular and politically cohesive groups of black voters to participate equally in the political process and to elect candidates of their choice. It found that the success a few black candidates have enjoyed in these districts is too recent, too limited, and, with regard to the 1982 elections, perhaps too aberrational, to disprove its conclusion. Excepting House District 23, with respect to which the District Court committed legal error, see *supra*, at 77, we affirm the District Court's judgment. We cannot say that the District Court, composed of local judges who are well acquainted with the political realities of the State, clearly erred in concluding that use of a multimember electoral structure has caused black voters in the districts other than House District 23 to have less opportunity than white voters to elect representatives of their choice.

The judgment of the District Court is

Affirmed in part and reversed in part.

APPENDIX A TO OPINION OF BRENNAN, J.

Percentages of Votes Cast by Black and White Voters for Black Candidates in the Five Contested Districts

Senate District 22

	Primary		*General*	
	White	*Black*	*White*	*Black*
1978 (Alexander)	47	87	41	94
1980 (Alexander)	23	78	n/a	n/a
1982 (Polk)	32	83	33	94

House District 21

	Primary		*General*	
	White	*Black*	*White*	*Black*
1978 (Blue)	21	76	n/a	n/a
1980 (Blue)	31	81	44	90
1982 (Blue)	39	82	45	91

House District 23

	Primary		*General*	
	White	*Black*	*White*	*Black*
1978 Senate				
Barns (Repub.)	n/a	n/a	17	5
1978 House				
Clement	10	89	n/a	n/a
Spaulding	16	92	37	89
1980 House				
Spaulding	n/a	n/a	49	90
1982 House				
Clement	26	32	n/a	n/a
Spaulding	37	90	43	89

House District 36

	Primary		*General*	
	White	*Black*	*White*	*Black*
1980 (Maxwell)	22	71	28	92
1982 (Berry)	50	79	42	92
1982 (Richardson)	39	71	29	88

House District 39

	Primary		*General*	
	White	*Black*	*White*	*Black*
1978 House				
Kennedy, H.	28	76	32	93
Norman	8	29	n/a	n/a
Ross	17	53	n/a	n/a
Sumter (Repub.)	n/a	n/a	33	25

House District 39

	Primary		*General*	
	White	*Black*	*White*	*Black*
1980 House				
Kennedy, A.	40	86	32	96
Norman	18	36	n/a	n/a
1980 Senate				
Small	12	61	n/a	n/a
1982 House				
Hauser	25	80	42	87
Kennedy, A.	36	87	46	94

590 F. Supp., at 369–371.

APPENDIX B TO OPINION OF BRENNAN, J.

Black Candidates Elected From 7 Originally Contested Districts

District (No. Seats)	Prior to 1972	1972	1974	1976	1978	1980	1982
House 8 (4)	0	0	0	0	0	0	0
House 21 (6)	0	0	0	0	0	1	1
House 23 (3)	0	1	1	1	1	1	1
House 36 (8)	0	0	0	0	0	0	1
House 39 (5)	0	0	1	1	0	0	2
Senate 2 (2)	0	0	0	0	0	0	0
Senate 22 (4)	0	0	1	1	1	0	0

See Brief for Appellees, table printed between pages 8 and 9; App. 93–94.

JUSTICE WHITE, concurring.

I join Parts I, II, III–A, III–B, IV–A, and V of the Court's opinion and agree with JUSTICE BRENNAN's opinion as to Part IV–B. I disagree with Part III–C of JUSTICE BRENNAN's opinion.

JUSTICE BRENNAN states in Part III–C that the crucial factor in identifying polarized voting is the race of the voter and that the race of the candidate is irrelevant. Under this test, there is polarized voting if the majority of white voters vote for different candidates than the majority of the blacks, regardless of the race of the candidates. I do not agree. Suppose an eight-member multimember district that is 60% white and 40% black, the blacks being geographically located so that two safe black single-member districts could be drawn. Suppose further that there are six white and two black Democrats running against six white and two black Republicans. Under JUSTICE BRENNAN's test, there would be polarized voting and a likely § 2 violation if all the Republicans, including the two blacks, are elected, and 80% of the blacks in the predominantly black areas vote Democratic. I take it that there would also be a violation in a single-member district that is 60% black, but enough of the blacks vote with the whites to elect a black candidate who is not the choice of the majority of black voters. This is interest-group politics rather than a rule hedging against racial discrimination. I doubt that this is what Congress had in mind in amending § 2 as it did, and it seems quite at odds with the discussion in *Whitcomb* v. *Chavis*, 403 U. S. 124, 149–160 (1971). Furthermore, on the facts of this case, there is no need to draw the voter/candidate distinction. The District Court did not and reached the correct result except, in my view, with respect to District 23.

JUSTICE O'CONNOR, with whom THE CHIEF JUSTICE, JUSTICE POWELL, and JUSTICE REHNQUIST join, concurring in the judgment.

In this case, we are called upon to construe § 2 of the Voting Rights Act of 1965, as amended June 29, 1982. Amended § 2 is intended to codify the "results" test employed in *Whitcomb* v. *Chavis*, 403 U. S. 124 (1971), and *White* v. *Regester*, 412 U. S. 755 (1973), and to reject the "intent" test propounded in the plurality opinion in *Mobile* v. *Bolden*, 446

U. S. 55 (1980). S. Rep. No. 97–417, pp. 27–28 (1982) (hereinafter S. Rep.). Whereas *Bolden* required members of a racial minority who alleged impairment of their voting strength to prove that the challenged electoral system was created or maintained with a discriminatory purpose and led to discriminatory results, under the results test, "plaintiffs may choose to establish discriminatory results without proving any kind of discriminatory purpose." S. Rep., at 28. At the same time, however, § 2 unequivocally disclaims the creation of a right to proportional representation. This disclaimer was essential to the compromise that resulted in passage of the amendment. See *id.*, at 193–194 (additional views of Sen. Dole).

In construing this compromise legislation, we must make every effort to be faithful to the balance Congress struck. This is not an easy task. We know that Congress intended to allow vote dilution claims to be brought under § 2, but we also know that Congress did not intend to create a right to proportional representation for minority voters. There is an inherent tension between what Congress wished to do and what it wished to avoid, because any theory of vote dilution must necessarily rely to some extent on a measure of minority voting strength that makes some reference to the proportion between the minority group and the electorate at large. In addition, several important aspects of the "results" test had received little attention in this Court's cases or in the decisions of the Courts of Appeals employing that test on which Congress also relied. See *id.*, at 32. Specifically, the legal meaning to be given to the concepts of "racial bloc voting" and "minority voting strength" had been left largely unaddressed by the courts when § 2 was amended.

The Court attempts to resolve all these difficulties today. First, the Court supplies definitions of racial bloc voting and minority voting strength that will apparently be applicable in all cases and that will dictate the structure of vote dilution litigation. Second, the Court adopts a test, based on the

level of minority electoral success, for determining when an electoral scheme has sufficiently diminished minority voting strength to constitute vote dilution. Third, although the Court does not acknowledge it expressly, the combination of the Court's definition of minority voting strength and its test for vote dilution results in the creation of a right to a form of proportional representation in favor of all geographically and politically cohesive minority groups that are large enough to constitute majorities if concentrated within one or more single-member districts. In so doing, the Court has disregarded the balance struck by Congress in amending § 2 and has failed to apply the results test as described by this Court in *Whitcomb* and *White*.

I

In order to explain my disagreement with the Court's interpretation of § 2, it is useful to illustrate the impact that alternative districting plans or types of districts typically have on the likelihood that a minority group will be able to elect candidates it prefers, and then to set out the critical elements of a vote dilution claim as they emerge in the Court's opinion.

Consider a town of 1,000 voters that is governed by a council of four representatives, in which 30% of the voters are black, and in which the black voters are concentrated in one section of the city and tend to vote as a bloc. It would be possible to draw four single-member districts, in one of which blacks would constitute an overwhelming majority. The black voters in this district would be assured of electing a representative of their choice, while any remaining black voters in the other districts would be submerged in large white majorities. This option would give the minority group roughly proportional representation.

Alternatively, it would usually be possible to draw four single-member districts in *two* of which black voters constituted much narrower majorities of about 60%. The black

voters in these districts would often be able to elect the representative of their choice in each of these two districts, but if even 20% of the black voters supported the candidate favored by the white minority in those districts the candidates preferred by the majority of black voters might lose. This option would, depending on the circumstances of a particular election, sometimes give the minority group more than proportional representation, but would increase the risk that the group would not achieve even roughly proportional representation.

It would also usually be possible to draw four single-member districts in each of which black voters constituted a minority. In the extreme case, black voters would constitute 30% of the voters in each district. Unless approximately 30% of the white voters in this extreme case backed the minority candidate, black voters in such a district would be unable to elect the candidate of their choice in an election between only two candidates even if they unanimously supported him. This option would make it difficult for black voters to elect candidates of their choice even with significant white support, and all but impossible without such support.

Finally, it would be possible to elect all four representatives in a single at-large election in which each voter could vote for four candidates. Under this scheme, white voters could elect all the representatives even if black voters turned out in large numbers and voted for one and only one candidate. To illustrate, if only four white candidates ran, and each received approximately equal support from white voters, each would receive about 700 votes, whereas black voters could cast no more than 300 votes for any one candidate. If, on the other hand, eight white candidates ran, and white votes were distributed less evenly, so that the five least favored white candidates received fewer than 300 votes while three others received 400 or more, it would be feasible for blacks to elect one representative with 300 votes even without substantial white support. If even 25% of the white vot-

ers backed a particular minority candidate, and black voters voted only for that candidate, the candidate would receive a total of 475 votes, which would ensure victory unless white voters also concentrated their votes on four of the eight remaining candidates, so that each received the support of almost 70% of white voters. As these variations show, the at-large or multimember district has an inherent tendency to submerge the votes of the minority. The minority group's prospects for electoral success under such a district heavily depend on a variety of factors such as voter turnout, how many candidates run, how evenly white support is spread, how much white support is given to a candidate or candidates preferred by the minority group, and the extent to which minority voters engage in "bullet voting" (which occurs when voters refrain from casting all their votes to avoid the risk that by voting for their lower ranked choices they may give those candidates enough votes to defeat their higher ranked choices, see *ante*, at 38–39, n. 5).

There is no difference in principle between the varying effects of the alternatives outlined above and the varying effects of alternative single-district plans and multimember districts. The type of districting selected and the way in which district lines are drawn can have a powerful effect on the likelihood that members of a geographically and politically cohesive minority group will be able to elect candidates of their choice.

Although § 2 does not speak in terms of "vote dilution," I agree with the Court that proof of vote dilution can establish a violation of § 2 as amended. The phrase "vote dilution," in the legal sense, simply refers to the impermissible discriminatory effect that a multimember or other districting plan has when it operates "to cancel out or minimize the voting strength of racial groups." *White*, 412 U. S., at 765. See also *Fortson* v. *Dorsey*, 379 U. S. 433, 439 (1965). This definition, however, conceals some very formidable difficulties. Is the "voting strength" of a racial group to be assessed solely

with reference to its prospects for electoral success, or should courts look at other avenues of political influence open to the racial group? Insofar as minority voting strength is assessed with reference to electoral success, how should undiluted minority voting strength be measured? How much of an impairment of minority voting strength is necessary to prove a violation of § 2? What constitutes racial bloc voting and how is it proved? What weight is to be given to evidence of actual electoral success by minority candidates in the face of evidence of racial bloc voting?

The Court resolves the first question summarily: minority voting strength *is* to be assessed solely in terms of the minority group's ability to elect candidates it prefers. *Ante*, at 48–49, n. 15. Under this approach, the essence of a vote dilution claim is that the State has created single-member or multimember districts that unacceptably impair the minority group's ability to elect the candidates its members prefer.

In order to evaluate a claim that a particular multimember district or single-member district has diluted the minority group's voting strength to a degree that violates § 2, however, it is also necessary to construct a measure of "undiluted" minority voting strength. "[T]he phrase [vote dilution] itself suggests a norm with respect to which the fact of dilution may be ascertained." *Mississippi Republican Executive Committee* v. *Brooks*, 469 U. S. 1002, 1012 (1984) (REHNQUIST, J., dissenting from summary affirmance). Put simply, in order to decide whether an electoral system has made it harder for minority voters to elect the candidates they prefer, a court must have an idea in mind of how hard it "should" be for minority voters to elect their preferred candidates under an acceptable system.

Several possible measures of "undiluted" minority voting strength suggest themselves. First, a court could simply use proportionality as its guide: if the minority group constituted 30% of the voters in a given area, the court would regard the minority group as having the potential to elect 30%

of the representatives in that area. Second, a court could posit some alternative districting plan as a "normal" or "fair" electoral scheme and attempt to calculate how many candidates preferred by the minority group would probably be elected under that scheme. There are, as we have seen, a variety of ways in which even single-member districts could be drawn, and each will present the minority group with its own array of electoral risks and benefits; the court might, therefore, consider a range of acceptable plans in attempting to estimate "undiluted" minority voting strength by this method. Third, the court could attempt to arrive at a plan that would maximize feasible minority electoral success, and use this degree of predicted success as its measure of "undiluted" minority voting strength. If a court were to employ this third alternative, it would often face hard choices about what would truly "maximize" minority electoral success. An example is the scenario described above, in which a minority group could be concentrated in one completely safe district or divided among two districts in each of which its members would constitute a somewhat precarious majority.

The Court today has adopted a variant of the third approach, to wit, undiluted minority voting strength means the maximum feasible minority voting strength. In explaining the elements of a vote dilution claim, the Court first states that "the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district." *Ante*, at 50. If not, apparently the minority group has no cognizable claim that its ability to elect the representatives of its choice has been impaired.[1] Second, "the minority group must be able

[1] I express no view as to whether the ability of a minority group to constitute a majority in a single-member district should constitute a threshold requirement for a claim that the use of multimember districts impairs the ability of minority voters to participate in the political processes and to elect representatives of their choice. Because the plaintiffs in this case would meet that requirement, if indeed it exists, I need not decide whether

to show that it is politically cohesive," that is, that a significant proportion of the minority group supports the same candidates. *Ante*, at 51. Third, the Court requires the minority group to "demonstrate that the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances . . . —usually to defeat the minority's preferred candidate." *Ibid.* If these three requirements are met, "the minority group demonstrates that submergence in a white multimember district impedes its ability to elect its chosen representatives." *Ibid.* That is to say, the minority group has proved vote dilution in violation of § 2.

The Court's definition of the elements of a vote dilution claim is simple and invariable: a court should calculate minority voting strength by assuming that the minority group is concentrated in a single-member district in which it constitutes a voting majority. Where the minority group is not large enough, geographically concentrated enough, or politically cohesive enough for this to be possible, the minority group's claim fails. Where the minority group meets these requirements, the representatives that it could elect in the hypothetical district or districts in which it constitutes a

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it is imposed by § 2. I note, however, the artificiality of the Court's distinction between claims that a minority group's "ability *to elect* the representatives of [its] choice" has been impaired and claims that "its ability to *influence* elections" has been impaired. *Ante*, at 46–47, n. 12. It is true that a minority group that could constitute a majority in a single-member district ordinarily has the potential ability to elect representatives without white support, and that a minority that could not constitute such a majority ordinarily does not. But the Court recognizes that when the candidates preferred by a minority group are elected in a multimember district, the minority group has *elected* those candidates, even if white support was indispensable to these victories. On the same reasoning, if a minority group that is not large enough to constitute a voting majority in a single-member district can show that white support would probably be forthcoming in some such district to an extent that would enable the election of the candidates its members prefer, that minority group would appear to have demonstrated that, at least under this measure of its voting strength, it would be able to elect some candidates of its choice.

majority will serve as the measure of its undiluted voting strength. Whatever plan the State actually adopts must be assessed in terms of the effect it has on this undiluted voting strength. If this is indeed the single, universal standard for evaluating undiluted minority voting strength for vote dilution purposes, the standard is applicable whether what is challenged is a multimember district or a particular single-member districting scheme.

The Court's statement of the elements of a vote dilution claim also supplies an answer to another question posed above: *how much* of an impairment of undiluted minority voting strength is necessary to prove vote dilution. The Court requires the minority group that satisfies the threshold requirements of size and cohesiveness to prove that it will *usually* be unable to elect as many representatives of its choice under the challenged districting scheme as its undiluted voting strength would permit. This requirement, then, constitutes the true test of vote dilution. Again, no reason appears why this test would not be applicable to a vote dilution claim challenging single-member as well as multimember districts.

This measure of vote dilution, taken in conjunction with the Court's standard for measuring undiluted minority voting strength, creates what amounts to a right to *usual, roughly* proportional representation on the part of sizable, compact, cohesive minority groups. If, under a particular multimember or single-member district plan, qualified minority groups usually cannot elect the representatives they would be likely to elect under the most favorable single-member districting plan, then § 2 is violated. Unless minority success under the challenged electoral system regularly approximates this rough version of proportional representation, that system dilutes minority voting strength and violates § 2.

To appreciate the implications of this approach, it is useful to return to the illustration of a town with four council representatives given above. Under the Court's approach, if the

black voters who constitute 30% of the town's voting population do not usually succeed in electing one representative of their choice, then regardless of whether the town employs at-large elections or is divided into four single-member districts, its electoral system violates § 2. Moreover, if the town had a black voting population of 40%, on the Court's reasoning the black minority, so long as it was geographically and politically cohesive, would be entitled usually to elect two of the four representatives, since it would normally be possible to create two districts in which black voters constituted safe majorities of approximately 80%.

To be sure, the Court also requires that plaintiffs prove that racial bloc voting by the white majority interacts with the challenged districting plan so as usually to defeat the minority's preferred candidate. In fact, however, this requirement adds little that is not already contained in the Court's requirements that the minority group be politically cohesive and that its preferred candidates usually lose. As the Court acknowledges, under its approach, "in general, a white bloc vote that normally will defeat the combined strength of minority support plus white 'crossover' votes rises to the level of legally significant white bloc voting." *Ante*, at 56. But this is to define legally significant bloc voting by the racial majority in terms of the extent of the racial minority's electoral success. If the minority can prove that it could constitute a majority in a single-member district, that it supported certain candidates, and that those candidates have not usually been elected, then a finding that there is "legally significant white bloc voting" will necessarily follow. Otherwise, by definition, those candidates would usually have won rather than lost.

As shaped by the Court today, then, the basic contours of a vote dilution claim require no reference to most of the "*Zimmer* factors" that were developed by the Fifth Circuit to implement *White*'s results test and which were highlighted in the Senate Report. S. Rep., at 28–29; see *Zimmer* v. *Mc-*

Keithen, 485 F. 2d 1297 (1973) (en banc), aff'd *sub nom. East Carroll Parish School Board* v. *Marshall*, 424 U. S. 636 (1976) *(per curiam)*. If a minority group is politically and geographically cohesive and large enough to constitute a voting majority in one or more single-member districts, then unless white voters usually support the minority's preferred candidates in sufficient numbers to enable the minority group to elect as many of those candidates as it could elect in such hypothetical districts, it will routinely follow that a vote dilution claim can be made out, and the multimember district will be invalidated. There is simply no need for plaintiffs to establish "the history of voting-related discrimination in the State or political subdivision," *ante*, at 44, or "the extent to which the State or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group," *ante*, at 45, or "the exclusion of members of the minority group from candidate slating processes," *ibid.*, or "the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health," *ibid.*, or "the use of overt or subtle racial appeals in political campaigns," *ibid.*, or that "elected officials are unresponsive to the particularized needs of the members of the minority group." *Ibid.* Of course, these other factors may be supportive of such a claim, because they may strengthen a court's confidence that minority voters will be unable to overcome the relative disadvantage at which they are placed by a particular districting plan, or suggest a more general lack of opportunity to participate in the political process. But the fact remains that electoral success has now emerged, under the Court's standard, as the linchpin of vote dilution claims, and that the elements of a vote dilution claim create an entitlement to roughly proportional representation within the framework of single-member districts.

II

In my view, the Court's test for measuring minority voting strength and its test for vote dilution, operating in tandem, come closer to an absolute requirement of proportional representation than Congress intended when it codified the results test in § 2. It is not necessary or appropriate to decide in this case whether § 2 requires a uniform measure of undiluted minority voting strength in every case, nor have appellants challenged the standard employed by the District Court for assessing undiluted minority voting strength.

In this case, the District Court seems to have taken an approach quite similar to the Court's in making its preliminary assessment of undiluted minority voting strength:

> "At the time of the creation of these multi-member districts, there were concentrations of black citizens within the boundaries of each that were sufficient in numbers and contiguity to constitute effective voting majorities in single-member districts lying wholly within the boundaries of the multi-member districts, which single-member districts would satisfy all constitutional requirements of population and geographical configuration." *Gingles* v. *Edmisten*, 590 F. Supp. 345, 358–359 (EDNC 1984).

The Court goes well beyond simply sustaining the District Court's decision to employ this measure of undiluted minority voting strength as a reasonable one that is consistent with § 2. In my view, we should refrain from deciding in this case whether a court must invariably posit as its measure of "undiluted" minority voting strength single-member districts in which minority group members constitute a majority. There is substantial doubt that Congress intended "undiluted minority voting strength" to mean "maximum feasible minority voting strength." Even if that is the appropriate definition in some circumstances, there is no indication that Congress intended to mandate a single, universally applicable

standard for measuring undiluted minority voting strength, regardless of local conditions and regardless of the extent of past discrimination against minority voters in a particular State or political subdivision. Since appellants have not raised the issue, I would assume that what the District Court did here was permissible under § 2, and leave open the broader question whether § 2 *requires* this approach.

