ELECTORAL SYSTEMS IN CONFLICT:

AT-LARGE VERSUS SINGLE-MEMBER

The Rose Institute of State and Local Government

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ELECTORAL SYSTEMS IN CONFLICT: AT-LARGE VERSUS SINGLE-MEMBER

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This paper has been written to introduce conferees to the issues involved in the controversy over at-large versus single-member districting. It is intended only as a summary and a survey, not as comprehensive coverage.

INTRODUCTION

California's 453 cities include only 21 that use true single-member districts (see Appendix 1); and of the 1,028 school boards in California, only 41 elect board members by district. This great preponderance of at-large systems (over 95%) traces to the Progressive movement of the late Nineteenth century and its opposition to partisan control of ward-based city machines. From 1883 to 1955, California mandated its General Law cities to elect councilmembers at-large.

Most of the at-large districting systems in California cities require all candidates to compete against one another for votes in city-wide elections: then the five highest vote-getters (or seven or nine, depending on the size of the council) are elected.

Some cities, however, employ variants of the true at-large system. In several cities, two separate elections are used to elect to "numbered post" seats. In other cities, residency in individual districts is required of candidates, but the voting is city-wide. In yet others, a primary election is held in individual districts, but the general election is city-wide. And there are even cities where some councilmembers are elected at large, others in individual districts.

In the course of the past two decades, challenges to the use of at-large elections in California cities have mounted. One source of discontent is the belief that at-large systems discriminate against minorities (especially ethnic minorities). Another source seems to be the belief that at-large systems advantage established interests (for example, "the downtown group") at the expense of new, more diverse and rapidly growing populations.

These two challenges to at-large systems are outlined below in the first section; arguments in defense of at-large systems are summarized in the second section; attempts to provide legislative remedies are discussed in the third section; and a short bibliography follows the conclusions.

I. CHALLENGES TO AT-LARGE ELECTIONS

A. Discrimination Against Minorities?

The use of at-large electoral systems, it is claimed, may lead to situations in which minorities (racial or ethnic, linguistic, political) lack an equal opportunity to elect candidates of their choice (whether minority candidates or minority-supported candidates). It is said that the flaw of at-large systems is that they allow a majority group, acting as a voting bloc, to defeat minority group candidates -- even when the minority has a sufficient share of the population to deserve its own representation. By contrast, single-member districts, because they do not "submerge" the votes of the minority, make it easier for minorities to elect their own candidates. That is, geographically compact minorities, acting as voting blocs, can elect candidates in their own districts. (The corollary, of course, is that the districts must not be gerrymandered to divide the minority group population).

This view of the discriminatory potential of at-large electoral arrangements was supported by the U.S. Supreme Court in Thornburg v. Gingles (196 S. Ct. 2752), a case in which multi-member districts in eight North Carolina counties were held unconstitutional (see Appendix 2). The ruling (and associated tests) in Thornburg stimulated a series of legal challenges to at-large elections in California cities.

1. The Thornburg Ruling

Thornburg served as the test case for the 1982 amendments to Section 2 of the Voting Rights Act, which said that a Section 2 violation could be proved by showing discriminatory effect rather than having to show discriminatory purpose. The 1982 amendments, considered a significant Civil Rights victory, represented a response to the U.S. Supreme Court decision in City of Mobile v. Bolden (446 U.S. 55 (1980)) which ruled that where the character of a law is readily explainable on grounds apart from race, disproportionate impact alone cannot be decisive, and courts must look to other evidence to support a finding of discriminatory purpose. Section 2a, as amended after Mobile, reads as follows:

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

proportion in the population. (42 U.S.C. Sec, 1973, as amended, 96 Stat. 134.)

The Senate Judiciary Committee Majority Report which accompanied the bill to amend Section 2 of the Voting Rights Act specified seven "typical factors" that might indicate a voting rights violation. A listing of those factors follows:

> "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 subdivison 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 subdivison 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."
> (S.Rep., at 28-29, U.S. Code Cong. & Admin. News 1982, pp. 206-207.)

In Thornburg the court held that "while many or all of the factors listed in the Senate Report may be relevant to a claim of vote dilution through submergence in multi-member districts, unless there is a conjunction of the following circumstances, the use of multi-member districts generally will not impede the ability of minority voters to elect representatives of their choice" (196 S.Ct. 2765). The court then proceeded to enumerate three basic tests that would support a claim of vote dilution through submergence in multi-member districts.

> "First, the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district. If it is not, as would be the case in a substantially integrated district, the *multi-member form* of the district cannot be responsible for minority voters' inability to elect its candidates." (196 S.Ct. 2766)
>
> "Second, the minority group must be able to show that it is politically cohesive. If the minority group is not politically cohesive, it cannot be said that the selection of a multimember electoral structure thwarts distinctive minority group interests." (196 S.Ct. 2766)

"Third, the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it -- in the absence of special circumstances, such as the minority candidate running unopposed -- usually to defeat the minority's preferred candidate." (196 S.Ct. 2766)

The court then affirmed the finding of the lower court of discriminatory purpose in four out of the five districts that were appealed to the Supreme Court. The findings in Thornburg were applied in a landmark California voting rights case, Gomez v. Watsonville (see Appendix 2).

2. The Watsonville Case

The City of Watsonville, although it had a Latino population of 36 percent in the 1980 Census, had never elected a Latino to the Council under the at-large system which was established in 1952. There were nine Latino candidates during the period from 1971 to 1985, none of whom was elected. In 1985, Dolores Cruz Gomez, a Latino community worker, challenged the City's use of an at-large electoral system under Section 2 of the voting rights act as amended in 1982. The case was not decided until early 1987, after the Thornburg decision had been handed down.

Although the district court found that racially polarized voting did exist in Watsonville, it also found Watsonville's Hispanic population insufficiently geographically compact to meet the requirements of a Section 2 claim." (863 F.2d 1407 (9th Cir. 1988) 1410) Further, it found that the plaintiffs did not demonstrate "sufficient political cohesiveness" (863 F2d 1407 (9th Cir. 1988) 1410) among the Hispanics in Watsonville. It based this judgement, not on the fact that 95 percent of registered Hispanics in Watsonville vote alike, but in refusing to assume that the large proportion of unregistered Hispanics would vote like those who were registered. The Court felt that by not registering, those Hispanics were demonstrating a lack of interest in the Hispanic candidates.

The Ninth Circuit, U.S. Court of Appeals, however, reversed the district court's decision, holding that the actual pattern of voting of registered Hispanics was the relevant test and not whether those Hispanics who were eligible had registered to vote.

