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Are Two Minorities Equal to One?: Minority Coalition Groups and Section 2 of the Voting Rights Act

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ARE TWO MINORITIES EQUAL TO ONE?: MINORITY COALITION GROUPS AND SECTION 2 OF THE VOTING RIGHTS ACT

Kevin Sette*

Following Jim Crow, vote dilution is the second-generation barrier standing between minority voters and the polls. Section 2 of the Voting Rights Act of 1965 (VRA) protects racial and language minorities from these vote dilution practices. To sustain a section 2 claim, a protected “class of citizens” must satisfy the criteria laid out by the U.S. Supreme Court in Thornburg v. Gingles. First, the class must constitute the majority of a hypothetical single-member voting district. Second, the class must be politically cohesive. Third, the minority class’s preferred candidate must be defeated by a white majority voting bloc.

What the Supreme Court has yet to answer is whether members of more than one minority group may form a single “class” to sustain a claim under Gingles and the VRA. In the Court’s silence, the federal circuits have diverged on the answer to this question. This Note examines the developing circuit split and proposes that the Supreme Court recognize protection of minority coalitions under the VRA. Principles of statutory interpretation require prudent courts to recognize that minority aggregation is contemplated by section 2. Further, the existing Gingles framework is readily equipped to prevent noncohesive groups from abusing section 2 for unfair political advantage.

INTRODUCTION.....	2694
I. THE VRA AND MINORITY VOTING POWER	2699
A. History of the VRA.....	2699
B. Burdens of Proof Under the VRA and Constitution.....	2702
C. Evolution of Vote Dilution Claims Under Section 2	2704
D. Response to Minority Aggregation Claims	2706

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II. MINORITY COALITIONS: A SPLIT IN THE FEDERAL CIRCUITS	2709
A. <i>Explicit Acceptance of Minority Aggregation</i>	2710
1. The Fifth and Eleventh Circuit Precedents	2710
2. The Sixth Circuit Dissent in <i>Nixon v. Kent</i> <i>County</i>	2714
3. Support in Scholarship	2715
B. <i>Assumed Validity of Minority Aggregation</i>	2717
C. <i>Explicit Rejection of Minority Aggregation</i>	2719
1. The Sixth Circuit in <i>Nixon v. Kent County</i>	2719
2. Rejection and Ambiguity in the Other Circuits.....	2721
3. Criticism in Scholarship.....	2723
III. MINORITY GROUPS CAN AGGREGATE UNDER SECTION 2 OF THE VRA	2724
A. <i>Principles of Statutory Interpretation Support</i> <i>Coalition Protection</i>	2725
1. What Is a “Class” of Citizens?.....	2726
2. Congress Intended for Broad Protection.....	2729
B. <i>Section 2 of the VRA Is the Proper Avenue of Relief</i> <i>for Minority Coalitions</i>	2730
1. The VRA Provides Broader Protection Than the Constitution.....	2730
2. Coalition Claims Are Not Unworkable Under the <i>Gingles</i> Framework.....	2731
3. The <i>Gingles</i> Framework Prevents Minority Coalitions from Abusing the VRA.....	2732
CONCLUSION.....	2734

INTRODUCTION

Consider Marques County, a fictional county located in a state consisting of both urban and suburban areas.¹ There are three single-member voting districts² within Marques County—District 1, District 2, and District 3. All three districts, prior to 2010 and now, are roughly equal in population size.

Before 2010, Marques County’s only urban region fell entirely within District 1. Most of the county’s minority population resides in this urban area. The voting population of District 1 was, prior to 2010, 49 percent Hispanic or Black and 45 percent white. Districts 2 and 3 are entirely suburban and predominantly white. Elections in Marques County are

1. This hypothetical, using facts similar to those of real cases, serves as an example of vote dilution in a single-member voting district involving multiple minority groups.

2. A single-member voting district is one in which the electorate of each district elects only one candidate. *Nixon v. Kent County*, 76 F.3d 1381, 1384 n.4 (6th Cir. 1996).

typically voted along racial lines, with Hispanics and Blacks consistently voting for the same candidates. As a result, a minority-preferred candidate has historically represented District 1, and white-preferred candidates have historically represented Districts 2 and 3.

Following the 2010 Census, the state legislature redrew its voting districts, including those in Marques County. The three districts were redrawn so that Marques County's urban region is now divided equally among Districts 1, 2, and 3. The result is a redistribution of racial and ethnic diversity within each district. Whereas the combined population of Hispanics and Blacks once constituted a predominant majority in District 1, each of Marques County's three single-member voting districts now has a white majority. Since redistricting took place, no minority-preferred candidate has won an election in Marques County.

Hispanic and Black plaintiffs file a complaint in federal court claiming that their votes in Marques County are being diluted in violation of the federal Voting Rights Act of 1965³ (VRA).⁴ Vote dilution is a process by which an electoral system “diminish[es] the overall impact of the minority vote.”⁵ Since 1965, the VRA has banned vote dilution of racial minorities and, following an amendment in 1975, has done the same for language minorities.⁶ The plaintiffs argue that the legislature diluted the power of their votes because, despite no change in the actual population of Marques County, redistricting has eliminated their ability to elect legislators of their choice.

The U.S. Supreme Court's interpretation of the VRA in *Thornburg v. Gingles*⁷ established three criteria that a protected “class of citizens”⁸ must show to successfully sustain a claim of vote dilution.⁹ First, the minority group must be sufficiently large and compact to constitute the majority of a theoretical single-member voting district.¹⁰ Second, the minority group must be politically cohesive.¹¹ Third, the white majority must vote as a bloc to defeat minority-preferred candidates.¹² The Supreme Court, however, has failed to identify whether a “class of citizens” protected under the VRA may

3. Pub. L. No. 89-110, 79 Stat. 437 (codified as amended in scattered sections of 42 and 52 U.S.C.).

4. This hypothetical action is the first procedural step for real-life litigants pursuing a vote dilution claim under the VRA on a minority coalition theory.

5. Allan J. Lichtman & J. Gerald Herbert, *A General Theory of Vote Dilution*, 6 LA RAZA L.J. 1, 4 (1993).

6. See 52 U.S.C. § 10301(a) (2018); Rick G. Strange, *Application of Voting Rights Act to Communities Containing Two or More Minority Groups—When Is the Whole Greater Than the Sum of the Parts?*, 20 TEX. TECH L. REV. 95, 104 (1989) (“[S]ection 2 provides that minority votes are not to be diluted by any voting scheme or structure.”); *About Section 5 of the Voting Rights Act*, U.S. DEP'T JUST., <https://www.justice.gov/crt/about-section-5-voting-rights-act> [<https://perma.cc/Q3HC-WR3G>] (last visited Apr. 12, 2020); see also *infra* notes 64–65 and accompanying text (defining “language minorities” under the VRA).

7. 478 U.S. 30 (1986).

8. See 52 U.S.C. § 10301(b).

9. See *Gingles*, 478 U.S. at 50–51.

10. *Id.* at 50.

11. *Id.* at 51.

12. *Id.*

contain members of more than one minority group.¹³ Stated differently, may the Hispanic and Black plaintiffs of Marques County aggregate¹⁴ to bring a unified claim of vote dilution or must they sustain claims as two different classes?

Federal circuit courts have diverged on the answer to this question for years.¹⁵ Initially, the federal circuits unanimously accepted the notion that multiple minority groups may create a single class under the VRA.¹⁶ In *Campos v. City of Baytown*,¹⁷ for example, the Fifth Circuit concluded that nothing in the text or history of the VRA prevented Blacks and Hispanics from alleging a single vote dilution claim together.¹⁸ Almost ten years later, the Sixth Circuit became the first to take the opposite position.¹⁹ In *Nixon v. Kent County*,²⁰ a divided Sixth Circuit concluded en banc that the VRA's text did not support a finding that aggregated minority groups were a protected class.²¹ Following *Nixon*, a split developed in the circuit courts, which has gone unaddressed by the Supreme Court and Congress for over three decades.²²

Scholars have taken up the challenge and are similarly at odds.²³ Critics of minority aggregation contend that the VRA was not intended to protect

13. See Lauren R. Weinberg, Note, *Reading the Tea Leaves: The Supreme Court and the Future of Coalition Districts Under Section 2 of the Voting Rights Act*, 91 WASH. U. L. REV. 411, 413 (2013) (noting that the Supreme Court has never addressed the minority aggregation issue directly); see also Audrey Yang, Note, *Treading Carefully After Shelby County: Minority Coalitions Under Section 2 of the Voting Rights Act*, 2015 U. CHI. LEGAL F. 701, 702 (explaining that federal circuits are split on Congress's intent regarding minority aggregation).

14. The phrases "minority coalition" and "minority aggregation" are used interchangeably throughout this Note. The general idea is "the ability to join our votes with like-minded others to elect our preferred candidates." See Daniel P. Tokaji, *Vote Dissociation*, 127 YALE L.J. FORUM 761, 764 (2018); see also Michael S. Taintor, Note, *Section 2 of the Voting Rights Act, Special Circumstances, and Evidence of Equality*, 94 N.Y.U. L. REV. 1767, 1775 (2019).

15. Compare League of United Latin Am. Citizens, Council No. 4386 v. Midland Indep. Sch. Dist. (*LULAC I*), 812 F.2d 1494, 1500–02 (5th Cir. 1987) (accepting minority coalition claims), *reh'g granted*, 818 F.2d 350 (5th Cir. 1987), and *vacated*, 829 F.2d 546 (5th Cir. 1987), and Concerned Citizens of Hardee Cty. v. Hardee Cty. Bd. of Comm'rs, 906 F.2d 524, 526 (11th Cir. 1990) (same), and Bridgeport Coal. for Fair Representation v. City of Bridgeport, 26 F.3d 280, 281 (2d Cir. 1994) (same), with *Nixon v. Kent County*, 76 F.3d 1381, 1388 (6th Cir. 1996) (rejecting coalition claims as beyond the VRA's scope).

16. In 1996, the Sixth Circuit was the first court to reject minority aggregation at the federal appellate level. See *Nixon*, 76 F.3d at 1388. At that point, other circuits had contemplated and accepted aggregation for at least nine years. See *supra* note 15.

17. 840 F.2d 1240 (5th Cir. 1988).

18. *Id.* at 1244.

19. See *supra* note 16 and accompanying text.

20. 76 F.3d 1381 (6th Cir. 1996).

21. *Id.* at 1388.

22. See *infra* Part II (outlining the circuit split that has developed across the federal circuit courts that have addressed the coalition claim question).

23. Compare Dale E. Ho, *Two Fs for Formalism: Interpreting Section 2 of the Voting Rights Act in Light of Changing Demographics and Electoral Patterns*, 50 HARV. C. R.-C. L. L. REV. 403 (2015), and Sara Michaloski, Note, *A Tale of Two Minority Groups: Can Two Different Minority Groups Bring a Coalition Suit Under Section 2 of the Voting Rights Act of 1965*, 63 CATH. U. L. REV. 271 (2014), with Sebastian Geraci, Note, *The Case Against Allowing Multiracial Coalitions to File Section 2 Dilution Claims*, 1995 U. CHI. LEGAL F. 389, Christopher E. Skinnell, Note, *Why Courts Should Forbid Minority Coalition Plaintiffs Under*

political groups.²⁴ They argue that, by congregating, the minority plaintiffs in Marques County would be abusing VRA protections to further mutual political interests.²⁵ Critics assert that multiple minority groups together could not constitute a single “class of citizens” protected in the VRA’s text.²⁶ In contrast, supporters of coalition groups argue that the VRA should be interpreted broadly to provide the greatest degree of protection possible.²⁷ Such supporters affirmatively dispute the contention that coalition groups would be able to abuse VRA protection for political gain.²⁸ Like claims asserted by a single minority group, claims by multiple minorities would still have to satisfy the burdens established in *Gingles*.²⁹ As such, the Marques County plaintiffs would still have to prove, at a minimum, that they constitute the majority of a potential district (for example, District 1 prior to 2010), cohesively vote for the same candidates, and their candidate was defeated by a white voting bloc.³⁰

A lack of clarity about minority coalition rights creates practical concerns. America’s white population is declining as Hispanic, Black, and Asian populations rise in certain regions of the country.³¹ Between 2000 and 2018, over one hundred counties witnessed white populations drop below 50 percent of the total population in each county.³² Almost three hundred counties total “were majority nonwhite in 2018,”³³ including twenty-one of the nation’s twenty-five most populous counties.³⁴ Translated to the voting context, nonwhites will represent a record one-third of all eligible voters in

Section 2 of the Voting Rights Act Absent Clear Congressional Authorization, 2002 U. CHI. LEGAL F. 363, and Yang, *supra* note 13.

24. See Geraci, *supra* note 23, at 393 (“The VRA was not designed to cater to interest-group politics.”); Skinnell, *supra* note 23, at 365 (“[A]ggregation would be a radical departure from the VRA’s purpose of ending racial discrimination, making it a mere tool of political interests.”). Drawing this distinction will be all the more important now that the Supreme Court has decided that partisan gerrymandering claims pose a political question beyond the reach of federal courts. See *Rucho v. Common Cause*, 139 S. Ct. 2484, 2506–07 (2019).

25. See Geraci, *supra* note 23, at 393 (arguing that the VRA’s purpose was to end discrimination and not to give coalition groups power they otherwise would not have).

26. See, e.g., Yang, *supra* note 13, at 716 (contending that use of the singular “class” in the VRA’s text prevents inclusion of multimorality coalitions).

27. See Ho, *supra* note 23, at 431–32 n.167; Michaloski, *supra* note 23, at 293.

28. See Michaloski, *supra* note 23, at 294.

29. See *id.*; see also *supra* notes 9–12 and accompanying text.

30. See *supra* notes 9–12 and accompanying text.

31. Jens Manuel Krogstad, *Reflecting a Demographic Shift, 109 U.S. Counties Have Become Majority Nonwhite Since 2000*, PEW RES. CTR.: FACT TANK (Aug. 21, 2019), <https://www.pewresearch.org/fact-tank/2019/08/21/u-s-counties-majority-nonwhite/> [https://perma.cc/85B2-3WEN]. For example, in 2018, the Hispanic population in the United States reached 59.9 million, an increase of 1.2 million from the previous year. Antonio Flores et al., *U.S. Hispanic Population Reached New High in 2018, but Growth Has Slowed*, PEW RES. CTR.: FACT TANK (July 8, 2019), <https://www.pewresearch.org/fact-tank/2019/07/08/u-s-hispanic-population-reached-new-high-in-2018-but-growth-has-slowed/> [https://perma.cc/75YH-H29G].

32. Krogstad, *supra* note 31.

33. *Id.*

34. *Id.* (“In 21 of the 25 biggest U.S. counties by population, nonwhite groups together make up more than half of residents.”).

the 2020 presidential election.³⁵ As a result of these trends, the impending 2020 Census will task state legislatures with redrawing voting districts around an unprecedented number of nonwhite municipalities. The likely aftermath will be a wave of litigation by minority groups, both individually and in the aggregate, alleging dilution of their voting rights—especially in regions already accused of engaging in minority voter suppression.³⁶ To properly address these claims, there must be uniformity in how courts interpret the legal responsibilities imposed on state legislatures regarding minority coalition voting.

This Note addresses the current ambiguity surrounding the legal rights of minority coalitions. The majority³⁷ circuit court approach permits minority coalitions to bring vote dilution claims, relying on congressional intent and broad statutory interpretation for support.³⁸ This includes a handful of circuits that accept minority aggregation without even addressing the issue.³⁹ The minority⁴⁰ circuit court approach interprets the VRA narrowly to require that a single “class of citizens” be composed of members of a single minority group.⁴¹ Scholars tried to resolve this disagreement but have provided meritorious arguments on both sides.⁴² The circuit split ultimately leaves state legislatures uncertain about their legal obligations and gives minority groups varying degrees of protection depending on where in the country their rights are being violated.

35. Anthony Cilluffo & Richard Fry, *An Early Look at the 2020 Electorate*, PEW RES. CTR.: SOC. & DEMOGRAPHIC TRENDS (Jan. 30, 2019), <https://www.pewsocialtrends.org/essay/an-early-look-at-the-2020-electorate/> [<https://perma.cc/Y3DF-MMDK>].

