

Racially Polarized Voting: Background

Redistricting Data Hub

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Upcoming Trainings

1. Section 1: Voting Rights Act
2. Section 2: Data Sets and Analysis
3. Section 3: Statistical Methods

Section 1: Background

1. The Voting Rights Act
2. *Thornburg v. Gingles* (1986)
3. Influential post-Gingles rulings

The Voting Rights Act


- **Voting Rights Act** was passed in **1965** with the intent to enforce the 15th Amendment
- 15th Amendment
 - Section 1: The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.
 - Section 2: The Congress shall have power to enforce this article by appropriate legislation.



The Voting Rights Act

Section 2

“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.”



The Voting Rights Act: Section 2

- Section 2 intended to protect against laws that were already implemented
- Lawsuits under Section 2 are broken into two types:
 - Dilution
 - Diminishment

The Voting Rights Act: Section 2

Dilution

- A dilution challenge deals with redistricting schemes, and might argue that an at-large districting scheme dilutes the voting strength of minority voters, such that their candidate of choice is never elected.

The Voting Rights Act

Section 2

“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.”

Section 5


Required that covered jurisdictions (areas that Congress determined had the highest potential for discrimination) receive preclearance by the attorney general or the U.S. District Court for D.C. for any change to their election law.


The Voting Rights Act: Section 5

- Section 5 was intended to provide “remedies for voting discrimination which go into effect without any need for prior adjudication.” This was meant to combat the usual time and energy required to litigate over a potentially discriminatory election change.
 - Stop the change before it goes into effect.


The Voting Rights Act: Section 5

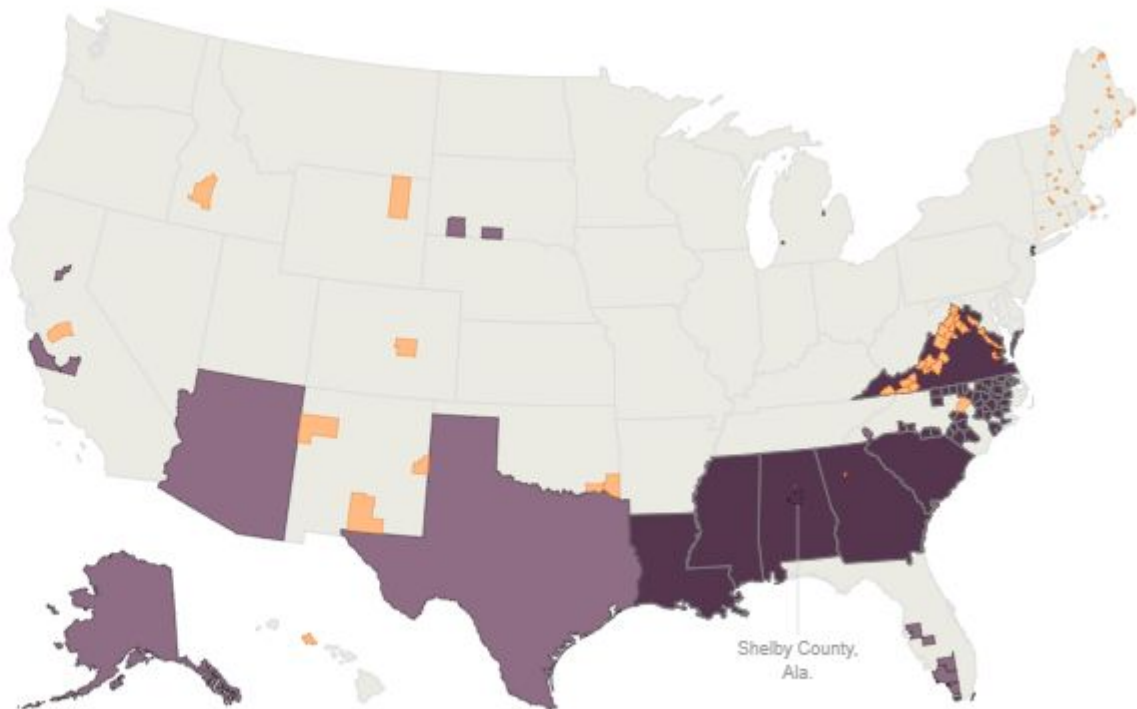
Places covered by the law

 Covered since 1965 Section 5 was first applied to places that had voter registration or turnout rates below 50 percent in 1964 and also “devices” to discourage voting, like literacy tests.