3. Other Jurisdictions

A number of other cities have watched the Watsonville case with great interest. The City of Salinas chose not to go the route of expensive litigation and adopted a district system. The Redlands City Council and the Cerritos Community College District have ballot proposals to switch to district systems. The City of Ontario, with a Latino population of 40 percent, has formed an Advisory Committee to study the possibility of moving to a district system. And the City of San Diego has reached an agreement with a Latino group to perform a redistricting that would be more equitable to Latinos.

B. Protection of "Vested Interests"?

Another source of the challenge to at-large electoral arrangements is the belief that they give undue protection to established interests.

Two chief themes may be identified in this challenge to at-large elections: the demands of California's dramatically changing demography; and the advantages of neighborhood representation.

1. California Demography

a. Swelling Population Totals:

Today, California's population is probably not far short of 30 millions: this represents almost a 100 percent gain over the course of a single generation, for California had only just passed the 15 million mark in 1959. The most rapid growth has occurred in the 1980s, with an annual average increase of around 2.3 percent (or around two-thirds of a million persons added to the state's population per year toward the close of the decade). Much of this new population is not in major metropolitan areas, but in small cities on their periphery.

As the population of these cities has boomed upward, it is hardly correct to continue to refer to them as small cities. Yet, they retain the institutional structures -- including at-large elections -- appropriate to an earlier stage of their developement.

b. Minority Population Growth

In the years immediately after the Second World War, most of California's population increase came from the immigration of U.S.- born citizens from other states into California or from babies born in California itself. But that changed in the 1970s and 1980s. Changes in federal law, the flood of refugees from Vietnam, the collapse of Mexico's oil economy, upheavals in Central America, the anticipated threat to Hong Kong's prosperity -- all of these stimulated an influx of population from the Americas and Asia. These developments have permanently changed California's demographic profile. Thus, the percentage of Anglos in the state's population has fallen from more than 75 percent in 1970 to little more than 60 percent today, while the Latino population has approximately doubled in the same period to nearly 25 percent today. Such developments are likely to be more pronounced in the future: for example, the percentage of school children who are Anglos has declined since 1970 from 65 percent to barely 50 percent of the under-14 age group today.

These two themes provide the basis for the claim that at-large arrangements are outdated. Population growth is changing the representative needs of many of California's cities: no longer small, they need the more elaborate and effective representative structure of district systems. At the same time, demographic changes are said to give urgency to involving new ethnic populations in the political process; and this can only be accomplished, it is claimed, by single-member districts, by the impulse they give to new voter participation, and by the incentive offered to ethnic candidates to take a step on to the first rung of the political ladder.

2. Neighborhood Representation

Another variation of the challenge to at-large arrangements arises from a claim that they frustrate the needs of "neighborhood representation." The central argument here is that it is at the local level of government that neighbor-to-neighbor and grassroots politics should have their fullest scope. This view is combined with the claim that city-wide elections, and their associated campaign techniques, tend to submerge the needs of individual communities and frustrate local political organization. Specific points include:

a. Critics complain that councilmembers in at-large systems may come from only one or two city neighborhoods, often the most affluent. This kind of residential clustering, it is claimed, prevents representation of other parts of the city, often those that are least affluent and most in need of city services.

b. Expensive and impersonal media-based and direct mail campaigns (necessary in SDs of 750,000 and ADs of 375,000) are denaturing our politics (and turning people off in droves). So, too, are city-wide campaigns in our swelling cities. Single-member districts at the local level offer the possibility of more personal, genuinely grassroots campaigns.

c. There are few incentives to voter participation in big city-wide campaigns. The relatively inexpensive neighbor-to-neighbor, door-to-door campaigns that are more possible in single-member districts can promote more citizen participation.

d. Single-member districts limit citizen involvement in the policy process. Many an ordinary citizen is too shy ever to testify before the city council enthroned en banc at city hall; it is very much easier to walk across a few streets to talk to a neighbor, the councilmember.

e. Many groups (some ethnic minorities are good examples) have long been shuffled to one side in local politics; others (commuting newcomers and young families in burgeoning suburbs, perhaps) have not yet found their feet in local politics. For both, the single-member district (with its emphasis on local candidacies and door-to-door campaigning) offers the best hope of inclusion. For both kinds of groups, too, the relatively inexpensive campaigns of single-member districts offer a better chance of home-grown candidacies.

II. ARGUMENTS IN DEFENSE OF AT-LARGE ELECTIONS

As the challenges have mounted to California's traditional form of municipal representation, a case for the defense has also begun to emerge. The principal arguments are summarized below.

A. Discrimination Against Minorities?

The defense here takes a number of forms:

*California's at-large electoral arrangements (unlike some multi-member districts and other racially motivated gerrymanders of the Southern states and some

Eastern cities) were not designed to disenfranchise minorities. Their purpose was to prevent the corrupt, ward-based politics of partisan city machines. Thus, attempts to reason by analogy to Southern-style discrimination are very wide of the mark in California.

*Minority candidates have often been elected in California cities in at-large elections. The crucial determinant of the success of minority candidates is not the existence of single-member districts, but rather the effectiveness of their political organization and the vigor and appeal of their campaigns.

*To single out at-large elections as obstacles to minority representation is to neglect other features of electoral structure that may be much more influential: for example, staggered terms, non-partisan offices, off-year elections, majority vote requirements, and the numbers of councilmanic districts.

*To seize upon single-member districting as a panacea for minority representation is to ignore the corrupt concomitant of so many district systems -- namely the gerrymander. Minorities, it is emphasized, have more to fear from the manipulation of districts lines than from at-large elections.

*Only those minorities that are geographically isolated -- in barrios or ghettos -- are likely to benefit from single-member districting. Minorities that are dispersed in the general population are more likely to achieve representation in at-large systems. This point is given further emphasis by reference to the processes of assimilation and dispersal that now seem to be underway among the Latino population.

*There is no consistent empirical evidence to show that minority candidates are more often elected in single-member district systems. Indeed, most California school boards elect at-large, and it is in elections to school boards that minority candidates have been most successful.

*To the extent that at-large elections do favor majorities, it could be that minorities will come to regret their drive for single-member districts. After all, ethnic minorities seem destined to form a majority of California's population before very much longer: might single-member districts then form the means whereby the new white "minorities" frustrate the new "majority" will?

1. The Pomona and Stockton Cases

Voting rights cases in the City of Pomona and the City of Stockton, decided since Watsonville, have left some observers wondering if the Watsonville case was just a flash in the pan.

a. The Pomona Case.