36. See Jason Lemon, *Hours-Long Super Tuesday Voting Lines in Texas County Lead to Accusations of ‘Voter Suppression,’* NEWSWEEK (Mar. 4, 2020), <https://www.newsweek.com/hours-long-super-tuesday-voting-lines-texas-county-lead-accusations-voter-suppression-1490560> [<https://perma.cc/ZN98-7HCR>]; Wendy R. Weiser, *This Is the Worst Voter Suppression We’ve Seen in the Modern Era*, BRENNAN CTR. FOR JUST. (Nov. 2, 2018), <https://www.brennancenter.org/our-work/analysis-opinion/worst-voter-suppression-weve-seen-modern-era> [<https://perma.cc/EAU2-Z3XN>] (“There’s evidence that states in which the political clout of minorities is growing—where the ruling majority perceives a threat to its power—are more likely to see restrictive voting laws than are more demographically homogenous states. And as the salience of race in our politics has increased, so too has voter suppression.”). These fears have only been exacerbated by the effects of the coronavirus pandemic on voting. See Alex Isenstadt, *Trump Campaign Declares War on Dems Over Voting Rules for November*, POLITICO (Apr. 3, 2020), <https://www.politico.com/news/2020/04/03/trump-2020-election-legal-battle-coronavirus-162152> [<https://perma.cc/QQ8S-4TRD>] (citing the surge in voting-related litigation likely to commence following elections impacted by the pandemic).

37. See Yang, *supra* note 13, at 702 (identifying permission of minority aggregation as the majority view among the circuits).

38. See *infra* Part II.A (identifying courts of appeals that have explicitly assented to coalition claims).

39. See *infra* Part II.B (identifying courts of appeals that have implicitly assented to coalition claims).

40. See Yang, *supra* note 13, at 702.

41. See *infra* Part II.C (identifying courts of appeals that have rejected coalition claims).

42. See *infra* Parts II.A.3, II.C.3 (identifying, respectively, scholarly support for and criticism of minority aggregation under the VRA).

Part I of this Note provides background information on the enactment and development of the VRA, as well as a general history of minority voting rights in the United States. This Note reviews seminal Supreme Court cases that interpret, expand, and limit the VRA's powers and applicability.

Part II analyzes the current split among both the federal courts of appeals and scholars over whether the VRA permits aggregated minority groups to sustain vote dilution claims. This Note divides the federal circuits into three distinct groups: (1) those that have explicitly granted VRA protections to minority coalitions, (2) those that have assumed the validity of such protections, and (3) those that have explicitly denied or are likely to deny extension of the VRA to aggregated minority claims.

Part III argues that both the VRA's text and Congress's intent support allowing minority coalition claims. This Note asserts that applying common tools of statutory interpretation to the VRA requires prudent courts to recognize that members of different minority groups can form a single "class of citizens." Finally, this Note concludes by disputing common criticisms of minority aggregation, including the popular belief that coalitions will abuse the VRA for unfair political advantage.

I. THE VRA AND MINORITY VOTING POWER

A. *History of the VRA*

The tempestuous journey of recognizing minority voting rights in the United States started with the ratification of the Fifteenth Amendment in 1870.⁴³ The Fifteenth Amendment declares that the right to vote may not be "denied or abridged . . . on account of race, color, or previous condition of servitude."⁴⁴ In its aftermath, measures were taken across the country to resist this constitutional constraint and circumvent minority access to the franchise.⁴⁵ The Supreme Court seemed to have constructively rendered the Fifteenth Amendment moot in 1898 when it upheld one of these measures: a Mississippi poll tax designed to deny Blacks the right to vote.⁴⁶ This decision catalyzed enactment of similar legislation across the South.⁴⁷ These

43. See Virginia E. Hench, *The Death of Voting Rights: The Legal Disenfranchisement of Minority Voters*, 48 CASE W. RES. L. REV. 727, 732–33 (1998); see also U.S. CONST. amend. XV.

44. U.S. CONST. amend. XV, § 1.

45. See Hench, *supra* note 43, at 733–36. At the time, these legal measures included "whites-only" primaries, poll taxes, and literacy tests. *Id.*

46. See *Williams v. Mississippi*, 170 U.S. 213, 222 (1898) (finding that a Mississippi law requiring payment of taxes in order to vote did not violate the Equal Protection Clause of the Fourteenth Amendment). Congress was no better. See *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 197 (2009) ("The first century of congressional enforcement of the [Fifteenth] Amendment . . . can only be regarded as a failure.").

47. *A Brief History of Jim Crow*, CONST. RTS. FOUND., <https://www.crf-usa.org/black-history-month/a-brief-history-of-jim-crow> [<https://perma.cc/CKB3-YYJ4>] (last visited Apr. 12, 2020) ("Given the green light, Southern states began to limit the voting right to those who owned property or could read well, to those whose grandfathers had been able to vote, to those with 'good characters,' to those who paid poll taxes.").

“first-generation”⁴⁸ methods of voter suppression persisted well into the twentieth century,⁴⁹ until Congress and the federal courts eventually phased them out.⁵⁰ States soon thereafter adopted newer and more complex “second-generation” methods of disenfranchisement in the form of strategic redistricting and vote dilution.⁵¹ In response to these evolving practices, Congress passed the VRA⁵² to vigorously reinforce each citizen’s constitutional voting rights, “including the right to . . . cast meaningful votes.”⁵³ The VRA is not permanent legislation but instead survives by Congress’s periodic extension of the law.⁵⁴ Most recently, the VRA was extended in 2006 for a period of twenty-five years.⁵⁵

There are two primary provisions of the VRA: section 2 and section 5.⁵⁶ Section 5 prohibits changes in the election practices of certain jurisdictions, specifically those having a greater likelihood of promoting voter disenfranchisement, until such changes have passed administrative review by the attorney general or U.S. District Court for the District of Columbia.⁵⁷ However, the Supreme Court’s 2013 ruling in *Shelby County v. Holder*⁵⁸ declared unconstitutional section 5’s selection criteria.⁵⁹ While not found unconstitutional itself, section 5 is all but unusable after *Shelby County*.⁶⁰

48. Heather K. Gerken, *Understanding the Right to an Undiluted Vote*, 114 HARV. L. REV. 1663, 1671 (2001) (classifying legal remedies to “first-generation” methods, primarily the Fifteenth Amendment, as “first-generation” voting rights).

49. *Id.*

50. See Kelly Phillips Erb, *For Election Day, a History of the Poll Tax in America*, FORBES (Nov. 5, 2018, 8:30 PM), <https://www.forbes.com/sites/kellyphillipserb/2018/11/05/just-before-the-elections-a-history-of-the-poll-tax-in-america> [<https://perma.cc/Y9VG-DRTB>] (describing the systematic rejection of Jim Crow laws, including the poll tax, via the Twenty-Fourth Amendment, VRA, and Supreme Court precedent).

51. See Chelsea J. Hopkins, Note, *The Minority Coalition’s Burden of Proof Under Section 2 of the Voting Rights Act*, 52 SANTA CLARA L. REV. 623, 626 n.18 (2012); see also Gerken, *supra* note 48, at 1666.

52. Pub. L. No. 89-110, 79 Stat. 437 (codified as amended in scattered sections of 42 and 52 U.S.C.).

53. 52 U.S.C. § 10301 note (2018) (stating Congress’s purpose and findings in enacting the VRA).

54. See *History of Federal Voting Rights Laws*, U.S. DEP’T JUST., <https://www.justice.gov/crt/history-federal-voting-rights-laws> [<https://perma.cc/S3B4-W432>] (last visited Apr. 12, 2020).

55. Carl Hulse, *By a Vote of 98-0, Senate Approves 25-Year Extension of Voting Rights Act*, N.Y. TIMES (July 21, 2006), <https://www.nytimes.com/2006/07/21/washington/21vote.html> [<https://perma.cc/3PWZ-QM6Y>].

56. Hopkins, *supra* note 51, at 626.

57. See 52 U.S.C. § 10303(a)–(b); *About Section 5 of the Voting Rights Act*, *supra* note 6.

58. 570 U.S. 529 (2013).

59. *Id.* at 553–54 (finding that Congress’s renewal of section 5 criteria was unconstitutional because “Congress did not . . . shape [an updated] coverage formula grounded in current conditions”).

60. See *About Section 5 of the Voting Rights Act*, *supra* note 6. The Supreme Court’s gutting of section 5 resulted in a wave of discriminatory voting practices. See Kristen Clarke & Ezra Rosenberg, Opinion, *Trump Administration Has Voting Rights Act on Life Support*, CNN (Aug. 6, 2018), <https://www.cnn.com/2018/08/06/opinions/voting-rights-act-anniversary-long-way-to-go-clarke-rosenberg-opinion/index.html> [<https://perma.cc/47DQ-TD9K>] (“After Shelby, a myriad of discriminatory voting practices have been implemented both in jurisdictions previously covered by Section 5 and those that were not.”); Anagha

Unlike other provisions of the VRA, section 2 applies to all U.S. jurisdictions and remains practicably enforceable.⁶¹ At its creation, section 2 banned any state⁶² “standard, practice, or procedure” that denied or abridged a citizen’s right to vote “on account of race or color.”⁶³ Section 2 was subsequently amended in 1975 to extend these protections to “language minority group[s].”⁶⁴ This amendment specifically protects American Indians, Asian Americans, Alaskan Natives, and persons of Spanish heritage.⁶⁵ Section 2 is violated where, based on a totality of the circumstances, “members of a [protected] class of citizens” have less opportunity to “participate in the political process and elect representatives of their choice.”⁶⁶

Srikanth, *Long Voting Lines in Texas Renew Accusations of Voter Suppression*, HILL (Mar. 4, 2020), <https://thehill.com/changing-america/respect/diversity-inclusion/485906-long-voting-lines-in-texas-renew-accusations-of> [<https://perma.cc/RLJ2-EGEP>] (identifying that Texas alone has closed 750 polling stations since 2012); Mark Joseph Stern, *The Supreme Court May Soon Deal a Final, Fatal Blow to the Voting Rights Act*, SLATE (Oct. 10, 2019), <https://slate.com/news-and-politics/2019/10/supreme-court-voting-rights-act-obliteration.html> [<https://perma.cc/ZPZ2-4LHB>] (stating that, following *Shelby County*, states have closed over 1600 polling places and enacted discriminatory voter ID laws). In February 2019, companion legislation was introduced in both houses of Congress, which intended to revive section 5 by codifying an updated coverage formula to assign preclearance requirements. John Bowden, *Dems Introduce Bills to Restore Voting Rights Act Provision*, HILL (Feb. 26, 2019), <https://thehill.com/homenews/house/431693-democrats-introduce-bill-to-strengthen-voting-rights-act> [<https://perma.cc/84JU-S72H>].

61. Kathay Feng, Keith Aoki & Bryan Ikegmai, *Voting Matters: AIPAs, Latinas/os and Post-2000 Redistricting in California*, 81 OR. L. REV. 849, 864 (2002). Recently, however, section 2 has been subject to attack on both enforcement and constitutionality grounds. *See* Ala. State Conference of the NAACP v. Alabama, 949 F.3d 647, 659 (11th Cir. 2020) (Branch, J., dissenting) (contending that the VRA does not abrogate state sovereign immunity, meaning individuals have no right to sue states for section 2 violations); *see also* Stern, *supra* note 60 (identifying arguments that section 2’s “results test,” *see infra* note 78 and accompanying text, is unconstitutional because it exceeds the Fifteenth Amendment’s scope, which only bars intentional discrimination).

62. The VRA also prohibits discriminatory voting practices by the federal government and local governments. *See* Paige A. Epstein, *Addressing Minority Vote Dilution Through State Voting Rights Acts* 3 (Univ. Chi. Pub. Law & Legal Theory Working Paper No. 474, 2014), https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1918&context=public_law_and_legal_theory [<https://perma.cc/KJM6-QV28>].

63. 42 U.S.C. § 1973 (1970) (current version at 52 U.S.C. § 10301(a) (2018)).

64. 42 U.S.C. § 1973b(f)(2) (1976) (current version at 52 U.S.C. § 10303(f)(2) (2018)).

65. 52 U.S.C. § 10310(c)(3) (2018).

66. *Id.* § 10301(b). The full, current version of section 2 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

B. Burdens of Proof Under the VRA and Constitution

Originally, claims brought under the VRA only needed to allege that the challenged voting practice resulted in a discriminatory effect.⁶⁷ However, the Supreme Court's 1980 ruling in *Mobile v. Bolden*⁶⁸ called for a heightened standard of discriminatory intent.⁶⁹ The Court, relying on *Washington v. Davis*⁷⁰ and its progeny, applied the "purposeful discrimination" standard that is required to bring a claim under the Fourteenth Amendment's Equal Protection Clause and the Fifteenth Amendment.⁷¹ The Court has long required that equal protection claims show discriminatory purpose.⁷² This standard has previously been applied in the context of equal protection vote dilution claims.⁷³ Similarly, "racially discriminatory motivation is a necessary ingredient of a Fifteenth Amendment violation."⁷⁴ This has produced a line of conflicting Supreme Court decisions on Fifteenth Amendment claims⁷⁵ of allegedly racially motivated gerrymandering.⁷⁶

In response to *Bolden*, Congress amended the VRA again in 1982 to make it clear that a section 2 claim "could be proved by showing discriminatory effect alone."⁷⁷ Congress created what is now the current section 2 framework—a "results test" asking whether, as a result of the challenged practice, members of the protected class have comparatively less opportunity

section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

Id. § 10301(a)–(b).

67. See Strange, *supra* note 6, at 100.

68. 446 U.S. 55 (1980).

69. *Id.* at 66 ("A plaintiff must prove that the disputed plan was 'conceived or operated as [a] purposeful devic[e] to further racial . . . discrimination.'" (quoting *Whitcomb v. Chavis*, 403 U.S. 124, 149–50 (1971))).

70. 426 U.S. 229 (1976).

71. *Bolden*, 446 U.S. at 67 ("The Court explicitly indicated in [*Davis*] that this principle applies to claims of racial discrimination affecting voting just as it does to other claims of racial discrimination.").

72. See, e.g., *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977) ("Proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause."); *Davis*, 426 U.S. at 240.

73. See, e.g., *Wright v. Rockefeller*, 376 U.S. 52, 55 (1964) (requiring a finding that the legislature's redistricting was motivated by racial considerations in order to sustain an equal protection claim).

74. *Bolden*, 446 U.S. at 62.

75. Compare *Gomillion v. Lightfoot*, 364 U.S. 339, 346–48 (1960) (identifying that a possible Fifteenth Amendment claim was stated where plaintiffs' alleged municipal boundary redistricting was racially motivated gerrymandering), with *Wright*, 376 U.S. at 58 (denying a Fifteenth Amendment claim of racial gerrymandering because plaintiffs failed to show discriminatory intent of the legislature).

76. Gerrymandering is the "practice of dividing a geographical area into electoral districts, often of highly irregular shape, to give one political party an unfair advantage by diluting the opposition's voting strength." *Gerrymandering*, BLACK'S LAW DICTIONARY (11th ed. 2019).

77. *Thornburg v. Gingles*, 478 U.S. 30, 35 (1986); see also 42 U.S.C. § 1973(a) (1982) (current version at 52 U.S.C. § 10301(a) (2018)).

to elect their representatives of choice.⁷⁸ The Senate Judiciary Committee report accompanying the 1982 amendments identified a noncomprehensive list of factors to consider when courts conduct a totality-of-the-circumstances analysis.⁷⁹ Each factor is concerned with the practices or effects of the state's election and political processes.⁸⁰

The Senate was explicit that intent is an inappropriate measure for establishing a section 2 violation.⁸¹ First, intent standards ask the wrong question.⁸² If a current practice “operates today to exclude blacks or Hispanics from a fair chance to participate,” the past or present motives behind the standard are “of the most limited relevance.”⁸³ Second, Congress also determined that an intent requirement would be unnecessarily divisive because it requires an allegation of racism against the officials or community implementing the voting procedure.⁸⁴ Third, showing intent places an “inordinately difficult burden” on plaintiffs to sustain a claim.⁸⁵ The *Bolden* Court advocated for an intent standard because it argued that section 2 and

78. *Gingles*, 478 U.S. at 35–36; see also *White v. Regester*, 412 U.S. 755, 766 (1973) (using the test that Congress codified in the VRA's 1982 amendment, which asks whether members of the protected class “had less opportunity than did other[s] . . . to participate in the political processes”).