What appellants *do* contest is the propriety of the District Court's standard for vote dilution. Appellants claim that the District Court held that "[a]lthough blacks had achieved considerable success in winning state legislative seats in the challenged districts, their failure to consistently attain the number of seats *that numbers alone would presumptively give them* (*i. e.*, in proportion to their presence in the population)," standing alone, constituted a violation of § 2. Brief for Appellants 20 (emphasis in original). This holding, appellants argue, clearly contravenes § 2's proviso 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." 42 U. S. C. § 1973.

I believe appellants' characterization of the District Court's holding is incorrect. In my view, the District Court concluded that there was a severe diminution in the prospects for black electoral success in each of the challenged districts, as compared to single-member districts in which blacks could constitute a majority, and that this severe diminution was in large part attributable to the interaction of the multimember form of the district with persistent racial bloc voting on the part of the white majorities in those districts. See 590 F. Supp., at 372.[2] The District Court attached great weight

[2]At times, the District Court seems to have looked to simple proportionality rather than to hypothetical single-member districts in which black voters would constitute a majority. See, *e. g.*, 590 F. Supp., at 367. Nowhere in its opinion, however, did the District Court state that § 2 requires that minority groups consistently attain the level of electoral success that would correspond with their proportion of the total or voting population.

to this circumstance as one part of its ultimate finding that "the creation of each of the multi-member districts challenged in this action results in the black registered voters of that district being submerged as a voting minority in the district and thereby having less opportunity than do other members of the electorate to participate in the political process and to elect representatives of their choice." *Id.*, at 374. But the District Court's extensive opinion clearly relies as well on a variety of the other *Zimmer* factors, as the Court's thorough summary of the District Court's findings indicates. See *ante*, at 38–41.

If the District Court had held that the challenged multi-member districts violated § 2 solely because blacks had not consistently attained seats in proportion to their presence in the population, its holding would clearly have been inconsistent with § 2's disclaimer of a right to proportional representation. Surely Congress did not intend to say, on the one hand, that members of a protected class have no right to proportional representation, and on the other, that any consistent failure to achieve proportional representation, without more, violates § 2. A requirement that minority representation usually be proportional to the minority group's proportion in the population is not quite the same as a right to strict proportional representation, but it comes so close to such a right as to be inconsistent with § 2's disclaimer and with the results test that is codified in § 2. In the words of Senator Dole, the architect of the compromise that resulted in passage of the amendments to § 2:

> "The language of the subsection explicitly rejects, as did *White* and its progeny, the notion that members of a protected class have a right to be elected in numbers equal to their proportion of the population. The extent to which members of a protected class have been elected under the challenged practice or structure is just one factor, among the totality of circumstances to be consid-

ered, and is not dispositive." S. Rep., at 194 (additional views of Sen. Dole).

On the same reasoning, I would reject the Court's test for vote dilution. The Court measures undiluted minority voting strength by reference to the possibility of creating single-member districts in which the minority group would constitute a majority, rather than by looking to raw proportionality alone. The Court's standard for vote dilution, when combined with its test for undiluted minority voting strength, makes actionable every deviation from usual, rough proportionality in representation for any cohesive minority group as to which this degree of proportionality is feasible within the framework of single-member districts. Requiring that every minority group that could possibly constitute a majority in a single-member district be assigned to such a district would approach a requirement of proportional representation as nearly as is possible within the framework of single-member districts. Since the Court's analysis entitles every such minority group usually to elect as many representatives under a multimember district as it could elect under the most favorable single-member district scheme, it follows that the Court is requiring a form of proportional representation. This approach is inconsistent with the results test and with § 2's disclaimer of a right to proportional representation.

In enacting § 2, Congress codified the "results" test this Court had employed, as an interpretation of the Fourteenth Amendment, in *White* and *Whitcomb*. The factors developed by the Fifth Circuit and relied on by the Senate Report simply fill in the contours of the "results" test as described in those decisions, and do not purport to redefine or alter the ultimate showing of discriminatory effect required by *Whitcomb* and *White*. In my view, therefore, it is to *Whitcomb* and *White* that we should look in the first instance in determining how great an impairment of minority voting strength is required to establish vote dilution in violation of § 2.

The "results" test as reflected in *Whitcomb* and *White* requires an inquiry into the extent of the minority group's opportunities to participate in the political processes. See *White*, 412 U. S., at 766. While electoral success is a central part of the vote dilution inquiry, *White* held that to prove vote dilution, "it is not enough that the racial group allegedly discriminated against has not had legislative seats in proportion to its voting potential," *id.*, at 765–766, and *Whitcomb* flatly rejected the proposition that "any group with distinctive interests must be represented in legislative halls if it is numerous enough to command at least one seat and represents a majority living in an area sufficiently compact to constitute a single member district." 403 U. S., at 156. To the contrary, the results test as described in *White* requires plaintiffs to establish "that the political processes leading to nomination and election were not equally open to participation by the group in question—that its members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice." 412 U. S., at 766. By showing both "a history of disproportionate results" and "strong indicia of lack of political power and the denial of fair representation," the plaintiffs in *White* met this standard, which, as emphasized just today, requires "a substantially greater showing of adverse effects than a mere lack of proportional representation to support a finding of unconstitutional vote dilution." *Davis* v. *Bandemer*, *post*, at 131 (plurality opinion).

When Congress amended § 2 it intended to adopt this "results" test, while abandoning the additional showing of discriminatory intent required by *Bolden*. The vote dilution analysis adopted by the Court today clearly bears little resemblance to the "results" test that emerged in *Whitcomb* and *White*. The Court's test for vote dilution, combined with its standard for evaluating "voting potential," *White*, *supra*, at 766, means that any racial minority with distinctive interests must *usually* "be represented in legislative halls if

it is numerous enough to command at least one seat and represents a minority living in an area sufficiently compact to constitute" a voting majority in "a single member district." *Whitcomb*, 403 U. S., at 156. Nothing in *Whitcomb*, *White*, or the language and legislative history of § 2 supports the Court's creation of this right to usual, roughly proportional representation on the part of every geographically compact, politically cohesive minority group that is large enough to form a majority in one or more single-member districts.

I would adhere to the approach outlined in *Whitcomb* and *White* and followed, with some elaboration, in *Zimmer* and other cases in the Courts of Appeals prior to *Bolden*. Under that approach, a court should consider all relevant factors bearing on whether the minority group has "less opportunity than other members of the electorate to participate in the political process *and* to elect representatives of their choice." 42 U. S. C. § 1973 (emphasis added). The court should not focus solely on the minority group's ability to elect representatives of its choice. Whatever measure of undiluted minority voting strength the court employs in connection with evaluating the presence or absence of minority electoral success, it should also bear in mind that "the power to influence the political process is not limited to winning elections." *Davis* v. *Bandemer*, *post*, at 132. Of course, the relative lack of minority electoral success under a challenged plan, when compared with the success that would be predicted under the measure of undiluted minority voting strength the court is employing, can constitute powerful evidence of vote dilution. Moreover, the minority group may in fact lack access to or influence upon representatives it did not support as candidates. Cf. *Davis* v. *Bandemer*, *post*, at 169–170 (POWELL, J., concurring in part and dissenting in part). Nonetheless, a reviewing court should be required to find more than simply that the minority group does not usually attain an undiluted measure of electoral success. The court must find that even substantial minority success will be highly infrequent

under the challenged plan before it may conclude, on this basis alone, that the plan operates "to cancel out or minimize the voting strength of [the] racial grou[p]." *White, supra,* at 765.

III

Only three Justices of the Court join Part III–C of JUSTICE BRENNAN's opinion, which addresses the validity of the statistical evidence on which the District Court relied in finding racially polarized voting in each of the challenged districts. Insofar as statistical evidence of divergent racial voting patterns is admitted solely to establish that the minority group is politically cohesive and to assess its prospects for electoral success, I agree that defendants cannot rebut this showing by offering 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. I do not agree, however, that such evidence can never affect the overall vote dilution inquiry. Evidence that a candidate preferred by the minority group in a particular election 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. Such evidence would suggest that another candidate, equally preferred by the minority group, might be able to attract greater white support in future elections.

I believe Congress also intended that explanations of the reasons why white voters rejected minority candidates would be probative of the likelihood that candidates elected without decisive minority support would be willing to take the minority's interests into account. In a community that is polarized along racial lines, racial hostility may bar these and other indirect avenues of political influence to a much greater extent than in a community where racial animosity is absent although the interests of racial groups diverge. Indeed, the

Senate Report clearly stated that one factor that could have probative value in § 2 cases was "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." S. Rep., at 29. The overall vote dilution inquiry neither requires nor permits an arbitrary rule against consideration of all evidence concerning voting preferences other than statistical evidence of racial voting patterns. Such a rule would give no effect whatever to the Senate Report's repeated emphasis on "intensive racial politics," on "racial political considerations," and on whether "racial politics . . . dominate the electoral process" as one aspect of the "racial bloc voting" that Congress deemed relevant to showing a § 2 violation. *Id.*, at 33–34. Similarly, I agree with JUSTICE WHITE that JUSTICE BRENNAN's conclusion that the race of the candidate is always irrelevant in identifying racially polarized voting conflicts with *Whitcomb* and is not necessary to the disposition of this case. *Ante*, at 83 (concurring).

In this case, as the Court grudgingly acknowledges, the District Court clearly erred in *aggregating* data from all of the challenged districts, and then relying on the fact that on average, 81.7% of white voters did not vote for any black candidate in the primary elections selected for study. *Ante*, at 59–60, n. 28. Although Senate District 22 encompasses House District 36, with that exception the districts at issue in this case are distributed throughout the State of North Carolina. *White* calls for "an intensely local appraisal of the design and impact of the . . . multimember district," 412 U. S., at 769–770, and racial voting statistics from one district are ordinarily irrelevant in assessing the totality of the circumstances in another district. In view of the specific evidence from each district that the District Court also considered, however, I cannot say that its conclusion that there was severe racial bloc voting was clearly erroneous with regard to any of the challenged districts. Except in House District 23, where racial bloc voting did not prevent sustained and virtu-

ally proportional minority electoral success, I would accordingly leave undisturbed the District Court's decision to give great weight to racial bloc voting in each of the challenged districts.

IV

Having made usual, roughly proportional success the sole focus of its vote dilution analysis, the Court goes on to hold that proof that an occasional minority candidate has been elected does not foreclose a § 2 claim. But JUSTICE BRENNAN, joined by JUSTICE WHITE, concludes that "persistent proportional representation" will foreclose a § 2 claim unless the plaintiffs prove that this "sustained success does not accurately reflect the minority group's ability to elect its preferred representatives." *Ante*, at 77. I agree with JUSTICE BRENNAN that consistent and sustained success by candidates preferred by minority voters is presumptively inconsistent with the existence of a § 2 violation. Moreover, I agree that this case presents no occasion for determining what would constitute proof that such success did not accurately reflect the minority group's actual voting strength in a challenged district or districts.

In my view, the District Court erred in assessing the extent of black electoral success in House District 39 and Senate District 22, as well as in House District 23, where the Court acknowledges error. As the evidence summarized by the Court in table form shows, *ante*, at 82, Appendix B, the degree of black electoral success differed widely in the seven originally contested districts. In House District 8 and Senate District 2, neither of which is contested in this Court, no black candidate had ever been elected to the offices in question. In House District 21 and House District 36, the only instances of black electoral success came in the two most recent elections, one of which took place during the pendency of this litigation. By contrast, in House District 39 and Senate District 22, black successes, although intermittent, dated back to 1974, and a black candidate had been elected in each

of these districts in three of the last five elections. Finally, in House District 23 a black candidate had been elected in each of the last six elections.

The District Court, drawing no distinctions among these districts for purposes of its findings, concluded that "[t]he overall results achieved to date at all levels of elective office are minimal in relation to the percentage of blacks in the total population." 590 F. Supp., at 367. The District Court clearly erred to the extent that it considered electoral success in the aggregate, rather than in each of the challenged districts, since, as the Court states, "[t]he inquiry into the existence of vote dilution . . . is district-specific." *Ante*, at 59, n. 28. The Court asserts that the District Court was free to regard the results of the 1982 elections with suspicion and to decide "on the basis of all the relevant circumstances to accord greater weight to blacks' relative lack of success over the course of several recent elections," *ante*, at 76, but the Court does not explain how this technique would apply in Senate District 22, where a black candidate was elected in three consecutive elections from 1974 to 1978, but no black candidate was elected in 1982, or in House District 39, where black candidates were elected in 1974 and 1976 as well as in 1982. Contrary to what the District Court thought, see 590 F. Supp., at 367, these pre-1982 successes, which were proportional or nearly proportional to black population in these three multimember districts, certainly lend *some* support for a finding that black voters in these districts enjoy an equal opportunity to participate in the political process and to elect representatives of their choice.

Despite this error, I agree with the Court's conclusion that, except in House District 23, minority electoral success was not sufficiently frequent to compel a finding of equal opportunity to participate and elect. The District Court found that "in each of the challenged districts racial polarization in voting presently exists to a substantial or severe degree, and . . . in each district it presently operates to

minimize the voting strength of black voters." *Id.*, at 372. I cannot say that this finding was clearly erroneous with respect to House District 39 or Senate District 22, particularly when taken together with the District Court's findings concerning the other *Zimmer* factors, and hence that court's ultimate conclusion of vote dilution in these districts is adequately supported.

This finding, however, is clearly erroneous with respect to House District 23. Blacks constitute 36.3% of the population in that district and 28.6% of the registered voters. In each of the six elections since 1970 one of the three representatives from this district has been a black. There is no finding, or any reason even to suspect, that the successful black candidates in District 23 did not in fact represent the interests of black voters, and the District Court did not find that black success in previous elections was aberrant.

Zimmer's caveat against *necessarily* foreclosing a vote dilution claim on the basis of isolated black successes, 485 F. 2d, at 1307; see S. Rep., at 29, n. 115, cannot be pressed this far. Indeed, the 23 Court of Appeals decisions on which the Senate Report relied, and which are the best evidence of the scope of this caveat, contain no example of minority electoral success that even remotely approximates the consistent, decade-long pattern in District 23. See, *e. g.*, *Turner* v. *McKeithen*, 490 F. 2d 191 (CA5 1973) (no black candidates elected); *Wallace* v. *House*, 515 F. 2d 619 (CA5 1975) (one black candidate elected), vacated on other grounds, 425 U. S. 947 (1976).

I do not propose that consistent and virtually proportional minority electoral success should always, as a matter of law, bar finding a § 2 violation. But, as a general rule, such success is entitled to great weight in evaluating whether a challenged electoral mechanism has, on the totality of the circumstances, operated to deny black voters an equal opportunity to participate in the political process and to elect representatives of their choice. With respect to House District 23, the District Court's failure to accord black electoral success such

weight was clearly erroneous, and the District Court identified no reason for not giving this degree of success preclusive effect. Accordingly, I agree with JUSTICE BRENNAN that appellees failed to establish a violation of § 2 in District 23.

V

When members of a racial minority challenge a multimember district on the grounds that it dilutes their voting strength, I agree with the Court that they must show that they possess such strength and that the multimember district impairs it. A court must therefore appraise the minority group's undiluted voting strength in order to assess the effects of the multimember district. I would reserve the question of the proper method or methods for making this assessment. But once such an assessment is made, in my view the evaluation of an alleged impairment of voting strength requires consideration of the minority group's access to the political processes generally, not solely consideration of the chances that its preferred candidates will actually be elected. Proof that white voters withhold their support from minority-preferred candidates to an extent that consistently ensures their defeat is entitled to significant weight in plaintiffs' favor. However, if plaintiffs direct their proof solely towards the minority group's prospects for electoral success, they must show that substantial minority success will be highly infrequent under the challenged plan in order to establish that the plan operates to "cancel out or minimize" their voting strength. *White*, 412 U. S., at 765.

Compromise is essential to much if not most major federal legislation, and confidence that the federal courts will enforce such compromises is indispensable to their creation. I believe that the Court today strikes a different balance than Congress intended to when it codified the results test and disclaimed any right to proportional representation under § 2. For that reason, I join the Court's judgment but not its opinion.

JUSTICE STEVENS, with whom JUSTICE MARSHALL and JUSTICE BLACKMUN join, concurring in part and dissenting in part.

In my opinion, the findings of the District Court, which the Court fairly summarizes, *ante*, at 37–41, 52–54, and n. 23, 59–61, and nn. 28 and 29, adequately support the District Court's judgment concerning House District 23 as well as the balance of that judgment.

I, of course, agree that the election of one black candidate in each election since 1972 provides significant support for the State's position. The notion that this evidence creates some sort of a conclusive, legal presumption, *ante*, at 75–76, is not, however, supported by the language of the statute or by its legislative history.[1] I therefore cannot agree with the Court's view that the District Court committed error by failing to apply a rule of law that emerges today without statutory support. The evidence of candidate success in District 23 is merely one part of an extremely large record which the District Court carefully considered before making its ultimate findings of fact, all of which should be upheld under a normal application of the "clearly erroneous" standard that the Court traditionally applies.[2]

The Court identifies the reason why the success of one black candidate in the elections in 1978, 1980, and 1982 is not

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[1] See *ante*, at 75 ("Section 2(b) provides that '[t]he extent to which members of a protected class have been elected to office . . . is one circumstance which may be considered.' 42 U. S. C. § 1973(b). . . . However, the Senate Report expressly states that 'the election of a few minority candidates does not "necessarily foreclose the possibility of dilution of the black vote,"' noting that if it did, 'the possibility exists that the majority citizens might evade [§ 2] by manipulating the election of a "safe" minority candidate.' . . . The Senate Committee decided, instead, to '"require an independent consideration of the record"'") (internal citations omitted).

[2] See *ante*, at 79 ("[T]he application of the clearly-erroneous standard to ultimate findings of vote dilution preserves the benefit of the trial court's particular familiarity with the indigenous political reality without endangering the rule of law").

inconsistent with the District Court's ultimate finding concerning House District 23.[3] The fact that one black candidate was also elected in the 1972, 1974, and 1976 elections, *ante*, at 82, Appendix B, is not sufficient, in my opinion, to overcome the additional findings that apply to House District 23, as well as to other districts in the State for each of those years. The Court accurately summarizes those findings:

> "The District Court in this case carefully considered the totality of the circumstances and found that in each district racially polarized voting; the legacy of official discrimination in voting matters, education, housing, employment, and health services; and the persistence of campaign appeals to racial prejudice acted in concert with the multimember districting scheme to impair the ability of geographically insular and politically cohesive groups of black voters to participate equally in the political process and to elect candidates of their choice. It found that the success a few black candidates have enjoyed in these districts is too recent, too limited, and, with regard to the 1982 elections, perhaps too aberrational, to disprove its conclusion." *Ante*, at 80.

To paraphrase the Court's conclusion about the other districts, *ibid.*, I cannot say that the District Court, composed of local judges who are well acquainted with the political realities of the State, clearly erred in concluding that use of a multimember electoral structure has caused black voters in House District 23 to have less opportunity than white voters to elect representatives of their choice.[4] Accordingly, I con-

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[3] See *ante*, at 52–54, and n. 23, 60, n. 29, 75–76.

[4] Even under the Court's analysis, the decision simply to reverse—without a remand—is mystifying. It is also extremely unfair. First, the Court does not give appellees an opportunity to address the new legal standard that the Court finds decisive. Second, the Court does not even bother to explain the contours of that standard, and why it was not satisfied in this case. Cf. *ante*, at 77, n. 38 ("We have no occasion in this case

cur in the Court's opinion except Part IV–B and except insofar as it explains why it reverses the judgment respecting House District 23.

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to decide what types of special circumstances could satisfactorily demonstrate that sustained success does not accurately reflect the minority's ability to elect its preferred representatives"). Finally, though couched as a conclusion about a "matter of law," *ante*, at 77, the Court's abrupt entry of judgment for appellants on District 23 reflects an unwillingness to give the District Court the respect it is due, particularly when, as in this case, the District Court has a demonstrated knowledge and expertise of the entire context that Congress directed it to consider.

Santa Monica Election Litigation

Pico Neighborhood Association and Maria Loya v. City of Santa Monica in the matter of California Voting Rights. Case Number BC616804

Frequently Asked Questions

April 12, 2016

Complaint – Plaintiffs file their original complaint challenging the City's at-large election system.

February 23, 2017

First Amended Complaint – Plaintiffs' file their first amended complaint.

March 30, 2017

Demurrer to First Amended Complaint – City argues that the First Amended Complaint fails to state facts sufficient to constitute a cause of action under either the California Voting Rights Act (CVRA) or the Equal Protection Clause of the California Constitution.

Supporting Documents filed by the City:

Declaration of George Brown

Defendant's Request for Judicial Notice - Declaration of Daniel Adler – Attaches supporting exhibits cited in the demurrer.

May 9, 2017

Opposition to Demurrer – Plaintiffs oppose the City's demurrer.

Supporting Documents filed by Plaintiffs:

Objection to Request for Judicial Notice

Plaintiffs' Request for Judicial Notice – Attaches supporting exhibits cited in opposition.

May 22, 2017

City's Reply in Support of Demurrer – City filing responding to Plaintiffs' opposition.