The initial Pomona case, Romero v. The City of Pomona argued that the city's at-large districting system diluted the ability of black and Hispanic voters to elect candidates of their choosing. The Thornburg decision was handed down after the plaintiffs had made their case in district court. But in granting the defendants' motion for involuntary dismissal, the district Court applied the three Thornburg tests and found "that plaintiffs failed to establish any of the three threshold requirements for proving a violation of Section 2 of the Voting Rights Act: (1) geographical compactness; (2)

minority group cohesion; and (3) bloc voting by the majority." (CV 85-3359 JMI (GX) 10054) In particular, it was opined, "Plaintiffs failed to prove that the black and Hispanic voters of Pomona comprised a politically cohesive group." (CV 85-3359 JMI (GX) 10054) Indeed, exit polls were conducted in the City during the March 1985 City Council primary that revealed that "a majority of black voters supported the white opponents of the Hispanic candidate for City Council District 3, while a majority of Hispanic voters supported the white opponents...of the black candidate for City Council District 2. (Romero, 665 F. Supp. at 858) The Court also determined that none of the seven Senate factors that accompanied the 1982 Section 2 amendment had been used "to discriminate against Hispanic or black voters." (Romero, 665 F. Supp. at 868) In fact, the Court found that the "overall success rate of Hispanic candidates [in Pomona council races] for the period 1965-1985 was 33% compared to a success rate of only 27.7% for white candidates." (Romero, 665 F. Supp. at 860-61)

The plaintiffs appealed on the grounds that Thornburg had changed the ground rules for proving a vote dilution claim under Section 2 (see Appendix 3). Their appeal contained four specific arguments: (1) That they should be allowed to introduce further evidence in light of the Thornburg ruling; (2) they disputed the district court's application of the geographical compactness test; (3) they took exception to "the district court's 'verbatim' and 'wholesale' adoption of defendants' proposed findings of fact;" (CV 85-3359 JMI (GX) 10055) and (4) they took exception to the fact that the district court refused to grant them class certification.

The appeals court, however, agreed with the district court's determination that "Thornburg did not announce such a fundamental, unanticipated or sweeping change in the law as to warrant reopening plaintiff's case." (CV 85-3359 JMI (GX) 10058) According to the opinion of the court, Thornburg "merely explained which of the Senate factors were most relevant in proving a Section 2 violation." (CV 85-3359 JMI (GX) 10058-9) As to the plaintiffs' dispute that the district court misapplied Thornburg's geographical compactness test, the court held that Thornburg "repeatedly makes reference to effective voting majorities, rather than raw population totals as the touchstone for determining geographical compactness." (CV 85-3359 JMI (GX) 10063) In reference to the third argument, the appeals court, having agreed with the district court's findings of a lack of geographic compactness and cohesion, found it unnecessary to address the purported lack of detailed findings concerning the Senate factors. Finally, the appeals court stated that the district "denied class certification because it found that black and Hispanic voters in Pomona lacked commonality of interests, a showing required under Fédéral Rule of Civil Procedure 23 (a)(2)," and that because they affirmed "the district court's dismissal of plaintiffs' case on the merits, the class certification issue is moot." (CV 85-3359 JMI (GX) 10067)

b. The Stockton Decision.

In Stockton, voters had been electing councilmembers from nine districts for a number of years. In 1985, however, voters opted by charter amendment to elect two candidates each from six districts all to later be

elected with the Mayor on a citywide basis. This new system was patterned after the system currently in use in San Diego (but now under challenge from Latino activists). Under the district system, Stockton, a city of 190,000, had three blacks and one Hispanic serving on the Council. Fears that the new at-large system would disadvantage minority candidates led to an immediate challenge to the charter amendment. In June of 1989, the case was thrown out of court on the grounds that it was not strong enough. It is now being appealed to the 9th U.S. Circuit Court of Appeals (which is the same court that ruled against the City of Watsonville, but for the City of Pomona).

B. Protection of "Vested Interests"?

The basic defensive position here is that electoral structures have little provable effect on policy outcomes such as the allocation of resources, zoning and the distribution of city services. Several specific points are made in defense of at-large systems.

1. If an established area of a city, or a particular group, is over represented on the city council, it is up to other areas and other groups to organize and mobilize behind their own candidates. Electoral re-arrangements are unnecessary if there is sufficient citizen interest.

2. To the extent that electoral structure does affect outcomes, the effects of single-member districts are likely to be deleterious. Districts -- like wards in Eastern cities -- can quickly become petty baronies, and the politics of "spoils" can soon develop. In other words, the parochialism of district-based councilmembers may prevent a view of the city's interest as a whole. Moreover, resolution of issues by consensus or fair compromise, which is customary in most cases in at-large systems, can be replaced either by stalemate or by self-interested log-rolling. Disputes and clashes among councilmembers may then replace the consensual style of politics.

3. The available evidence is that service distribution patterns in cities are not affected in any substantive way by changes in electoral structure. Much more significant are features of bureaucratic organization and other aspects of city administration. Thus, if the purpose of the attack on at-large elections is to affect policy outcomes, it is misdirected. Those seeking to change the allocation of city resources or to change other policy outcomes would do better, it is said, to organize politically and prove their influence by established means.

4. Gerrymandering is an ever-present threat in all single-member district systems. In congressional and state legislative districts, incumbent gerrymanders have produced a near death of competition. The same result could occur at the local level. Moreover, gerrymandering against particular groups (wasting their votes by packing or dispersing them) could achieve -- far more securely than by at-large election -- the entrenchment of established interests.

III. LEGISLATIVE REMEDIES

Assemblyman Peter Chacon (D. San Diego), Chairman of the Assembly Elections and Reapportionment Committee, introduced legislation in 1987 which would have required election of California school boards by trustee area (AB 2191) and election of city councils in cities with populations of 25,000+ by council district (AB 2190). AB 2190

never made it out of Chacon's committee. AB 2191 passed the Assembly but stalled in the Senate Elections Committee.

In the current session, Mr. Chacon introduced ACR 35 (see Appendix 4) which would require the formation of a legislative task force on district elections for the purpose of discussing the implications of the Watsonville case. This bill went to the inactive file on September 12, 1989. He also introduced AB 2 (see Appendix 4) which requires the State's 12 largest school districts (those with a pupil enrollment of 20,000 or more) to move from at-large systems to district elections by 1992. Amended in the Senate to stipulate "that at least 21% of a school district's student population must be members of an ethnic minority group before the school district would be required to elect their school board members from single-member districts," this bill passed the Senate on September 12 and the Assembly on September 14, 1989. It was, however, vetoed by Governor Deukmejian on September 29, 1989.

Another Chacon bill, AB 343 (see Appendix 4) would extend to the voters the authority now held only by the County Committee on school district organization "to establish, rearrange, or abolish trustee areas, to increase or decrease the number of governing board members, or to adopt one of specified alternative methods of electing board members." AB 343 stalled in Committee in August 1989 and was never reconsidered.