79. *Gingles*, 478 U.S. at 37–38; see also S. REP. NO. 97-417, at 28–29 (1982).

80. See S. REP. NO. 97-417, at 28–29. The factors include the following:

1. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;
2. the extent to which voting in the elections of the state or political subdivision is racially polarized;
3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
4. if there is a candidate slating process, whether 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.

Id.

81. See *id.* at 36.

82. See *id.*

83. *Id.*

84. *Id.*

85. See *id.* at 36–37 (noting the unique difficulty of determining intent from lackluster state or local legislative records of voting practices implemented decades earlier); see also Joan F. Hartman, *Racial Vote Dilution and Separation of Powers: An Exploration of the Conflict Between the Judicial “Intent” and the Legislative “Results” Standards*, 50 GEO. WASH. L. REV. 689, 741 (1982) (“The drafters articulated two distinct aims in amending section 2: to forestall purposeful discrimination that might escape undetected under the stringent intent test and to eliminate systems that perpetuate the effects of past discrimination.”).

the Fifteenth Amendment served congruent purposes.⁸⁶ However, following the expansion of the VRA's provisions in the two decades following its creation, it was no longer legislation coextensive with the Fifteenth Amendment.⁸⁷ Instead, the VRA became an "example of Congress's power to enact implementing legislation that goes beyond the direct prohibitions of the Constitution itself."⁸⁸

C. Evolution of Vote Dilution Claims Under Section 2

Voter suppression is a process whereby a minority's right of access to the polls is completely barred.⁸⁹ Dilution of the vote, however, occurs when the strength of a group's voting power is reduced such that the group's ability to elect its preferred candidate is diminished or eliminated.⁹⁰ Unlike the often-individualized analysis of voter suppression, dilution requires courts to consider the treatment of a group to determine whether an individual has suffered harm.⁹¹ Vote dilution, as a legal doctrine, developed over time through the courts but was codified by the VRA as a private cause of action.⁹² There are two strands of vote dilution used in practice: "cracking" and "packing."⁹³ Cracking is redistricting in a way that disperses minority groups among different voting districts so that no single district has enough minority voters to impact an election.⁹⁴ Packing is the alternative practice of crowding

86. *Mobile v. Bolden*, 446 U.S. 55, 60–61 (1980) ("[T]he sparse legislative history of § 2 makes clear that it was intended to have an effect no different from that of the Fifteenth Amendment itself.").

87. *See* S. REP. NO. 97-417, at 39.

88. *Id.* at 39; *see also* *City of Rome v. United States*, 446 U.S. 156, 177 (1980) (finding that "Congress may prohibit practices that in and of themselves do not violate [the Fifteenth Amendment], so long as the prohibitions attacking racial discrimination in voting are appropriate"); *South Carolina v. Katzenbach*, 383 U.S. 301, 324 (1966) ("As against the reserved powers of the States, Congress may use any rational means to effectuate the constitutional prohibition of racial discrimination in voting.").

89. *See* *Shaw v. Reno*, 509 U.S. 630, 640–41 (1993) ("[I]t soon became apparent that guaranteeing equal access to the polls would not suffice to root out other racially discriminatory voting practices. . . . [T]he right to vote can be affected by a *dilution* of voting power as well as by an absolute prohibition on casting a ballot." (quoting *Allen v. State Bd. of Elections*, 393 U.S. 544, 569 (1969))).

90. *Id.* at 641; *see also* Epstein, *supra* note 62, at 3.

91. Gerken, *supra* note 48, at 1667.

92. *Id.* at 1671. The VRA originally entitled only the attorney general to enforce the Act. *See* *Ala. State Conference of the NAACP v. Alabama*, 949 F.3d 647, 652 (11th Cir. 2020). However, the Supreme Court first recognized the implicit right of private citizens to enforce the VRA in 1969. *See* *Allen v. State Bd. of Elections*, 393 U.S. 544, 555 (1969) ("Analysis of [section 5] in light of the major purpose of the Act indicates that [private citizens] may seek a declaratory judgment that a new state enactment is governed by § 5."). In 1975, Congress amended the VRA to explicitly allow private citizens enforcement rights over the Act as a whole. *See* 52 U.S.C. § 10302(a) (2018); *see also* *Ala. State Conference of the NAACP*, 949 F.3d at 652. Despite challenges by states under a sovereign immunity theory, the Fifth, Sixth, and Eleventh Circuits have upheld Congress's right to limit the states' sovereign immunity by granting a private cause of action against state violations of the VRA. *See* *Ala. State Conference of the NAACP*, 949 F.3d at 652; *OCA-Greater Hous. v. Texas*, 867 F.3d 604, 614 (5th Cir. 2017); *Mixon v. Ohio*, 193 F.3d 389, 398 (6th Cir. 1999).

93. Feng, Aoki & Ikegami, *supra* note 61, at 864.

94. *Id.*

minority groups into a small handful of districts so that the overall reach of the group's legislative influence is weakened.⁹⁵

After two decades of confusion about the requirements needed to sustain a section 2 vote dilution claim, the Supreme Court provided some clarity in its seminal 1985 case, *Thornburg v. Gingles*. In *Gingles*, Justice William Brennan identified three factors (“*Gingles* factors”) that a plaintiff must satisfy to successfully claim that a multimember⁹⁶ voting district is in violation of section 2.⁹⁷ First, the minority group must demonstrate that it is “sufficiently large and geographically compact” to represent the majority in a hypothetical single-member voting district.⁹⁸ Otherwise, the “multimember form” of an election system cannot be blamed for the minority group’s failure to elect candidates.⁹⁹ Second, the minority group must show that it is “politically cohesive.”¹⁰⁰ Third, the minority group must establish that the white majority “votes sufficiently as a bloc” to “defeat the minority’s preferred candidate.”¹⁰¹ The second and third factors help determine whether the degree of racially polarized voting is legally sufficient to sustain a section 2 claim.¹⁰² Finding racially polarized voting requires a fact-specific inquiry into whether there is “a consistent relationship between [the] race of the voter and the way in which the voter votes.”¹⁰³ There is no clear doctrinal test, but sufficient polarization is stronger when a pattern of racial bloc voting can be identified.¹⁰⁴ Ultimately, failure to satisfy any one of the *Gingles* factors will defeat a plaintiff’s section 2 claim.¹⁰⁵

In 1993, the Supreme Court in *Grove v. Emison*¹⁰⁶ extended the *Gingles* factor analysis to claims brought against single-member voting districts.¹⁰⁷

95. *Id.*

96. A multimember voting district is one in which two or more representatives are elected to represent a single district. Daniel R. Ortiz, *Alternative Voting Systems as Remedies for Unlawful At-Large Systems*, 92 YALE L.J. 144, 145 n.8 (1982).

97. *Thornburg v. Gingles*, 478 U.S. 30, 49–51 (1986). This is in contrast to a single-member voting district, where each voting district elects only one representative. *Nixon v. Kent County*, 76 F.3d 1381, 1384 n.4 (6th Cir. 1996).

98. *Gingles*, 478 U.S. at 50 n.17 (“[T]he 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.”).

99. *Id.* at 48 (“Multimember districts and at-large election schemes . . . are not *per se* violative of minority voters’ rights.”).

100. *Id.* at 51.

101. *Id.*

102. *See id.* at 56 (“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 also* MATT BARRETO ET AL., REDISTRICTING: COALITION DISTRICTS AND THE VOTING RIGHTS ACT 1, 3 (2011), [https://www.law.berkeley.edu/files/Coalition\(1\).pdf](https://www.law.berkeley.edu/files/Coalition(1).pdf) [<https://perma.cc/7FUV-U9AG>].

103. *Gingles*, 478 U.S. at 53 n.21 (quoting the district court record).

104. *Id.* at 57.

105. Skinnell, *supra* note 23, at 368.

106. 507 U.S. 25 (1993).

107. *See generally id.* Multimember voting districts are still those most scrutinized by section 2 because they “submerge the votes of a minority in the majority.” *See Taintor, supra* note 14, at 1775–76. However, single-member voting districts, like those in the fictional

The Court determined that the logic behind the factors still applied.¹⁰⁸ The majority population and political cohesion requirements still work to establish that the minority group has the potential to elect its preferred candidate.¹⁰⁹ The white majority bloc requirement still proves that the minority vote is diluted when submerged in a “larger white voting population.”¹¹⁰ A year later, in *Johnson v. De Grandy*,¹¹¹ the Court added a deferential fourth factor to the *Gingles* analysis in its holding that “the three *Gingles* factors may not be isolated as sufficient, standing alone, to prove dilution in every multimember [or single-member] district challenge.”¹¹² The original three factors provided structure to section 2’s totality-of-the-circumstances requirement¹¹³ but “cannot be applied mechanically and without regard to the nature of the claim.”¹¹⁴ Thus, the initial three factors are a prerequisite but are not necessarily dispositive.¹¹⁵

The Supreme Court also determined in *Chisom v. Roemer*¹¹⁶ that section 2 protections under the VRA must be liberally construed.¹¹⁷ The Court recognized that Congress’s purpose for passing the VRA was “rid[ding] the country of racial discrimination in voting.”¹¹⁸ In doing so, Congress passed a statute that was “enacted to protect voting rights that are not adequately protected by the Constitution itself.”¹¹⁹ As a result, the Court concluded that section 2 must be “interpreted in a manner that provides ‘the broadest possible scope’ in combatting racial discrimination.”¹²⁰ The Court recognized the difficulties of this broad, fact-specific inquiry but determined that such difficulties “cannot justify a judicially created limitation on the coverage of the broadly worded statute, as enacted and amended by Congress.”¹²¹

D. Response to Minority Aggregation Claims

In the aftermath of the *Gingles* framework, minority groups began aggregating to satisfy, primarily, the first *Gingles* factor: the majority-

Marques County, “can achieve the same result if none of the districts provide actual electoral opportunity to people of color [and language minorities].” *See id.* at 1776.

108. *Emison*, 507 U.S. at 40.

109. *Id.*

110. *Id.*

111. 512 U.S. 997 (1994).

112. *Id.* at 1012.

113. *Id.* at 1010.

114. *Id.* at 1007 (quoting *Voinovich v. Quilter*, 507 U.S. 146, 158 (1993)).

115. *Id.* at 1012.

116. 501 U.S. 380 (1991).

117. *See id.* at 403 (holding that state judicial elections fell within the scope of section 2 of the VRA).

118. *Id.* (quoting *South Carolina v. Katzenbach*, 383 U.S. 301, 315 (1966)).

119. *Id.*

120. *Id.* (quoting *Allen v. State Bd. of Elections*, 393 U.S. 544, 567 (1969)).

121. *Id.*

minority population requirement.¹²² A minority coalition group exists where more than one ethnic or language minority (for example, Blacks and Hispanics) combine to form a numerical majority of the eligible voting population.¹²³ Congress made no explicit reference to minority coalitions in the text of the VRA, though Congress considered at least one constitutional¹²⁴ coalition case in drafting its subsequent amendments to section 2.¹²⁵ The Supreme Court has referenced coalition groups,¹²⁶ though it has never explicitly decided whether they can sustain a valid claim under section 2.¹²⁷

In *Emison*, the Court conducted its review of a ruling from the District of Minnesota assuming, without explicitly holding, that the district court was allowed to aggregate more than one distinct minority group.¹²⁸ In making this assumption, the Supreme Court determined that the presence of a coalition group made “proof of minority political cohesion . . . all the more

122. See Skinnell, *supra* note 23, at 369; see also *Voinovich v. Quilter*, 507 U.S. 146, 149 (1993) (defining a majority-minority district as one “in which a majority of the [voting] population is a member of a specific minority group”).

123. See Skinnell, *supra* note 23, at 363. These are different from “crossover” groups, where a protected minority constitutes a numerical majority of the electorate only when combined with members of the white majority who vote for the minority’s preferred candidate. Epstein, *supra* note 62, at 5. The Supreme Court has explicitly refused to extend section 2 protections to crossover voting districts. See *Bartlett v. Strickland*, 556 U.S. 1, 25–26 (2009) (plurality opinion).

124. Both courts and scholars have recognized that, in contemplating whether the 1975 VRA amendments should include language minorities, the Senate also cited to at least one section 2 minority coalition claim. See, e.g., *Nixon v. Kent County*, 76 F.3d 1381, 1395 (6th Cir. 1996) (Keith, J., dissenting) (“In its discussion of the history of discrimination . . . the Senate cited at least one case in which African-Americans and Hispanics brought a joint claim under the voting rights act.”); Skinnell, *supra* note 23, at 365 n.18 (identifying the case referenced by the Senate as *Wright v. Rockefeller*, 376 U.S. 52 (1964)); see also Michaloski, *supra* note 23, at 278 (“In [*Wright*], two minority groups brought a joint claim . . . [under] Section 2 of the Act.”). Scholars have been wrong, nevertheless, to characterize *Wright* as a section 2 claim; the plaintiffs, still a minority coalition, pleaded their claims solely as Fourteenth and Fifteenth Amendment violations. See *Wright v. Rockefeller*, 376 U.S. 52, 53 (1964).

125. S. REP. NO. 94-295, at 27 (1975) (discussing *White v. Regester*, 412 U.S. 755 (1973), where an at-large voting system in Texas was found to have unconstitutionally diluted the votes of Hispanic and Black voters); Michaloski, *supra* note 23, at 279.

126. See, e.g., *Strickland*, 556 U.S. at 13 (identifying the difference between coalition minority groups and crossover minority groups); *Grove v. Emison*, 507 U.S. 25, 41 (1993).

127. See *Emison*, 507 U.S. at 41 (stating that the Court was explicitly not deciding the minority coalition question). Nonetheless, minority coalition claims of vote dilution are permissible when brought as constitutional violations. See, e.g., *White v. Regester*, 412 U.S. 755, 769–70 (1973) (finding that an election scheme diluted the votes of Blacks and Hispanics in violation of the Fourteenth Amendment); *Wright*, 376 U.S. at 57–58 (hearing claims of vote dilution brought by Blacks and Puerto Ricans as both Fourteenth and Fifteenth Amendment claims); see also Michaloski, *supra* note 23, at 278 n.41.

128. *Emison*, 507 U.S. at 41.

essential.”¹²⁹ However, the Court was explicit that it would not decide the validity of coalition claims under section 2 in this case.¹³⁰

In two subsequent opinions, the Court again made reference to minority coalitions.¹³¹ While the Court noted in *Bartlett v. Strickland*¹³² that “[n]othing in § 2 grants special protection to a minority group’s right to form political coalitions,” this dicta was in reference to a minority group’s attempt to form a crossover district, not a coalition district.¹³³ In *Perry v. Perez*,¹³⁴ the Court suggested that requiring a state to create coalition districts in compliance with section 5 of the VRA was beyond the scope of what the statute requires.¹³⁵ However, *Perez* should not conflate the mandated creation of new coalition districts under section 5 with the legal protections granted to existing coalition districts under section 2.¹³⁶ Thus, neither decision has squarely resolved the minority aggregation question.¹³⁷

There are substantial legal and practical differences between crossover claims and coalition claims.¹³⁸ Both exist where a single minority group does not constitute a numerical majority “but still could be described as exercising functional control over the district’s electoral outcome.”¹³⁹ However, unlike minority coalitions, crossover groups exist where a minority group can sustain a functional majority only when combined with white voters who support the same candidates.¹⁴⁰ The Supreme Court rejected crossover claims in *Strickland* because section 2 “requires a showing that *minorities* ‘have less opportunity than other members of the electorate to’” participate

129. *Id.* (dismissing the section 2 claim for failure to establish political cohesion).