Supporting Documents filed by City:

Supplemental Request for Judicial Notice in Support of Demurrer

June 7, 2017

Order Overruling City's Demurrer to the First Amended Complaint – Court denies demurrer and orders City to file answer to FAC.

June 27, 2017

City's Answer to the First Amended Complaint – City files its response to the allegations in the FAC and asserts affirmative defenses.

March 29, 2018

City's Motion for Summary Judgment – City contends that judgment should be issued in its favor because there are no triable issues of material fact on either Plaintiffs' CVRA claim or their Equal Protection claim.

Supporting Documents filed by City:

City's Separate Statement of Undisputed Material Facts

City's Request for Judicial Notice - Declaration of Daniel Adler – Attaches supporting exhibits for summary judgment motion.

Exhibit AA: Peter Morrison Declaration

Exhibit A: Elected Representative Roster

Exhibit B: Election Results

Exhibit C: Order Overruling City's Demurrer

Exhibit D: Order on Legal Issue Regarding Cumulative Voting in Soliz Case

Exhibit E: Demand Letter from Plaintiff

Exhibit F: Census Data

Exhibit G: 1948 and 1941 City Charters

Exhibit H: Exhibit 2 from Kevin Shenkman Declaration

May 31, 2018

Plaintiff's Opposition to Defendant's Motion for Summary Judgment – Plaintiffs oppose City's motion for summary judgment, and contend that service of the motion on Plaintiffs was untimely.

Supporting Documents filed by Plaintiffs:

Plaintiff's Separate Statement in Opposition – Plaintiffs contest that facts cited by City are undisputed and assert additional facts they contend are undisputed.

Declaration of David Ely

Declaration of J. Morgan Kousser

Declaration of Justin Levitt

Declaration of Sergio Farias

Declaration of Kevin Shenkman

Proof of Service

June 7, 2018

City's Reply in Support of its Summary Judgment Motion – City responds to Plaintiffs' opposition

Supporting Documents filed by the City:

City's Objections to Plaintiffs' Evidence – City states objections to certain evidence submitted by Plaintiffs

City's Reply in Support of Separate Statement – City responds to Plaintiffs' contentions regarding disputed and undisputed facts

Declaration of Daniel Adler

June 14, 2018

City's Motion for Order Rejecting Plaintiffs' Untimely Service Argument – City argues that Plaintiffs's untimely service argument should be rejected because they cannot show any prejudice from late service.

Supporting Documents filed by City:

Declaration of Daniel Adler

June 18, 2018

Plaintiffs' Opposition to City's Motion for Order Rejecting Plaintiffs' Untimely Service Argument – Plaintiffs respond to City's arguments regarding untimely service

Supporting Documents filed by Plaintiffs:

Declaration of Kevin Shenkman

June 19, 2018

Orders Denying City's Motion – Court issues two orders. One denies the City's motion for an order rejecting Plaintiffs' untimely service argument. The second denies the City's motion for summary judgment based on untimely service.

July 2, 2018

City's Writ Petition – In the Court of Appeal, City challenges the trial court's orders denying its summary judgment motion.

July 9, 2018

Letter Response to Writ Petition – Plaintiffs respond to the City's petition requesting that the Court of Appeal overturn the trial court's orders denying the City's summary judgment motion.

July 11, 2018

Reply in Support of Writ Petition – The City replies to Plaintiffs' response, further explaining why the Court of Appeal should overturn the trial court's orders denying the City's summary judgment motion.

July 12, 2018

Order Denying Writ Petition – Court of Appeal denies City's petition for a writ overturning the trial court's orders denying the City's summary judgment motion.

July 30, 2018

City's Trial Brief – Brief filed by City discussing legal and factual issues anticipated to arise at trial.

August 1, 2018

City's Opening Statement – City's Opening Statement Presentation presented at trial.

September 11, 2018

Tentative Ruling on City's Sanctions Motion – Court issues tentative order requiring plaintiffs and their counsel to pay monetary sanctions in the amount of $21,612.50 based on misuse of discovery process. (Order made final on November 8, 2018 – see entry below.)

September 25, 2018

Plaintiffs' Closing Brief– Plaintiffs' closing brief presented at the conclusion of trial.

October 15, 2018

City's Closing Brief – City's closing brief presented at the conclusion of trial.

October 25, 2018

Plaintiffs' Rebuttal Closing – Plaintiffs' rebuttal closing brief presented at the conclusion of trial.

November 8, 2018

Court's Tentative Ruling – Tentative ruling by the court.

Minute Order re Sanctions – Court issues final order requiring plaintiffs and their counsel to pay monetary sanctions in the amount of $21,612.50 based on misuse of discovery process.

November 15, 2018

Request for Statement of Decision – Filing by the City requesting that the Court provide an explanation of the legal and factual bases for its tentative decision.

November 19, 2018

Plaintiffs' Remedies Brief – Plaintiffs' arguments regarding the remedies they seek to have the court impose.

Supporting Documents filed by Plaintiffs

Declaration of Justin Levitt

Declaration of Kevin Shenkman

Plaintiffs' Proposed Seven-District Map – The district map proposed by plaintiffs, which was prepared by plaintiffs' expert and offered by plaintiffs as an exhibit at trial.

November 26, 2018

Response to Request for Statement of Decision – Plaintiffs' response to the City's request that the Court provide an explanation of the legal and factual bases for its tentative decision.

November 30, 2018

City's Answering Brief Regarding Remedies - City's arguments regarding remedies.

November 28, 2018

Order re Statement of Decision – Order directing Plaintiffs to file and serve a proposed statement of decision on or before January 2, 2019.

December 4, 2018

Plaintiffs' Reply Brief Regarding Remedies – Plaintiffs' response to City's arguments regarding remedies.

December 14, 2018

Court's First Amended Tentative Decision – Amended tentative ruling by the court.

December 21, 2018

Request for Statement of Decision re: First Amended Tentative Decision – Filing by the City requesting that the Court provide an explanation of the legal and factual bases for its first amended tentative decision.

December 31, 2018

Ex Parte Application for Clarification – Filing by plaintiffs seeking clarification from court regarding its amended tentative ruling re remedies.

January 2, 2019

Response to Ex Parte Application – Filing by City responding to plaintiffs' request for clarification.

January 3, 2019

Plaintiffs' Proposed Statement of Decision – Plaintiffs' proposed explanation of the factual and legal bases for the court's tentative decision.

Plaintiffs' Proposed Judgment – Plaintiffs' proposal for the judgment to be issued by the court.

January 18, 2019

City's Objections to Proposed Statement of Decision – City' filing of its factual and legal objections to the statement of decision proposed by plaintiffs.

City' Objections to Proposed Judgment – City's filing of its factual and legal objections to the order of judgment proposed by plaintiffs.

City's Request for Judicial Notice – City's request for the Court to take notice of Santa Monica's 2018 election results.

January 25, 2019

Plaintiffs file four documents in response to the City's Objections to their proposed statement of decision and judgment:

Plaintiffs' Response to Objections to Proposed Statement of Decision

Plaintiffs' Response to Objections to Proposed Judgment

Plaintiffs' Corrected Proposed Judgment

Plaintiffs' Objections to Request for Judicial Notice

February 15, 2019

Order re Objections to Plaintiffs' Proposed Judgment – Court denies City's objections to Plaintiffs' proposed judgment.

Order re Objections to Plaintiffs' Proposed Statement of Decision – Court denies the majority of the City's objections to Plaintiffs' proposed statement of decision.

Statement of Decision – With minor changes, Court adopts Plaintiffs' proposed statement of decision.

Judgment – Court adopts Plaintiffs' corrected proposed judgment.

February 22, 2019

City's Notice of Appeal

February 28, 2019

City's Ex Parte Application (a) to confirm that paragraph 9 of the February 13, 2019, judgment is a mandatory injunction and thus stayed pending appeal, or (b) in the alternative, to stay pending appeal the enforcement of paragraph 9.

Declaration of Denise Anderson-Warren

Declaration of Dr. Jeffrey B. Lewis

March 6, 2019

Order Denying City's Ex Parte Application to Confirm

March 8, 2019

City's Petition for Writ of Supersedeas Seeking Immediate Stay

March 18, 2019

Stay Order – Order from Court of Appeal temporarily staying paragraph 9 of the February 13, 2019 judgment.

March 21, 2019

Respondents' Opposition to Petition for Writ of Supersedeas – Plaintiffs' opposition to the City's petition for a stay pending appeal.

Motion to Strike – Plaintiffs' motion to strike portions of the City's petition referencing the Declaration of Jeffrey Lewis.

March 23, 2019

City's Reply in Support of Petition for Writ of Supersedeas Seeking Immediate Stay

City's Opposition to Motion to Strike

March 27, 2019

Order Granting City's Writ Petition – Court of Appeal order granting City's writ petition and staying judgment pending appeal.

March 28, 2019

Plaintiffs' Memorandum of Costs – Filing by plaintiffs setting out costs (other than attorneys' fees) they seek to recover from the City.

April 12, 2019

City's Motion to Strike or, in the Alternative, Tax Costs – Filing by City seeking to strike memorandum of costs due to late filing or, in the alternative, reduce allowable costs to exclude costs for which recovery is precluded by statute and unreasonable or unnecessary costs.

Supporting Declaration of Kahn Scolnick

April 29, 2019

City's Motion for Calendar Preference – Filing by City seeking expedited briefing and argument to facilitate a November 2020 Council election.

Supporting Declaration of Kahn Scolnick

May 2, 2019

Plaintiffs' Response to Motion for Calendar Preference

Supporting Declaration of Kevin Shenkman

May 3, 2019

City's Reply in Support of Motion for Calendar Preference

Supporting Declaration of Kahn Scolnick

May 6, 2019

Order granting City's Motion for Calendar Preference

June 3, 2019

Notice of Motion and Motion for an Award of Attorneys' Fees and Expenses

Proposed Order

Supporting Declaration of Milton Grimes

Supporting Declaration of Rex Parris

Supporting Declaration of Robert Rubin

Supporting Declaration of Kevin Shenkman

Supporting Declaration of Hon. Margaret M. Grignon (ret.)

Supporting Declaration of Barrett S. Litt

June 12, 2019

Plaintiff's Opposition to City's Motion to Tax Costs

Supporting Declaration of Milton Grimes

Supporting Declaration of Mary Ruth Hughes

Supporting Declaration of Rex Parris

Supporting Declaration of Robert Rubin

Supporting Declaration of Kevin Shenkman

June 18, 2019

City's Reply in Support of Motion to Strike Or, in the Alternative, to Tax Costs

Supporting Declaration of Kahn Scolnick

October 18, 2019

City's Opening Brief in the Court of Appeal

December 27, 2019

Plaintiffs' Answering Brief in the Court of Appeal

January 21, 2020

City's Reply Brief in the Court of Appeal

February 4, 2020

Amicus Brief – filed by California League of Cities and California Special Districts Association in support of City

Amicus Brief – filed by Santa Monica Transparency Project in support of City's position on remedies

Amicus Brief – filed by former State Senator Richard Polanco, three Palmdale council members, and one San Juan Capistrano council member in support of Plaintiffs

Amicus Brief – filed by FairVote, a non-profit headquartered in Maryland, in support of Plaintiffs

February 10, 2020

City's Response to Amicus Briefs – Response to amicus briefs filed by Fair Vote and current and former public officials

Plaintiffs' Response to Amicus Briefs – Response to amicus briefs filed by California League of Cities and Santa Monica Transparency Project

May 12, 2020

City's Letter re Oral Argument – Letter requesting that oral argument be scheduled to permit decision by July 10, 2020

June 9, 2020

Notice – Notice from court setting oral argument for June 30, 2020 at 1:00 pm (to be conducted remotely via teleconference)

City's Request for Oral Argument – Requesting 30 minutes of oral argument

June 15, 2020

Plaintiffs' Request for Oral Argument – Requesting 30 minutes of oral argument

July 9, 2020

Court of Appeal Opinion – The Court of Appeal issued its opinion ruling in favor of the City on both claims raised by Plaintiffs, reversing the trial court's judgment, and ordering the trial court to enter judgment in the City's favor.

July 24, 2020

Petition for Rehearing – Plaintiffs filed a petition requesting rehearing by the Court of Appeal.

August 5, 2020

Order Denying Petition for Rehearing.

August 18, 2020

Petition for Review – Plaintiffs filed a petition requesting review by the California Supreme Court.

August 31, 2020

Amicus Curiae Letter – Letter from the Dolores Huerta Foundation in support of Plaintiffs' petition for review.

Amicus Curiae Letter – Letter from Coalition of 2000-2001 California Legislators in support of Plaintiffs' petition for review.

September 4, 2020

Response to Petition for Review – City's response to Plaintiffs' request for review by the California Supreme Court.

September 8, 2020

Amicus Curiae Letter – Letter from California Secretary of State in support of Plaintiffs' petition for review.

September 10, 2020

Amicus Curiae Letter – Letter from FairVote in support of Plaintiffs' petition for review.

September 11, 2020

Amicus Curiae Letter – Letter from three California legislative caucuses (Latino Legislative Caucus, Legislative Black Caucus, and Asian Pacific Islander Legislative Caucus) in support of Plaintiffs' petition for review.

Amicus Curiae Letter – Letter from Asian Americans Advancing Justice—Asian Law Caucus, Asian Americans Advancing Justice—Los Angeles, the Asian Law Alliance, the Asian Pacific Environmental Network, and Khmer Girls in Action in support of Plaintiffs' petition for review.

Amicus Curiae Letter – Letter from the Southern Christian Leadership Conference of Southern California in support of Plaintiffs' petition for review.

Amicus Curiae Letter – Letter from the League of United Latin American Citizens and the Southwest Voter Registration Education Project in support of Plaintiffs' petition for review.

September 14, 2020

Reply in Support of Petition for Review – Plaintiffs' reply in support of their request for review by the California Supreme Court.

Amicus Curiae Letter – Letter from Lawyers' Committee for Civil Rights of the San Francisco Bay Area in support of Plaintiffs' Petition for Review.

September 15, 2020

Amicus Curiae Letter – Letter from California Latino School Boards Association and California Association of Black School educators in support of Plaintiffs' petition for review.

September 18, 2020

Amicus Curiae Letter – Letter from the Mexican American Legal Defense and Educational Fund and the NALEO Educational Fund in support of Plaintiffs' petition for review.

September 22, 2020

Amicus Curiae Letter – Letter from the California League of Cities and the California Special Districts Association in support of the City's response to Plaintiffs' petition for review.

October 21, 2020

Amicus Curiae Letter – Letter from the Latino Caucus of California Counties in support of Plaintiffs' petition for review.

Petition for Review Granted – The California Supreme Court granted the petition for review and ordered the parties to brief the following issue: "What must a plaintiff prove in order to establish vote dilution under the California Voting Rights Act?" The Supreme Court also ordered the Court of Appeal's opinion depublished.

December 21, 2020

Petitioners' Opening Brief – Plaintiffs' opening brief in the California Supreme Court.

March 22, 2021

City's Answering Brief – City's answering brief in the California Supreme Court.

City's Motion for Judicial Notice – City's motion requesting that the Supreme Court take judicial notice of the 2020 City Council election results, certain candidate statements from that election, and the transcript of the oral argument in the Court of Appeal.

April 6, 2021

Petitioners' Opposition to City's Motion for Judicial Notice

May 12, 2021

Petitioners' Reply Brief – Plaintiffs' reply brief in the California Supreme Court.

Petitioners' Motion for Judicial Notice – Plaintiffs' motion requesting that the Supreme Court take judicial notice of the legislative history of the CVRA.

April 12, 2021

City's Reply in Support of City's Motion for Judicial Notice

May 26, 2021

City's Response to Petitioner's Motion for Judicial Notice

May 27, 2021

Amicus Curiae Brief – Brief from FairVote in support of Plaintiffs

Amicus Curiae Brief – Brief from John K. Haggerty, Pro Per, in support of City

June 3, 2021

Plaintiffs' Reply in Support of Plaintiffs' Motion for Judicial Notice

June 7, 2021

Amicus Curiae Brief – Brief from League of Women Voters of Santa Monica, the Alliance of Santa Monica Latino and Black Voters, the Human Relations Council Santa Monica Bay Area, and the Community for Excellent Public Schools in support of City

Amicus Curiae Request for Judicial Notice – Request for judicial notice of City of Irvine correspondence

June 10, 2021

Amicus Curiae Brief -- Brief from Bruce A. Wessel in support of neither party

Amicus Curiae Brief -- Brief from Amici Scholars in support of Plaintiffs

June 11, 2021

Amicus Curiae Brief – Brief from Asian Americans Advancing Justice – Asian Law Caucus, Asian Americans Advancing Justice – Los Angeles, and Asian Law Alliance in support of Plaintiffs

Amicus Curiae Brief – Brief from Oscar de la Torre in support of Plaintiffs

Amicus Curiae Brief – Brief of League of California Cities and California Special Districts Association in support of City

Amicus Curiae Brief – Brief of UCLA Voting Rights Project in support of Plaintiffs

June 16, 2021

Plaintiffs' Response to Amicus Curiae Brief – Plaintiffs' response to the amicus curiae brief frilled by John K. Haggerty

June 18, 2021

Opposition to Motion for Judicial Notice – Plainitiffs' opposition to the motion for judicial notice filed by amicus curiae League of Women Voters of Santa Monica, et al.

June 24, 2021

Reply in Support of Motion for Judicial Notice – Amicus Curiae League of Women Voters of Santa Monica, et al., reply in support of motion for judicial notice

July 8, 2021

Motion to Strike Amicus Curiae Brief – Plaintiffs' motion to strike the amicus curiae brief of League of Women Voters of Santa Monica, et al.

July 12, 2021

Amicus Curiae Brief – Brief of California Attorney General Rob Bonta in support of neither party.

July 19, 2021

Opposition to Motion to Strike – League of Women Voters of Santa Monica, et al., opposition to Plaintiffs' motion to strike their amicus curiae brief

August 11, 2021

Response to Amicus Curiae Briefs – City's Consolidated Answer to Amicus Briefs

Response to Amicus Curiae Brief – Plaintiffs' Response to Amicus Brief of California Attorney General

Response to Amicus Curiae Brief – Plaintiffs' Response to Amicus Brief of League of California Cities, et al.

Response to Amicus Curiae Brief – Plaintiffs' Response to Amicus Brief of League of Women Voters, et al.

Response to Amicus Curiae Brief – Plaintiffs' Response to Amicus Brief of Bruce Wessel

April 13, 2022

Amicus Curiae Brief with Application to File Late Brief – Brief of Steven Bosworth and L. Stevan Leonard

May 13, 2022

Response to Amicus Curiae Brief – Plaintiffs' Response to Amicus Brief of Steven Bosworth and L. Stevan Leonard

November 16, 2022

Amicus curiae brief – Brief filed by Stephen Bosworth and L. Stevan Leonard

December 21, 2022

Request for Judicial Notice – RJN filed by Amici League of Women Voters of Santa Monica, Alliance of Santa Monica Latino and Black Voters, Human Relations Council Santa Monica Bay Area, and Community for Excellent Public Schools

January 5, 2023

Opposition to Request for Judicial Notice – Brief filed by Plaintiff and Respondent Pico Neighborhood Association

September 20, 2023

Opinion of the California Supreme Court

December 6, 2023

Supplemental Opening Brief after Remand – Brief filed by Appellant and Defendant City of Santa Monica

December 6, 2023

Supplemental Opening Brief after Remand – Brief filed by Plaintiff and Respondent Pico Neighborhood Association

June 25, 2024

Motion to Re-Issue Judgment- Motion filed by Pico Neighborhood Association

Supporting Declaration - Declaration of Kevin Shenkman in support of to Motion to Re-Issue filed by Pico Neighborhood Association

June 26, 2024

Ex Parte Application - Application to Advance Hearing on Motion to Re-Issue filed by Plaintiff Pico Neighborhood Association

Supporting Declaration - Declaration of Kevin Shenkman in support of Application to Advance Hearing on Motion to Re-Issue filed by Pico Neighborhood Association

June 26, 2024

Opposition- Opposition to Ex Parte Applicaiton to Advance Hearing filed by City of Santa Monica

Supporting Declaration - Declaration of Kahn A. Scolnick in Opposition to Ex Parte filed by City of Santa Monica

Motion Re Further Proceedings on Remand - Brief filed by City of Santa Monica

Supporting Declaration - Declaration of Kahn A. Scolnick in support of Motion re Further Proceedings filed by City of Santa Monica

Part 1, Part 2, Part 3, Part 4, Part 5, Part 6, Part 7, Part 8, Part 9, Part 10

June 27, 2024

Minute Order - Filed by Court

July 10, 2024

Motion- Motion to Reissue Judgment filed by Pico Neighborhood Association

August 1, 2024

Reply- Reply in support of Motion to Reissue Judgment filed by Pico Neighborhood Association

Declaration- Supplemental Declaration of Kevin Shenkman in support of Motion to Reissue Judgment filed by Pico Neighborhood Association

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Sheri Damon - Formal Request for the Creation of Districts for the City of Seaside

From: Central Coast DSA <centralcoastdsa@gmail.com>
To: <ioglesby@ci.seaside.ca.us>, <dpacheco@ci.seaside.ca.us>, <agarcia@ci.se...
Date: 10/14/2024 2:17 PM
Subject: Formal Request for the Creation of Districts for the City of Seaside

10/14/2024

Seaside City Council, City Manager, & City Attorney
City Hall
440 Harcourt Avenue
Seaside, CA 93955

Dear Mayor Oglesby, Members of the Seaside City Council, City Manager and City Attorney;

I am writing on behalf of concerned citizens of Seaside to formally request the creation of neighborhood-based districts for the representation of our city's approximately 36,000 residents. This request is made with the understanding that the City of Seaside has a legal obligation to ensure equitable representation for all its citizens, especially in light of the California Voting Rights Act (CVRA) and relevant case law, which emphasize the importance of district-based elections to prevent disenfranchisement and ensure compliance with state laws.