The State of New Mexico passed legislation similar to the Chacon legislation in order to prevent the endless rounds of litigation that typically accompany the move from at-large to single-member distrct systems at the local level.

IV. CONCLUSION

Evidently, the dispute between proponents of at-large and single-member district systems will not be reconciled easily. Yet, much is at stake here and some clearer, less controverted view of the issues is urgently needed.

If there is little representational gain from single-member districts, as the defenders of at-large elections claim, minorities could well be wasting much-needed political and organizational resources in a fruitless or even self-defeating campaign. Certainly, reliance on legal challenges to electoral structures could divert attention from urgent tasks of registration, candidate recruitment, improved campaign technology and other forms of political mobilization.

On the other hand, if at-large elections are, indeed, a serious obstacle to minority representation, California's ongoing demographic explosion makes some corrective remedy a matter of the greatest public importance. Political participation, inter-racial and civic harmony, effective policy development -- all could falter or stall without more involvement of minorities in the government of our rapidly changing cities.

Similarly, it is a matter of considerable public interest to know whether, in fact, single-member districts can contribute to some better integration into civic life of California's many newcomer groups -- not only ethnic minorities but the proliferating new suburbanites in areas such as the Inland Empire and other rapid-growth communities. Will single-member districts give greater incentives to participation in local campaigns, to the promotion of candidacies, and the use of door-to-door techniques of canvassing? Or could the movement to single-member districts fail, as have so many other reforms, to produce its promised gains and realize, instead, some unforeseen and unwelcome results?

Fortunately, several of these uncertainties can be lessened by empirical research. The select bibliography that follows includes a number of scholarly articles that bear on questions we have only briefly raised. Over the next two years, also, the Rose Institute hopes to focus further research in this area.

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Armenta v. City of Salinas, Civ. Act. No. C-88-20567 WAI (N.D. Cal. 1988)

Albert Carrillo v. Whitter Union High School District, 2d Civil No. 67858 (LASC No. C-311912)

Romero v. City of Pomona, Civ. Act. No. CV 85-3359 JMI (Gx) (1989)

APPENDIX 1

October 1989

COUNCIL ELECTIONS*

Cities in California Electing Council Members by Districts/Wards

Charter

Bakersfield
Berkeley
Downey - 1 councilmember elected at-large
Fresno
Inglewood
Long Beach
Los Angeles
Oakland - 1 councilmember elected at-large
Pasadena
Redondo Beach
Riverside
Sacramento
Salinas
San Bernardino
San Jose
Seal Beach
Watsonville

General Law

Bradbury
Rancho Mirage
Ripon
Moreno Valley

Cities in California Nominating Council Members from Districts/Wards but Electing Them At-Large

Charter

Alhambra
Compton
Eureka
Newport Beach
Pomona
San Diego - primary election by district
San Leandro
Santa Ana
Stockton

General Law

Woodside

*Prepared with the assistance of the League of California Cities.

APPENDIX 2

478 U.S. 30, 92 L.Ed.2d 25

Lacy H. THORNBURG, et al., Appellants

v.

Ralph GINGLES et al.

No. 83-1968.

Argued Dec. 4, 1985.

Decided June 30, 1986.

Action was brought challenging use of multimember districts in North Carolina legislative apportionment. The United States District Court for the Eastern District of North Carolina, 590 F.Supp. 345, found the plan to violate the Voting Rights Act and state officials appealed. The Supreme Court, Justice Brennan, J., held that: (1) plaintiffs claiming impermissive vote dilution must demonstrate that voting devices resulted in unequal access to electoral process; (2) use of multimember districts does not impede the ability of minority voters to elect representatives of their choice unless a bloc voting majority will usually be able to defeat candidates supported by a politically cohesive, geographically insular minority; (3) District Court applied proper standard in determining whether there was racial polarization and voting; (4) legal concept of racially polarized voting incorporates neither causation nor intent; (5) some electoral success by minority group does not foreclose successful section 2 claim; (6) finding of impermissible dilution was supported by the evidence; but (7) claim of dilution with respect to one multimember district was defeated by evidence that last six elections resulted in proportional representation for black residents.

Affirmed in part and reversed in part.

Justice White filed a concurring opinion.

Justice O'Connor filed an opinion concurring in the judgment in which Chief Justice Burger, Justice Powell, and Justice Rehnquist joined.

Justice Stevens filed an opinion concurring in part and dissenting in part in which Justice Marshall and Justice Blackmun joined.

1. Elections ⟹12(2)

Subsection 2(a) of the Voting Rights Act prohibits all state and political subdivisions from imposing any voting qualifications or prerequisites to voting or any standards, practices, or procedures which result in the denial or abridgment of the right to vote of any citizen who is a member of a protected class of racial and language minorities. Voting Rights Act of 1965, § 2(a), as amended, 42 U.S.C.A. § 1973(a).

2. Elections ⟹12(2)

Section 2 of the Voting Rights Act prohibits all forms of voting discrimination, not just vote dilution. Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

3. Elections ⟹12(9)

Electoral devices such as at-large elections may not be considered per se violative of section 2 of the Voting Rights Act; parties challenging electoral devices must demonstrate that, under the totality of the circumstances, the devices result in unequal access to the electoral process. Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

4. Elections ⟹12(3)

The conjunction of an allegedly dilutive electoral mechanism and the lack of proportional representation of a minority does not, alone, establish a violation of section 2 of the Voting Rights Act. Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

5. Elections ⟹12(9)

The results test under section 2 of the Voting Rights Act does not assume the existence of racial bloc voting; plaintiffs must prove it. Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

6. Elections ⟹12(3)

Essence of a claim under section 2 of the Voting Rights Act is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives. Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

7. States ⟹27(7)

Factors bearing on challenges under section 2 of the Voting Rights Act to multimember legislative districts are the extent to which minority group members have been elected to public office in the jurisdiction and the extent to which voting in the state or political subdivision is racially polarized; other factors such as the lingering effects of past discrimination, use of appeals to racial bias in election campaigns, and use of electoral devices which enhance the dilutive effects of multimember districts when substantial white bloc voting exists are supportive of, but not essential to, a minority voter's claim of dilution. Voting Rights Act of 1965, § 2, as amended. 42 U.S.C.A. § 1973.