130. *Id.*; see also Note, *The Ties That Bind: Coalitions and Governance Under Section 2 of the Voting Rights Act*, 117 HARV. L. REV. 2621, 2629 (2004) (“[Emison] thus illustrates the Court’s ambiguous and cautious approval of a coalitional claim under section 2.”).

131. *Perry v. Perez*, 565 U.S. 388, 398–99 (2012); *Strickland*, 556 U.S. at 13.

132. 556 U.S. 1 (2009).

133. *Id.* at 13–15 (stating explicitly that the Court was not addressing “coalition-district claims in which two minority groups form a coalition to elect the candidate of the coalition’s choice”); see also Weinberg, *supra* note 13, at 426.

134. 565 U.S. 388 (2012).

135. See *id.* at 398–99; see also *Texas v. United States*, 887 F. Supp. 2d 133, 149 (D.D.C. 2012) (interpreting *Perez* to mean that section 5 does not require the formation of new coalition districts, while also determining that section 5 protects preexisting coalition districts). Back in 2003, the Supreme Court ruled in *Georgia v. Ashcroft*, 539 U.S. 461 (2003) that states creating a mixture of majority-minority voting districts and coalition voting districts—rather than maximizing majority-minority districts—was not a retrogressive violation of section 5. *Id.* at 483, 487 (“Section 5 leaves room for States to use . . . coalition districts.”); see also Note, *supra* note 130, at 2630–32.

136. See *Texas*, 887 F. Supp. 2d at 149; see also Ho, *supra* note 23, at 429 (“This [statement in *Perez*] could be based on the assumption that coalition claims are not cognizable under any circumstances (which would be an unusual way to announce a new holding on a question that only recently had been expressly reserved [in *Strickland*]).”). At least with regards to the question of retrogression, the Supreme Court has been explicit that it will “refuse to equate a § 2 vote dilution inquiry with the § 5 . . . standard.” *Georgia*, 539 U.S. at 478–79 (rejecting *Georgia*’s attempt to rely on section 2 precedent to establish its compliance under section 5).

137. See Weinberg, *supra* note 13, at 430.

138. See *supra* note 115 and accompanying text.

139. Ho, *supra* note 23, at 428.

140. See *id.*

in the political process.¹⁴¹ Allowing crossover groups to bring claims under the VRA would require the Court to change or entirely eliminate the *Gingles* framework that has driven vote dilution analysis since 1985.¹⁴² Conditioning minority voting power on an alliance with white voters eliminates the workability of the first *Gingles* factor—whether the minority group can sustain a majority on its own.¹⁴³ Additionally, regarding the third *Gingles* factor, “[i]t is difficult to see how the majority-bloc-voting requirement could be met in a district where, by definition, white voters join . . . to elect the minority’s preferred candidate.”¹⁴⁴ Ultimately, the Court refused to require the white-minority cooperation that the VRA intended to foster voluntarily.¹⁴⁵

Given that the Supreme Court has, at least twice now, reserved judgment on the minority coalition question, the circuit courts are split on whether multiple minority groups may aggregate to sustain a claim under section 2.

II. MINORITY COALITIONS: A SPLIT IN THE FEDERAL CIRCUITS

For more than twenty years, circuit courts have grappled with plaintiffs asserting VRA claims on behalf of minority coalitions. In that time, the circuits have interpreted section 2’s applicability to aggregated minority groups in three ways: explicit acceptance, assumed validity, and explicit or anticipated rejection.¹⁴⁶ In 1987, the Fifth Circuit, in *League of United Latin American Citizens, Council No. 4386 v. Midland Independent School District*¹⁴⁷ (*LULAC I*), was the first to explicitly accept minority aggregation.¹⁴⁸ In 1996, the Sixth Circuit, in *Nixon*, was the first to explicitly reject a coalition group’s right to pursue a section 2 claim.¹⁴⁹ The *Nixon* court openly rejected the Fifth Circuit’s analysis and acknowledged that it had created a split among the circuits.¹⁵⁰ In the time between, and following, these decisions, several other circuits weighed in on the aggregation question.¹⁵¹ Specifically, the Second and Ninth Circuits accepted review of

141. *Bartlett v. Strickland*, 556 U.S. 1, 14 (2009) (plurality opinion) (emphasis added) (quoting 42 U.S.C. § 1973(b)).

142. *Id.* at 16 (“Allowing crossover-district claims would require us to revise and reformulate the *Gingles* threshold inquiry that has been the baseline of our § 2 jurisprudence.”).

143. *Id.* at 15, 26 (“Only when a geographically compact group of minority voters could form a majority in a single-member district has the first *Gingles* requirement been met.”).

144. *Id.* at 16.

145. *Id.* at 25–26.

146. See Skinnell, *supra* note 23, at 369–73.

147. 812 F.2d 1494 (5th Cir. 1987), *reh’g granted*, 818 F.2d 350 (5th Cir. 1987), and *vacated*, 829 F.2d 546 (5th Cir. 1987).

148. See generally *id.* It proceeded to do so at least four times. See, e.g., *League of United Latin Am. Citizens Council No. 4434 v. Clements (LULAC II)*, 999 F.2d 831 (5th Cir. 1993); *Campos v. City of Baytown*, 840 F.2d 1240 (5th Cir. 1988).

149. *Nixon v. Kent County*, 76 F.3d 1381, 1388 (6th Cir. 1996).

150. *Id.* (rejecting the Fifth Circuit’s findings while noting that it does “not take lightly disagreement with the views of [its] sister circuits”).

151. Compare *Concerned Citizens of Hardee Cty. v. Hardee Cty. Bd. of Comm’rs*, 906 F.2d 524 (11th Cir. 1990) (permitting coalition groups), with *Hall v. Virginia*, 385 F.3d 421

such claims without explicitly addressing the aggregation issue at all.¹⁵² Several other circuits have not ruled on the issue, while also expressing concern about the concept.¹⁵³ To date, neither the Supreme Court nor Congress has provided any clarity regarding the fate of minority coalitions.

A. Explicit Acceptance of Minority Aggregation

Two circuit courts have explicitly determined that minority coalition claims permissibly fall within the scope of section 2.¹⁵⁴ In 1987, the Fifth Circuit ruled in *LULAC I* that Blacks and Hispanics could aggregate to satisfy the *Gingles* factors.¹⁵⁵ The Fifth Circuit upheld this interpretation in 1988, twice in 1989, and again in 1993.¹⁵⁶ In this time period, the Eleventh Circuit addressed the issue in its 1990 ruling in *Concerned Citizens of Hardee County v. Hardee County Board of Commissioners*¹⁵⁷ that two minority groups may aggregate so long as they are politically cohesive.¹⁵⁸ Additionally, Judge Damon J. Keith's dissent in *Nixon* offers the most comprehensive judicial analysis to date justifying minority aggregation.¹⁵⁹ Some scholars have weighed in, arguing that permitting coalition claims furthers the VRA's purpose and makes sense in light of the developing complexity of American diversity.¹⁶⁰

1. The Fifth and Eleventh Circuit Precedents

In *LULAC I*, Blacks and Hispanics brought a united section 2 claim alleging that an at-large voting scheme to elect a school board diluted their votes.¹⁶¹ The Western District of Texas agreed and required that the structure be divided into single-member voting districts.¹⁶² The ruling was appealed and subsequently remanded with direction to consider the then newly established *Gingles* factors.¹⁶³ On remand, the district court again found that

(4th Cir. 2004) (implying rejection of minority aggregation), and *Metts v. Murphy*, 347 F.3d 346, 359 (1st Cir. 2003) (same), *vacated on reh'g en banc*, 363 F.3d 8 (1st Cir. 2004).

152. See, e.g., *Bridgeport Coal. for Fair Representation v. City of Bridgeport*, 26 F.3d 280 (2d Cir. 1994); *Badillo v. City of Stockton*, 956 F.2d 884 (9th Cir. 1992).

153. See *infra* Part II.C.2 (identifying federal courts of appeals that have indirectly expressed skepticism of minority coalition claims).

154. Following a Second Circuit opinion in 2012, three federal circuits arguably have explicitly accepted minority aggregation under the VRA. See *infra* notes 267–70 and accompanying text.

155. *LULAC I*, 812 F.2d 1494, 1499–502 (5th Cir. 1987), *reh'g granted*, 818 F.2d 350 (5th Cir. 1987), and *vacated*, 829 F.2d 546 (5th Cir. 1987).

156. See generally *LULAC II*, 999 F.2d 831 (5th Cir. 1993); *Brewer v. Ham*, 876 F.2d 448 (5th Cir. 1989); *Overton v. City of Austin*, 871 F.2d 529 (5th Cir. 1989); *Campos v. City of Baytown*, 840 F.2d 1240 (5th Cir. 1988).

157. 906 F.2d 524 (11th Cir. 1990).

158. See *id.* at 526.

159. See *Nixon v. Kent County*, 76 F.3d 1381, 1393 (Keith, J., dissenting).

160. See *infra* Part II.A.3.

161. See *LULAC I*, 812 F.2d 1494, 1495 (5th Cir. 1987), *reh'g granted*, 818 F.2d 350 (5th Cir. 1987), and *vacated*, 829 F.2d 546 (5th Cir. 1987).

162. See *id.*

163. See *id.* at 1496.

both minority groups were subject to a history of “oppressive discrimination” and that such discrimination impacted their right to vote and participate in the electoral process.¹⁶⁴ It determined this by considering the seven Senate report factors identified by the *Gingles* Court as relevant to the totality-of-the-circumstances review required under section 2.¹⁶⁵ The Fifth Circuit affirmed.¹⁶⁶ In doing so, both the Fifth Circuit and Western District of Texas were unconcerned that two different minority groups were implicated.¹⁶⁷

To reach its decision, the Fifth Circuit applied the three prerequisite *Gingles* factors.¹⁶⁸ To satisfy the first factor—constituting a majority population in a theoretical single-member district—the court accepted the trial judge’s finding that “Blacks and Hispanics live predominately in a geographically discrete area.”¹⁶⁹ The court identified three voting precincts that comprised over 90 percent of the district’s Black population and over 70 percent of the Hispanic population.¹⁷⁰ One of these precincts had a population that was roughly 45 percent Black and 25 percent Hispanic, for a total minority population of roughly 70 percent.¹⁷¹ This “overwhelm[ing]” minority presence was sufficient to establish “a geographically compact group capable of carrying a district.”¹⁷² The court then separated the second political cohesion factor into two subquestions: (1) whether each minority group was individually cohesive and (2) whether the two groups were cohesive together.¹⁷³ Both questions were answered affirmatively.¹⁷⁴ It ultimately did not matter that “there [were] many cultural and ethnic differences between the two groups” because the “prejudice of the majority is not narrowly focused.”¹⁷⁵ Instead, it mattered that both groups had an undeniable history of discrimination by the white majority and common goals stemming from that history.¹⁷⁶ It was also critical that the plaintiffs introduced the same statistical methods used in *Gingles* to show that school board elections followed racial lines.¹⁷⁷ Finally, the court briefly concluded

164. *See id.* (quoting *League of United Am. Citizens, Council No. 4836 v. Midland Indep. Sch. Dist.*, 648 F. Supp. 596, 600 (W.D. Tex. 1986)).

165. *See id.* at 1497–98; *see also supra* note 80 and accompanying text.

166. *See LULAC I*, 812 F.2d at 1496.

167. *See id.* at 1498 (“Although there are two minority groups in Midland, both have suffered the same adverse social and economic effects Justice Brennan described in discussing the black minority in *Gingles*.”).

168. *See id.* at 1499–502.

169. *See id.* at 1500.

170. *See id.*

171. *See id.*

172. *See id.*

173. *See id.*

174. *See id.* at 1500–02.

175. *See id.* at 1500.

176. *See id.* at 1500–01 (“The bringing of this lawsuit by Blacks and Hispanics is symbolic of their realization that . . . they have common social, economic, and political interests which converge and make them a cohesive political group.”).

177. *See id.* at 1501.

that the third *Gingles* factor is satisfied if whites “will usually defeat a minority candidate,” whether Black or Hispanic.¹⁷⁸

The Fifth Circuit revisited the minority aggregation question a year later in *Campos*. The Fifth Circuit upheld the Southern District of Texas’s finding of vote dilution of “the politically cohesive combination of Blacks and Mexican-Americans.”¹⁷⁹ More succinctly stated than in its predecessor case, the court found that “nothing in the law . . . prevents the plaintiffs from identifying the protected aggrieved minority to include both Blacks and Hispanics.”¹⁸⁰ It supported this determination by looking to Congress’s recognition of the prevalent discrimination of language minorities.¹⁸¹ The court concluded that, if members of both minorities are concentrated geographically so as to represent the majority of a single-member district, they are eligible for the *Gingles* analysis.¹⁸² To establish dilution, a coalition must prove that they “actually vote together” and, under the totality of the circumstances, are impeded from electing candidates of their choice.¹⁸³

While the *Campos* court engages in a *Gingles* analysis like that in *LULAC I*, some key additions and deviations are notable. Regarding the first factor, the court rejected the defendant’s argument that, because a significant percentage of minorities lived outside the disputed district, the coalition failed to establish geographical compactness.¹⁸⁴ Judge Thomas M. Reavley clarified that the presence of a majority of minorities outside the disputed district was insignificant.¹⁸⁵ What mattered was that the minorities *within* the disputed district constituted a majority of *that* district.¹⁸⁶ Regarding the second factor, Judge Reavley recognized that the dual purpose of identifying racially polarized voting in *Gingles* made it clear that “a minority group is politically cohesive if it votes together.”¹⁸⁷ The Fifth Circuit’s most notable deviation from *LULAC I* was its finding that a showing of political cohesion for each minority group individually was “too great [of,] if not impossible,” a burden.¹⁸⁸ Like in *Gingles*, the political cohesion of the coalition group as

178. *See id.* at 1502 (finding the third *Gingles* factor satisfied based on the relatively low success of minority candidates in Midland, Texas).

179. *See Campos v. City of Baytown*, 840 F.2d 1240, 1241 (5th Cir. 1988). The court ultimately vacated and remanded, finding that the city’s proposed remedial voting plan was insufficient. *Id.*

180. *See id.* at 1244.

181. *See id.* (“Congress itself recognized ‘that voting discrimination against citizens of language minorities is pervasive and national in scope.’” (quoting 42 U.S.C. § 1973b(f)(1))).

182. *See id.*

183. *Id.* The white bloc majority voting to defeat the coalition remained a necessary factor. *Id.*

184. *See id.*

185. *See id.*

186. *See id.*

187. *See id.*; *see also supra* note 102 and accompanying text. Judge Reavley was critical of the *Gingles* plurality’s determination that the minority candidate’s race was unimportant. *See Campos*, 840 F.2d at 1245 (finding no clear error in the district court’s decision to focus solely “on those [voting] races that had a minority member as a candidate”).

188. *Campos*, 840 F.2d at 1245; *see also Strange, supra* note 6, at 129 n.219.

a whole is sufficient.¹⁸⁹ Finally, despite being decided six years before *Johnson v. De Grandy*, Judge Reavley applied the “fourth factor” of the *Gingles* analysis—an additional totality-of-the-circumstances review.¹⁹⁰ In doing so, he partly relied on the finding that “Blacks and Hispanics suffer the lingering socio-economic effects of past official discrimination.”¹⁹¹

LULAC I and its progeny have clearly recognized minority aggregation as a guarantee in the Fifth Circuit. In *Overton v. City of Austin*,¹⁹² the court rejected a section 2 claim because Blacks and Mexican Americans could not prove cohesiveness together, though doing so would have permitted their claim to go forward.¹⁹³ The Fifth Circuit reiterated in *Brewer v. Ham*¹⁹⁴ that “minority groups may be aggregated for the purposes of asserting a Section 2 violation” and remarked on the difficulties in proving political cohesion.¹⁹⁵ In *League of United American Citizens, Council No. 4434 v. Clements*¹⁹⁶ (*LULAC II*), the Fifth Circuit once again proclaimed that “[i]f blacks and Hispanics vote cohesively, they are legally a single minority group” for the purposes of a section 2 claim.¹⁹⁷

The Eleventh Circuit also reached the same conclusion. In *Concerned Citizens of Hardee County*, the Eleventh Circuit, citing *LULAC I* and *Campos*, found that “[t]wo minority groups . . . may be a single section 2 minority if they can establish that they behave in a politically cohesive manner.”¹⁹⁸ The claim was brought by Black and Hispanic plaintiffs who alleged that an at-large voting system “unlawfully dilute[d] the [group’s] combined voting strength.”¹⁹⁹ The claim ultimately failed because “the class offered little evidence that blacks and hispanics in [the district] worked together” or “ever voted together.”²⁰⁰

189. *Campos*, 840 F.2d at 1245 (“Of course, if one part of the group cannot be expected to vote with the other part, the combination is not cohesive.”).

