

VRA SECTION 2

1965 Original

No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color.

1982 Amendment (overturning Mobile v. Bolden)

(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 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. 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.

1982 Senate Factors

1. History of official discrimination in the state or subdivision that “touches” voting/democratic participation
2. Racially polarized voting
3. Suspect electoral arrangements: unusually large districts, majority vote requirements, anti-single shot provisions, etc.
4. Denial of minority access to slating process
5. Burdens on political participation due to continuing effects of discrimination in areas of education, employment, health, etc.
6. Whether political campaigns are characterized by racial appeals
7. Extent to which members of minority group have gotten elected in jdx
8. Any other factors with “probative value” including:
 - a. Elected officials’ lack of responsiveness to minority concerns
 - b. Tenuous policy underlying use of challenged electoral procedure

There is no requirement that any particular factors be proved, or that a majority point in one direction or another.

THORNBURG v. GINGLES
478 U.S. 30 (1986)

Facts: Black registered voters challenged 1982 redistricting in North Carolina, specifically one single-member district and six multi-member district. District Court held that the redistricting plan violated the VRA §2 (as amended).

Holding: The Supreme Court affirmed the lower court holding and established that districts violate §2 when there is evidence that a bloc voting majority usually defeats candidates supported by a politically cohesive, geographically insular minority group.

Gingles (threshold) test:

- (1) **Compactness.** Geographically possible to draw compact majority-minority district.
- (2) **Cohesion.** Minority voters must be politically cohesive.
- (3) **Opposition.** White voting bloc against minority candidates. Strongest evidence when opposition is sufficient to defeat candidate.

Cohesion + Opposition = Racially Polarized Voting (RPV)			
	Republican	Democrat	
White	0 / 15 / 25	35 / 20 / 10	35
Black	60 / 45 / 35	5 / 20 / 30	65
	60	40	100

How to deal with the problem of “ecological inference” (and what data is probative)?

- Examine voter preferences in “extreme” precincts (e.g., > 80% Black or White pop)
- Linear (bivariate) regression
- EI method developed by Gary King
- Exit polls/interviews

If you survive the Gingles threshold test, court then engages in “totality of circumstances” analysis:

*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.*

Rely on the Senate factors to prove a history of discrimination and then provide evidence of current “risk factors” for discrimination.

- Court is still looking for something *more* than just results (despite 1982 amendments)
- After *Shelby County*, reliance on historical data is now risky.