 Added in 1970 or 1975 On renewal, the law used data from 1968 and 1972 and defined a “device” to include English-only ballots in places where at least 5 percent of voting-age citizens spoke a single language other than English.

Bailed out

 Places that had been free of any voting discrimination for 10 years could be released from coverage by a court.



The Voting Rights Act: Section 5

- Section 4, which held the coverage formula to determine areas of the country were covered jurisdictions was struck down by the Supreme Court in *Shelby County v. Holder* (2013); **Section 5 has not been in effect since this ruling because no new coverage formula has made it through Congress.**

The Voting Rights Act

Section 2

“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.”

In effect

Section 5

Required that covered jurisdictions (areas that Congress determined had the highest potential for discrimination) receive preclearance by the attorney general or the U.S. District Court for D.C. for any change to their election law.

NOT in effect

The Voting Rights Act

- Act had an immediate effect.

African American voter registration
in covered jurisdictions increased
from:

1965 → 1967*
29.3% → 52.1%

In the 11 former confederate states,
Black members of state legislatures
increased from:

1965 → 1985*
3 → 176

*Grofman, Bernard; Handley, Lisa (February 1991). "The Impact of the Voting Rights Act on Black Representation in Southern State Legislatures" (PDF). *Legislative Studies Quarterly*. 16 (1): 111. doi:10.2307/439970. JSTOR 439970.

Tokaji, Daniel P. (2006). "The New Vote Denial: Where Election Reform Meets the Voting Rights Act". *South Carolina Law Review*. 57. SSRN 896786

The Voting Rights Act

- The Act was set to expire in 1970, but was repeatedly reauthorized, first until 1975, then 1982, then 2006.
 - In 2006 it was reauthorized for 25 more years ahead of the 2007 expiration date.
- Amended in 1975 to include language minorities.



The Voting Rights Act

- *Mobile v. Bolden* (1980)
 - The Supreme Court ruled that any minority vote dilution claim under Section 2 had to demonstrate a racially discriminatory **purpose** in the enactment of the law leading to the purported dilution.
 - In response to the ruling, Congress in 1982 amended Section 2 to include a results clause: “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...”

Thornburg vs. Gingles

- 1986 Supreme Court case in which Black plaintiffs challenged the multi-member electoral scheme of North Carolina's General Assembly.
- Plaintiffs argued that multi-member districts impermissibly diluted their vote under Section 2.
 - The Court found that the effects of historical discrimination acted in concert with the multi-member scheme to impair Black voters' ability to equally participate in the General Assembly elections.

Thornburg vs. Gingles

- In Justice Brennan's plurality opinion, three conditions were outlined that are necessary to establish any Section 2 dilution claim.
- They are called Gingles I, II and III.

Thornburg vs. Gingles

Gingles I

Is the minority group sufficiently numerous and geographically compact to constitute a majority of a single-member district?

Gingles II

Is the minority group politically cohesive (i.e. do minority voters tend to vote similarly to one another)?

Gingles III

Is the majority group politically cohesive and have they consistently voted as a bloc such that the minority preferred candidate is usually defeated?

Thornburg vs. Gingles

- The theory of the Gingles Court was that if the preconditions could not be satisfied then there was no potential remedy, and thus no dilution done to the minority group
- Analysis of Gingles II and III is generally called a **racially polarized voting (RPV) analysis**.
- Because an individual's ballot does not carry any demographic information about the voter, it is non-trivial to demonstrate that the minority and/or majority group votes cohesively.
 - Instead, statistical inferences are made about each groups' voting preferences by running analysis on the data available: census demographic data (at the block level), and election results (at the precinct level).

Thornburg vs. Gingles

- Though initially established in the context of multi-member district schemes, the Gingles criteria have been expanded to cover a range of vote dilution methods, including fragmenting, packing, and submerging minority voters.
- This includes challenges to single-member districts, at-large voting schemes, multi-member districts and more.

Totality of Circumstances

- If all three Gingles conditions are met, the Court instructed that analysis should continue to the totality of circumstances, where the Court would look at the ‘Senate factors,’ which were seven factors included in the Senate Committee on the Judiciary’s 1982 report that accompanied the addition of the “results” test language to Section 2.