190. *See Campos*, 840 F.2d at 1249–50 (“After making the initial *Gingles*’ factor determination, the district court turned to the [Senate report] factors to determine whether, under the totality of the circumstances, there was a § 2 voter dilution claim.”); *see also Johnson v. De Grandy*, 512 U.S. 997, 1012 (1994).

191. *See Campos*, 840 F.2d at 1249.

192. 871 F.2d 529 (5th Cir. 1989).

193. *See id.* at 540.

194. 876 F.2d 448 (5th Cir. 1989).

195. *Id.* at 453 (referencing *Overton* to caution against reaching conclusions about “inter-minority cohesion absent a diligent inquiry into the political dynamics of the particular community”).

196. 999 F.2d 831 (5th Cir. 1993).

197. *Id.* at 864 (“Nevertheless, we have treated the issue as a question of fact, allowing aggregation of different minority groups where the evidence suggests that they are politically cohesive, and we need not revisit this question here.”).

198. *Concerned Citizens of Hardee Cty. v. Hardee Cty. Bd. of Comm’rs*, 906 F.2d 524, 526 (11th Cir. 1990) (first citing *Campos v. City of Baytown*, 840 F.2d 1240, 1244 (5th Cir. 1988); then citing *LULAC I*, 812 F.2d 1494, 1499–502 (5th Cir. 1987), *reh’g granted*, 818 F.2d 350 (5th Cir. 1987), and *vacated*, 829 F.2d 546 (5th Cir. 1987)).

199. *Id.* at 525.

200. *Id.* at 527.

2. The Sixth Circuit Dissent in *Nixon v. Kent County*

Judge Keith's dissent to the Sixth Circuit's ruling in *Nixon* provides a comprehensive analysis in support of permitting minority aggregation under the VRA.²⁰¹ In *Nixon*, an en banc Sixth Circuit panel denied Black and Hispanic plaintiffs the right to bring a unified vote dilution claim under section 2.²⁰² Judge Keith's dissent, joined by four other judges,²⁰³ relied on (1) statutory language, (2) legislative history, and (3) commonly accepted practices to advocate for VRA protection of minority coalitions.²⁰⁴

First, Judge Keith identified the ambiguity in Congress's use of the phrase "class of citizens" in the VRA's text.²⁰⁵ He rejected the majority's argument that the VRA's failure to address coalition groups meant that Congress did not intend to grant such groups section 2 protection.²⁰⁶ He stated instead that, because the VRA is ambiguous in its applicability to minority coalitions, the majority was required to follow the "mandates of statutory construction" by looking to legislative history.²⁰⁷

Judge Keith then analyzed Congress's purpose in passing and amending the VRA following the Supreme Court's example in *Chisom*.²⁰⁸ Here, as with the issue presented in *Chisom*,²⁰⁹ neither the text nor the legislative history "limits Section 2 protection to cases involving only one historically disadvantaged ethnic group."²¹⁰ As a result, given the broadest-possible-reading requirement established by *Chisom*,²¹¹ a narrow reading that omits coalition protection runs contrary to Congress's purpose of broadening the VRA's scope.²¹² Both the 1975 and 1982 congressional amendments explicitly intended to extend the VRA's protections by, for example, inserting the broad phrase "protected class" into section 2.²¹³ Taken together with the law's plain language, Congress's desire to expand the VRA's reach supports recognition of aggregated minority claims.²¹⁴

201. See *Nixon v. Kent County*, 76 F.3d 1381, 1393–403 (6th Cir. 1996) (Keith, J., dissenting).

202. See *id.* at 1393 (majority opinion).

203. *Id.* at 1403–04 (Keith, J., dissenting).

204. *Id.* at 1393–97. Judge Keith also argued, with the support of only two other dissenters, that prohibiting minority aggregation under the VRA segregates solely on the basis of race. *Id.* at 1399–400. He contended that such a reading of the law serves no compelling state interest and is therefore constitutionally impermissible. *Id.*

205. *Id.* at 1394.

206. *Id.* at 1398.

207. *Id.*

208. See *id.* at 1398–99.

209. See *id.* at 1398; see also *supra* notes 117–21 and accompanying text.

210. *Nixon*, 76 F.3d at 1398 (Keith, J., dissenting).

211. See *supra* note 120 and accompanying text.

212. *Nixon*, 76 F.3d at 1398 (Keith, J., dissenting).

213. See *id.* at 1398–99 (recognizing that, if Congress intended to omit section 2 protection for minority coalitions, it would have stated as much in the extensive legislative record accompanying the 1982 amendments).

214. See *id.* at 1399.

Finally, Judge Keith looked to accepted practices.²¹⁵ He noted that every other court to address an aggregation claim has “assumed they are permissible where the *Gingles* prerequisites are satisfied.”²¹⁶ He also relied on support from the U.S. attorney general—“the officer entrusted to enforce the Act.”²¹⁷ The attorney general, in an amicus brief opposing certiorari in *Campos*, asserted that, “if the political reality is that Hispanics and blacks view themselves . . . as a single unit . . . then it is sensible to treat them as one group under the Voting Rights Act.”²¹⁸ Since the VRA’s enactment, each attorney general had supported an expansive reading of the law.²¹⁹ “In light of the extensive role the Attorney General played in drafting the [VRA] and explaining its operation to Congress,” Judge Keith argued that the attorney general’s interpretation “provides compelling evidence” of how Congress understood the law.²²⁰

3. Support in Scholarship

A handful of scholars have advocated on behalf of VRA protection for minority coalitions.²²¹ In addition to reinforcing arguments already asserted by the circuit courts,²²² scholars have also developed new rationales to support aggregated claims. Some argue that requiring a protected class to consist of just a single minority group furthers the discrimination that the VRA sought to eradicate.²²³ This practice, they argue, “further separates, classifies and labels minority groups” in a way that entrenches minority status rather than promotes cross-sectional unity.²²⁴ Regardless, they argue that racial or ethnic composition of the protected class misguides the analysis.²²⁵ The ultimate inquiry of section 2 is whether or not a minority group has less opportunity to participate in the political process—this may be true of one or

215. *See id.* at 1396–97.

216. *Id.* at 1396 (looking specifically to Second, Fifth, and Eleventh Circuit precedents).

217. *Id.* at 1397.

218. *Id.* at 1397 (quoting Brief for the NAACP Legal Defense Fund as Amicus Curiae at 35–36, *Nixon*, 76 F.3d 1381 (No. 93-1456)).

219. *Id.*

220. *Id.* (“Thus, the Attorney General’s construction of the Act supports the finding that Section 2 permits minority coalition claims.”).

221. *See, e.g.*, Ho, *supra* note 23, at 426; Strange, *supra* note 6, at 128; Michaloski, *supra* note 23, at 291.

222. *See, e.g.*, Ho, *supra* note 23, at 431 n.167 (supporting the argument in Judge Keith’s *Nixon* dissent that the phrase “class of citizens” does not explicitly reject minority aggregation); Michaloski, *supra* note 23, at 295 (accepting the “functional and holistic approach” adopted in *Campos* and the *Nixon* dissent).

223. *See* Michaloski, *supra* note 23, at 292–93 (noting that this practice “furthers overbroad stereotypes and prejudices about and against the minority groups instead of providing equality in the political process”).

224. *Id.* at 292; *see also* Ho, *supra* note 23, at 434 (“[A] rule against coalition districts would afford minority groups protection only when each group votes cohesively as an independent group, and would thereby disincentivize the formation of cross-racial coalitions that the VRA is supposed to encourage.”).

225. Michaloski, *supra* note 23, at 291.

multiple cohesive minority groups that have experienced similar barriers to voting.²²⁶

Scholars have also attacked the arbitrariness of a single-minority requirement “given the increasingly complex ways in which Americans self-identify by race and ethnicity.”²²⁷ If section 2 were to prohibit minority aggregation, a multiracial or multilingual Hispanic community may be unable to assert a claim.²²⁸ It would also bar a community of Asian Americans who speak different languages.²²⁹ Scholars note that this makes entirely uncertain the legal protections afforded to biracial or multiracial individuals.²³⁰ Ultimately, any claim that internal unity is stronger in a single minority group than it would be in a coalition group is unfounded.²³¹

Minority coalition supporters remind critics that aggregation would not allow misuse of the VRA for political gain because coalitions still must satisfy the *Gingles* factors.²³² The VRA makes no assumptions about the cohesive political preferences or voting patterns of any minority group.²³³ Rick Strange²³⁴ went further and developed a test to address the concerns that permitting coalition claims would dilute the VRA.²³⁵ This three-prong test serves as a precondition to applying the *Gingles* framework.²³⁶ First, Strange requires that the differing minority groups have similar socioeconomic backgrounds.²³⁷ Second, the distinct minority groups must have “similar attitudes” toward the challenged voting practice.²³⁸ And third,

226. *Id.* (“If two minority groups experience oppression at the hands of the majority, and they are able to establish the same burden of proof as one minority group might, then . . . [democracy] is best served by allowing them to form a coalition.”).

227. *See* Ho, *supra* note 23, at 432–33 (“Can there ever be members of a single group, given the inherent arbitrariness of our racial and ethnic categories?”); *see also* Michaloski, *supra* note 23, at 292.

228. *See* Ho, *supra* note 23, at 432.

229. *See id.* “Asian American” is a class explicitly protected under the VRA. *See supra* note 65 and accompanying text.

230. *See* Ho, *supra* note 23, at 432; Michaloski, *supra* note 23, at 292 (“In fact, minority groups often have multiple subgroups as a result of differing internal cultures and histories.”).

231. *See* Ho, *supra* note 23, at 433 (noting that groups of “‘Blacks,’ ‘Hispanics’ and ‘Asians’ . . . often consist of individuals with different linguistic, national origin, and cultural backgrounds”).

232. *See* Michaloski, *supra* note 23, at 294 (disputing the conclusion in *Nixon* that coalition suits would provide unfair political advantages).

233. *See* Ho, *supra* note 23, at 433 (citing S. REP. NO. 97-417, at 34 (1982)).

234. Justice Rick Strange was, until 2011, a justice of the Texas State Eleventh Court of Appeals. *See* Bob Campbell, *Strange Misses Texas Supreme Court Runoff*, MIDLAND REP.-TELEGRAM (Mar. 1, 2010), <https://www.mrt.com/news/article/Strange-misses-Texas-Supreme-Court-runoff-7479506.php> [<https://perma.cc/FQG8-96MS>].

235. *See* Strange, *supra* note 6, at 129.

236. *Id.* Strange’s three-part test was inspired by a similar recommendation made to the Fifth Circuit in *LULAC I. Id.* at 95.

237. *Id.* at 129–31 (“If the groups can show that they suffer from similar handicaps, such as poor education, housing, and high unemployment, it is more reasonable to conclude that they collectively suffer from discrimination which has adversely affected their right to vote.”); *see also* Note, *supra* note 130, at 2639.

238. Strange, *supra* note 6, at 129, 131–37 (calling for a case-by-case determination of whether the attitudes of the distinct minority groups are similar, though stating that they need not be identical).

the minority groups must have consistently voted for the same candidates.²³⁹ Satisfying this burden, Strange contends, “will lead to greater compliance with congressional intent since a court will be assured that it is faced with a cohesive political unit joined by a common disability of chronic bigotry.”²⁴⁰ Failure to satisfy the test would weed out any “political alliance[s] having little or no connection to discrimination.”²⁴¹

B. Assumed Validity of Minority Aggregation

Prior to 2012, two circuits implicitly accepted the right of minorities to aggregate for a section 2 claim. First, the Ninth Circuit in *Romero v. City of Pomona*,²⁴² and again in *Badillo v. City of Stockton*,²⁴³ entertained a vote dilution claim by Blacks and Hispanics without questioning their right to aggregate. The Second Circuit followed suit several years later in *Bridgeport Coalition for Fair Representation v. City of Bridgeport*.²⁴⁴ However, in 2012, the Second Circuit explicitly recognized the circuit split over coalition claims and accepted their validity pursuant to its precedent.²⁴⁵

In *Romero*, Black and Hispanic voters alleged that an at-large voting system for the city council diluted their ability to elect preferred candidates.²⁴⁶ The Ninth Circuit agreed with the Central District of California’s findings that the minority coalition did not represent a majority of eligible voters in any hypothetical voting district.²⁴⁷ It did not matter that the coalition may have constituted a majority of the total population.²⁴⁸ As other courts have recognized, “a section 2 claim will fail unless the plaintiff can establish that the minority group constitutes an *effective voting majority* in a single-member district.”²⁴⁹ In *Romero*, the plaintiffs could not establish this.²⁵⁰ Though the analysis could have stopped there, given that all three *Gingles* preconditions are required, the court went on to find that the group was also not politically cohesive.²⁵¹ While the claim was unsuccessful, the court did not address the fact that the plaintiffs comprised a coalition of multiple distinct minorities. It simply assumed that Blacks and Hispanics could aggregate to bring a section 2 claim.²⁵²

239. *Id.* (noting that this showing would all but satisfy the first two *Gingles* factors).

240. *Id.* at 129.

241. *Id.*

242. 883 F.2d 1418 (9th Cir. 1989).

243. 956 F.2d 884 (9th Cir. 1992).

244. 26 F.3d 271 (2d Cir. 1994).

245. *See* *Pope v. County of Albany*, 687 F.3d 565, 572 n.5 (2d Cir. 2012).

246. *Romero*, 883 F.2d at 1420.

247. *See id.* at 1425–26.

248. *See id.*

249. *Id.* at 1426 (emphasis added).

250. *Id.*

251. *Id.* at 1426–27 (“The district court’s finding was based in part on the 1985 city council primary elections, in which plaintiffs’ exit polls revealed that 60% of blacks voted against the Hispanic candidate . . . and in favor of white candidates.”).

252. *See generally id.*

Similarly, in *Badillo*, Blacks and Hispanics in California contested the adoption of an at-large voting system.²⁵³ The Ninth Circuit recognized that the contested voting system embodied “many electoral devices and practices that have been readily identified as common means of diminishing minority voting strength.”²⁵⁴ Regardless, the plaintiffs’ claim failed because there was no requisite showing that Blacks and Hispanics were politically cohesive, “either when combined or when considered separately.”²⁵⁵ It could not be determined that the district court was clearly erroneous in making this factual finding.²⁵⁶ Again, even though the claim was unsuccessful, the Ninth Circuit implicitly accepted the minority coalition’s right to allege a single section 2 claim.²⁵⁷

In 1994, the Second Circuit accepted review of a successful vote dilution claim brought by several activist groups on behalf of Black and Hispanic citizens.²⁵⁸ In *Bridgeport*, the plaintiffs alleged that the racial configurations of ten voting districts were adjusted in a way that diluted minority votes.²⁵⁹ Addressing the first *Gingles* factor, the court found that Blacks and Hispanics constituted a substantial share of the area’s eligible voting population.²⁶⁰ This distribution made it possible to create two more minority-controlled districts than had previously been recommended.²⁶¹ The court then accepted “both testimonial and statistical evidence that African Americans and Hispanics . . . are politically cohesive” in a city plagued by “remarkably racially polarized” voting.²⁶² Regarding the third *Gingles* factor, the court recognized ambiguity in the “mixed bag” of evidence regarding the presence of white bloc voting.²⁶³ It resolved this ambiguity in favor of the plaintiffs by citing undisputed evidence “that politically influential whites have worked to” elect white candidates over Black candidates.²⁶⁴ Without explicitly commenting on the applicability of section 2 to coalition claims,

253. See *Badillo v. City of Stockton*, 956 F.2d 884, 886 (9th Cir. 1992).

254. *Id.* at 889–90 (including examples of electoral devices used to diminish minority voting strength, such as the system’s at-large component, a majority vote requirement, and a functional runoff election procedure).