The City must undertake a redistricting process to ensure that residents in different parts of Seaside receive fair and proportional representation in city governance. The current at-large election system may no longer reflect the diversity of our population, and the creation of districts is a crucial step toward ensuring that all communities, particularly those historically underrepresented, have an equal voice in city affairs.

Under the CVRA and California Elections Code, public agencies are legally required to avoid practices that dilute the voting power of minority communities. Creating districts, particularly for a city the size of Seaside, would ensure compliance with these laws by preventing potential violations of voters' rights. Upon receipt of this formal letter, I respectfully urge the City of Seaside to begin the process of creating neighborhood districts without delay, as failure to do so could expose the city to legal challenges for violating residents' rights to equal representation.

The City of Seaside is further obligated, upon receipt of this letter, to take immediate steps to assess the feasibility and necessity of this district creation through the initiation of a comprehensive redistricting process. I request that the City Council consider retaining expert demographers, legal counsel, and community representatives to begin the process of drafting district boundaries that reflect our city's diverse population.

Supporting Framework from the MPUSD Redistricting Process provides a successful model, I encourage the City to review the redistricting process recently completed by the Monterey Peninsula Unified School District (MPUSD). MPUSD employed a data-driven approach that included demographic analysis, population distribution studies, and input from community

stakeholders to create fair and representative boundaries for its district. The City of Seaside should similarly adopt the methodologies used by MPUSD, as this would provide a transparent and equitable framework for redistricting.

The community stands ready to assist the City by utilizing the MPUSD reports and findings, which are publicly available, as a foundation for city-wide districting. These documents provide key insights into how local demographics have shifted and how redistricting could benefit various neighborhoods. We believe this data will offer valuable support for drawing fair and representative boundaries in Seaside, ensuring that each district reflects the unique needs of its residents.

I hereby request that the City Council direct staff to begin the redistricting process, including public consultations, demographic studies, and the hiring or creation of an independent commission to review and draw potential district maps. I further request that a timeline for this process be established to ensure swift compliance with legal obligations. We are prepared to work with the City and offer any support necessary to expedite this process.

Failure to act in a timely manner on this request could not only perpetuate an outdated and potentially unlawful system but may also result in costly litigation for the City, as has been the case in other California municipalities that have delayed or ignored their legal obligations under the CVRA.

We look forward to the City's immediate response to this request and stand ready to work collaboratively to ensure that every resident of Seaside has fair representation in our local government.

Thank you for your attention to this critical matter. Please do not hesitate to contact me if additional information is needed, or to schedule a meeting to discuss this further.

Sincerely,

In Solidarity;
Karla Lobo
Co-Chair
Central Coast Democratic Socialist of America
P: 831.760.8026
M: 831.224.8005

Follow us on Instagram for breaking news & information @centralcoastdsa

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NDC
National Demographics Corporation

November 14, 2024

Sheri Damon, City Attorney
City of Seaside
440 Harcourt Avenue
Seaside, CA 93955

Dear Ms. Damon,

NDC has worked on over 600 liability analysis and districting projects related to the California Voting Rights Act, and it has been our pleasure to work with Seaside to review the City's situation. Following the release of the 2020 Census data, NDC reviewed the City's demographic profile and election history. NDC's review included a look at election results back to 2006. Between 2006 and 2024, Latino candidates appeared on Council election ballots (or ran uncontested) seven times. All seven times the Latino candidate was elected. For Mayor, a Latino candidate appeared on the ballot six times in that time period, winning five of those six times.[1]

African-American candidates have a similarly long history of electoral success in Seaside, winning five of the seven times African-Americans ran for Council between 2006 and 2024, and winning the Mayoral election in 2018, 2020, 2022 and 2024. While NDC has not conducted the expensive and imprecise analysis of whether the data indicate whether Latino voters support those successful Latino candidates, or of whether African-American voters supported those successful African-American candidates, we are aware of no indications to the contrary. In short, a simple review of the City's electoral history indicates the City's at-large election system is not in violation of the Act's provisions. In fact, as detailed below, a shift to by-district elections is likely to impair, rather than enhance, the ability of Latino, African-American and Asian-American / Pacific Islander voters to elect their preferred candidates or otherwise influence the outcome of elections.

The 2020 Census and the most recent American Community Survey data at the time of our review indicated that Latinos are 43% of Seaside's total population and 28% of Seaside's Citizen Voting Age Population (often referred to as the 'eligible voter' population). At 75% of the City Council, (3 of 4) Latinos' share of the Council significantly exceeds the Latino share of eligible voters. African-Americans are similarly well-represented, with the Mayor representing 20 percent of the votes at City Council while African-Americans are only 11 percent of eligible voters.

No Asian-American is on the Council or Mayor, though Asian-Americans are 11 percent of the City's total population and 16 percent of eligible voters. But we have seen or read no indications of racially polarized voting against candidates preferred by Asian-American voters. Given the population patterns in the City, a move to by-district elections would likely impair, rather than enhance, Asian-American voting strength. Our review found that in a by-district system Asian-Americans would be, at most, 20 percent of eligible voters in a district. While 20 percent is a slight increase over their 16 percent citywide, those Asian-American voters would still be outnumbered four to one in a district that elects only one Councilmember. Outnumbered four-to-one in a single Councilmember election would be a significant reduction in Asian-Americans' ability to influence elections compared to representing 16 percent of the eligible voters in election contests for all four Councilmembers. Being concentrated in one district, with only one seat available, also removes the opportunity for an Asian-American to build a coalition of candidates and their supporters running together for multiple seats.

A move to a by-district election system would similarly reduce Latino voters' ability to elect their preferred candidates, because of the resulting concentration of many Latino voters in a single district.

[1] I am unaware of 2024 unsuccessful Mayoral candidate Karla Lobo's race/ethnicity, so she is not included in these counts.

Phone: (818) 254-1221 P.O. Box 5271 info@NDCresearch.com
FAX (818) 254-1221 Glendale, CA 91221 www.NDCresearch.com

Given the diverse demographics of the City, Latinos would likely not be a majority of eligible voters in any one district. But the concentration of Latino voters would reduce, or possibly even eliminate, Latino voters' current ability to electing multiple Latinos to the Council via the at-large election system.

Sincerely,

Douglas Johnson, President

OFFICE OF THE CITY ATTORNEY

440 Harcourt Avenue
Seaside, CA 93955
www.ci.seaside.ca.us

Telephone 831-899-6890
Facsimile 831-718-8602

November 15, 2024

Via Email: Central Coast DSA <centralcoastdsa@gmail.com>
Ms. Karla Lobo, Co-Chair
Mr. Henry Laney, Communication Chair
Central Coast Democratic Socialists of America

RE: Email of October 14, 2024

Dear Ms. Lobo and Mr. Laney,

Thank you for your email dated October 14, 2024. It appears from this email you are attempting to request the City to district in accordance with the California Voting Rights Act of 2001 (CVRA). While the City Clerk acknowledge the receipt of the email, the request is not in compliance with the Election Code that requires such requests to be transmitted via certified mail. (Cal. Elections 10010(e)(1)).

Additionally, the City Council after the 2020 census results authorized the commission of an evaluation of the City's election practices and potential districting based upon the 2020 Census results. Enclosed please find the executive summary of that report that indicates there have been no violations of the California Voting Rights Act of 2001 and that districting based upon those results could be detrimental to minority representation.

We provide this information, so your organization may be informed about the status and compliance of the City of Seaside with the CVRA. There will be a public presentation to the City Council on November 21, 2024 regarding the potential impacts of by-district voting in the City of Seaside. Please ensure that any future requests your organization might make for districting are in compliance with the CVRA.

Sincerely,

Sheri L. Damon
City Attorney

Enc.

Cc: City Clerk

Assembly Bill No. 764

Passed the Assembly September 13, 2023

_____

Chief Clerk of the Assembly

Passed the Senate September 12, 2023

_____

Secretary of the Senate

This bill was received by the Governor this _____ day of _____, 2023, at _____ o'clock ___M.

_____

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 35 of the Code of Civil Procedure, to amend Sections 1002, 5019, 5019.5, 5020, 5021, 5023, 5027, and 5028 of, to repeal Section 5019.7 of, and to repeal and add Section 1005 of, the Education Code, to amend Sections 21500, 21500.1, 21503, 21506, 21534, 21544, 21552, 21564, 21574, 21600, 21601, 21603, 21605, 21606, 21620, 21621, 21623, 21625, 21626, 21630, 22000, 23002, and 23003 of, to add Chapter 2 (commencing with Section 21100) to Division 21 of, to repeal Sections 21501, 21507, 21507.1, 21508, 21509, 21602, 21607, 21607.1, 21608, 21609, 21622, 21627, 21627.1, 21628, 21629, and 22002 of, and to repeal and add Section 22001 of, the Elections Code, and to amend Sections 34874, 34877.5, 34884, 34886, and 57301 of the Government Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

AB 764, Bryan. Local redistricting.

Existing law requires counties, general law and charter cities, and special districts that elect their governing boards using district-based elections to adopt, in a prescribed manner, new district boundaries following each federal decennial census. Existing law also requires county boards of education, and the governing boards of school districts and community college districts in which trustee areas have been established, to adopt new boundaries for their trustee areas following each federal decennial census.

This bill would revise and recast these provisions. The bill would require counties, county boards of education, cities, school districts, community college districts, and special districts, if the governing body of these local jurisdictions is elected by districts, to comply with uniform requirements related to redistricting. The bill would require local jurisdictions to adopt district boundaries, using specified criteria, following the decision to establish district-based elections and following each federal decennial census.

This bill would define the term "districting body," as specified, and clarify requirements applicable to advisory or hybrid redistricting commissions. This bill would require an advisory or

hybrid redistricting commission to comply with specified requirements when recommending changes to the legislative body's district boundaries.

The bill would require a local jurisdiction, before adopting new district boundaries, to hold at least one public workshop and at least 5 public hearings, except as specified. This bill would require all public hearings held by an advisory or hybrid redistricting commission to comply with the same requirements applicable to hearings held by the districting body. This bill would impose requirements relating to workshops and public hearings upon local jurisdictions, districting bodies, and advisory and hybrid redistricting commissions, as specified. The bill would require the local jurisdiction to adopt a redistricting public education and outreach plan before holding a hearing or workshop, as specified. If a local jurisdiction establishes a hybrid redistricting commission to recommend changes to the legislative body's district boundaries, this bill would require the local jurisdiction, not the hybrid redistricting commission, to adopt the public education and outreach plan, as specified. The bill would also require the local jurisdiction to establish and maintain an accessible internet web page dedicated to redistricting to provide specified information to the public. The bill would require a local jurisdiction to make available on its redistricting web page, within specified time frames, both of the following: (1) recordings or written summaries of oral public comments made at workshops or public hearings, and (2) written comments and draft maps. The bill would require the Secretary of State to develop templates for such web pages and to provide a redistricting training for local jurisdictions. This bill would also require the Secretary of State to make available to the public a free electronic mapping tool, as specified.

For redistricting occurring in 2031 and thereafter, the bill would require district boundaries to be adopted no later than 204 days before the local jurisdiction's next regular election occurring after January 1 in each year ending in the number 2. If the responsible body misses that deadline, the bill would require the body to immediately petition a superior court in a county in which the local jurisdiction is located for an order adopting election district boundaries, and if the body does not petition a superior court, a resident of the local jurisdiction would be permitted to file that petition. If the court grants a petition, the bill would permit the

court to appoint a special master to assist with adopting district boundaries.

Under existing law, county boards of supervisors and city councils that have adopted district-based elections are prohibited from adopting new district boundaries until after the next federal decennial census, except under certain circumstances.

This bill would authorize the adoption of new district boundaries before the next federal decennial census if the number of supervisors or city council members elected by districts changes or if an independent redistricting commission is established to adopt new districts before the next census.

The bill would provide that a member of the governing body of a local jurisdiction continues to represent the constituents residing in the district boundaries from which the member was elected for the duration of that term of office. The bill would specify that a local jurisdiction may assign a public official, as specified, to provide constituent services to residents of an area that is temporarily not represented by a member of the governing body of the local jurisdiction due to redistricting.

This bill would incorporate additional changes to Section 23003 of the Elections Code proposed by Assembly Bill 1248 to be operative only if this bill and Assembly Bill 1248 are enacted and this bill is enacted last.

By increasing the duties of local officials with respect to redistricting, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Section 35 of the Code of Civil Procedure, as amended by Section 1 of Chapter 745 of the Statutes of 2022, is amended to read:

35. (a) Proceedings in cases involving the registration or denial of registration of voters, the certification or denial of certification of candidates, the certification or denial of certification of ballot measures, election contests, actions under Section 20010 of the Elections Code, and actions under Chapter 2 (commencing with Section 21100) of Division 21 of the Elections Code shall be placed on the calendar in the order of their date of filing and shall be given precedence.

(b) This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2027, deletes or extends that date.

SEC. 2. Section 35 of the Code of Civil Procedure, as amended by Section 2 of Chapter 745 of the Statutes of 2022, is amended to read:

35. (a) Proceedings in cases involving the registration or denial of registration of voters, the certification or denial of certification of candidates, the certification or denial of certification of ballot measures, election contests, and actions under Chapter 2 (commencing with Section 21100) of Division 21 of the Elections Code shall be placed on the calendar in the order of their date of filing and shall be given precedence.

(b) This section shall become operative January 1, 2027.

SEC. 3. Section 1002 of the Education Code is amended to read:

1002. (a) Upon being so requested by the county board of education, the county committee on school district organization, by a two-thirds vote of the members, may either change the boundaries of any or all of the trustee areas of the county pursuant to Chapter 2 (commencing with Section 21100) of Division 21 of the Elections Code, or propose to increase or decrease the number of members of the county board of education, or both.

(b) Following each decennial federal census, the county committee shall adopt trustee area boundaries pursuant to Chapter 2 (commencing with Section 21100) of Division 21 of the Elections Code.

(c) Except as to the redistricting deadline provided in Section 21140 of the Elections Code, changes in trustee area boundaries or a proposed reduction in the number of county board of education members shall be made in writing and filed with the county board

of supervisors not later than the first day of March of any school year.

(d) Whenever the boundaries of trustee areas are changed so as to be coterminous with those of supervisorial districts of the county, excluding any part of a trustee area that is outside of the county pursuant to Section 1001, the election for members of the county board of education shall be consolidated with the countywide election.

SEC. 4. Section 1005 of the Education Code is repealed.

SEC. 5. Section 1005 is added to the Education Code, to read:

1005. (a) Notwithstanding subdivision (a) of Section 1000, the term of office of any member of a county board of education who has been elected and whose term of office has not expired shall not be affected by any change in the boundaries of the area from which the member was elected and that member shall continue to represent the constituents residing in the area boundaries from which the member was elected for the duration of that term of office. This section does not prevent a board from assigning a trustee or county office of education official to provide constituent services to residents of an area that is temporarily not represented by a trustee due to redistricting.

(b) At the first election for a member of the county board of education following adoption of the boundaries of trustee areas, excluding a special election to fill a vacancy or a recall election, a member shall be elected for each area under the new trustee area plan that has the same district number as a trustee area whose incumbent's term is due to expire.

(c) For a county board of education employing both a primary and a general election, a change in the boundaries of a trustee area shall not be made between the direct primary election and the general election.

SEC. 6. Section 5019 of the Education Code is amended to read:

5019. (a) (1) In any school district or community college district, the county committee on school district organization may establish trustee areas, rearrange the boundaries of trustee areas, abolish trustee areas, and increase to seven from five, or decrease from seven to five, the number of members of the governing board, or adopt one of the alternative methods of electing governing board members specified in Section 5030.

(2) For any school district whose average daily attendance during the preceding year was less than 300, the county committee on school district organization may decrease from five to three the number of members of the governing board, or adopt one of the alternative methods of electing governing board members specified in Section 5030.

(3) Notwithstanding paragraph (1), the county committee on school district organization shall not rearrange trustee area boundaries in a school district or community college district that has established a hybrid or independent redistricting commission for this purpose pursuant to Section 23003 of the Elections Code, the charter of a city or city and county, or a legal settlement.

(b) The county committee on school district organization may establish or abolish a common governing board for a high school district and an elementary school district within the boundaries of the high school district. The resolution of the county committee on school district organization approving the establishment or abolition of a common governing board shall be presented to the electors of the school districts as specified in Section 5020.

(c) (1) A proposal to make the changes described in subdivision (a) or (b) may be initiated by the county committee on school district organization or made to the county committee on school district organization either by a petition signed by 5 percent or 50, whichever is less, of the qualified registered voters residing in a district in which there are 2,500 or fewer qualified registered voters, by 3 percent or 100, whichever is less, of the qualified registered voters residing in a district in which there are 2,501 to 10,000 qualified registered voters, by 1 percent or 250, whichever is less, of the qualified registered voters residing in a district in which there are 10,001 to 50,000 qualified registered voters, by 500 or more of the qualified registered voters residing in a district in which there are 50,001 to 100,000 qualified registered voters, by 750 or more of the qualified registered voters residing in a district in which there are 100,001 to 250,000 qualified registered voters, or by 1,000 or more of the qualified registered voters residing in a district in which there are 250,001 or more qualified registered voters or by resolution of the governing board of the district. For this purpose, the necessary signatures for a petition shall be obtained within a period of 180 days before the submission of the petition to the county committee on school district organization,

and the number of qualified registered voters in the district shall be determined pursuant to the most recent report submitted by the county elections official to the Secretary of State under Section 2187 of the Elections Code.

(2) When a proposal is made pursuant to paragraph (1), the county committee on school district organization shall call and conduct at least one hearing in the district on the matter. At the conclusion of the hearing, the county committee on school district organization shall approve or disapprove the proposal.

(d) If the county committee on school district organization approves pursuant to subdivision (a) the rearrangement of the boundaries of trustee areas for a particular district, then the rearrangement of the trustee areas shall be effectuated for the next district election occurring at least 125 days after its approval, unless at least 5 percent of the registered voters of the district sign a petition requesting an election on the proposed rearrangement of trustee area boundaries. The petition for an election shall be submitted to the county elections official within 60 days of the proposal's adoption by the county committee on school district organization. If the qualified registered voters approve pursuant to subdivision (b) or (c) the rearrangement of the boundaries to the trustee areas for a particular district, the rearrangement of the trustee areas shall be effective for the next district election occurring at least 125 days after its approval by the voters.

(e) Trustee areas shall comply with the requirements and criteria of Section 21130 of the Elections Code.

SEC. 7. Section 5019.5 of the Education Code is amended to read:

5019.5. (a) Following each decennial federal census, the governing board of each school district or community college district in which trustee areas have been established shall adopt trustee area boundaries pursuant to Chapter 2 (commencing with Section 21100) of Division 21 of the Elections Code.

(b) Notwithstanding subdivision (a) of Section 21130 of the Elections Code, if a school district or community college district has one or more multiple-member trustee areas, the governing board shall adopt the boundaries of the areas of the district so that the population of each area is substantially the same proportion of the total population of the district as the ratio that the number of governing board members elected from the area bears to the total

number of members of the governing board, as required by the United States Constitution. Substantial proportionality of population shall be based on the total population of residents as provided in paragraphs (1) and (2) of subdivision (a) of Section 21130 of the Elections Code.

(c) Except as provided in subdivision (a), the authority to establish or abolish trustee areas, rearrange the boundaries of trustee areas, increase or decrease the number of members of the governing board, or adopt any method of electing governing board members may be exercised only as otherwise provided under this article and Division 21 (commencing with Section 21000) of the Elections Code, as applicable.

SEC. 8. Section 5019.7 of the Education Code is repealed.

SEC. 9. Section 5020 of the Education Code is amended to read:

5020. (a) (1) The resolution of the county committee approving a proposal to establish or abolish trustee areas, to adopt one of the alternative methods of electing governing board members specified in Section 5030, or to increase or decrease the number of members of the governing board shall constitute an order of election, and the proposal shall be presented to the electors of the district not later than the next succeeding election for members of the governing board.

(2) Notwithstanding paragraph (1), a county committee may, by resolution, approve a proposal to establish trustee areas and to elect governing board members using district-based elections, as defined in subdivision (b) of Section 14026 of the Elections Code, without being required to submit the resolution to the electors of the district for approval. A resolution adopted pursuant to this paragraph shall include a declaration that the change in the method of electing members of the governing body is being made in furtherance of the purposes of the California Voting Rights Act of 2001 (Chapter 1.5 (commencing with Section 14025) of Division 14 of the Elections Code). The resolution shall take effect upon adoption and shall govern all elections for governing board members occurring at least 125 days after the adoption of the resolution.

(b) If a petition requesting an election on a proposal to rearrange trustee area boundaries is filed, containing at least 5 percent of the signatures of the district's registered voters as determined by the

elections official, the proposal shall be presented to the electors of the district, at the next succeeding election for the members of the governing board, at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote if there is sufficient time to place the issue on the ballot. The rearranged trustee areas shall comply with the criteria and requirements in Section 21130 of the Elections Code.