Totality of Circumstances

1. The history of official voting-related discrimination in the state or political subdivision;
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 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;”

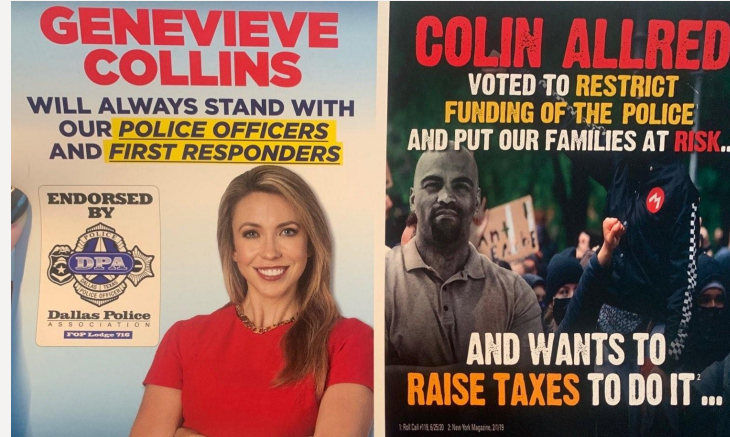
Totality of Circumstances

4. The exclusion of members of the minority group from candidate slating processes;
5. The extent to which minority group members bear the effects of discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process;

Totality of Circumstances



“A new study shows campaign ads by 2008 Republican presidential nominee John McCain noticeably darkened the skin tone of rival Barack Obama -- and that the ads affected, to some degree, voters' racial biases.”
-Reena Flores, 2015*



“Democratic U.S. Rep. Colin Allred on Sunday accused Republican rival Genevieve Collins of darkening his skin in her campaign mailers.”
-Gromer Jeffers Jr., 2020*

*Flores, Reena. “Study: 2008 McCain attack ads depicted Obama with darker skin tone.” cbsnews.com, CBS News, 31 December 2015, <https://www.cbsnews.com/news/study-2008-mccain-attack-ads-darkened-obama-skin-tone/>

*Jeffers Jr., Gromer. “Colin Allred accuses Genevieve Collins of darkening his skin in her campaign mailers.” dallasnews.com, The Dallas Morning News, 18 October 2020, <https://www.dallasnews.com/news/politics/2020/10/18/colin-allred-accuses-genevieve-collins-of-darkening-his-skin-in-her-campaign-mailers/>

Totality of Circumstances

6. The use of overt or subtle racial appeals in political campaigns; and
7. The extent to which members of the minority group have been elected to public office in the jurisdiction.

Totality of Circumstances

- The assumption is that if the Senate factors support the plaintiff's challenge, then the redistricting scheme was dilutive and a violation of Section 2. This is, however, not absolute.
- Generally, if the Gingles conditions are met, a Section 2 violation has occurred.
- As the 11th Circuit has said, "it would be only the very unusual case in which the plaintiffs can establish the existence of the three Gingles factors but still have failed to establish a violation of Section 2 under the totality of circumstances."