255. *Id.* at 891.

256. *Id.*

257. *Id.* at 884.

258. See *Bridgeport Coal. for Fair Representation v. City of Bridgeport*, 26 F.3d 271, 272–73 (2d Cir. 1994).

259. *Id.* at 272 (“The plan proposed . . . continued a division into ten districts but changed the configurations so that one district would be populated by a majority of black citizens, one would be composed of a majority of Latino citizens, two would contain a majority of black and Latino citizens combined, and the remaining six districts would consist of a majority of white voters.”).

260. See *id.* at 275.

261. See *id.* at 275–76.

262. *Id.* at 276. This, of course, satisfies the second *Gingles* factor. See *supra* note 102 and accompanying text.

263. See *Bridgeport Coal.*, 26 F.3d at 276.

264. *Id.* The court also applied the “fourth factor” of *Gingles*, looking at the totality of the circumstances surrounding the challenged voting practice. *Id.* In concluding that the district court was not clearly erroneous, it recognized a “number of race-based controversies” surrounding the municipality. *Id.* at 277.

the court determined that the *Gingles* analysis “weigh[ed] substantially in favor of [a] finding of vote dilution.”²⁶⁵

Almost two decades later, the Second Circuit changed its position on minority aggregation from assumed validity to explicit acceptance. In *Pope v. County of Albany*,²⁶⁶ the court dedicated a single footnote to addressing the circuit split that had developed following the Sixth Circuit’s *Nixon* decision.²⁶⁷ It clearly identified that “the Supreme Court has expressly reserved decision on the issue” and has stated the theoretical requirements of a coalition group in *Emison*.²⁶⁸ The Second Circuit then went on to recognize that its own precedent, specifically *Bridgeport*, has accepted coalition claims.²⁶⁹ It relied on this in *Pope* to affirm the Northern District of New York’s finding that a minority coalition failed to satisfy the second and third *Gingles* factors.²⁷⁰

C. Explicit Rejection of Minority Aggregation

Only one federal court of appeals has explicitly determined that minority coalition claims are not permissible under section 2 of the VRA. In 1996, the Sixth Circuit became the first to deny a multiracial coalition access to section 2’s protections.²⁷¹ In doing so, the court relied on the VRA’s text and legislative history to narrowly interpret the law’s applicability.²⁷² On similar grounds, Judge Patrick E. Higginbotham of the Fifth Circuit delivered a striking dissent to the *Campos* court, rejecting minority coalition protections.²⁷³ Since that time, the First, Fourth, and Seventh Circuits have all alluded to the minority aggregation issue. While each has either directly or indirectly expressed concern, none has taken the step to affirmatively reject coalition claims.²⁷⁴ Scholars have also addressed the issue, arguing against a broad interpretation of section 2.²⁷⁵

1. The Sixth Circuit in *Nixon v. Kent County*

In *Nixon*, the Sixth Circuit looked to (1) the VRA’s text, (2) other authorities, (3) expansive trends, and (4) policy considerations to address the

265. *Id.*

266. 687 F.3d 565 (2d Cir. 2012).

267. *See id.* at 572 n.5 (“The circuits are split as to whether different minority groups may be aggregated to establish a Section 2 claim.”).

268. *Id.*; *see also supra* notes 128–30 and accompanying text.

269. *See Pope*, 687 F.3d at 572 n.5.

270. *Id.*

271. *See generally* *Nixon v. Kent County*, 76 F.3d 1381 (6th Cir. 1996).

272. *See id.* at 1386–92.

273. *See generally* *Campos v. City of Baytown*, 849 F.2d 943 (5th Cir. 1988) (Higginbotham, J., dissenting).

274. *See, e.g.,* *Hall v. Virginia*, 385 F.3d 421, 431 (4th Cir. 2004); *Metts v. Murphy*, 347 F.3d 346, 359 (1st Cir. 2003), *vacated on reh’g en banc*, 363 F.3d 8 (1st Cir. 2004); *Frank v. Forest County*, 336 F.3d 570, 575 (7th Cir. 2003).

275. *See infra* Part II.C.3.

minority aggregation issue.²⁷⁶ Looking first to the text, Judge Richard F. Suhrheinrich relied on the complete lack of reference to coalition groups in the “clear, unambiguous language” of section 2.²⁷⁷ He reasoned that, if Congress intended to extend protection to coalition groups, it would have invoked protected “*classes* of citizens” instead of a protected “*class* of citizens” identified under the Act.²⁷⁸ Given that the language of section 2 “reveals no word or phrase which reasonably supports combining separately protected minorities,” statutory construction requires that this interpretation be conclusive.²⁷⁹ Second, the court considered other authorities, primarily legislative history and other circuit decisions.²⁸⁰ Since the VRA’s plain meaning is clear, “resort to the legislative history is unnecessary and improper.”²⁸¹ The court then identified and criticized the other circuits on their application of statutory interpretation, “which none of the aforementioned courts acknowledged, let alone applied.”²⁸² Judge Suhrheinrich specifically rejected the “incomplete [and] incorrect analysis” of the *Campos* court.²⁸³

Third, the court addressed the plaintiffs’ argument that the VRA’s “broad remedial purposes” required an expansive interpretation of the law.²⁸⁴ The Sixth Circuit determined that the plaintiffs’ reliance on this concept, derived from *Chisom*, was misplaced.²⁸⁵ In *Chisom*, the Supreme Court extended the VRA, following the 1982 amendments, to judicial elections because judicial elections were specifically covered in prior versions of the Act.²⁸⁶ In *Nixon*, by contrast, “it [was] undisputed that the [VRA] has *never* permitted coalition suits by its terms.”²⁸⁷ The Sixth Circuit also rejected an argument that the purposes of the 1975 and 1982 VRA amendments condoned “a broad and boundless ‘trend’ to expand the Act to protect” minority coalitions.²⁸⁸ Finally, Judge Suhrheinrich considered four policy considerations to reject minority aggregation under the VRA.²⁸⁹ First, he stated that Congress identified a specific list of minorities protected under the law, which did not include minority coalitions, based on congressional findings of

276. See *Nixon*, 76 F.3d at 1386–92. In *Nixon*, Blacks and Hispanics brought a class action suit claiming vote dilution under section 2. *Id.* at 1383.

277. *Id.* at 1386.

278. *Id.* at 1386–87.

279. *Id.* at 1387.

280. *Id.* at 1387–88.

281. *Id.* at 1387. Even if it did consider legislative history, the court found that the legislative record of neither the 1975 nor the 1982 amendments made any reference, explicit or otherwise, to minority aggregation. *Id.*

282. *Id.* at 1388.

283. *Id.*

284. *Id.* at 1389.

285. *Id.*; see also *supra* notes 208–14 and accompanying text.

286. *Chisom v. Roemer*, 501 U.S. 380, 404 (1991).

287. *Nixon*, 76 F.3d at 1389.

288. *Id.* at 1390.

289. *Id.* at 1390–92.

discrimination.²⁹⁰ Second, the mechanics of allowing minority aggregation would create an unsolvable “puzzle” for state legislatures that, “in good faith, seek to draw district lines according to the [VRA’s] nebulous requirements.”²⁹¹ Third, Judge Suhrheinrich contended that permitting coalition claims would require eliminating the first *Gingles* factor.²⁹² Finally, permitting minority aggregation would run contrary to the law’s purpose by providing “minority groups with a political advantage not . . . authorized by the constitutional and statutory underpinnings of [the VRA].”²⁹³

2. Rejection and Ambiguity in the Other Circuits

Judge Higginbotham of the Fifth Circuit consistently rejected the concept of minority aggregation, delivering dissenting opinions in both *LULAC I* and on a denial for rehearing in *Campos*.²⁹⁴ In his *Campos* dissent, he characterized the majority’s interpretation of such a “uniquely important statute” as “disturbing.”²⁹⁵ Where the majority determined that nothing in the VRA *prohibited* minority coalitions, Judge Higginbotham noted that the correct question is whether “Congress intended to *protect* those coalitions.”²⁹⁶ He stated that no such intent can be deduced.²⁹⁷ Congress’s decision to extend VRA protection to language minorities does not mean that Congress intended to extend protection to a combination of different individually protected groups.²⁹⁸ Judge Higginbotham went further to challenge the notion “that a group composed of [different minorities] is itself a protected minority.”²⁹⁹ Instead, such groups merely constitute political

290. *Id.* at 1390–91. Stated differently, “[s]imply because Congress has found that African Americans [and Hispanics] have been discriminated against . . . there is no basis for presuming such a finding regarding a group consisting of a mixture of both minorities.” *Id.* at 1391.

291. *Id.*

If district lines are drawn pursuant to a plan to enhance the political impact of minorities separately, the plan faces potential challenge by a coalition of minorities claiming that greater influence could have been achieved had the minorities been “lumped” together. If, on the other hand, the lines are drawn to accommodate all minorities together, the plan faces potential challenge by an individual minority group on the ground that its influence could have been enhanced had it been treated separately. In both situations, courts and legislatures would be forced to “choose” between protected groups when drawing district lines.

Id.

292. *Id.*

293. *Id.* at 1391–92 (“The Equal Protection Clause, the Fifteenth Amendment and the Voting Rights Act are aimed only at ensuring equal political opportunity: that every person’s chance to form a majority is the same, regardless of race or ethnic origin.”).

294. *See generally* *Campos v. City of Baytown*, 849 F.2d 943 (5th Cir. 1988) (Higginbotham, J., dissenting); *LULAC I*, 812 F.2d 1494, 1503 (5th Cir. 1987) (Higginbotham, J., dissenting), *reh’g granted*, 818 F.2d 350 (5th Cir. 1987), and *vacated*, 829 F.2d 546 (5th Cir. 1987).

295. *Campos*, 849 F.2d at 944 (Higginbotham, J., dissenting).

296. *Id.* at 945 (“A statutory claim cannot find its support in the absence of prohibitions.”).

297. *See id.*

298. *See id.*

299. *See id.*

alliances with shared agendas.³⁰⁰ Protecting political alliances “stretch[es] the concept of cohesiveness” and dilutes its effectiveness as a measure of relation between discrimination and voting practices.³⁰¹ At the very least, he scolded the majority for not better investigating political cohesion, asking whether each minority group in the coalition was individually cohesive.³⁰²

Unlike the circuits addressed thus far, the First Circuit has not yet rendered a clear opinion on the minority aggregation question.³⁰³ Originally, the First Circuit fell into the category of tacit acceptance by permitting review of a coalition group claim, without raising issue with the fact that the plaintiffs came from three distinct minority groups.³⁰⁴ This opinion, however, was released several months before the Supreme Court issued its *Gingles* decision.³⁰⁵ In 2003, the First Circuit again tacitly made reference to the idea of minority aggregation but ultimately indicated an alternative interpretation.³⁰⁶ In reference to the third *Gingles* factor, the First Circuit found that “[w]hile the ‘protected class’ being discriminated against must be constituted of a particular ‘race or color,’” the same was not required of the majority voting bloc.³⁰⁷ In that case, however, the court was not facing a minority aggregation claim. While this leaves unresolved the First Circuit’s formal stance on coalitions, the court, post-*Gingles*, is likely to read section 2 narrowly and require claims be brought by single-minority groups.

Similarly, the Fourth and Seventh Circuits have, without deciding, expressed concerns about the implications of minority coalitions. In *Hall v. Virginia*,³⁰⁸ the Fourth Circuit reviewed a claim brought by Black voters alleging vote dilution.³⁰⁹ To satisfy the first *Gingles* factor, the plaintiffs asserted that “blacks were sufficiently numerous to combine with white voters” to elect their preferred candidates.³¹⁰ While this presents a crossover claim,³¹¹ the court’s analysis more broadly addressed general multiracial coalition claims.³¹² Citing both *Nixon* and Judge Higginbotham’s *Campos* dissent, the Fourth Circuit reasoned that “multiracial coalitions would transform the [VRA]” from a source of minority protection to an advantage for political coalitions.³¹³ Ultimately, a redistricting plan that diminishes the

300. *See id.*

301. *See id.*

302. *See id.*; *see also supra* notes 188–89 and accompanying text.

303. *See Huot v. City of Lowell*, 280 F. Supp. 3d 228, 235 (D. Mass. 2017) (“The First Circuit has yet to address coalition claims directly.”).

304. *See Latin Political Action Comm., Inc. v. City of Boston*, 784 F.2d 409, 410, 414 (1st Cir. 1986) (dismissing plaintiffs’ claim for failure to establish racial polarization); *see also Ho*, *supra* note 23, at 429 n.152.

305. Weinberg, *supra* note 13, at 420 n.62.

306. *See Metts v. Murphy*, 347 F.3d 346, 359 (1st Cir. 2003), *vacated on reh’g en banc*, 363 F.3d 8 (1st Cir. 2004).

307. *Id.* (emphasis added) (internal citation omitted).

308. 385 F.3d 421 (4th Cir. 2004).

309. *See id.* at 424.

310. *Id.* at 425.

311. *See supra* notes 138–45 and accompanying text.

312. *See Hall*, 385 F.3d at 431.

313. *Id.*

ability of a minority group “to form a political coalition with other racial or ethnic groups, does not result in vote dilution ‘on account of race’ in violation of Section 2.”³¹⁴ The Seventh Circuit, in *Frank v. Forest County*,³¹⁵ addressed an Indian tribe’s claim of vote dilution against a single-member municipal voting district scheme.³¹⁶ The claim relied on a multiracial group consisting of tribe members and Blacks to satisfy *Gingles*’s first requirement.³¹⁷ In addressing the coalition argument, Judge Richard A. Posner identified the circuit split and the Supreme Court’s decision to reserve judgment.³¹⁸ Without explicitly rejecting the viability of minority aggregation, Judge Posner briefly acknowledged the “problematic character” of such claims.³¹⁹ He then went on to reject the claim for lack of evidence of mutual interest in municipal county governance between the two groups.³²⁰

3. Criticism in Scholarship

Many scholars have argued that the VRA should not allow protection for minority coalition groups. Critics have echoed the reservations of courts, arguing that a narrow interpretation of section 2’s text does not support minority aggregation.³²¹ Additionally, it is argued that legislative history suggests Congress passed the VRA to protect specific minority groups based on empirical evidence of past voting discrimination.³²² The logic asserted is that empirical evidence of voting discrimination against two minority groups, individually, cannot infer voting discrimination between a combination of those two groups.³²³ Had Congress sought to remedy the coalition issue, it would have done so explicitly when it revisited the VRA for amendment in 2006.³²⁴ Absent that clarification, “the courts should not read into a statute what is not there.”³²⁵

Another theory posed that broad protection under the VRA is unnecessary when minorities may otherwise seek relief through the Constitution.³²⁶ Where section 2 would not apply, minority coalitions may still allege claims of vote dilution under the Equal Protection Clause and Fifteenth Amendment.³²⁷ Unlike section 2 claims, constitutional claims would, of course, require the coalition to prove an intent to discriminate.³²⁸ This, it is

314. *Id.*

315. 336 F.3d 570 (7th Cir. 2003).

316. *See id.* at 571.

317. *See id.* at 575.

318. *See id.*

319. *See id.*

320. *See id.* at 575–76.

321. Geraci, *supra* note 23, at 392; Yang, *supra* note 13, at 715–16.

322. Yang, *supra* note 13, at 716–17.

323. *Id.*

324. *Id.*

325. *Id.* at 717.

326. Skinnell, *supra* note 23, at 403.

327. *Id.* at 403–04.