(c) If a petition requesting an election on a proposal to establish or abolish trustee areas, to increase or decrease the number of members of the board, or to adopt one of the alternative methods of electing governing board members specified in Section 5030 is filed, containing at least 10 percent of the signatures of the district's registered voters as determined by the elections official, the proposal shall be presented to the electors of the district, at the next succeeding election for the members of the governing board, at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote if there is sufficient time to place the issue on the ballot. Before the proposal is presented to the electors, the county committee on school district organization may call and conduct one or more public hearings on the proposal.

(d) The resolution of the county committee approving a proposal to establish or abolish a common governing board for a high school and an elementary school district within the boundaries of the high school district shall constitute an order of election. The proposal shall be presented to the electors of the district at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote if there is sufficient time to place the issue on the ballot.

(e) For each proposal there shall be a separate proposition on the ballot. The ballot shall contain the following words:

"For the establishment (or abolition or rearrangement) of trustee areas in ____ (insert name) School District—Yes" and "For the establishment (or abolition or rearrangement) of trustee areas in ____ (insert name) School District—No."

"For increasing the number of members of the governing board of ____ (insert name) School District from five to seven—Yes"

and "For increasing the number of members of the governing board of ____ (insert name) School District from five to seven—No."

"For decreasing the number of members of the governing board of ____ (insert name) School District from seven to five—Yes" and "For decreasing the number of members of the governing board of ____ (insert name) School District from seven to five—No."

"For the election of each member of the governing board of the ____ (insert name) School District by the registered voters of the entire ____ (insert name) School District—Yes" and "For the election of each member of the governing board of the ____ (insert name) School District by the registered voters of the entire ____ (insert name) School District—No."

"For the election of one member of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters in that trustee area—Yes" and "For the election of one member of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters in that trustee area—No."

"For the election of one member, or more than one member for one or more trustee areas, of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters of the entire ____ (insert name) School District—Yes" and "For the election of one member, or more than one member for one or more trustee areas, of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters of the entire ____ (insert name) School District—No."

"For the establishment (or abolition) of a common governing board in the ____ (insert name) School District and the ____ (insert name) School District—Yes" and "For the establishment (or abolition) of a common governing board in the ____ (insert name) School District and the ____ (insert name) School District—No."

(f) If more than one proposal appears on the ballot, all must carry in order for any to become effective, except as follows:

(1) A proposal to adopt one of the methods of election of board members specified in Section 5030 that is approved by the voters shall become effective unless a proposal that is inconsistent with that proposal has been approved by a greater number of voters.

(2) An inconsistent proposal approved by a lesser number of voters than the number which have approved a proposal to adopt one of the methods of election of board members specified in Section 5030 shall not be effective.

SEC. 10. Section 5021 of the Education Code is amended to read:

5021. (a) If a proposal for the establishment of trustee areas formulated under Sections 5019 and 5020 is approved by a majority of the voters voting at the election, or by the county committee on school district organization when no election is required, any affected incumbent board member shall serve out the board member's term of office and succeeding board members shall be nominated and elected in accordance with Section 5030. If two or more trustee areas are established at an election that are not represented in the membership of the governing board of the school district or community college district, the county committee shall determine by lot the trustee area from which the nomination and election for the next vacancy on the governing board shall be made.

(b) If a proposal for rearrangement of boundaries is approved by a majority of the voters voting on the measure, or by the county committee when no election is required, or by the board, and if the boundary changes affect the board membership, any affected incumbent board member shall serve out the board member's term of office and that member shall continue to represent the constituents residing in the area boundaries from which the member was elected for the duration of that term of office. Succeeding board members shall be nominated and elected in accordance with Section 5030. This section does not prevent a board from assigning a trustee or school district or community college district official to provide constituent services to residents of an area that is temporarily not represented by a trustee due to redistricting.

(c) If a proposal for abolishing trustee areas is approved by a majority of the voters voting at the election, the incumbent board members shall serve out their terms of office and succeeding board members shall be nominated and elected at large from the district.

SEC. 11. Section 5023 of the Education Code is amended to read:

5023. (a) Whenever an elementary, high school, or unified school district, or a portion of any such district, is annexed to another school district in which trustee areas have been established,

the county committee on school district organization of the county having jurisdiction over the annexing district shall study and make recommendations with respect to trustee areas of the annexing district as enlarged. If the recommendations include moving territory from an existing trustee area in the annexing district to another trustee area of the annexing district, the recommendations shall comply with the criteria and requirements in Section 21130 of the Elections Code. Procedures contained in Section 5019 shall be used for purposes of this section.

(b) Recommendations adopted under provisions of subdivision (a), if approved by the electors, shall become effective on the same date that the annexing district as enlarged becomes effective for all purposes.

SEC. 12. Section 5027 of the Education Code is amended to read:

5027. Notwithstanding Section 5019, Section 5019.5, or Chapter 2 (commencing with Section 21100) of Division 21 of the Elections Code, whenever the boundaries of a county high school district are coterminous with the boundaries of a county, the board shall consist of one member from each supervisorial district in the county elected at large from the district, and the high school district shall not go through a redistricting process separate from the process for redistricting the county board of supervisors.

SEC. 13. Section 5028 of the Education Code is amended to read:

5028. In every community college district that was divided into five trustee areas on or before September 7, 1955, one member of the board shall be elected from each trustee area by the registered voters of the trustee area. Following each federal decennial census, the governing board shall, by resolution, adopt boundaries for all of the trustee areas pursuant to Chapter 2 (commencing with Section 21100) of Division 21 of the Elections Code.

SEC. 14. Chapter 2 (commencing with Section 21100) is added to Division 21 of the Elections Code, to read:

Chapter 2. Fair And Inclusive Redistricting for Municipalities And Political Subdivisions (FAIR MAPS) Act of 2023

21100. (a) This chapter shall be known and may be cited as the Fair And Inclusive Redistricting for Municipalities And Political Subdivisions (FAIR MAPS) Act of 2023.

(b) In enacting this chapter, the Legislature finds and declares all of the following:

(1) The California Constitution guarantees to the people equal protection of the law and provides that the Legislature shall prohibit improper practices that affect elections.

(2) Ensuring the integrity, fairness, transparency, and accessibility of the local redistricting process is a matter of statewide interest and concern.

(3) Prohibiting discriminatory local redistricting practices, including racially discriminatory gerrymandering, partisan gerrymandering, and incumbency protection gerrymandering, is a matter of statewide interest and concern.

(4) Protecting the people from unrepresentative and dilutive local electoral systems is a matter of statewide interest and concern.

(5) As a result of changes to state law governing the city and county redistricting process that were included in the FAIR MAPS Act (Chapter 557 of the Statutes of 2019), the adjustment of district boundaries in cities and counties during the 2020 redistricting cycle was more transparent, participatory, and representative than in prior years.

(6) Notwithstanding these improvements to the redistricting process, research evaluating the 2020 redistricting cycle demonstrates that improvements to the FAIR MAPS Act are necessary to address ambiguities, loopholes, and deficiencies in the legislation that prevented the law's important goals from being fully realized.

(7) This chapter addresses a matter of statewide concern rather than a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this chapter applies to all cities, including charter cities, except as specified.

(c) The purpose of this chapter is to do all of the following:

(1) Implement the guarantees of the California Constitution, including Sections 2, 3, and 7 of Article I and Sections 1, 2, 3, and 4 of Article II.

(2) Ensure the integrity, fairness, transparency, and accessibility of the local redistricting process, prohibit discriminatory local redistricting practices, and protect the people from unrepresentative and dilutive local electoral systems.

(3) Establish requirements to ensure minimum standards of transparency and accessibility in the local redistricting process so that the public is able to provide information to assist their local governments in adopting fair and equitable district maps.

(4) Establish mandatory districting and redistricting criteria to promote fair and effective representation for all people, neighborhoods, and communities, and particularly for disadvantaged, historically marginalized, under-resourced, low-income, and underrepresented neighborhoods and communities.

(5) Establish ranked criteria that prioritize keeping whole neighborhoods and communities of interest together, facilitate political organization and constituent representation, and prohibit gerrymandering, including incumbent-protection gerrymandering.

(6) Provide a means for residents to hold their local governments accountable for conducting a fair and transparent redistricting process and adopting district maps that comply with this chapter.

(d) This chapter shall be liberally construed to effectuate its purposes.

21110. For purposes of this chapter, the following terms have the following meanings:

(a) “Adopt” or “adoption” in regard to election district boundaries means the passage of an ordinance or resolution specifying those boundaries.

(b) “Applicable language” means the following:

(1) For a county or county office of education that is not a small education district, any language in which ballots are required to be provided in the county pursuant to Section 203 of the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10503).

(2) For a city, any language that is spoken by a group of city residents with limited English proficiency who constitute 3 percent or more of the city’s total population over four years of age for whom language can be determined, as determined by the Secretary

of State in accordance with paragraph (2) of subdivision (c) of Section 21170.

(3) For a school district that is not a small education district, any language in which a school within the district is required to provide translated materials pursuant to Section 48985 of the Education Code.

(4) For a community college district that is not a small education district, any language that qualifies as an applicable language pursuant to paragraph (1) for a county in which the community college district is located.

(5) For a special district or a small education district, no applicable language shall be required under this chapter.

(c) "Election district" means an election district of the legislative body, including a county supervisorial district, county board of education trustee area, city council district, school district trustee area, community college district trustee area, or a special district governing board division.

(d) "Legislative body" means a county board of supervisors, a county board of education, a city council, a governing board of a school district, a governing board of a community college district, or a governing board of a special district.

(e) "Local jurisdiction" means a county, a county office of education, a general law city, a charter city, a school district, a community college district, or a special district.

(f) "Small education district" means any of the following:

(1) A county office of education in a county that has a total population of fewer than 250,000 residents, as of the most recent census.

(2) A school district serving an area that has a total population of fewer than 250,000 residents, as of the most recent census.

(3) A community college district serving an area that has a total population of fewer than 250,000 residents, as of the most recent census.

(g) "Member," unless otherwise specified, means a member of a legislative body elected by or from districts, including a county supervisor, county board of education member, city council member, school district trustee, community college district trustee, or special district governing board member.

(h) "Districting body" means the body that has the power to adopt a legislative body's election districts, and which may include an independent redistricting commission.

(i) "Advisory redistricting commission," "hybrid redistricting commission," and "independent redistricting commission" have the same meanings as those terms are defined in Section 23000, and include any commission created by a charter city that meets those definitions.

21120. This chapter applies to a county, county office of education, general law city, charter city, school district, community college district, or special district whose legislative body is elected by districts or from districts.

21130. (a) Following or concurrent with the decision to establish district-based elections for a legislative body, or following each federal decennial census for a legislative body that is already elected using district-based elections, the districting body shall, by ordinance or resolution, adopt boundaries for all of the election districts of the legislative body so that the election districts shall be substantially equal in population as required by the United States Constitution.

(1) Population equality shall be based on the total population of residents of the local jurisdiction as determined by the most recent federal decennial census for which the redistricting data described in Public Law 94-171 are available.

(2) Notwithstanding paragraph (1), an incarcerated person, as that term is used in Section 21003, shall not be counted towards a local jurisdiction's population, except for an incarcerated person whose last known place of residence may be assigned to a census block in the local jurisdiction, if information about the last known place of residence for incarcerated persons is included in the computerized database for redistricting that is developed in accordance with subdivision (b) of Section 8253 of the Government Code, and that database is made publicly available.

(b) The districting body shall adopt election district boundaries that comply with the United States Constitution, the California Constitution, and the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.).

(1) Consistent with the districting body's existing obligations under the federal Voting Rights Act, the districting body shall determine whether it is possible to create an election district or

districts in which a minority group is sufficiently large and geographically compact to constitute a majority in a single-member district, as set forth in Thornburg v. Gingles, 478 U.S. 30 (1986), and as interpreted in case law regarding enforcement of the federal Voting Rights Act with respect to redistricting. The districting body shall publish on its redistricting web page, at a minimum, the results of its analysis within seven days of completing the analysis or prior to adopting election district boundaries, whichever occurs first.

(2) If the districting body, consistent with its existing obligations under the federal Voting Rights Act, conducts an analysis to determine whether "racially polarized voting," as defined in case law regarding enforcement of the federal Voting Rights Act, exists in the local jurisdiction, the districting body shall publish on its redistricting web page, at a minimum, a summary of its analysis and findings within seven days of completing the analysis or prior to adopting election district boundaries, whichever occurs first.

(c) The districting body shall adopt election district boundaries using the following criteria as set forth in the following order of priority:

(1) To the maximum extent practicable, election districts shall be geographically contiguous. Areas that meet only at the points of adjoining corners are not contiguous. Areas that are separated by water and not connected by a bridge, tunnel, or regular ferry service are not contiguous.

(2) To the maximum extent practicable, and where it does not conflict with the preceding criterion in this subdivision, the geographic integrity of any local neighborhood or local community of interest shall be respected in a manner that minimizes its division. A "community of interest" is a population that shares common social or economic interests that should be included within a single election district for purposes of its effective and fair representation. Characteristics of communities of interest may include, but are not limited to, shared public policy concerns such as education, public safety, public health, environment, housing, transportation, and access to social services. Characteristics of communities of interest may also include, but are not limited to, cultural districts, shared socioeconomic characteristics, similar voter registration rates and participation rates, and shared histories.

Communities of interest do not include relationships with political parties, incumbents, or political candidates.

(3) To the maximum extent practicable, and where it does not conflict with the preceding criteria in this subdivision, the geographic integrity of a city or census designated place shall be respected in a manner that minimizes its division. This paragraph does not apply to a city.

(4) To the maximum extent practicable, and where it does not conflict with the preceding criteria in this subdivision, election districts shall be bounded by natural and artificial barriers, by streets, or by the boundaries of the local jurisdiction. Election district boundaries should be easily identifiable and understandable by residents.

(5) To the maximum extent practicable, and where it does not conflict with the preceding criteria in this subdivision, election districts shall be drawn to encourage geographical compactness in a manner that nearby areas of population are not bypassed in favor of more distant populations.

(d) The districting body shall not adopt election district boundaries for the purpose of favoring or discriminating against an incumbent, political candidate, or political party.

(e) The districting body shall not adopt election district boundaries using any criterion that is prioritized over the criteria in subdivision (c) or that, expressly or as applied, conflicts with one of the requirements in subdivisions (a) to (d), inclusive, except as provided in subdivision (g).

(f) Within 21 days of adopting final election district boundaries, the districting body shall issue a report that explains the basis on which the districting body made its decisions in achieving compliance with the requirements and criteria described in this section, including, as to each neighborhood, community of interest, city, or census designated place that was split into two or more districts, the reason for that split. This paragraph does not apply to a special district or small education district. Notwithstanding subdivision (i) of Section 23003, if a local jurisdiction establishes a hybrid redistricting commission to recommend changes to the legislative body’s district boundaries, the report required by this subdivision shall be issued by the districting body, and not by the commission.

(g) Subdivision (c) does not apply to a charter city that has adopted comprehensive or exclusive redistricting criteria in its city charter that includes a requirement to keep whole either communities of interest or neighborhoods. In such a charter city, the report required by subdivision (f) shall explain the basis on which the districting body made its decisions in achieving compliance with the requirements described in this section and the criteria described in the city charter, including, as to each neighborhood or community of interest that was split into two or more districts, the reason for that split. For purposes of this subdivision, "comprehensive or exclusive" means either that the city's charter excludes consideration of redistricting criteria other than those that are identified in the city charter or that the city's charter provides two or more mandatory traditional redistricting criteria other than the requirement that districts be equal in population.

(h) If a local jurisdiction establishes an advisory or hybrid redistricting commission to recommend changes to the legislative body's district boundaries, any recommendation adopted by the commission shall comply with the requirements of subdivisions (a) through (e), inclusive, except as provided in subdivision (g).

(i) The criteria and requirements of this section apply to all election district boundaries adopted after January 1, 2024, including district boundaries adopted when a legislative body transitions from being elected at-large to elected by districts or from districts.

21140. (a) For redistricting occurring in 2031 and thereafter, the boundaries of the election districts shall be adopted by the districting body not later than 204 days before the local jurisdiction's next regular election occurring after January 1 in each year ending in the number two.

(b) This section does not apply when a legislative body transitions from being elected at-large to elected by districts or from districts.

(c) This section does not apply to a charter city that has adopted a different redistricting deadline by ordinance or in its city charter, provided that, if the county conducts the city's elections, the county is able to administratively accommodate this later deadline. If the county cannot accommodate that deadline, the county shall provide the charter city with the latest deadline the county can reasonably accommodate, which shall be used as the map-adoption deadline

for purposes of Section 21180 and which the city shall post to the city's redistricting web page.

21150. (a) Before a districting body adopts new election district boundaries, including when a local jurisdiction redistricts following the federal decennial census or between federal decennial censuses, but not including when a legislative body transitions from being elected at-large to elected by districts or from districts, the local jurisdiction shall hold at least one workshop before the districting body draws a draft map or maps of the proposed election district boundaries and the districting body shall hold public hearings, as specified by this section, at which the public is invited to provide input regarding the composition of one or more neighborhoods, communities of interest, or election districts.

(b) For purposes of this chapter, a workshop is a standalone meeting which is conducted by either a local jurisdiction's staff, a consultant hired by the local jurisdiction, or by one or more members of the districting body but fewer than a majority of the members of the districting body. At each workshop, the local jurisdiction shall provide the public with information on the redistricting process, information on how the public may provide public comment, and instructions on how to use an online mapping tool to create draft maps or community of interest maps, if applicable. Local jurisdictions may, and are encouraged to, assist the public in drawing and submitting draft maps at the workshop. All submitted draft maps and an oral summary that characterizes the number and nature of the public comments received at the workshop concerning the proposed boundaries of a neighborhood, community of interest, or election district shall be presented to the districting body at the next public hearing.

(c) This subdivision applies to special districts and small education districts.

(1) After drawing a draft map or maps, the districting body shall hold at least two public hearings. This subdivision does not prevent a districting body from holding a public hearing before drawing a draft map or maps.

(d) This subdivision applies to counties, cities, school districts, community college districts, and county offices of education that are not a small education district.

(1) Before the districting body draws a draft map or maps of the proposed election district boundaries, the districting body shall hold at least two public hearings.

(2) After drawing a draft map or maps, a districting body shall hold at least three public hearings.

(e) (1) In lieu of the districting body, an advisory redistricting commission that complies with Section 23002 may hold the public hearings required by paragraph (1) of subdivision (d). An advisory redistricting commission may draw draft maps and hold public hearings to consider draft maps, but those public hearings shall not fulfill the districting body's responsibility to hold public hearings under paragraph (1) of subdivision (c) or paragraph (2) of subdivision (d).

(2) In lieu of the districting body, a hybrid redistricting commission, as defined in subdivision (c) of Section 23000, may hold the public hearings required by subdivisions (c) and (d) of this section.

(3) A public hearing held by an advisory or hybrid redistricting commission pursuant to this subdivision shall comply with the requirements of this section that would apply to the hearing if the hearing were held by the districting body.

(f) At least two workshops or public hearings shall be held on a Saturday, on a Sunday, or after 6 p.m. on a weekday.

(g) The building in which a workshop or public hearing is held shall be accessible to persons with disabilities.

(h) To promote the accessibility of the public hearings, the districting body shall permit the public to attend and provide live public comment at each public hearing both in-person and remotely, which should include providing an accessible and clearly audible call-in or internet-based service option. Notwithstanding any other law, the districting body shall not be required to provide a physical location from which the public may remotely provide public comment at a public hearing and the districting body shall not require that the public go to a physical location to remotely provide public comment.

(i) If a public hearing is consolidated with a regular or special meeting of the districting body that includes other substantive agenda items, the public hearing shall begin at a fixed time regardless of its order on the agenda, except that the districting body may first conclude any item being discussed or acted upon,

including any associated public comment, when that time occurs. The time of the public hearing shall be noticed to the public.

(j) Consistent with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), the districting body may reasonably limit an individual's speaking time at a public hearing. The total amount of time available for all public comment at a public hearing shall not be limited to less than two hours; however, the public comment period may end before two hours if every person desiring to provide public comment has done so.

(k) Subdivisions (f) to (h), inclusive, do not apply to special districts or small education districts.

21160. (a) The local jurisdiction shall make a good faith effort to encourage residents, including those in underrepresented communities and non-English-speaking communities, to participate in the redistricting process.

(b) No later than four weeks before the first hearing or workshop held pursuant to Section 21150, the legislative body or districting body shall adopt a redistricting public education and outreach plan to inform residents about the local jurisdiction's redistricting process and how to participate. Notwithstanding subdivision (i) of Section 23003, if a local jurisdiction establishes a hybrid redistricting commission to recommend changes to the legislative body's district boundaries, the public education and outreach plan required by this subdivision shall be adopted by the local jurisdiction, and not by the commission.

(1) A draft version of the plan shall be posted online for a 14-day review and comment period prior to being adopted. In developing the draft plan, the local jurisdiction shall make a good faith effort to consult with organizations that are active in the local jurisdiction, including those active in language minority communities, and shall identify those consulted organizations in the draft report.

(2) The plan shall include a description of all of the following:

(A) How the local jurisdiction will devote the necessary resources on education and outreach to ensure that residents, including residents speaking an applicable language, are informed about the local jurisdiction's redistricting process.