8. Elections ⟹12(7)

Bloc voting majority must be able to usually defeat candidates supported by politically cohesive, geographically insular minority group in order for there to be a showing of vote dilution through the use of multimember districts. Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

9. Elections ⟹12(7)

If minority group claiming dilution of its vote in violation of section 2 of the Voting Rights Act through use of multimember district is not sufficiently large and geographically compact to constitute a majority in a single-member district, the multimember form of the district cannot be responsible for minority voters' inability to elect their candidates. Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

10. Elections ⟹12(7)

If minority group claiming dilution of its voting strength in violation of section 2 of the Voting Rights Act through use of multimember district is not able to show that it is politically cohesive, it cannot be said that the selection of a multimember electoral structure thwarts distinctive minority group interests. Voting Rights Act of 1965. § 2. as amended. 42 U.S.C.A. § 1973.

11. Elections ⟹12(7)

If minority voting group claiming dilution of its voting strength in violation of section 2 of the Voting Rights Act through use of multimember districts is not able to demonstrate that the white majority votes sufficiently as a bloc to enable it to usually defeat the minority's preferred candidate, it has not shown that the multimember district impedes the minority group's ability to elect its chosen representatives. Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

12. Elections ⟹12(7)

Question whether multimember district experiences legally significant racially polarized voting, so that use of multimember district dilutes minority voting strength in violation of section 2, requires discrete inquiries into minority and white voting practices, showing that significant number of minority group members usually vote for the same candidates is one way of proving the political cohesiveness necessary to a vote dilution claim; white bloc vote that normally will defeat combined strength of minority plus white crossover votes rises to the level of legally significant white voting bloc. Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

13. Elections ⟹12(7)

Pattern of racial bloc voting which extends over period of time is more probative of a claim that use of multimember district impermissibly dilutes minority voting strength in violation of section 2 than are the results of a single election. Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

14. Elections ⟹12(7)

In a district where elections are shown to usually be polarized along racial lines, fact that facially polarized voting is not present in one or few individual elections does not necessarily negate the conclusion that the district experiences legally significant bloc voting so that use of multimember district can be shown to impermissibly dilute minority voting strength in violation

of section 2. Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

15. States ⇐27(10)

Finding of political cohesiveness of black voters and existence of a white voting bloc, supporting claim that use of multimember districts impermissibly diluted black voting strength in violation of section 2, was supported by evidence of black support for black candidates in excess of 70% in both primary and general elections, that an average of 81.7% of white voters would not vote for any black candidate in the primary elections, and that two-thirds of the white voters would not vote for a black candidate even after he won the Democratic primary. Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

16. States ⇐27(10)

District court's approach which tested election data from three years in each multimember district and revealed that blacks strongly supported black candidates while, to the usual detriment of black candidates, whites rarely did support black candidates satisfactorily addressed each facet of the proper legal standard for determining claim of vote dilution under section 2. Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

17. Elections ⇐12(1)

For purposes of section 2, the legal concept of racially polarized voting incorporates neither causation nor intent but, rather, simply means that the race of voters correlates with the selection of certain candidates; it refers to the situation where different races or minority language groups vote in blocs for different candidates. (Per Justice Brennan, with three Justices concurring and one Justice concurring in part and concurring in the judgment.) Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

18. Elections ⇐12(7)

It is the difference between the choices made by blacks and whites, and not the reason for that difference, which results in blacks having less opportunity than whites to elect their preferred representatives when there is dilution of black vote in violation of section 2 through use of multimember districts. (Per Justice Brennan, with three Justices concurring and one Justice concurring in part and concurring in the judgment.) Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

19. Elections ⇐12(7)

Fact that race of voter and race of candidate is often correlated is not directly pertinent to inquiry as to whether there has been impermissible dilution of minority vote through use of multimember districts in violation of section 2; it is the status of the candidate as the chosen representative of a particular racial group, not the race of the candidate, that is important. (Per Justice Brennan, with three Justices concurring and one Justice concurring in part and concurring in the judgment.) Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

20. Elections ⇐12(3)

Concept of racially polarized voting as it refers to dilution of minority group voting strength through use of multimember districts in violation of section 2 does not refer only to white bloc voting which is caused by white voters' racial hostility toward the black candidate. (Per Justice Brennan, with three Justices concurring and one Justice concurring in part and concurring in the judgment.) Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

21. Elections ⇐12(9)

Minority voters claiming vote dilution in violation of section 2 through use of electoral devices such as multimember districts need not prove causation or intent in order to prove a prima facie case of racial bloc voting and defendants may not rebut a prima facie case with evidence of causation or intent. (Per Justice Brennan, with three Justices concurring and one Justice concurring in part and concurring in the judgment.) Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

22. Elections ⇐12(3)

Proof that some minority candidates have been elected does not foreclose a claim under section 2 for impermissible dilution of minority voting strength. (Per Justice Brennan, with three Justices concurring and one Justice concurring in part and concurring in the judgment.) Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

23. States ⇐27(10)

District court could take account of circumstances surrounding recent black electoral success in determining its significance to claim of impermissible dilution of minority voting strength and could properly notice fact that electoral success increased after filing of lawsuit challenging multimember districts on the grounds of vote dilution. Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

24. States ⇐27(7)

Persistent proportional representation in particular multimember district over the last six elections showed that multimember district did not impermissibly dilute black voting strength in violation of section 2, in the absence of any explanation for success of black candidates in three of the six elections. (Per Justice Brennan with one Justice concurring and four Justices concurring in part and concurring in the judgment.) Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

25. Federal Courts ⇐855

Clearly erroneous test of Rule 52(a) is appropriate standard for appellate review of a finding of impermissible vote dilution. Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973; Fed.Rules Civ. Proc.Rule 52(a), 28 U.S.C.A.

26. States ⇐27(10)

Finding of impermissible dilution of black voting strength through use of multimember legislative districts was supported by evidence of racially polarized voting, legacy of official discrimination in voting matters, education, housing, employment, and health services, and persistence of campaign appeals to racial prejudice. Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

Syllabus *

In 1982, the North Carolina General Assembly enacted a legislative redistricting plan for the State's Senate and House of Representatives. Appellees, black citizens of North Carolina who are registered to vote, brought suit in Federal District Court, challenging one single-member district and six multimember districts on the ground, *inter alia*, that the redistricting plan impaired black citizens' ability to elect representatives of their choice in violation of § 2 of the Voting Rights Act of 1965. After appellees brought suit, but before trial, § 2 was amended, largely in response to *Mobile v. Bolden*, 446 U.S. 55, 100 S.Ct. 1490, 64 L.Ed.2d 47, to make clear that a violation of § 2 could be proved by showing discriminatory effect alone, rather than having to show a discriminatory purpose, and to establish as the relevant legal standard the "results test." Section 2(a), as amended, prohibits a State or political subdivision from imposing any voting qualifications or prerequisites to voting, or any standards, practices, or procedures that result in the denial or abridgment of the right of any citizen to vote on account of race or color. Section 2(b), as amended, provides that § 2(a) is violated where the "totality of circumstances" reveals that "the political processes leading to nomination or election ... are not equally open to participation by members of a [protected class] ... in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice," and that the extent to which members of a protected class have been elected to office is one circumstance that may be considered. The District Court applied the "totality of circumstances" test set forth in § 2(b) and held that the redistricting plan violated § 2(a) because it resulted in the dilution of black citizens' votes in all of the

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

disputed districts. Appellants, the Attorney General of North Carolina and others, took a direct appeal to this Court with respect to five of the multimember districts.