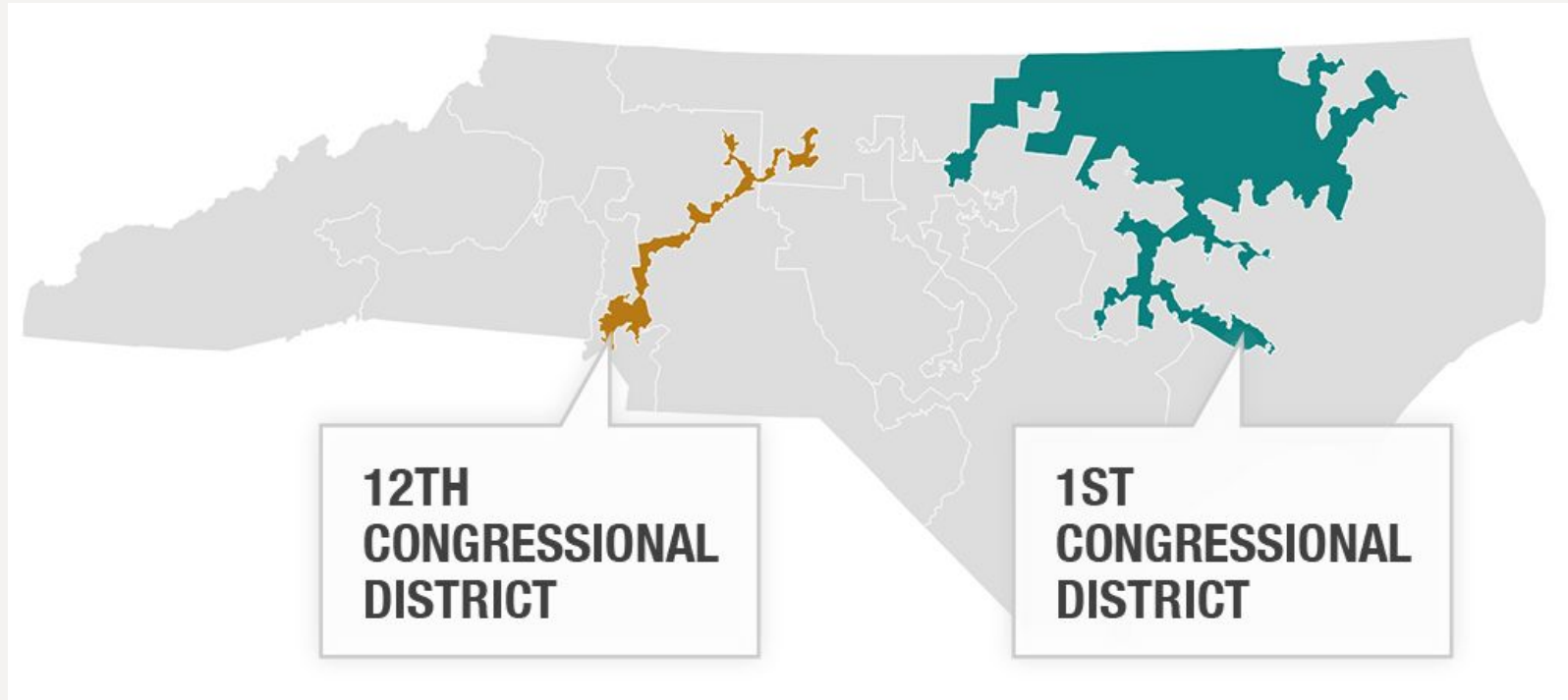
Influential post-Gingles rulings

- Since Gingles, there have been a number of Supreme Court cases related to Section 2 that have narrowed the Gingles preconditions or otherwise impacted how Section 2 challenges are applied and assessed.

Shaw v. Reno (1993)

- The Supreme Court found that redistricting based on race must be held to strict scrutiny for risk of violating the Equal Protections Clause of the 14th Amendment.
 - North Carolina had drawn a highly non-compact district with the intent to give Black voters the opportunity to elect their candidate of choice.
 - The Court determined that the legislature had wholly neglected traditional redistricting criteria.

Shaw v. Reno (1993)



Shaw v. Reno (1993) contd.

- Effect: Race cannot be the predominant factor in redistricting; districts designed to comply with the VRA cannot reject all traditional redistricting principles; a district drawn based heavily on race must be backed by some legitimate state interest;

Johnson v. DeGrandy (1994)

- The Supreme Court found that Section 2 does not require maximizing the number of districts in which minority voters can elect their candidate of choice.
 - The relevant consideration is whether minority voters are represented proportional to the minority group's population.
- Effect: Jurisdictions are not required to make a minority performing district wherever possible. A minority group in one area of the state may be underrepresented proportional to their population in that area if they are proportionally represented across the entire state.

Bartlett v. Strickland (2009)

- The Supreme Court found that a dilution claim is only cognizable under Section 2 if the minority group makes up at least 50% of the voting age population in the area.
- Effect: Voting-age population (or potentially more restrictive citizen voting-age population) must be used to assess Gingles I and crossover districts where a minority group can only elect a candidate of choice with support from the majority are not required to be made under Section 2.

Conclusion

What was discussed:

- The Voting Rights Acts and its impact
- Thornburg v Gingles
 - Gingles Criteria and the Senate Factors
- Influential Post Gingles Rulings

Upcoming Trainings

1. Section 2: Data Sets and Analysis
2. Section 3: Statistical Methods

Questions?