(B) The specific methods the jurisdiction plans to use to inform residents about the redistricting process and how to participate. Examples may include media, including an identification of any

media outlets that the jurisdiction plans to use, direct contact with residents, and community events or town halls.

(C) How the local jurisdiction will inform organizations that are active in the local jurisdiction, including organizations that requested to be notified of the jurisdiction's redistricting and organizations active in language minority communities, about the local jurisdiction redistricting process and which of these organizations, if any, that the jurisdiction will partner with to inform the public.

(D) Whether and how the local jurisdiction will coordinate its outreach and messaging with other local jurisdictions in the same county that are also redistricting.

(E) The number of workshops and public hearings the local jurisdiction intends to hold and their anticipated dates.

(3) A jurisdiction may use the redistricting public education and outreach template developed pursuant to paragraph (6) of subdivision (a) of Section 21170 when satisfying the requirements of this subdivision.

(c) Throughout the redistricting process, the local jurisdiction shall make a good faith effort to provide redistricting information to all of the following:

(1) Media organizations that provide local jurisdiction news coverage, including media organizations that serve language minority communities.

(2) Good government, civil rights, civic engagement, neighborhood, and community groups or organizations that are active in the local jurisdiction, including those active in language minority communities.

(3) Any person that has requested to be notified concerning the local jurisdiction's redistricting process. The local jurisdiction shall maintain a contact list for all such persons and provide them with regular updates throughout the redistricting process including, at minimum, notices of upcoming workshops or public hearings.

(d) The local jurisdiction shall arrange for the live translation in an applicable language of a workshop or public hearing held pursuant to this chapter if a request for translation is made at least 72 hours before the workshop or public hearing, unless less than five days' notice is provided for the workshop or public hearing, in which case the request shall be made at least 48 hours before the workshop or public hearing.

(e) Notwithstanding Section 54954.2 of the Government Code, the local jurisdiction shall publish the date, time, and location for any workshop or public hearing on the internet at least five days before the workshop or public hearing. However, if there are fewer than 28 days until the deadline to adopt boundaries, the local jurisdiction may publish the date, time, and location for the workshop or public hearing on the internet for at least 72 hours before the workshop or public hearing.

(f) (1) A draft map shall be published on the internet for at least 7 days before being adopted as a final map by the districting body provided that, if there are fewer than 28 days until the deadline to adopt boundaries, the draft map may instead be published on the internet for at least 72 hours.

(2) Each draft map prepared by a member of an advisory or hybrid redistricting commission, a member of the districting body, or by employees or contractors of the local jurisdiction, or any draft map submitted by the public that a member of the advisory or hybrid redistricting commission or districting body asks be discussed or considered at a future public hearing, shall be accompanied by information on the total population, citizen voting age population, and racial and ethnic characteristics of the citizen voting age population of each proposed election district, to the extent the local jurisdiction has that data.

(3) (A) An advisory or hybrid redistricting commission, the districting body, and employees or contractors of the local jurisdiction shall not release draft maps of election districts earlier than three weeks after the block-level redistricting database required by subdivision (b) of Section 8253 of the Government Code is first made publicly available. This subparagraph does not prohibit the commission or districting body from holding workshops or public hearings on the placement of election district boundaries before the earliest date that draft maps of election districts may be released.

(B) If the period of time between the date that the redistricting database is made publicly available and the map adoption deadline is fewer than 90 days and more than 59 days, the waiting period described in subparagraph (A) is reduced to 7 days.

(C) If the period of time between the date that the redistricting database is made publicly available and the map adoption deadline

is fewer than 60 days, the waiting period described in subparagraph (A) does not apply.

(g) (1) The local jurisdiction shall either video or audio record or prepare a written summary of each oral public comment, and each deliberation by a districting body or an advisory or hybrid redistricting commission, made at every workshop or public hearing held pursuant to this chapter. The local jurisdiction shall make the recording or written summary of a workshop or public hearing available to the public on its redistricting web page no later than 14 days after the workshop or public hearing. Notwithstanding subdivision (i) of Section 23003, if a local jurisdiction establishes a hybrid redistricting commission, the local jurisdiction, not the hybrid redistricting commission, shall be responsible for meeting the requirements of this subdivision.

(2) Notwithstanding paragraph (1), the local jurisdiction shall do both of the following:

(A) At least 72 hours before holding the first of its final two workshops or public hearings, make all of the recordings or written summaries of the workshops and public hearings that the local jurisdiction has already held available to the public on its redistricting web page.

(B) Make all of the recordings or written summaries of the public hearings required by paragraph (1) of subdivision (d) of Section 21150 available to the public on its redistricting web page at least 72 hours before the first public hearing required by paragraph (2) of subdivision (d) of Section 21150.

(h) (1) The districting body, or an advisory or hybrid redistricting commission, shall allow the public to submit written public comment or draft neighborhood, community of interest, or district maps both in a paper format and electronically.

(2) The local jurisdiction shall make any written public comments or draft maps available to the public on its redistricting web page no later than 14 days after receiving the public comment or draft map.

(3) Notwithstanding paragraph (2), the local jurisdiction shall do both of the following:

(A) At least 72 hours before holding the first of its final two workshops or public hearings, make all of the written comments or draft maps available to the public on its redistricting web page,

except for any public comment or draft map received less than four business days before that workshop or public hearing.

(B) Make all of the written comments or draft maps available to the public on its redistricting web page at least 72 hours before the first public hearing required by paragraph (2) of subdivision (d) of Section 21150, except for any public comment or draft map received less than four business days before that workshop or public hearing.

(i) Prior to holding its first workshop or public hearing, the local jurisdiction shall establish, and maintain for at least 10 years after the adoption of new election district boundaries, an accessible internet web page dedicated to redistricting. The web page may be hosted on the local jurisdiction's existing internet website or another internet website maintained by the local jurisdiction. Prior to the first workshop or public hearing and until new district boundaries are adopted, the homepage of the local jurisdiction's internet website shall include a prominent link to the redistricting web page. The web page shall include, or link to, all of the following information:

(1) A general explanation of the redistricting process for the local jurisdiction. This explanation shall be provided in English and applicable languages.

(2) An explanation of the procedures for a member of the public to provide in-person or remote oral public comment during a public hearing or to submit written public comment or a draft map to the districting body, or an advisory or hybrid redistricting commission, either in a paper or electronic format, for consideration at a future public hearing. The explanation shall be provided in English and applicable languages.

(3) A calendar of all workshop and public hearing dates. A calendar listing that includes the date, time, and location of the workshop or public hearing dates satisfies the notice required by subdivision (e).

(4) A notice of the applicable languages in which the local jurisdiction will provide live translation of a workshop or public hearing upon request and instructions for making such a request. This notice and these instructions shall be provided in English and applicable languages.

(5) Instructions and a method for a person to sign up to receive regular notices regarding redistricting, including notices of

upcoming workshops or public hearings. These instructions shall be provided in English and applicable languages.

(6) The notice and agenda for each workshop and public hearing.

(7) The recording or written summary of each workshop and public hearing.

(8) Each draft map considered by the districting body or an advisory or hybrid redistricting commission at a public hearing.

(9) Each written public comment submitted to the local jurisdiction.

(10) The results of the local jurisdiction's analysis under paragraphs (1) and (2) of subdivision (b) of Section 21130.

(11) The existing map of election district boundaries prior to redistricting.

(12) The adopted final map of election district boundaries after redistricting, and where applicable, the report required pursuant to subdivision (f) of Section 21130.

(j) This section does not apply when a legislative body transitions from being elected at-large to elected by districts or from districts.

(k) Subdivisions (b) to (g), inclusive, paragraphs (2) and (3) of subdivision (h), and paragraphs (4) to (10), inclusive, of subdivision (i) do not apply to special districts or small education districts. Subdivision (i) does not apply to special districts or small education districts that do not have a website for the jurisdiction and are not legally required to establish such a website.

21170. (a) No later than December 15, 2030, and no later than December 15 in each year ending in the number zero thereafter, the Secretary of State shall publish in a conspicuous location on the Secretary of State's internet website all of the following documents:

(1) A template explaining the local jurisdiction redistricting process that meets the requirements of paragraph (1) of subdivision (i) of Section 21160.

(2) A template explaining the procedures for providing public comment in the local jurisdiction redistricting process that meets the requirements of paragraph (2) of subdivision (i) of Section 21160.

(3) A template of a notice explaining the languages in which a local jurisdiction is required to provide live translation upon request

and how to make such a request that meets the requirements of paragraph (4) of subdivision (i) of Section 21160.

(4) A template of instructions for a member of the public to sign up for regular notices regarding redistricting that meets the requirements of paragraph (5) of subdivision (i) of Section 21160.

(5) A template form for a member of the public to describe and identify the boundaries of a neighborhood or community of interest.

(6) To assist local jurisdictions with complying with this chapter, a template of a redistricting public education and outreach plan that can be used to meet the requirements of subdivision (b) of Section 21160.

(7) To assist local jurisdictions with complying with this chapter, a brief summary and checklist of all the requirements imposed on a local jurisdiction by this chapter.

(b) No later than November 1, 2030, and no later than November 1 in each year ending in the number zero thereafter, the Secretary of State shall post online drafts of the documents described in subdivision (a) for at least a 30-day public comment period before finalizing any draft. Prior to posting these drafts, the Secretary of State shall solicit input from good government organizations, civil rights organizations, firms providing redistricting mapping services, and statewide associations representing affected local government agencies.

(c) (1) No later than January 1, 2031, and no later than January 1 in every year ending in the number one thereafter, the Secretary of State shall publish the applicable languages for each city and county in a conspicuous location on the Secretary of State's internet website.

(2) To determine the applicable languages for each city, in 2030 and in each year ending in the number zero thereafter, the Secretary of State, in consultation with the developer of the database developed in accordance with subdivision (b) of Section 8253 of the Government Code, shall request a special tabulation from the United States Census Bureau of the most recent data on limited English proficiency from the bureau's American Community Survey that satisfies paragraph (2) of subdivision (b) of Section 21110. If the bureau is unable to produce that data, the Secretary of State shall base the Secretary of State's determination on the table from the American Community Survey enumerating the number of residents with limited English proficiency that has the

largest number of languages included, that is publicly available, and that was produced within the previous 10 years.

(d) No later than February 28, 2031, and no later than February 28 in each year ending in the number one thereafter, the Secretary of State shall translate the documents described in paragraphs (1) to (5), inclusive, of subdivision (a) in any applicable language required for any city or county and shall publish these documents on a conspicuous location on the Secretary of State's internet website.

(e) Prior to finalizing any translated documents pursuant to subdivision (d), the Secretary of State shall post online drafts of these documents for at least a 15-day public comment period before finalizing any draft. Prior to posting these drafts, the Secretary of State shall solicit input from the Language Accessibility Advisory Committee and organizations representing communities that speak each applicable language.

(f) To assist local jurisdictions with complying with this chapter, the Secretary of State shall provide a training to local jurisdictions subject to this chapter and associations representing such local jurisdictions that summarizes the requirements imposed on a local jurisdiction by this chapter. This training shall be video recorded and posted in a conspicuous location on the Secretary of State's internet website.

(g) (1) Within 30 days of the computerized database described in subdivision (b) of Section 8253 of the Government Code being made available to the public, the Secretary of State shall make available to the public a free electronic mapping tool, loaded with relevant population and demographic data for each county and city whose legislative body is elected by district, which tool can be used by the public to create neighborhood maps, community of interest maps, or draft district maps that can be submitted to the local jurisdiction's districting body or to an advisory or hybrid redistricting commission. The Secretary of State is authorized and encouraged to create a mapping tool for other local jurisdictions whose legislative bodies are elected by district.

(2) Implementation of this subdivision shall be contingent on an appropriation being made for this purpose in the annual Budget Act or another statute.

21180. (a) If the districting body does not adopt election district boundaries by the deadlines set forth in subdivision (a) of

Section 21140 or adopted pursuant to subdivision (c) of Section 21140, as applicable, the districting body shall immediately petition a superior court in a county in which the local jurisdiction is located for an order adopting election district boundaries. If the districting body does not petition a superior court within five days after the deadline, any resident of the local jurisdiction may file that petition.

(b) (1) Upon granting a petition filed pursuant to subdivision (a), the superior court shall adopt election district boundaries in accordance with the requirements and criteria set forth in Section 21130, which shall be used in the local jurisdiction's next regular election.

(2) The superior court may appoint a special master to assist the court with adopting the district boundaries. The local jurisdiction shall pay the cost for the special master and associated costs.

(3) The superior court or a special master appointed by the superior court may hold one or more public hearings before the superior court adopts the election district boundaries.

(4) Subject to the approval of the court, the special master may employ redistricting experts or other consultants or counsel, independent experts in the field of redistricting and computer technology, and other necessary personnel to assist them in their work. The special master may also seek the full cooperation of the local jurisdiction in producing and using any data, computer models and programs, or technical assistance that was made available to the districting body or an advisory or hybrid redistricting commission and local jurisdiction personnel who are knowledgeable in the mechanics of drafting redistricting legislation. The court may assist the special master in securing the necessary personnel and the physical facilities required for their work and in preparing for the prompt submission to the local jurisdiction of a request for local jurisdiction funding for the necessary expenses of the special master and the special master's staff.

(c) The election district boundaries adopted by the superior court shall have the same force and effect as an enacted resolution or ordinance of the districting body, but shall not be subject to a referendum.

(d) The superior court may order the adjustment of electoral deadlines as necessary to implement the new election district boundaries in the next regular election.

(e) This section does not apply to a charter city that has adopted in its city charter a different method for adopting city council district boundaries when a redistricting deadline is missed.

(f) This chapter does not limit the discretionary remedial authority of any federal or state court, including any authority to award attorney's fees and costs under other provisions of law.

SEC. 15. Section 21500 of the Elections Code is amended to read:

21500. Following a county's decision to elect its board using district-based elections, or following each federal decennial census for a county whose board is already elected using district-based elections, the board shall, by ordinance or resolution, adopt boundaries for all of the supervisorial districts of the county pursuant to Chapter 2 (commencing with Section 21100).

SEC. 16. Section 21500.1 of the Elections Code is amended to read:

21500.1. This chapter applies to a county that elects members of the county's board of supervisors by districts or from districts.

SEC. 17. Section 21501 of the Elections Code is repealed.

SEC. 18. Section 21503 of the Elections Code is amended to read:

21503. (a) After redistricting or districting, a board shall not adopt new supervisorial district boundaries until after the next federal decennial census, except under the following circumstances:

(1) A court orders the board to redistrict.

(2) The board is settling a legal claim that its supervisorial district boundaries violate the United States Constitution, the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.), or this chapter.

(3) The boundaries of the county change by the addition or subtraction of territory.

(4) The number of supervisors elected by districts or from districts is increased or decreased.

(5) An independent redistricting commission is established pursuant to Section 23003 to adopt new supervisorial districts between federal decennial censuses and the districts being replaced were adopted by the board of supervisors.

(b) This section does not prohibit a board from adopting supervisorial districts between federal decennial censuses if the board is adopting supervisorial districts for the first time, including

when a board adopts supervisorial districts for the purpose of transitioning from electing its supervisors in at-large elections to elections by districts or from districts.

SEC. 19. Section 21506 of the Elections Code is amended to read:

21506. (a) The term of office of any supervisor who has been elected and whose term of office has not expired shall not be affected by any change in the boundaries of the district from which the supervisor was elected and that supervisor shall continue to represent the constituents residing in the district boundaries from which the supervisor was elected for the duration of that term of office. This section does not prevent a board from assigning a county elected official or county official to provide constituent services for residents of an area that is temporarily not represented by a supervisor due to redistricting.

(b) At the first election for county supervisors in each county following adoption of the boundaries of supervisorial districts, excluding a special election to fill a vacancy or a recall election, a supervisor shall be elected for each district under the new district plan that has the same district number as a district whose incumbent's term is due to expire. This subdivision does not apply when a county transitions from at-large to district-based elections.

(c) For a county employing both a primary and a general election, a change in the boundaries of a supervisorial district shall not be made between the direct primary election and the general election.

(d) Except as provided in subdivision (a), a person is not eligible to hold office as a member of a board of supervisors unless that person meets the requirements of Section 201 of the Elections Code and Section 24001 of the Government Code.

SEC. 20. Section 21507 of the Elections Code is repealed.

SEC. 21. Section 21507.1 of the Elections Code is repealed.

SEC. 22. Section 21508 of the Elections Code is repealed.

SEC. 23. Section 21509 of the Elections Code is repealed.

SEC. 24. Section 21534 of the Elections Code is amended to read:

21534. (a) The commission shall establish single-member supervisorial districts for the board pursuant to a mapping process using the following criteria as set forth in the following order of priority:

(1) (A) Districts shall comply with the United States Constitution and each district shall have a reasonably equal population with other districts for the board, except where deviation is required to comply with the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.) or allowable by law.

(B) Population equality shall be based on the total population of residents of the county as determined by the most recent federal decennial census for which the redistricting data described in Public Law 94-171 are available.

(C) Notwithstanding subparagraph (B), an incarcerated person, as that term is used in Section 21003, shall not be counted towards the county's population, except for an incarcerated person whose last known place of residence may be assigned to a census block in the county, if information about the last known place of residence for incarcerated persons is included in the computerized database for redistricting that is developed in accordance with subdivision (b) of Section 8253 of the Government Code, and that database is made publicly available.

(2) Districts shall comply with the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.).

(3) Districts shall be geographically contiguous.

(4) The geographic integrity of any city, local neighborhood, or local community of interest shall be respected in a manner that minimizes its division to the extent possible without violating the requirements of paragraphs (1) to (3), inclusive. A community of interest is a contiguous population that shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. Communities of interest shall not include relationships with political parties, incumbents, or political candidates.

(5) To the extent practicable, and where this does not conflict with paragraphs (1) to (4), inclusive, districts shall be drawn to encourage geographical compactness such that nearby areas of population are not bypassed for more distant areas of population.

(b) The place of residence of any incumbent or political candidate shall not be considered in the creation of a map. Districts shall not be drawn for purposes of favoring or discriminating against an incumbent, political candidate, or political party.

(c) (1) The commission shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(2) (A) Before the commission draws a map, the commission shall conduct at least seven public hearings, to take place over a period of no fewer than 30 days, with at least one public hearing held in each supervisorial district.

(B) In the event any state or local health order prohibits large gatherings, the commission may modify the location of the hearings, including use of virtual hearings that use technology to permit remote viewing and participation, to the extent required to comply with public health requirements. If the commission modifies the location of a hearing, it shall provide opportunities to view and listen to proceedings by video, to listen to proceedings by phone, and to provide public comment by phone and in writing with no limitation on the number of commenters. The commission shall, to the greatest extent practicable, provide an opportunity for in-person participation for at least one hearing in each supervisorial district. Methods for providing in-person participation may include, but are not limited to, setting up multiple rooms with audiovisual connections to the hearing, allowing community members to make appointments to make public comment, providing personal protective equipment, or holding hearings in outdoor spaces.

(3) After the commission draws a draft map, the commission shall do both of the following:

(A) Post the map for public comment on the internet website of the County of Los Angeles.

(B) Conduct at least two public hearings to take place over a period of no fewer than 30 days.

(4) (A) The commission shall establish and make available to the public a calendar of all public hearings described in paragraphs (2) and (3). Hearings shall be scheduled at various times and days of the week to accommodate a variety of work schedules and to reach as large an audience as possible.

(B) Notwithstanding Section 54954.2 of the Government Code, the commission shall post the agenda for the public hearings described in paragraphs (2) and (3) at least seven days before the hearings. The agenda for a meeting required by paragraph (3) shall include a copy of the draft map.

(5) (A) The commission shall arrange for the live translation of a hearing held pursuant to this chapter in an applicable language if a request for translation is made at least 24 hours before the hearing.

(B) For purposes of this paragraph, an "applicable language" means a language for which the number of residents of the County of Los Angeles who are members of a language minority is greater than or equal to 3 percent of the total voting age residents of the county.

(6) The commission shall take steps to encourage county residents to participate in the redistricting public review process. These steps may include:

(A) Providing information through media, social media, and public service announcements.

(B) Coordinating with community organizations.

(C) Posting information on the internet website of the County of Los Angeles that explains the redistricting process and includes a notice of each public hearing and the procedures for testifying during a hearing or submitting written testimony directly to the commission.

(7) The board shall take all steps necessary to ensure that a complete and accurate computerized database is available for redistricting, and that procedures are in place to provide to the public ready access to redistricting data and computer software equivalent to what is available to the commission members.

(8) The board shall provide reasonable funding and staffing for the commission.

(9) All records of the commission relating to redistricting, and all data considered by the commission in drawing a draft map or the final map, are public records.

(d) (1) The commission shall adopt a redistricting plan adjusting the boundaries of the supervisorial districts and shall file the plan with the county elections official by the map adoption deadline set forth in subdivision (a) of Section 21140. The commission shall not release a draft map before the date set forth in paragraph (3) of subdivision (f) of Section 21160.

(2) The plan shall be subject to referendum in the same manner as ordinances.

(3) The commission shall issue, with the final map, a report that explains the basis on which the commission made its decisions in

achieving compliance with the criteria described in subdivisions (a) and (b).

SEC. 25. Section 21544 of the Elections Code is amended to read:

21544. (a) The commission shall establish single-member supervisorial districts for the board pursuant to a mapping process using the following criteria as set forth in the following order of priority:

(1) (A) Districts shall comply with the United States Constitution and each district shall have a reasonably equal population with other districts for the board, except where deviation is required to comply with the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.) or allowable by law.