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

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

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

⊥31 1. Minority voters who contend that the multimember form of districting violates § 2 must prove that the use of a multimember electoral structure operates to minimize or cancel out their ability to elect their preferred candidates. While many or all of the factors listed in the Senate Report may be relevant to a claim of vote dilution through submergence in multimember districts, unless there is a conjunction of the following circumstances, the use of multimember districts generally will not impede the ability of minority voters to elect representatives of their choice. Stated succinctly, a bloc voting majority must *usually* be able to defeat candidates supported by a politically cohesive, geographically insular minority group. The relevance of the existence of racial bloc voting to a vote dilution claim is twofold: to ascertain whether minority group members constitute a politically cohesive unit and to determine whether whites vote sufficiently as a bloc usually to defeat the minority's preferred candidate. Thus, the question whether a given district experiences legally significant racial bloc voting requires discrete inquiries into minority and white voting practices. A showing that a significant number of minority group members usually vote for the same candidates is one way of proving the political cohesiveness necessary to a vote dilution claim, and consequently establishes minority bloc voting within the meaning of § 2. And, in general, a white bloc vote that normally will defeat the combined strength of minority support plus white "crossover" votes rises to the level of legally significant white bloc voting. Because loss of political power through vote dilution is distinct from the mere inability to win a particular election, a pattern of racial bloc voting that extends over a period of time is more probative of a claim that a district experiences significant polarization than are the results of a single election. In a district where elections are shown usually to be polarized, the fact that racially polarized voting is not present in one election or a few elections does not necessarily negate the conclusion that the district experiences legally significant bloc voting. Furthermore, the success of a minority candidate in a particular election does not necessarily prove that the district did not experience polarized voting in that election. Here, the District Court's approach, which tested data derived from three election years in each district in question, and which revealed that blacks strongly supported black candidates, while, to the black candidates' usual detriment, whites rarely did, satisfactorily addresses each facet of the proper standard for legally significant racial bloc voting. Pp. 2767-2772.

2. The language of § 2 and its legislative history plainly demonstrate that proof that some minority candidates have been elected does not foreclose a § 2 claim. Thus, the District Court did not err, as a matter of law, in refusing to treat the fact that some black candidates have ⊥32 succeeded as dispositive of appellees' § 2 claims. Where multimember districting generally works to dilute the minority vote, it cannot be defended on the ground that it sporadically and serendipitously benefits minority voters. Pp. 2778-2780.

3. The clearly-erroneous test of Federal Rule of Civil Procedure 52(a) is the appropriate standard for appellate review of ultimate findings of vote dilution. As both amended § 2 and its legislative history make clear, in evaluating a statutory claim of vote dilution through districting, the trial court is to consider the "totality of the circumstances" and to determine, based upon a practical evaluation of the past and present realities, whether the political process is equally open to minority voters. In this case, the District Court carefully considered the totality of the circumstances and found that in each district racially polarized voting; the legacy of official discrimination in voting matters, education, housing, employment, and health services; and the persistence of campaign appeals to racial prejudice acted in concert with the multimember districting scheme to impair the ability of geographically insular and politically cohesive groups of black voters to participate equally in the political process and to elect candidates of their choice. Pp. 2780-2781.

Justice BRENNAN, joined by Justice MARSHALL, Justice BLACKMUN, and Justice STEVENS, concluded in Part III-C that for purposes of § 2, the legal concept of racially polarized voting, as it relates to claims of vote dilution—that is, when it is used to prove that the minority group is politically cohesive and that white voters will usually be able to defeat the minority's preferred candidates—refers only to the existence of a correlation between the race of voters and the selection of certain candidates. Plaintiffs need not prove causation or intent in order to prove a prima facie case of racial bloc voting, and defendants may not rebut that case with evidence of causation or intent. Pp. 2772-2778.

Justice BRENNAN, joined by Justice WHITE, concluded in Part IV-B, that the District Court erred, as a matter of law, in ignoring the significance of the sustained success black voters have experienced in House District 23. The persistent proportional representation for black residents in that district in the last six elections is inconsistent with appellees' allegation that black voters' ability in that district to elect representatives of their choice is not equal to that enjoyed by the white majority. P. 2780.

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

1. Insofar as statistical evidence of divergent racial voting patterns is admitted solely to establish that the minority group is politically cohesive and to assess its prospects for electoral success, such a showing cannot be rebutted by evidence that the divergent voting patterns may ⊥34 be explained by causes other than race. However, evidence of the reasons for divergent voting patterns can in some circumstances be relevant to the overall vote dilution inquiry, and there is no rule against consideration of all evidence concerning voting preferences other than statistical evidence of racial voting patterns. Pp. 2792-2793.

2. Consistent and sustained success by candidates preferred by minority voters is presumptively inconsistent with the existence of a § 2 violation. The District Court erred in assessing the extent of black electoral success in House District 39 and Senate District 22, as well as in House District 23. Except in House District 23, despite these errors the District Court's ultimate conclusion of vote dilution is not clearly erroneous. But in House District 23 appellees failed to establish a violation of § 2. Pp. 2793-2795.

BRENNAN, J., announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II, III-A, III-B, IV-A, and V, in which WHITE, MARSHALL, BLACKMUN, and STEVENS, JJ., joined, an opinion with respect to Part III-C, in which MARSHALL, BLACKMUN, and STEVENS, JJ., joined, and an opinion with respect to Part IV-B, in which WHITE, J., joined. WHITE, J., filed a concurring opinion, *post*, p. 2783. O'CONNOR, J., filed an opinion concurring in the judgment, in which BURGER, C.J., and POWELL and REHNQUIST, JJ., joined, *post*, p. 2783. STEVENS, J., filed an opinion concurring in part and dissenting in part, in which MARSHALL and BLACKMUN, JJ., joined, *post*, p. 2795.

Lacy H. Thornburg, Raleigh, N.C., for appellants.

Sol. Gen. Charles Fried for the United States, as amicus curiae, in support of the appellants, by special leave of Court.

Julius L. Chambers, Charlotte, N.C., for appellees.