328. *Id.* at 404.

argued, helps mitigate the fear that political coalitions may rely on section 2 to gain an unfair advantage in the political process.³²⁹ Courts may then dismiss claims against so-called good faith jurisdictions that would otherwise face the consequences of section 2's strict liability results test.³³⁰ This constitutional avenue allows courts to avoid complex statutory interpretation questions that implicate principles of federalism.³³¹

Several more critics have attempted to "read the tea leaves" and predict how the Supreme Court is likely to address minority coalition claims.³³² The consensus is that the Supreme Court's rejection of crossover claims in *Strickland* strongly suggests that the Court will reject aggregation between different minority groups as well.³³³ It is argued that the same issue of protecting political alliances exists, regardless of whether aggregation is with other minorities or whites.³³⁴ The *Strickland* Court, quoting *De Grandy*, highlighted that "[m]inority voters are not immune from the obligation to pull, haul, and trade to find common political ground."³³⁵ Scholars look to the Court's argument that the VRA is not meant to give minorities "the most potential, or the best potential, to elect a candidate by attracting crossover voters."³³⁶ Some scholars contend that this applies equally to the attraction of coalition voters.³³⁷ It is argued that *Strickland* is instructive of the Court's future approach to minority aggregation because it "framed the issue as whether a minority group that constitutes less than fifty percent can meet the first *Gingles* precondition."³³⁸ The Court's answer was ultimately no.³³⁹

III. MINORITY GROUPS CAN AGGREGATE UNDER SECTION 2 OF THE VRA

There is no indication that section 2 minority coalition claims are going away.³⁴⁰ As the diversity of the American voting population continues to

329. *Id.*

330. *Id.*

331. *Id.* at 403–04 (recognizing that a broad interpretation of section 2 might be perceived as an unconstitutional expansion of federal statutory power that tramples on state sovereignty).

332. Weinberg, *supra* note 13, at 429–30; Yang, *supra* note 13, at 717.

333. Weinberg, *supra* note 13, at 425, 429–31; Yang, *supra* note 13, at 718–19. Scholars also rely on the Supreme Court's ruling in *Perez*, which rejected the requirement of creating coalition districts as a remedy under section 5 of the VRA. See Weinberg, *supra* note 13, at 425, 428–29; Yang, *supra* note 13, at 718; see also *supra* notes 135–36 and accompanying text.

334. See Weinberg, *supra* note 13, at 427.

335. *Bartlett v. Strickland*, 556 U.S. 1, 15 (2009) (plurality opinion) (quoting *Johnson v. De Grandy*, 512 U.S. 997, 1020 (1994)); see also Weinberg, *supra* note 13, at 427.

336. Weinberg, *supra* note 13, at 427.

337. *Id.* at 425, 429–32; Yang, *supra* note 13, at 718.

338. Weinberg, *supra* note 13, at 431.

339. *Id.*

340. See, e.g., *Perry v. Perez*, 565 U.S. 388 (2012); *Huot v. City of Lowell*, 280 F. Supp. 3d 228 (D. Mass. 2017) (permitting a minority coalition claim, while addressing the circuit split and ambiguity of its own circuit's precedent); *Perez v. Abbott*, 250 F. Supp. 3d 123 (W.D. Tex. 2017) (permitting minority aggregation); *Rodriguez v. Pataki*, 308 F. Supp. 2d 346, 405 (S.D.N.Y. 2004) (identifying the circuit split but relying on *Emison* to consider the cohesion requirement of a Black-Hispanic coalition); *Arbor Hill Concerned Citizens Neighborhood Ass'n v. County of Albany*, No. 03-CV-502 (NAM-DRH), 2003 U.S. Dist. LEXIS 11386

grow, determining the VRA's correct interpretation becomes increasingly important. This Part argues that the current circuit split should be resolved in favor of permitting minority coalitions access to section 2 protections. This resolution is consistent with the conclusions of the Second, Fifth, Ninth, and Eleventh Circuits and remains faithful to the Supreme Court's principles of statutory interpretation. While such a conclusion may be sustained on the VRA's text alone, it is also supported by the intent of Congress demonstrated through its legislative history. In addition, despite the qualms of critics, the VRA is the appropriate avenue of relief for minority coalitions. The VRA offers broad remedial protection that is inadequately safeguarded by the Constitution alone. Unlike crossover claims, acceptance of minority aggregation does not render the *Gingles* framework unworkable. In fact, strict adherence to the *Gingles* framework polices against abuse of the VRA's protections.

A. Principles of Statutory Interpretation Support Coalition Protection

The Supreme Court has historically engaged in a process of practical reasoning, relying on a hierarchy of sources to interpret statutes.³⁴¹ This analysis begins with a statute's text, looking to the "specific words of the statutory provision being interpreted."³⁴² Absent an explicit statutory definition, the challenged words are typically given their "ordinary meaning."³⁴³ Ordinary meaning is best understood as "reliance on a common sense understanding of textual words or phrases, without reference to additional aids."³⁴⁴ Ordinary meaning must be considered in both the narrower context of the specific provision in which it is placed and the broader context of the statute as a whole.³⁴⁵ It must not be interpreted in isolation.³⁴⁶ Ordinary meaning and textual interpretation must also abide by canons (or rules) of statutory construction. For example, adoption of a

(N.D.N.Y. July 7, 2003) (permitting coalition claims). While the Department of Justice under President Trump has all but abandoned pursuing voting rights litigation, private plaintiffs continue to vigorously litigate claims under the VRA. Tierney Sneed, *Trump's DOJ Has Not Filed a Single New Voting Rights Act Case*, TALKING POINTS MEMO (Mar. 5, 2020), <https://talkingpointsmemo.com/muckraker/trumps-doj-has-not-filed-a-single-new-voting-rights-act-case> [https://perma.cc/488A-3UU6].

341. William Eskridge, Jr. & Philip Frickey, *Statutory Interpretation as Practical Reasoning*, 42 STAN. L. REV. 321, 353 n.123 (1990).

342. *Id.* at 354–55.

343. *See, e.g.*, *Yates v. United States*, 574 U.S. 528, 553 (2015) (Kagan, J., dissenting) ("When Congress has not supplied a definition, we generally give a statutory term its ordinary meaning."); *Schindler Elevator Corp. v. United States ex rel. Kirk*, 563 U.S. 401, 407 (2011). Ordinary meaning can be derived from looking to dictionary definitions. *See Yates*, 574 U.S. at 537.

344. Lawrence Baum & James J. Brudney, *Two Roads Diverged: Statutory Interpretation by the Circuit Courts and Supreme Court in the Same Cases*, 88 FORDHAM L. REV. 823, 837 n.69 (2019).

345. *See, e.g.*, *Yates*, 574 U.S. at 537 (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997)); *Tyler v. Cain*, 533 U.S. 656, 662 (2001); *Deal v. United States*, 508 U.S. 129, 132 (1993).

346. *See Yates*, 574 U.S. at 537 (quoting *Deal*, 508 U.S. at 132).

particular interpretation must be rejected if enforcement of that interpretation would produce an absurd result.³⁴⁷ The canon against surplusage dictates that the language of a statute should not be interpreted in a way that “renders superfluous another portion of the same law.”³⁴⁸ Additionally, the last antecedent rule presumes that “a limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows.”³⁴⁹

If a clear textual meaning is deduced, this may justify an end to the analysis or merely serve as a presumption that the textual meaning is correct.³⁵⁰ If the analysis continues, the Court then typically looks to historical considerations where legislative history is the most authoritative source.³⁵¹ If Congress’s intent clearly supports the textual interpretation, that interpretation is likely decisive.³⁵² Absent clarity at that stage, the Court may then look to more dynamic factors such as enforcement methods, current values of fairness, and constitutional principles.³⁵³

Applying this framework to the VRA requires prudent courts to identify that the statute’s ordinary meaning provides minority coalitions protection under section 2. Any other interpretation is disingenuous to the text of section 2, contradicts legislative intent, and is functionally unworkable.

1. What Is a “Class” of Citizens?

Section 2 of the VRA safeguards “members of a class of citizens protected by subsection (a)” of the same provision.³⁵⁴ Subsection (a), of course, identifies racial and language minorities as the beneficiaries of the VRA.³⁵⁵ Critics of minority aggregation argue that, had Congress intended to protect coalition groups, it would have written “classes of citizens” into the statute instead of a “class of citizens.”³⁵⁶ This criticism overstates the role of the word “class” in section 2. Invoking the presumptive last antecedent rule

347. See, e.g., *Small v. United States*, 544 U.S. 385, 404 (2005) (Thomas, J., dissenting); *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004) (stating that it is the Supreme Court’s role to enforce plain language according to its terms, unless the disposition required by the text is absurd).

348. *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) (quoting *Mackey v. Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825, 837 (1988)).

349. *Barnhart v. Thomas*, 540 U.S. 20, 26 (2003); see also *Jama v. Immigration & Customs Enf’t*, 543 U.S. 335, 343 (2005); Joseph Kimble, *The Doctrine of the Last Antecedent, the Example in Barnhart, Why Both Are Weak, and How Textualism Postures*, 16 SCRIBES J. LEGAL WRITING 5, 18 (2015) (noting that the last antecedent rule is almost always applied, even when in conflict with other canons, if the modifying term or phrase comes at the end of a sentence).

350. See Eskridge & Frickey, *supra* note 341, at 355–56.

351. See *id.* at 356; see, e.g., *Yates*, 574 U.S. at 542 (looking to legislative history after engaging in analysis of the text); *Pub. Citizen v. U.S. Dep’t of Justice*, 491 U.S. 440, 452–53 (1989) (same).

352. See Eskridge & Frickey, *supra* note 341, at 357.

353. *Id.* at 359. See generally *Bob Jones Univ. v. United States*, 461 U.S. 574 (1983) (relying on constitutional principles where statutory text and legislative history were unclear).

354. See 52 U.S.C. § 10301(b) (2018).

355. See *id.* §§ 10301(a), 10303(f)(2).

356. See *supra* note 278 and accompanying text.

requires courts to apply the limiting phrase “protected by subsection (a)” only to the noun directly proceeding it, which is “citizens.”³⁵⁷ As a result, it is not the singular class that must be composed of a racial or language minority protected under subsection (a) but rather each citizen that makes up the class. So long as one class is asserting a claim, and each citizen in that class is a protected racial or language minority, the statutory requirements are met. Were a court to mandate that all citizens from the class have the same minority status, it would be wrongfully reading into the statute what is not there.³⁵⁸

While the last antecedent rule is rebuttable,³⁵⁹ there is no structural or contextual evidence in the “clear, unambiguous language”³⁶⁰ of section 2 calling for deviation from the rule. In fact, there is substantial evidence to the contrary. Proper textual interpretation requires considering the disputed language in the context of the entire provision.³⁶¹ Section 2 in its entirety addresses and is concerned with “citizens” and “members” of the electorate who may be impacted by vote dilution, not the class itself.³⁶² Subsection (a) makes no reference to “class” at all.³⁶³ Any mention of a “protected class” otherwise is actually referencing “members” of a protected class, with individual members being the primary subjects.³⁶⁴

Courts may also use the rule against surplusage to reach the same conclusion.³⁶⁵ Were the Supreme Court to accept the *Nixon* court’s interpretation, it would render superfluous any reference to “members” or “citizens” in section 2.³⁶⁶ Had Congress intended the narrower *Nixon* interpretation, it would have simply identified a “class protected by subsection (a).” Had Congress intended the *Nixon* interpretation while still making clear that section 2 is available to individual citizens, it could have identified “members of a class protected by subsection (a)” or even “citizens of a class protected by subsection (a).” It chose none of these. Thus, there is no basis to render portions of the broader provision meaningless in order to achieve a narrower interpretation that is faithful to language Congress chose not to enact.

Even if a court were to find that the limiting phrase applies to the word “class,” the word’s ordinary meaning is not so restrictive as to reject the possibility of a multiminority class. *Merriam-Webster* defines “class” as “a

357. See *supra* note 349 and accompanying text; see also *Barnhart v. Thomas*, 540 U.S. 20, 26 (2003) (stating that the last antecedent rule is “quite sensible as a matter of grammar”).

358. See *supra* note 325 and accompanying text.

359. *Lockhart v. United States*, 136 S. Ct. 958, 965 (2016) (“This Court has long acknowledged that structural or contextual evidence may ‘rebut the last antecedent inference.’” (quoting *Jama v. Immigration & Customs Enforcement*, 543 U.S. 335, 344 n.4 (2005))).

360. See *supra* note 277 and accompanying text.

361. See *supra* notes 345–46 and accompanying text.

362. See 52 U.S.C. § 10301(b) (2018).

363. See *id.*

364. See *id.*

365. See *supra* note 347 and accompanying text.

366. See *supra* notes 276–79 and accompanying text.

group sharing the same economic or social status.”³⁶⁷ It has already been determined that different distinct minority groups may, as a result of their diversity, suffer similar or the same social and economic consequences.³⁶⁸ This conclusion is most poignant in the cases of citizens who identify as both racial and language minorities. In these cases, rejection of coalition claims, and thus rejection of the text’s ordinary meaning, would produce absurd results. Such an interpretation of the law would require those individuals to assume multiple social identities and prioritize one of those identities in pursuit of securing voting rights. This not only further polarizes minority groups but also becomes increasingly unworkable as diversity in America grows more complex.³⁶⁹

Additionally, this interpretation blatantly contradicts the VRA given that certain already-protected groups are capable of being coalition groups. “Asian American,” for example, is a distinct grouping protected under the VRA that could theoretically be composed of Chinese Americans, Japanese Americans, and Indian Americans who speak different languages.³⁷⁰ Similarly, “American Indians,” or Native Americans, are protected under section 2³⁷¹—another group capable of being multilingual in a particular voting district.³⁷² Despite their coalitional nature, the VRA defines these groups as permissible “classes.”³⁷³

While the *Campos* court ultimately misunderstood the question that must be asked regarding the text of section 2, it reached the correct conclusion. It is unimportant that nothing in the law’s text prohibits minority coalitions.³⁷⁴ What matters, instead, is whether the ordinary meaning of “members of a class of citizens protected by subsection (a),” understood in the context of section 2 and the VRA as a whole, permits citizens with different minority statuses to form a single class under section 2. The statutory text and applicable canons of construction suggest the answer is yes. At a minimum, the answer is maybe and an examination of the VRA’s legislative history is required.³⁷⁵

367. *Class*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/class> [<https://perma.cc/8ZAK-5JXR>] (last visited Apr. 12, 2020); see also *Class*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“A group of people . . . that have common characteristics or attributes.”).

368. See *supra* notes 176, 191 and accompanying text.

369. See *supra* note 227 and accompanying text.

370. See *supra* note 65 and accompanying text.

371. See *id.*

372. U.S. DEP’T OF EDUC. ET AL., A NEW CHAPTER FOR NATIVE AMERICAN LANGUAGES IN THE UNITED STATES: A REPORT ON FEDERAL AGENCY COORDINATION AND SUPPORT 13 (2016), https://www.acf.hhs.gov/sites/default/files/ana/a_new_chapter_for_native_american_languages_in_the_united.pdf [<https://perma.cc/M5QD-AYPL>] (noting that “current Native American languages spoken in the United States range from 155 to 175” (footnote omitted)).

373. Consider also a multiracial Hispanic community. It is unclear whether the VRA, under a narrow construction, would recognize this community as a language minority protected under section 2 or a crossover district barred from bringing a claim.

374. See *supra* note 180 and accompanying text.

375. See *supra* notes 207, 351 and accompanying text.

2. Congress Intended for Broad Protection

The VRA's legislative history "puts icing on a cake already frosted" by supporting Congress's intent for section 2 to have broad remedial powers.³⁷⁶ Judge Keith's dissent in *Nixon* correctly identified that nothing in the legislative history limits section 2's protection to single-minority claims.³⁷⁷ On the contrary, Congress has instead repeatedly broadened the power of section 2.³⁷⁸ The *Nixon* majority correctly noted that this fact does not permit a "boundless" expansion of the law.³⁷⁹ However, Congress's repeated expansion of section 2 is instructive when addressing the minority coalition question, which is, at least on its face, answered affirmatively by the VRA's text.