(B) Population equality shall be based on the total population of residents of the county as determined by the most recent federal decennial census for which the redistricting data described in Public Law 94-171 are available.

(C) Notwithstanding subparagraph (B), an incarcerated person, as that term is used in Section 21003, shall not be counted towards the county's population, except for an incarcerated person whose last known place of residence may be assigned to a census block in the county, if information about the last known place of residence for incarcerated persons is included in the computerized database for redistricting that is developed in accordance with subdivision (b) of Section 8253 of the Government Code, and that database is made publicly available.

(2) Districts shall comply with the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.).

(3) Districts shall be geographically contiguous.

(4) The geographic integrity of any city, local neighborhood, or local community of interest shall be respected in a manner that minimizes its division to the extent possible without violating the requirements of paragraphs (1) to (3), inclusive. A community of interest is a contiguous population that shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. Communities of interest shall not include relationships with political parties, incumbents, or political candidates.

(5) To the extent practicable, and where this does not conflict with paragraphs (1) to (4), inclusive, districts shall be drawn to

encourage geographical compactness such that nearby areas of population are not bypassed for more distant areas of population.

(b) The place of residence of any incumbent or political candidate shall not be considered in the creation of a map. Districts shall not be drawn for purposes of favoring or discriminating against an incumbent, political candidate, or political party.

(c) (1) The commission shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(2) (A) Before the commission draws a map, the commission shall conduct at least seven public hearings, to take place over a period of no fewer than 30 days, with at least one public hearing held in each supervisorial district.

(B) In the event any state or local health order prohibits large gatherings, the commission may modify the location of the hearings, including through the use of virtual hearings that use technology to permit remote viewing and participation, to the extent required to comply with public health requirements. If the commission modifies the location of a hearing, it shall provide opportunities to view and listen to proceedings by video, to listen to proceedings by phone, and to provide public comment by phone and in writing with no limitation on the number of commenters. The commission shall, to the greatest extent practicable, provide an opportunity for in-person participation for at least one hearing in each supervisorial district. Methods for providing in-person participation may include setting up multiple rooms with audiovisual connections to the hearing, allowing community members to make appointments to make public comment, providing personal protective equipment, or holding hearings in outdoor spaces.

(3) After the commission draws a draft map, the commission shall do both of the following:

(A) Post the map for public comment on the website of the County of Riverside.

(B) Conduct at least two public hearings to take place over a period of no fewer than 30 days.

(4) (A) The commission shall establish and make available to the public a calendar of all public hearings described in paragraphs (2) and (3). Hearings shall be scheduled at various times and days

of the week to accommodate a variety of work schedules and to reach as large an audience as possible.

(B) Notwithstanding Section 54954.2 of the Government Code, the commission shall post the agenda for the public hearings described in paragraphs (2) and (3) at least seven days before the hearings. The agenda for a meeting required by paragraph (3) shall include a copy of the draft map.

(5) (A) The commission shall arrange for the live translation of a hearing held pursuant to this chapter in an applicable language if a request for translation is made at least 24 hours before the hearing.

(B) For purposes of this paragraph, an "applicable language" means a language for which the number of residents of the County of Riverside who are members of a language minority is greater than or equal to 3 percent of the total voting age residents of the county.

(6) The commission shall take steps to encourage county residents to participate in the redistricting public review process. These steps may include:

(A) Providing information through media, social media, and public service announcements.

(B) Coordinating with community organizations.

(C) Posting information on the website of the County of Riverside that explains the redistricting process and includes a notice of each public hearing and the procedures for testifying during a hearing or submitting written testimony directly to the commission.

(7) The board shall take all steps necessary to ensure that a complete and accurate computerized database is available for redistricting, and that procedures are in place to provide to the public ready access to redistricting data and computer software equivalent to what is available to the commission members.

(8) The board shall provide for reasonable funding and staffing for the commission.

(9) All records of the commission relating to redistricting, and all data considered by the commission in drawing a draft map or the final map, are public records.

(d) (1) The commission shall adopt a redistricting plan adjusting the boundaries of the supervisorial districts and shall file the plan with the county elections official by the map adoption deadline

set forth in subdivision (a) of Section 21140. The commission shall not release a draft map before the date set forth in paragraph (3) of subdivision (f) of Section 21160.

(2) The plan shall be subject to referendum in the same manner as ordinances.

(3) The commission shall issue, with the final map, a report that explains the basis on which the commission made its decisions in achieving compliance with the criteria described in subdivisions (a) and (b).

SEC. 26. Section 21552 of the Elections Code is amended to read:

21552. (a) The commission shall establish single-member supervisorial districts for the board pursuant to a mapping process using the following criteria as set forth in the following order of priority:

(1) (A) Districts shall comply with the United States Constitution and each district shall have a reasonably equal population with other districts for the board, except where deviation is required to comply with the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.) or is allowable by law.

(B) Population equality shall be based on the total population of residents of the county as determined by the most recent federal decennial census for which the redistricting data described in Public Law 94-171 are available.

(C) Notwithstanding subparagraph (B), an incarcerated person, as that term is used in Section 21003, shall not be counted towards the county's population, except for an incarcerated person whose last known place of residence may be assigned to a census block in the county, if information about the last known place of residence for incarcerated persons is included in the computerized database for redistricting that is developed in accordance with subdivision (b) of Section 8253 of the Government Code, and that database is made publicly available.

(2) Districts shall comply with the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.).

(3) Districts shall be geographically contiguous.

(4) The geographic integrity of any city, local neighborhood, or local community of interest shall be respected in a manner that minimizes its division to the extent possible without violating the requirements of paragraphs (1) to (3), inclusive. A community of

interest is a contiguous population that shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. Communities of interest shall not include relationships with political parties, incumbents, or political candidates.

(5) To the extent practicable, and where it does not conflict with paragraphs (1) to (4), inclusive, districts shall be drawn to encourage geographical compactness such that nearby areas of population are not bypassed for more distant areas of population.

(b) The place of residence of any incumbent or political candidate shall not be considered in the creation of a map. Districts shall not be drawn for purposes of favoring or discriminating against an incumbent, political candidate, or political party.

(c) (1) The commission shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(2) (A) Before the commission draws a map, the commission shall conduct at least seven public hearings, to take place over a period of no fewer than 30 days, with at least one public hearing held in each supervisorial district.

(B) In the event any state or local health order prohibits large gatherings, the commission may modify the location of the hearings, including use of virtual hearings that use technology to permit remote viewing and participation, to the extent required to comply with public health requirements. If the commission modifies the location of a hearing, it shall provide opportunities to view and listen to proceedings by video, to listen to proceedings by phone, and to provide public comment by phone and in writing with no limitation on the number of commenters. The commission shall, to the greatest extent practicable, provide an opportunity for in-person participation for at least one hearing in each supervisorial district. Methods for providing in-person participation may include, but are not limited to, setting up multiple rooms with audiovisual connections to the hearing, allowing community members to make appointments to make public comment, providing personal protective equipment, or holding hearings in outdoor spaces.

(3) After the commission draws a draft map, the commission shall do both of the following:

(A) Post the map for public comment on the internet website of the County of San Diego.

(B) Conduct at least two public hearings to take place over a period of no fewer than 30 days.

(4) (A) The commission shall establish and make available to the public a calendar of all public hearings described in paragraphs (2) and (3). Hearings shall be scheduled at various times and days of the week to accommodate a variety of work schedules and to reach as large an audience as possible.

(B) Notwithstanding Section 54954.2 of the Government Code, the commission shall post the agenda for the public hearings described in paragraphs (2) and (3) at least seven days before the hearings. The agenda for a meeting required by paragraph (3) shall include a copy of the draft map.

(5) (A) The commission shall arrange for the live translation of a hearing held pursuant to this chapter in an applicable language if a request for translation is made at least 24 hours before the hearing.

(B) For purposes of this paragraph, an "applicable language" means a language for which the number of residents of the County of San Diego who are members of a language minority is greater than or equal to 3 percent of the total voting age residents of the county.

(6) The commission shall take steps to encourage county residents to participate in the redistricting public review process. These steps may include:

(A) Providing information through media, social media, and public service announcements.

(B) Coordinating with community organizations.

(C) Posting information on the internet website of the County of San Diego that explains the redistricting process and includes a notice of each public hearing and the procedures for testifying during a hearing or submitting written testimony directly to the commission.

(7) The board shall take all steps necessary to ensure that a complete and accurate computerized database is available for redistricting, and that procedures are in place to provide to the public ready access to redistricting data and computer software equivalent to what is available to the commission members.

(8) The board shall provide for reasonable funding and staffing for the commission.

(9) All records of the commission relating to redistricting, and all data considered by the commission in drawing a draft map or the final map, are public records.

(d) (1) The commission shall adopt a redistricting plan adjusting the boundaries of the supervisorial districts and shall file the plan with the Clerk of the Board of Supervisors by the map adoption deadline set forth in subdivision (a) of Section 21140. The commission shall not release a draft map before the date set forth in paragraph (3) of subdivision (f) of Section 21160.

(2) The plan shall be subject to referendum in the same manner as ordinances.

(3) The commission shall issue, with the final map, a report that explains the basis on which the commission made its decisions in achieving compliance with the criteria described in subdivisions (a) and (b).

SEC. 27. Section 21564 of the Elections Code is amended to read:

21564. (a) The commission shall establish single-member supervisorial districts for the board pursuant to a mapping process using the following criteria as set forth in the following order of priority:

(1) (A) Districts shall comply with the United States Constitution and each district shall have a reasonably equal population with other districts for the board, except where deviation is required to comply with the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.) or allowable by law.

(B) Population equality shall be based on the total population of residents of the county as determined by the most recent federal decennial census for which the redistricting data described in Public Law 94-171 are available.

(C) Notwithstanding subparagraph (B), an incarcerated person, as that term is used in Section 21003, shall not be counted towards the county's population, except for an incarcerated person whose last known place of residence may be assigned to a census block in the county, if information about the last known place of residence for incarcerated persons is included in the computerized database for redistricting that is developed in accordance with subdivision (b) of Section 8253 of the Government Code, and that database is made publicly available.

(2) Districts shall comply with the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.).

(3) Districts shall be geographically contiguous.

(4) The geographic integrity of any city, local neighborhood, or local community of interest shall be respected in a manner that minimizes its division to the extent possible without violating the requirements of paragraphs (1) to (3), inclusive. A community of interest is a contiguous population that shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. Communities of interest shall not include relationships with political parties, incumbents, or political candidates.

(5) To the extent practicable, and where this does not conflict with paragraphs (1) to (4), inclusive, districts shall be drawn to encourage geographical compactness such that nearby areas of population are not bypassed for more distant areas of population.

(b) The place of residence of any incumbent or political candidate shall not be considered in the creation of a map. Districts shall not be drawn for purposes of favoring or discriminating against an incumbent, political candidate, or political party.

(c) (1) The commission shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(2) (A) Before the commission draws a map, the commission shall conduct at least seven public hearings, to take place over a period of no fewer than 30 days, with at least one public hearing held in each supervisorial district.

(B) In the event a state or local health order prohibits large gatherings, the commission may modify the location of the hearings, including through the use of virtual hearings that use technology to permit remote viewing and participation, to the extent required to comply with public health requirements. If the commission modifies the location of a hearing, it shall provide opportunities to view and listen to proceedings by video, to listen to proceedings by phone, and to provide public comment by phone and in writing with no limitation on the number of commenters. The commission shall, to the greatest extent practicable, provide an opportunity for in-person participation for at least one hearing in each supervisorial district. Methods for providing in-person participation may include, but are not limited to, setting up multiple

rooms with audiovisual connections to the hearing, allowing community members to make appointments to make public comment, providing personal protective equipment, or holding hearings in outdoor spaces.

(3) After the commission draws a draft map, the commission shall do both of the following:

(A) Post the map for public comment on the internet website of the County of Fresno.

(B) Conduct at least two public hearings to take place over a period of no fewer than 30 days.

(4) (A) The commission shall establish and make available to the public a calendar of all public hearings described in paragraphs (2) and (3). Hearings shall be scheduled at various times and days of the week to accommodate a variety of work schedules and to reach as large an audience as possible.

(B) Notwithstanding Section 54954.2 of the Government Code, the commission shall post the agenda for the public hearings described in paragraphs (2) and (3) at least seven days before the hearings. The agenda for a meeting required by paragraph (3) shall include a copy of the draft map.

(5) (A) The commission shall arrange for the live translation of a hearing held pursuant to this chapter in an applicable language if a request for translation is made at least 24 hours before the hearing.

(B) For purposes of this paragraph, an "applicable language" means a language for which the number of residents of the County of Fresno who are members of a language minority is greater than or equal to 3 percent of the total voting age residents of the county.

(6) The commission shall take steps to encourage county residents to participate in the redistricting public review process. These steps may include:

(A) Providing information through media, social media, and public service announcements.

(B) Coordinating with community organizations.

(C) Posting information on the internet website of the County of Fresno that explains the redistricting process and includes a notice of each public hearing and the procedures for testifying during a hearing or submitting written testimony directly to the commission.

(7) The board shall take all steps necessary to ensure that a complete and accurate computerized database is available for redistricting, and that procedures are in place to provide to the public ready access to redistricting data and computer software equivalent to what is available to the commission members.

(8) The board shall provide reasonable funding and staffing for the commission.

(9) All records of the commission relating to redistricting, and all data considered by the commission in drawing a draft map or the final map, are public records.

(d) (1) The commission shall adopt a redistricting plan adjusting the boundaries of the supervisorial districts and shall file the plan with the county elections official by the map adoption deadline set forth in subdivision (a) of Section 21140. The commission shall not release a draft map before the date set forth in paragraph (3) of subdivision (f) of Section 21160.

(2) The plan shall be subject to referendum in the same manner as ordinances.

(3) The commission shall issue, with the final map, a report that explains the basis on which the commission made its decisions in achieving compliance with the criteria described in subdivisions (a) and (b).

SEC. 28. Section 21574 of the Elections Code is amended to read:

21574. (a) The commission shall establish single-member supervisorial districts for the board pursuant to a mapping process using the following criteria as set forth in the following order of priority:

(1) (A) Districts shall comply with the United States Constitution and each district shall have a reasonably equal population with other districts for the board, except where deviation is required to comply with the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.) or allowable by law.

(B) Population equality shall be based on the total population of residents of the county as determined by the most recent federal decennial census for which the redistricting data described in Public Law 94-171 are available.

(C) Notwithstanding subparagraph (B), an incarcerated person, as that term is used in Section 21003, shall not be counted towards the county's population, except for an incarcerated person whose

last known place of residence may be assigned to a census block in the county, if information about the last known place of residence for incarcerated persons is included in the computerized database for redistricting that is developed in accordance with subdivision (b) of Section 8253 of the Government Code, and that database is made publicly available.

(2) Districts shall comply with the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.).

(3) Districts shall be geographically contiguous.

(4) The geographic integrity of any city, local neighborhood, or local community of interest shall be respected in a manner that minimizes its division to the extent possible without violating the requirements of paragraphs (1) to (3), inclusive. A community of interest is a contiguous population that shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. Communities of interest shall not include relationships with political parties, incumbents, or political candidates.

(5) To the extent practicable, and where this does not conflict with paragraphs (1) to (4), inclusive, districts shall be drawn to encourage geographical compactness such that nearby areas of population are not bypassed for more distant areas of population.

(b) The place of residence of any incumbent or political candidate shall not be considered in the creation of a map. Districts shall not be drawn for purposes of favoring or discriminating against an incumbent, political candidate, or political party.

(c) (1) The commission shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(2) (A) Before the commission draws a map, the commission shall conduct at least seven public hearings, to take place over a period of no fewer than 30 days, with at least one public hearing held in each supervisorial district.

(B) In the event a state or local health order prohibits large gatherings, the commission may modify the location of the hearings, including through the use of virtual hearings that use technology to permit remote viewing and participation, to the extent required to comply with public health requirements. If the commission modifies the location of a hearing, it shall provide opportunities to view and listen to proceedings by video, to listen

to proceedings by phone, and to provide public comment by phone and in writing with no limitation on the number of commenters. The commission shall, to the greatest extent practicable, provide an opportunity for in-person participation for at least one hearing in each supervisorial district. Methods for providing in-person participation may include, but are not limited to, setting up multiple rooms with audiovisual connections to the hearing, allowing community members to make appointments to make public comment, providing personal protective equipment, or holding hearings in outdoor spaces.

(3) After the commission draws a draft map, the commission shall do both of the following:

(A) Post the map for public comment on the internet website of the County of Kern.

(B) Conduct at least two public hearings to take place over a period of no fewer than 30 days.

(4) (A) The commission shall establish and make available to the public a calendar of all public hearings described in paragraphs (2) and (3). Hearings shall be scheduled at various times and days of the week to accommodate a variety of work schedules and to reach as large an audience as possible.

(B) Notwithstanding Section 54954.2 of the Government Code, the commission shall post the agenda for the public hearings described in paragraphs (2) and (3) at least seven days before the hearings. The agenda for a meeting required by paragraph (3) shall include a copy of the draft map.

(5) (A) The commission shall arrange for the live translation of a hearing held pursuant to this chapter in an applicable language if a request for translation is made at least 24 hours before the hearing.

(B) For purposes of this paragraph, an "applicable language" means a language for which the number of residents of the County of Kern who are members of a language minority is greater than or equal to 3 percent of the total voting age residents of the county.

(6) The commission shall take steps to encourage county residents to participate in the redistricting public review process. These steps may include:

(A) Providing information through media, social media, and public service announcements.

(B) Coordinating with community organizations.

(C) Posting information on the internet website of the County of Kern that explains the redistricting process and includes a notice of each public hearing and the procedures for testifying during a hearing or submitting written testimony directly to the commission.

(7) The board shall take all steps necessary to ensure that a complete and accurate computerized database is available for redistricting, and that procedures are in place to provide to the public ready access to redistricting data and computer software equivalent to what is available to the commission members.

(8) The board shall provide reasonable funding and staffing for the commission.

(9) All records of the commission relating to redistricting, and all data considered by the commission in drawing a draft map or the final map, are public records.

(d) (1) The commission shall adopt a redistricting plan adjusting the boundaries of the supervisorial districts and shall file the plan with the county elections official by the map adoption deadline set forth in subdivision (a) of Section 21140. The commission shall not release a draft map before the date set forth in paragraph (3) of subdivision (f) of Section 21160.

(2) The plan shall be subject to referendum in the same manner as ordinances.

(3) The commission shall issue, with the final map, a report that explains the basis on which the commission made its decisions in achieving compliance with the criteria described in subdivisions (a) and (b).

SEC. 29. Section 21600 of the Elections Code is amended to read:

21600. This article applies to a general law city that elects members of the city's legislative body by districts or from districts, as those terms are defined in Section 34871 of the Government Code.

SEC. 30. Section 21601 of the Elections Code is amended to read:

21601. Following a city's decision to elect its council using district-based elections, or following each federal decennial census for a city whose council is already elected using district-based elections, the council shall, by ordinance or resolution, adopt boundaries for all of the council districts of the city pursuant to Chapter 2 (commencing with Section 21100).

SEC. 31. Section 21602 of the Elections Code is repealed.

SEC. 32. Section 21603 of the Elections Code is amended to read:

21603. (a) If the boundaries of a city expand by the addition of new territory, including through annexation of unincorporated territory or consolidation with another city, the council shall add that new territory to the nearest existing council district without changing the boundaries of other council district boundaries.

(b) Notwithstanding subdivision (a), the council may adopt new boundaries for each council district pursuant to Chapter 2 (commencing with Section 21100) if the boundaries of the city expand by the addition of new territory and if both of the following conditions are met:

(1) There are more than four years until the council is next required to redistrict pursuant to Section 21601.

(2) The population of the new territory being annexed or consolidated is greater than 25 percent of the city's population, as determined by the most recent federal decennial census.

SEC. 33. Section 21605 of the Elections Code is amended to read:

21605. (a) After redistricting or districting, a council shall not adopt new council district boundaries until after the next federal decennial census, except under the following circumstances:

(1) A court orders the council to redistrict.

(2) The council is settling a legal claim that its council district boundaries violate the United States Constitution, the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.), or this article.

(3) The boundaries of the city change by the addition of territory pursuant to Section 21603 or by the subtraction of territory.

(4) The number of council members elected by districts or from districts is increased or decreased.

(5) An independent redistricting commission is established pursuant to Section 23003 to adopt new council districts between federal decennial censuses and the districts being replaced were adopted by the city council.

(b) This section does not prohibit a council from adopting council districts between federal decennial censuses if the council is adopting council districts for the first time, including when a city adopts council districts for the purpose of transitioning from

electing its council members in at-large elections to elections by districts or from districts.

SEC. 34. Section 21606 of the Elections Code is amended to read:

21606. (a) The term of office of any council member who has been elected and whose term of office has not expired shall not be affected by any change in the boundaries of the district from which the council member was elected and that member shall continue to represent the constituents residing in the district boundaries from which the member was elected for the duration of that term of office. This section does not prevent a city council from assigning a city elected official or city official to provide constituent services to residents of an area that is temporarily not represented by a council member due to redistricting.

(b) At the first election for council members in each city following adoption of the boundaries of council districts, excluding a special election to fill a vacancy or a recall election, a council member shall be elected for each district under the new district plan that has the same district number as a district whose incumbent's term is due to expire. This subdivision does not apply when a city transitions from at-large to district-based elections.