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

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

I

BACKGROUND

In April 1982, the North Carolina General Assembly enacted a legislative redistricting plan for the State's Senate and House of Representatives. Appellees, black citizens of North Carolina who are registered to vote, challenged seven districts, one single-member[1] and six multimember[2] districts, alleging that the redistricting scheme impaired black citizens' ability to elect representatives of their choice in violation of the Fourteenth and Fifteenth Amendments to the United States Constitution and of § 2 of the Voting Rights Act.[3]

After appellees brought suit, but before trial, Congress amended § 2. The amendment was largely a response to this Court's plurality opinion in *Mobile v. Bolden*, 446 U.S. 55, 100 S.Ct. 1490, 64 L.Ed.2d 47 (1980), which had declared that, in order to establish a violation either of § 2 or of the Fourteenth or Fifteenth Amendments, minority voters must prove that a contested electoral mechanism was intentionally adopted or maintained by state officials for a discriminatory purpose. Congress substantially revised § 2 to make clear that a violation could be proved by showing discriminatory effect alone and to establish as the relevant legal standard the "results test," applied by this Court in *White v. Regester*, 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314 (1973), and by other federal courts before *Bolden*, *supra*. S.Rep. No. 97–417, 97th Cong.2nd Sess. 28 (1982), U.S. Code Cong. & Admin.News 1982, pp. 177, 205 (hereinafter S.Rep.).

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

"(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), as provided in subsection (b).

"(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population." Codified at 42 U.S.C. § 1973.

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

"1. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;

"2. the extent to which voting in the elections of the state or political subdivision is racially polarized;

"3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;

"4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;

"5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;

"6. whether political campaigns have been characterized by overt or subtle racial appeals;

"7. the extent to which members of the minority group have been elected to public office in the jurisdiction.

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

"whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group.

"whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous." S.Rep., at 28–29, U.S.Code Cong. & Admin.News 1982, pp. 206–207.

The District Court applied the "totality of the circumstances" test set forth in § 2(b) to appellees' statutory claim, and, relying principally on the factors outlined in the Senate Report, held that the redistricting scheme violated § 2 because it resulted in the dilution of black citizens' votes in all seven disputed districts. In light of this conclusion, the court did not reach appellees' constitutional claims. *Gingles v. Edmisten*, 590 F.Supp. 345 (EDNC 1984).

Preliminarily, the court found that black citizens constituted a distinct population and registered-voter minority in each chal-

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

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

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

4. These factors were derived from the analytical framework of *White v. Regester*, 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314 (1973), as refined and developed by the lower courts, in particular by the Fifth Circuit in *Zimmer v. McKeithen*, 485 F.2d 1297 (1973) (en banc), aff'd *sub nom. East Carroll Parish School Board v. Marshall*, 424 U.S. 636, 96 S.Ct. 1083, 47 L.Ed.2d 296 (1976) (*per curiam*). S.Rep., at 28, n. 113.

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

First, the court found that North Carolina had officially discriminated against its black citizens with respect to their exercise of the voting franchise from approximately 1900 to 1970 by employing at different times a poll tax, a literacy test, a prohibition against bullet (single-shot) voting[5] ⊥39 and designated seat plans[6] for multimember districts. The court observed that even after the removal of direct barriers to black voter registration, such as the poll tax and literacy test, black voter registration remained relatively depressed; in 1982 only 52.7% of age-qualified blacks statewide were registered to vote, whereas 66.7% of whites were registered. The District Court found these statewide depressed levels of black voter registration to be present in all of the disputed districts and to be traceable, at least in part, to the historical pattern of statewide official discrimination.

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

Third, the court considered other voting procedures that may operate to lessen the opportunity of black voters to elect candidates of their choice. It noted that North Carolina has a majority vote requirement for primary elections and, while acknowledging that no black candidate for election to the State General Assembly had failed to win solely because of this requirement, the court concluded that it nonetheless presents a continuing practical impediment to the opportunity of black voting minorities to elect candidates of their choice. The court also remarked on the fact that North Carolina does not have a subdistrict residency requirement for members of the General Assembly elected from multimember ⊥40 districts, a requirement which the court found could offset to some extent the disadvantages minority voters often experience in multimember districts.

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

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

⊥41 With respect to the success in this century of black candidates in the contested districts, see also Appendix B to opinion, *post*, p. 2783, the court found that only one black had been elected to House District 36—after this lawsuit began. Similarly, only one black had served in the Senate from District 22, from 1975–1980. Before the 1982 election, a black was elected only twice to the House from District 39 (part of Forsyth County); in the 1982 contest two blacks were elected. Since 1973 a black citizen had been elected each 2-year term to the House from District 23 (Durham County), but no black had been elected to the Senate from Durham County. In House District 21 (Wake County), a black had been elected twice to the House, and another black served two terms in the State Senate. No black had ever been elected to the House or Senate from the area covered by House District No. 8, and no black person had ever been elected to the Senate from the area covered by Senate District No. 2.

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

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

⊥42 Based on these findings, the court declared the contested portions of the 1982 redistricting plan violative of § 2 and enjoined appellants from conducting elections pursuant to those portions of the plan. Appellants, the Attorney General of North Carolina and others, took a direct appeal to

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

"'Consider [a] town of 600 whites and 400 blacks with an at-large election to choose four council members. Each voter is able to cast four votes. Suppose there are eight white candidates, with the votes of the whites split among them approximately equally, and one black candidate, with all the blacks voting for him and no one else. The result is that each white candidate receives about 300 votes and the black candidate receives 400 votes. The black has probably won a seat. This technique is called single-shot voting. Single-shot voting enables a minority group to win some at-large seats if it concentrates its vote behind a limited number of candidates and if the vote of the majority is divided among a number of candidates.'" *City of Rome v. United States*, 446 U.S. 156, 184, n. 19, 100 S.Ct. 1548, 1565, n. 19, 64 L.Ed.2d 119 (1980), quoting United States Commission on Civil Rights, The Voting Rights Act: Ten Years After, pp. 206–207 (1975).

6. Designated (or numbered) seat schemes require a candidate for election in multimember districts to run for specific seats, and can, under certain circumstances, frustrate bullet voting. See, *e.g., City of Rome, supra*, at 185, n. 21, 100 S.Ct., at 1566, n. 21.

this Court, pursuant to 28 U.S.C. § 1253, with respect to five of the multimember districts—House Districts 21, 23, 36, and 39, and Senate District 22. Appellants argue, first, that the District Court utilized a legally incorrect standard in determining whether the contested districts exhibit racial bloc voting to an extent that is cognizable under § 2. Second, they contend that the court used an incorrect definition of racially polarized voting and thus erroneously relied on statistical evidence that was not probative of polarized voting. Third, they maintain that the court assigned the wrong weight to evidence of some black candidates' electoral success. Finally, they argue that the trial court erred in concluding that these multimember districts result in black citizens having less opportunity than their white counterparts to participate in the political process and to elect representatives of their choice. We noted probable jurisdiction, 471 U.S. 1064, 105 S.Ct. 2137, 85 L.Ed.2d 495 (1985), and now affirm with respect to all of the districts except House District 23. With regard to District 23, the judgment of the District Court is reversed.