By expanding the VRA in 1975, Congress recognized that language minorities have long been subject to forms of discrimination like those to which racial minorities have been subject.³⁸⁰ The Senate Judiciary Committee found, for example, that discrimination against Hispanics was evident in "almost every facet of life," paralleling the barriers faced by Blacks.³⁸¹ Going further, the Senate explicitly relied on precedent involving a minority coalition claim between Hispanics and Blacks.³⁸² It specifically observed how at-large voting schemes in Texas denied both minority groups access to electoral representation.³⁸³ At the very least, this indicates that Congress was contemplating minority aggregation when it rewrote section 2.

Even in its 1982 adoption of the "results test," Congress spoke of the rights of racial and language minorities in tandem.³⁸⁴ The results test entitles plaintiffs to relief if, under a totality of the circumstances, vote dilution is effectuated as a result of minority status.³⁸⁵ Absent an explicit omission by Congress, a coalition group bringing the claim should merely be one circumstance considered in the totality. It is most striking that Congress derived its results test from the Supreme Court's analysis in the same constitutional coalition case that it relied on in the 1975 amendments.³⁸⁶ This indicates Congress's awareness, and likely acceptance, of the right of minorities to aggregate.

It is evident that, on several occasions, Congress embraced and relied on the features of minority aggregation in its formulation of the modern version of section 2. As a result, for those who care about it, the VRA's legislative history supports congressional intent to award protection to minority

376. See *Yates v. United States*, 574 U.S. 528, 557 (2015) (Kagan, J., dissenting); see also *supra* note 120 and accompanying text.

377. See *supra* note 210 and accompanying text.

378. See *supra* note 213 and accompanying text.

379. See *supra* note 288 and accompanying text.

380. See S. REP. NO. 94-295, at 25 (1975).

381. *Id.* at 28–29; see also Michaloski, *supra* note 23, at 278 n.40.

382. See S. REP. NO. 94-295, at 27–28.

383. See *id.*

384. See *supra* notes 79–85 and accompanying text.

385. See *supra* notes 79–80 and accompanying text.

386. See Michaloski, *supra* note 23, at 279.

coalitions.³⁸⁷ Given that legislative history conforms with the textual interpretation forwarded by this Note, such an interpretation should be decisive absent compelling evidence to the contrary.³⁸⁸

B. Section 2 of the VRA Is the Proper Avenue of Relief for Minority Coalitions

Despite support found in the text and legislative history of section 2, critics have continuously asserted that the VRA is not a proper avenue of relief for minority coalitions.³⁸⁹ These criticisms are misguided. This Note identifies and categorically rejects three prominent arguments offered in opposition to the idea that section 2 may properly function as a remedy for a multiminority class. First, the Constitution does not serve as an adequate alternative for minority coalitions seeking redemption of their voting powers.³⁹⁰ Second, permitting coalition claims would not render the well-established *Gingles* framework unworkable.³⁹¹ Third, adherence to the *Gingles* test sufficiently prevents groups from using the VRA for unfair political advantage.³⁹²

1. The VRA Provides Broader Protection Than the Constitution

Broad protection under section 2 is not unnecessary simply because minority coalitions may otherwise seek remedy under the Fourteenth or Fifteenth Amendments to the Constitution.³⁹³ Support for a constitutional alternative is premised on the idea that the burden of proof required for such claims serves as a check on coalitions seeking unfair political advantage.³⁹⁴ This logic is misguided for two reasons. First, Congress has already explicitly determined that section 2 is meant to confer protections beyond those explicitly embedded in the Constitution and that the burden to show discriminatory intent is inappropriate for vote dilution claims. Second, the existing framework for analyzing vote dilution claims properly polices against abuse.

As an initial matter, Congress has already clarified that intent is immaterial in identifying a section 2 claim.³⁹⁵ The justifications for rejecting intent still apply when minorities choose to aggregate. Intent standards continue to ask

387. At the very least, the legislative history does not contradict the textual interpretation this Note forwards. In that case, a court would consider more dynamic factors such as enforcement mechanisms and constitutional principles. *See supra* note 354 and accompanying text. Both of these abstract considerations support minority coalition protection. *See infra* Part III.B.

388. *See supra* note 352 and accompanying text.

389. *See supra* Part II.C.3.

390. *See supra* notes 326–31 and accompanying text.

391. *See supra* notes 332–33 and accompanying text.

392. *See supra* notes 24–25, 232, 241, 293, 300–02, 313–14, 329 and accompanying text.

393. *See supra* note 326 and accompanying text.

394. *See supra* notes 71–76, 328–29 and accompanying text; *see also* *Chisom v. Roemer*, 501 U.S. 380, 403–04 (1991) (“Congress amended the Act in 1982 in order to relieve plaintiffs of the burden of proving discriminatory intent.”).

395. *See supra* notes 81–85 and accompanying text.

the wrong question.³⁹⁶ If the challenged voting practice “operates today to exclude Blacks [and] Hispanics from a fair chance to participate,” past or present motives are still not relevant.³⁹⁷ Regardless of whether a class is composed of one or more minorities, intent still requires an unnecessarily divisive charge of racism against the entity responsible for the voting system.³⁹⁸ Third, intent places an “inordinately difficult burden” on minority coalitions, especially when satisfying the burdens derived from *Gingles* is already more challenging for coalitions.³⁹⁹ These principles clarify why constitutional avenues are not only too restrictive to carry vote dilution claims but also distort the underlying principles of such claims.

The imposition of an intent requirement may have had more bite if the VRA were merely a codification of the Constitution. However, the VRA is no longer coextensive with the Fifteenth Amendment.⁴⁰⁰ Instead, it is broader and prohibits what may otherwise be constitutionally permissible.⁴⁰¹ This interpretation is reflected in *Chisom*, in which the Supreme Court recognized that section 2 protects voting rights where the Constitution fails to do so.⁴⁰² It would thus be counterintuitive to reject coalition claims under the VRA on the premise that the Constitution serves as an alternative source of remedy.⁴⁰³ While interpreting section 2 to have “the broadest possible scope” of protection should not equate to “boundless” protection,⁴⁰⁴ it at the very least should include claims that are contemplated by narrower constitutional provisions. It would otherwise be unfeasible to recognize section 2 as a legitimate expansion of the Fifteenth Amendment,⁴⁰⁵ while simultaneously barring under section 2 what is explicitly permissible under the Fifteenth Amendment.

2. Coalition Claims Are Not Unworkable Under the *Gingles* Framework

The Supreme Court’s rejection of crossover claims is neither a predictor nor a justification for rejecting coalition claims.⁴⁰⁶ Both have practical and legal differences that make them incomparable in their applicability to

396. *See supra* note 82 and accompanying text.

397. *See supra* note 83 and accompanying text.

398. *See supra* note 84 and accompanying text.

399. *See supra* note 85 and accompanying text.

400. *See supra* note 87 and accompanying text.

401. *See supra* note 88 and accompanying text. “Congress may, under the authority of § 2 of the Fifteenth Amendment, prohibit state action that, though in itself not violative of § 1, perpetuates the effects of past discrimination.” *City of Rome v. United States*, 446 U.S. 156, 176 (1980).

402. *See supra* note 119 and accompanying text.

403. “Of course the private litigant could always bring suit under the Fifteenth Amendment. But it was the inadequacy of just these suits for securing the right to vote that prompted Congress to pass the Voting Rights Act.” *Allen v. State Bd. of Elections*, 393 U.S. 544, 556 n.21 (1969).

404. *See supra* notes 120, 288 and accompanying text.

405. The Supreme Court and lower federal courts have “unanimously” affirmed the constitutionality of section 2’s “results test.” *Bush v. Vera*, 517 U.S. 952, 990–91 (1996) (O’Connor, J., concurring) (collecting cases).

406. *See supra* notes 333–34 and accompanying text.

section 2. While both are premised on the idea that a single minority group cannot alone constitute a majority population, crossover claims rely on the white majority.⁴⁰⁷ The Court rejected this framework because section 2 protects *minorities*, who have less opportunity than members of the white majority to participate in the political process.⁴⁰⁸ Permitting crossover claims would impose by law the majority-minority cooperation that the VRA was passed to encourage.⁴⁰⁹ Permitting coalition claims would simply impose by law the protection already promised to minorities who are unfairly represented in the voting system. In addition, it functionally contradicts section 2's purpose to grant protection to a group that, in part, consists of the very majority population that section 2 was enacted to protect against. Simply stated, white voters are not a group protected by section 2. Permitting coalition claims does not implicate this problematic contradiction because each member of the coalition is a minority protected under the VRA.

Further, acceptance of crossover claims would force the Supreme Court to abandon its long-relied-upon *Gingles* test as the two are not reconcilable.⁴¹⁰ Coalition claims, by contrast, are workable under the *Gingles* framework. The Court has interpreted the first *Gingles* factor as asking whether the minority group constitutes the majority of a theoretical voting district.⁴¹¹ This means that the protected minority group is a populous majority in relation to some nonprotected population responsible for diluting the minority's vote. Crossover claims confuse this criterion because crossover groups intermingle the minority population with the nonprotected population. Coalition groups avoid this confusion because each member of the coalition is protected under the VRA. Regarding crossover claims and the third *Gingles* factor, the Court failed to understand how white bloc voting defeated minority candidates when white voters were "crossing over" to elect minority candidates.⁴¹² Again, this issue is resolved in the coalition context because the coalition is not relying on members of the white voting bloc responsible for its failure.

3. The *Gingles* Framework Prevents Minority Coalitions from Abusing the VRA

Courts and scholars alike have been adamant that granting protection to minority coalitions will provide them a political advantage not intended by the VRA.⁴¹³ This position stems from the misguided assertion that a coalition of multiple minorities does not constitute a single protected minority group but rather an alliance premised on mutual political goals.⁴¹⁴ Judge Keith, in his *Nixon* dissent, correctly identified that it simply makes

407. See *supra* note 140 and accompanying text.

408. See *supra* note 141 and accompanying text.

409. See *supra* note 145 and accompanying text.

410. See *supra* note 142 and accompanying text.

411. See *supra* note 143 and accompanying text.

412. See *supra* note 144 and accompanying text.

413. See *supra* notes 293, 300, 334–35 and accompanying text.

414. See *supra* note 300 and accompanying text.

sense to consider multiple minorities as one group if that is the political reality.⁴¹⁵ It should not matter that the two minority groups have variations in the history of their discrimination because the “prejudice of the majority is not narrowly focused.”⁴¹⁶ In the VRA context, it should only matter that each protected minority group is equally subject to vote dilution under the circumstances contemplated by *Gingles*. The presence of mutual political goals among members of a coalition group does not negate the reality that vote dilution is taking place. Mutual political interests are present in any group seeking to elect a particular candidate, including in the single-minority groups currently awarded protection under section 2.

Regardless, strict adherence to the *Gingles* framework otherwise prevents ill-intended groups from pursuing political agendas under the guise of vote dilution. While Strange recommended that additional preconditions were needed to fully combat this danger,⁴¹⁷ such a framework is redundant and would render it nearly impossible to successfully sustain an already challenging claim of vote dilution.⁴¹⁸ The sufficiency of the *Gingles* test can be quantified by the fact that, of the ten circuit court cases where minority aggregation was explicitly or implicitly accepted, only three were successful for the coalition plaintiffs.⁴¹⁹

The Fifth Circuit’s approach is the closest to properly assessing minority aggregation claims under the *Gingles* framework. Regarding the first factor, the coalition group’s voting population must constitute the majority of a hypothetical single-member voting district.⁴²⁰ A majority, as it is applied to single-minority groups, must mean more than 50 percent of the hypothetical district’s voting population.

Like the Fifth Circuit’s approach in *Campos*,⁴²¹ but unlike its approach in *LULAC I*,⁴²² the second political cohesiveness factor should be assessed against the coalition group as a whole, rather than against each individual minority group *and* the whole coalition group. Requiring a showing of

415. See *supra* note 218 and accompanying text.

416. See *supra* note 175 and accompanying text.

417. See *supra* notes 234–41 and accompanying text.

418. The only element of Strange’s test that diverged from the requirements of *Gingles* was proof that the minority coalition shared a similar socioeconomic status. See Strange, *supra* note 237 and accompanying text. However, relying on socioeconomic status “is a crude measure and will exclude many potential coalitions that might otherwise have never encountered the legal obstacle of inconsistent . . . interests.” See Note, *supra* note 130, at 2639.

419. Compare *Bridgeport Coal. for Fair Representation v. City of Bridgeport*, 26 F.3d 271 (2d Cir. 1994) (holding for the minority coalition plaintiffs), and *Campos v. City of Baytown*, 840 F.2d 1240 (5th Cir. 1988) (same), and *LULAC I*, 812 F.2d 1494 (5th Cir. 1987) (same), *reh’g granted*, 818 F.2d 350 (5th Cir. 1987), and *vacated*, 829 F.2d 546 (5th Cir. 1987), with *Pope v. County of Albany*, 687 F.3d 565 (2d Cir. 2012) (rejecting a minority coalition’s claim), and *LULAC II*, 999 F.2d 831 (5th Cir. 1993) (same), and *Badillo v. City of Stockton*, 956 F.2d 884 (9th Cir. 1992) (same), and *Concerned Citizens of Hardee Cty. v. Hardee Cty. Bd. of Comm’rs*, 906 F.2d 524 (11th Cir. 1990) (same), and *Romero v. City of Pomona*, 883 F.2d 1418 (9th Cir. 1989) (same), and *Brewer v. Ham*, 876 F.2d 448 (5th Cir. 1989) (same), and *Overton v. City of Austin*, 871 F.2d 529 (5th Cir. 1989) (same).

420. See *supra* note 172 and accompanying text.

421. See *supra* note 188 and accompanying text.

422. See *supra* note 173 and accompanying text.

political cohesion at both stages places an “impossible”⁴²³ burden on the coalition. It also fails to realize that a coalition group and single-minority group are functionally the same if political cohesion across the group is established.⁴²⁴ Further, political cohesion must be quantified by a concrete metric, such as the statistical data of past voting patterns used in *Gingles* and *Campos*.⁴²⁵

The third *Gingles* factor is also crucial in drawing a distinction between racially polarized voting and attempted abuse of section 2. The presence of a majority white voting bloc, like political cohesion, must persist over time.⁴²⁶ The Supreme Court recognized how particularly important political cohesion was in coalition claims;⁴²⁷ the same is true of white bloc voting.⁴²⁸ A consistent pattern of both factors will allow courts to clearly recognize when systematic racially polarized voting has prevented a minority coalition from electing its candidate of choice. The absence of this pattern may indicate that either no dilution is occurring or that the coalition is asserting its claim for improper purposes. In ambiguity, courts may of course still look to the totality of the remaining circumstances to reach their conclusions.

CONCLUSION

Section 2 of the VRA sought to do what the Fifteenth Amendment alone could not: protect minority populations from any voting system that has the effect of diluting their votes. As the crown jewel of the civil rights movement, the VRA was intended to provide minorities with the broadest scope of protection possible. Whether those protections extend to minority coalitions is a question that “cries out for clarification.”⁴²⁹ Denying minority coalitions protection under section 2 would violate the statute’s text, ignore Congress’s intent in passing it, and disappoint a class of citizens already too familiar with discriminatory, unconstitutional barriers to voting. As the 2020 Census results come in and a wave of redistricting approaches, minority groups in the most diverse corners of the United States have no guarantee that their voting rights will be protected. The Supreme Court must address this question and provide clarity to courts and state legislatures in their interpretation of the VRA. Ultimately, protecting minority coalitions is required to prevent an impending constitutional crisis at the polls.

423. See *supra* note 188 and accompanying text.

424. Of course, when applying the “fourth” *Gingles* factor, a court can recognize the lack of cohesiveness in one of the minority groups as a circumstance, in the totality, cutting against a finding of vote dilution.

425. See *supra* note 177 and accompanying text.

426. See *supra* note 104 and accompanying text.

427. See *supra* note 129 and accompanying text.

428. This recommendation is more stringent than the *Campos* court’s standard, which is that white voters “will usually defeat” a minority candidate. See *supra* note 178 and accompanying text.

429. See *Perez v. Perry*, No. SA-11-CV-788, 2011 U.S. Dist. LEXIS 135830 (W.D. Tex. Nov. 25, 2011) (Smith, J., dissenting), *vacated*, 565 U.S. 388 (2012).