(c) Except as provided in subdivision (a), a person is not eligible to hold office as a member of a city council unless that person meets the requirements of Section 201 of the Elections Code and Section 34882 of the Government Code.

SEC. 35. Section 21607 of the Elections Code is repealed.

SEC. 36. Section 21607.1 of the Elections Code is repealed.

SEC. 37. Section 21608 of the Elections Code is repealed.

SEC. 38. Section 21609 of the Elections Code is repealed.

SEC. 39. Section 21620 of the Elections Code is amended to read:

21620. This article applies to a charter city that elects members of the city's legislative body by districts or from districts, as those terms are defined in Section 34871 of the Government Code.

SEC. 40. Section 21621 of the Elections Code is amended to read:

21621. Following a city's decision to elect its council using district-based elections, or following each federal decennial census for a city whose council is already elected using district-based elections, the council shall, by ordinance or resolution, adopt

boundaries for all of the council districts of the city pursuant to Chapter 2 (commencing with Section 21100).

SEC. 41. Section 21622 of the Elections Code is repealed.

SEC. 42. Section 21623 of the Elections Code is amended to read:

21623. (a) If the boundaries of a city expand by the addition of new territory, including through annexation of unincorporated territory or consolidation with another city, the council shall add that new territory to the nearest existing council district without changing the boundaries of other council district boundaries.

(b) Notwithstanding subdivision (a), the council may adopt new boundaries for each council district pursuant to Chapter 2 (commencing with Section 21100) if the boundaries of the city expand by the addition of new territory and if both of the following conditions are met:

(1) There are more than four years until the council is next required to redistrict pursuant to Section 21621.

(2) The population of the new territory being annexed or consolidated is greater than 25 percent of the city's population as determined by the most recent federal decennial census.

(c) This section does not apply to a charter city that has adopted, by ordinance or in its city charter, a different standard for adding new territory to existing council districts.

SEC. 43. Section 21625 of the Elections Code is amended to read:

21625. (a) After redistricting or districting, a council shall not adopt new council district boundaries until after the next federal decennial census, except under the following circumstances:

(1) A court orders the council to redistrict.

(2) The council is settling a legal claim that its council district boundaries violate the United States Constitution, the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.), or this article.

(3) The boundaries of the city change by the addition of territory pursuant to Section 21623 or by the subtraction of territory.

(4) The number of council members elected by districts or from districts is increased or decreased.

(5) An independent redistricting commission, whose members are not directly appointed by the legislative body or an elected official of the local jurisdiction, is established to adopt new council

districts between federal decennial censuses and the districts being replaced were adopted by the city council.

(b) This section does not prohibit a council from adopting council districts between federal decennial censuses if the council is adopting council districts for the first time, including when a city adopts council districts for the purpose of transitioning from electing its council members in at-large elections to elections by districts or from districts.

(c) This section does not apply to a charter city that has adopted different rules for mid-cycle redistricting in its city charter.

SEC. 44. Section 21626 of the Elections Code is amended to read:

21626. (a) The term of office of any council member who has been elected and whose term of office has not expired shall not be affected by any change in the boundaries of the district from which the council member was elected and that member shall continue to represent the constituents residing in the district boundaries from which the member was elected for the duration of that term of office. This section does not prevent a city council from assigning a city elected official or city official to provide constituent services to residents of an area that is temporarily not represented by a council member due to redistricting.

(b) At the first election for council members in each city following adoption of the boundaries of council districts, excluding a special election to fill a vacancy or a recall election, a council member shall be elected for each district under the new district plan that has the same district number as a district whose incumbent's term is due to expire. This subdivision does not apply when a city transitions from at-large to district-based elections.

(c) For a city employing both a primary and a general election, a change in the boundaries of a council district shall not be made between the direct primary election and the general election.

(d) Except as provided in subdivision (a), a person is not eligible to hold office as a member of a city council unless that person meets the requirements of Section 201 of the Elections Code and Section 34882 of the Government Code.

SEC. 45. Section 21627 of the Elections Code is repealed.

SEC. 46. Section 21627.1 of the Elections Code is repealed.

SEC. 47. Section 21628 of the Elections Code is repealed.

SEC. 48. Section 21629 of the Elections Code is repealed.

SEC. 49. Section 21630 of the Elections Code is amended to read:

21630. If a council assigns the responsibility to recommend or to adopt new district boundaries to a hybrid or independent redistricting commission as defined in Section 23000, the charter city remains subject to the redistricting deadlines, requirements, and restrictions that apply to the council under this article and Chapter 2 (commencing with Section 21100), unless otherwise exempted by law. A redistricting commission described in this section may perform the duties required of a city council under this article.

SEC. 50. Section 22000 of the Elections Code is amended to read:

22000. (a) Following a special district's decision to elect its board of directors using district-based elections, or following each federal decennial census for a special district whose board of directors is already elected using district-based elections, the board of directors shall, by resolution, adopt boundaries for all of the divisions of the special district pursuant to Chapter 2 (commencing with Section 21100).

(b) The resolution specified in subdivision (a) shall be adopted by a vote of not less than a majority of the directors.

(c) At the time of, or after, any annexation of territory to the district, the board of directors shall designate, by resolution, the division of which the annexed territory shall be a part.

(d) Except as provided in Section 21140, no change in division boundaries may be made within 180 days preceding the election of any director.

(e) (1) A change in division boundaries shall not affect the term of office of any director.

(2) If division boundaries are adjusted, the director of the division whose boundaries have been adjusted shall continue to be the director of the division bearing the number of that division as formerly comprised until the office becomes vacant by means of term expiration or otherwise, whether or not the director is a resident within the boundaries of the division as adjusted. The director shall continue to represent the constituents residing in the district boundaries from which the director was elected for the duration of that term of office. This section does not prevent a board from assigning a director or special district official to provide

constituent services to residents of an area that is temporarily not represented by a director due to redistricting.

(f) The successor to the office in a division whose boundaries have been adjusted shall be a resident and voter of that division.

(g) A district is not required to adjust the boundaries of any divisions pursuant to this section until after the 2000 federal decennial census.

(h) This section shall not be construed to prohibit or restrict a district from adjusting the boundaries of any divisions pursuant to Chapter 2 (commencing with Section 21100) whenever the board of directors of the district determines by a two-thirds vote of the board that a sufficient change in population has occurred that makes it desirable in the opinion of the board to adjust the boundaries of any divisions, or whenever any territory is added by or excluded from the district.

SEC. 51. Section 22001 of the Elections Code is repealed.

SEC. 52. Section 22001 is added to the Elections Code, to read:

22001. This chapter and Chapter 2 (commencing with Section 21100) do not apply to special districts in which only landowners vote for directors or whose directors are all elected at large or appointed.

SEC. 53. Section 22002 of the Elections Code is repealed.

SEC. 54. Section 23002 of the Elections Code is amended to read:

23002. (a) This section applies to advisory redistricting commissions.

(b) Notwithstanding any other law, the local jurisdiction may prescribe the manner in which members are appointed to the commission, provided that the commissioners are not appointed by the legislative body or an elected official of the local jurisdiction.

(c) A person who is an elected official of the local jurisdiction, or a family member, staff member, or paid campaign staff of an elected official of the local jurisdiction, shall not be appointed to serve on the commission.

(d) A local jurisdiction may impose additional requirements or restrictions on the commission, members of the commission, or applicants to the commission in excess of those prescribed by this section.

(e) The commission is subject to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) and the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code).

SEC. 55. Section 23003 of the Elections Code is amended to read:

23003. (a) This section applies to hybrid redistricting commissions and independent redistricting commissions.

(b) Notwithstanding any other law, the local jurisdiction may prescribe the manner in which members are appointed to the commission, provided that the jurisdiction uses an application process open to all eligible residents and provided that the commissioners are not appointed by the legislative body or an elected official of the local jurisdiction.

(c) A person shall not be appointed to serve on the commission if the person or any family member of the person has been elected or appointed to, or been a candidate for, an elective office of the local jurisdiction in the eight years preceding the person's application.

(d) A person shall not be appointed to serve on the commission if either of the following applies:

(1) The person or the person's spouse has done any of the following in the eight years preceding the person's application:

(A) Served as an officer of, employee of, or paid consultant to, a campaign committee or a candidate for elective office of the local jurisdiction.

(B) Served as an officer of, employee of, or paid consultant to, a political party or as an elected or appointed member of a political party central committee.

(C) Served as a staff member or a consultant to, or who has contracted with, a currently serving elected officer of the local jurisdiction.

(D) Been registered to lobby the local jurisdiction.

(E) Contributed five hundred dollars ($500) or more in a year to any candidate for an elective office of the local jurisdiction. The local jurisdiction may adjust this amount by the cumulative change in the California Consumer Price Index, or its successor, in every year ending in zero.

(2) A family member of the person, other than the person's spouse, has done any of the following in the four years preceding the person's application:

(A) Served as an officer of, employee of, or paid consultant to, a campaign committee or a candidate for elective office of the local jurisdiction.

(B) Served as an officer of, employee of, or paid consultant to, a political party or as an elected or appointed member of a political party central committee.

(C) Served as a staff member of or consultant to, or has contracted with, a currently serving elected officer of the local jurisdiction.

(D) Been registered to lobby the local jurisdiction.

(E) Contributed five hundred dollars ($500) or more in a year to any candidate for an elective office of the local jurisdiction. The local jurisdiction may adjust this amount by the cumulative change in the California Consumer Price Index, or its successor, in every year ending in zero.

(e) A member of the commission shall not do any of the following:

(1) While serving on the commission, endorse, work for, volunteer for, or make a campaign contribution to, a candidate for an elective office of the local jurisdiction.

(2) Be a candidate for an elective office of the local jurisdiction if any of the following is true:

(A) Less than five years has elapsed since the date of the member's appointment to the commission.

(B) The election for that office will be conducted using district boundaries that were adopted by the commission on which the member served, and those district boundaries have not been subsequently readopted by a commission after the end of the member's term on the commission.

(C) The election for that office will be conducted using district boundaries that were adopted by a legislative body pursuant to a recommendation by the commission on which the member served, and those district boundaries have not been subsequently readopted by a legislative body pursuant to a recommendation by a commission after the end of the member's term on the commission.

(3) For four years commencing with the date of the person's appointment to the commission:

(A) Accept employment as a staff member of, or consultant to, an elected official or candidate for elective office of the local jurisdiction.

(B) Receive a noncompetitively bid contract with the local jurisdiction.

(C) Register as a lobbyist for the local jurisdiction.

(4) For two years commencing with the date of the person's appointment to the commission, accept an appointment to an office of the local jurisdiction.

(f) The commission shall not be comprised entirely of members who are registered to vote with the same political party preference.

(g) Each member of the commission shall be a designated employee in the conflict of interest code for the commission pursuant to Article 3 (commencing with Section 87300) of Chapter 7 of Title 9 of the Government Code.

(h) The commission is subject to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) and the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code).

(i) The commission shall be subject to the same redistricting deadlines, requirements, and restrictions that would otherwise apply to a legislative body. A local jurisdiction may also impose additional requirements and restrictions on the commission, on members of the commission, or on applicants to the commission in excess of those prescribed by this section.

(j) The commission shall publish a map of the proposed new district boundaries and make that map available to the public for at least seven days before that map may be adopted. The commission shall hold at least three public hearings preceding the hearing at which the new boundaries are adopted.

(k) The commission shall not draw districts for the purpose of favoring or discriminating against a political party or an incumbent or political candidate.

(*l*) District boundaries adopted by an independent redistricting commission or adopted by a legislative body from recommendations provided by a hybrid redistricting commission, shall not be altered by the legislative body or the commission until after the next federal decennial census occurs, unless those

boundaries have been invalidated by a final judgment or order of a court of competent jurisdiction.

(m) For the purposes of subdivisions (c) and (d), "local jurisdiction" does not include a local jurisdiction that contracts with a county independent redistricting commission pursuant to Section 23004.

SEC. 55.5. Section 23003 of the Elections Code is amended to read:

23003. (a) This section applies to hybrid redistricting commissions, and to independent redistricting commissions, including independent redistricting commissions established by an ordinance, resolution, or charter amendment of the local jurisdiction, as described in Section 23001.5, and independent redistricting commissions established pursuant to Section 23005 or Section 23006.

(b) (1) Notwithstanding any other law, the local jurisdiction may prescribe the manner in which members are appointed to the commission, provided that the jurisdiction uses an application process open to all eligible residents and provided that the commissioners are not appointed by the legislative body or an elected official of the local jurisdiction.

(2) Paragraph (1) does not apply to a local jurisdiction required to establish an independent redistricting commission pursuant to Section 23005 or Section 23006.

(c) A person shall not be appointed to serve on the commission if the person or any family member of the person has been elected or appointed to, or been a candidate for, an elective office of the local jurisdiction in the eight years preceding the person's application.

(d) A person shall not be appointed to serve on the commission if either of the following applies:

(1) The person or the person's spouse has done any of the following in the eight years preceding the person's application:

(A) Served as an officer of, employee of, or paid consultant to, a campaign committee or a candidate for elective office of the local jurisdiction.

(B) Served as an officer of, employee of, or paid consultant to, a political party or as an elected or appointed member of a political party central committee.

(C) Served as a staff member or a consultant to, or who has contracted with, a currently serving elected officer of the local jurisdiction.

(D) Been registered to lobby the local jurisdiction.

(E) Contributed five hundred dollars ($500) or more in a year to any candidate for an elective office of the local jurisdiction. The local jurisdiction may adjust this amount by the cumulative change in the California Consumer Price Index, or its successor, in every year ending in zero.

(2) A family member of the person, other than the person's spouse, has done any of the following in the four years preceding the person's application:

(A) Served as an officer of, employee of, or paid consultant to, a campaign committee or a candidate for elective office of the local jurisdiction.

(B) Served as an officer of, employee of, or paid consultant to, a political party or as an elected or appointed member of a political party central committee.

(C) Served as a staff member of or consultant to, or has contracted with, a currently serving elected officer of the local jurisdiction.

(D) Been registered to lobby the local jurisdiction.

(E) Contributed five hundred dollars ($500) or more in a year to any candidate for an elective office of the local jurisdiction. The local jurisdiction may adjust this amount by the cumulative change in the California Consumer Price Index, or its successor, in every year ending in zero.

(e) A member of the commission shall not do any of the following:

(1) While serving on the commission, endorse, work for, volunteer for, or make a campaign contribution to, a candidate for an elective office of the local jurisdiction.

(2) Be a candidate for an elective office of the local jurisdiction if any of the following is true:

(A) Less than five years has elapsed since the date of the member's appointment to the commission.

(B) The election for that office will be conducted using district boundaries that were adopted by the commission on which the member served, and those district boundaries have not been

subsequently readopted by a commission after the end of the member's term on the commission.

(C) The election for that office will be conducted using district boundaries that were adopted by a legislative body pursuant to a recommendation by the commission on which the member served, and those district boundaries have not been subsequently readopted by a legislative body pursuant to a recommendation by a commission after the end of the member's term on the commission.

(3) For four years commencing with the date of the person's appointment to the commission:

(A) Accept employment as a staff member of, or consultant to, an elected official or candidate for elective office of the local jurisdiction.

(B) Receive a noncompetitively bid contract with the local jurisdiction.

(C) Register as a lobbyist for the local jurisdiction.

(4) For two years commencing with the date of the person's appointment to the commission, accept an appointment to an office of the local jurisdiction.

(f) The commission shall not be comprised entirely of members who are registered to vote with the same political party preference.

(g) Each member of the commission shall be a designated employee in the conflict of interest code for the commission pursuant to Article 3 (commencing with Section 87300) of Chapter 7 of Title 9 of the Government Code.

(h) The commission is subject to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) and the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code).

(i) The commission shall be subject to the same redistricting deadlines, requirements, procedures, criteria, and restrictions that would otherwise apply to a legislative body. A local jurisdiction may also impose additional requirements and restrictions on the commission, on members of the commission, or on applicants to the commission in excess of those prescribed by this section.

(j) The commission shall publish a map of the proposed new district boundaries and make that map available to the public for at least seven days before that map may be adopted. The commission shall hold at least three public hearings preceding the

hearing at which the new boundaries are adopted, or the number of public hearings that would otherwise apply to the legislative body for which district boundaries are being drawn, whichever is greater.

(k) The commission shall not draw districts for the purpose of favoring or discriminating against a political party or an incumbent or political candidate.

(*l*) District boundaries adopted by an independent redistricting commission or adopted by a legislative body from recommendations provided by a hybrid redistricting commission, shall not be altered by the legislative body or the commission until after the next federal decennial census occurs, unless those boundaries have been invalidated by a final judgment or order of a court of competent jurisdiction, or as may be necessary to account for changes to a jurisdiction's territory, including changes through annexation or consolidation.

(m) For the purposes of subdivisions (c) and (d), "local jurisdiction" does not include a local jurisdiction that contracts with a county independent redistricting commission pursuant to Section 23004.

SEC. 56. Section 34874 of the Government Code is amended to read:

34874. (a) An amendatory ordinance altering the boundaries of the legislative districts established pursuant to this article shall not be submitted to the registered voters until the ordinance has been submitted to the planning commission of the city or, in absence of a planning commission, to the legislative body of said city for an examination as to the definiteness and certainty of the boundaries of the legislative districts proposed.

(b) An amendatory ordinance altering the boundaries of legislative districts shall comply with the requirements and criteria of Section 21130 of the Elections Code.

SEC. 57. Section 34877.5 of the Government Code is amended to read:

34877.5. (a) After an ordinance is passed by the voters pursuant to Section 34876.5, or after an ordinance is enacted by the legislative body pursuant to Section 34886, the legislative body shall prepare a proposed map that describes the boundaries and numbers of the districts for the legislative body. In preparing the proposed map, the legislative body shall comply with the

requirements and criteria of Section 21130 of the Elections Code and shall seek public input, including accepting proposed maps submitted by the public.

(b) If the legislative body is changing from an at-large method of election to a district-based election, as those terms are defined in Section 14026 of the Elections Code, the legislative body shall hold public hearings pursuant to Section 10010 of the Elections Code. If the legislative body is otherwise adjusting the district boundaries, the legislative body shall hold public hearings on the proposed district boundaries pursuant to Section 21150 of the Elections Code.

SEC. 58. Section 34884 of the Government Code is amended to read:

34884. (a) If, at the time a vote is held on the subject of incorporation of a new city, a majority of the votes cast is for incorporation and, if, in accordance with Section 57116, a majority of the votes cast on the question of whether members of the city council in future elections are to be elected by district or at large is in favor of election by district, all of the following procedures apply:

(1) Before the first day on which voters may nominate candidates for election at the next regular municipal election, the legislative body shall, by ordinance or resolution, establish the boundaries of the districts of the legislative body. The districts shall be substantially equal in population as required by the United States Constitution. The districts shall comply with the requirements and criteria of Section 21130 of the Elections Code.

(2) The terms of office of the two members elected with the lowest vote shall expire on the Tuesday succeeding the next regular municipal election. At that election, members shall be elected by district in the even-numbered districts and shall hold office for four years.

(3) The terms of office of the three members elected with the highest vote shall expire on the Tuesday succeeding the second regular municipal election following the incorporation. At that election, members shall be elected by district in the odd-numbered districts and shall hold office for four years.

(b) The result of the vote cast on the question of whether members of the city council in future elections are to be elected by district or at large shall not preclude the submission to the voters

at any future election of a measure in accordance with Section 34871.

SEC. 59. Section 34886 of the Government Code is amended to read:

34886. Notwithstanding Section 34871 or any other law, the legislative body of a city may adopt an ordinance that requires the members of the legislative body to be elected by district or by district with an elective mayor, as described in subdivisions (a) and (c) of Section 34871, without being required to submit the ordinance to the voters for approval. An ordinance adopted pursuant to this section shall comply with the requirements and criteria of Section 21130 of the Elections Code and include a declaration that the change in the method of electing members of the legislative body is being made in furtherance of the purposes of the California Voting Rights Act of 2001 (Chapter 1.5 (commencing with Section 14025) of Division 14 of the Elections Code).

SEC. 60. Section 57301 of the Government Code is amended to read:

57301. If at any time between each decennial federal census, a city annexes or detaches territory or consolidates with another city, the city council of the city annexing or detaching the territory or the city council of the successor city, may reexamine the boundaries of its council districts pursuant to Section 21603 or 21623 of the Elections Code, as applicable.

SEC. 61. The district boundary criteria specified in this act apply to election district boundaries that are adopted or readopted on or after January 1, 2024. Election district boundaries adopted before January 1, 2024, shall comply with the applicable district boundary criteria in effect at the time of their adoption.

SEC. 62. The Legislature finds and declares that, as to cities and counties, many of the provisions of Chapter 2 (commencing with 21100) of Division 21 of the Elections Code, as added by this act, do not constitute a change in, but are declaratory of, existing law, and that a court should not draw a contrary inference based on the language of this act in resolving an action brought under the prior rules for city and county redistricting.

SEC. 63. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity

shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 64. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 65. Section 55.5 of this bill incorporates amendments to Section 23003 of the Elections Code proposed by both this bill and Assembly Bill 1248. That section shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2024, (2) each bill amends Section 23003 of the Elections Code, and (3) this bill is enacted after Assembly Bill 1248, in which case Section 55 of this bill shall not become operative.

Approved _____, 2023

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Governor