II

SECTION 2 AND VOTE DILUTION THROUGH USE OF MULTIMEMBER DISTRICTS

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

⊥43A

SECTION 2 AND ITS LEGISLATIVE HISTORY

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

The Senate Report which accompanied the 1982 amendments elaborates on the nature of § 2 violations and on the proof required to establish these violations.[7] First and foremost, the Report dispositively rejects the position of the plurality in *Mobile v. Bolden*, 446 U.S. 55, 100 S.Ct. 1490, 64 L.Ed.2d 47 (1980), which ⊥44required proof that the contested electoral practice or mechanism was adopted or maintained with the intent to discriminate against mi-

7. The United States urges this Court to give little weight to the Senate Report, arguing that it represents a compromise among conflicting "factions," and thus is somehow less authoritative than most Committee Reports. Brief for United States as *Amicus Curiae* 8, n. 12, 24, n. 49. We are not persuaded that the legislative history of amended § 2 contains anything to should be accorded little weight. We have repeatedly recognized that the authoritative source for legislative intent lies in the Committee Reports on the bill. See, *e.g., Garcia v. United States*, 469 U.S. 70, 76, and n. 3, 105 S.Ct. 479, 483, and n. 3, 83 L.Ed.2d 472 (1984); *Zuber v. Allen*, 396 U.S. 168, 186, 90 S.Ct. 314, 324, 24 L.Ed.2d 345 (1969).

nority voters.[8] See, *e.g.*, S.Rep., at 2, 15–16, 27. The intent test was repudiated for three principal reasons—it is "unnecessarily divisive because it involves charges of racism on the part of individual officials or entire communities," it places an "inordinately difficult" burden of proof on plaintiffs, and it "asks the wrong question." *Id.*, at 36, U.S.Code Cong. & Admin.News 1982, p. 214. The "right" question, as the Report emphasizes repeatedly, is whether "as a result of the challenged practice or structure plaintiffs do not have an equal opportunity to participate in the political processes and to elect candidates of their choice."[9] *Id.*, at 28, U.S.Code Cong. & Admin.News 1982, p. 206. See also *id.*, at 2, 27, 29, n. 118, 36.

[2] In order to answer this question, a court must assess the impact of the contested structure or practice on minority electoral opportunities "on the basis of objective factors." *Id.*, at 27, U.S.Code Cong. & Admin.News 1982, p. 205. The Senate Report specifies factors which typically may be relevant to a § 2 claim: the history of voting-related discrimination in the State or political subdivision; the extent to which voting in the elections of the State or political ⊥45subdivision is racially polarized; the extent to which the State or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority vote requirements, and prohibitions against bullet voting; the exclusion of members of the minority group from candidate slating processes; the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process; the use of overt or subtle racial appeals in political campaigns; and the extent to which members of the minority group have been elected to public office in the jurisdiction. *Id.*, at 28–29; see also *supra*, at 2759. The Report notes also that evidence demonstrating that elected officials are unresponsive to the particularized needs of the members of the minority group and that the policy underlying the State's or the political subdivision's use of the contested practice or structure is tenuous may have probative value. *Id.*, at 29. The Report stresses, however, that this list of typical factors is neither comprehensive nor exclusive. While the enumerated factors will often be pertinent to certain types of § 2 violations, particularly to vote dilution claims,[10] other factors may also be relevant and may be considered. *Id.*, at 29–30. Furthermore, the Senate Committee observed that "there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other." *Id.*, at 29, U.S.Code Cong. & Admin.News 1982, p. 207. Rath-

8. The Senate Report states that amended § 2 was designed to restore the "results test"—the legal standard that governed voting discrimination cases prior to our decision in *Mobile v. Bolden*, 446 U.S. 55, 100 S.Ct. 1490, 64 L.Ed.2d 47 (1980). S.Rep., at 15–16. The Report notes that in pre-*Bolden* cases such as *White v. Regester*, 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314 (1973), and *Zimmer v. McKeithen*, 485 F.2d 1297 (CA5 1973), plaintiffs could prevail by showing that, under the totality of the circumstances, a challenged election law or procedure had the effect of denying a protected minority an equal chance to participate in the electoral process. Under the "results test," plaintiffs are not required to demonstrate that the challenged electoral law or structure was designed or maintained for a discriminatory purpose. S.Rep., at 16, U.S.Code Cong. & Admin.News 1982, p. 193.

9. The Senate Committee found that "voting practices and procedures that have discriminatory results perpetuate the effects of past purposeful discrimination." *Id.*, at 40, U.S.Code Cong. & Admin.News 1982, p. 218 (footnote omitted). As the Senate Report notes, the purpose of the Voting Rights Act was "'not only to correct an active history of discrimination, the denying to Negroes of the right to register and vote, but also to deal with the accumulation of discrimination.'" *Id.*, at 5, U.S.Code Cong. & Admin.News 1982, p. 182 (quoting 111 Cong. Rec. 8295 (1965) (remarks of Sen. Javits)).

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

er, the Committee determined that "the question whether the political processes are 'equally open' depends upon a searching practical evaluation of the 'past and present reality,'" *id.*, at 30, U.S.Code Cong. & Admin.News 1982, p. 208 (footnote omitted), and on a "functional" view of the political process. *Id.*, at 30, n. 120, U.S. Code Cong. & Admin.News 1982, p. 208.

[3–5] ⊥46 Although the Senate Report espouses a flexible, fact-intensive test for § 2 violations, it limits the circumstances under which § 2 violations may be proved in three ways. First, electoral devices, such as at-large elections, may not be considered *per se* violative of § 2. Plaintiffs must demonstrate that, under the totality of the circumstances, the devices result in unequal access to the electoral process. *Id.*, at 16. Second, the conjunction of an allegedly dilutive electoral mechanism and the lack of proportional representation alone does not establish a violation. *Ibid.* Third, the results test does not assume the existence of racial bloc voting; plaintiffs must prove it. *Id.*, at 33.

B

VOTE DILUTION THROUGH THE USE OF MULTIMEMBER DISTRICTS

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

[6] ⊥47 The essence of a § 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives. This Court has long recognized that multimember districts and at-large voting schemes may "'operate to minimize or cancel out the voting strength of racial [minorities in] the voting population.'"[13] *Burns v. Richardson*, 384 U.S. ⊥48 73, 88, 86 S.Ct. 1286, 1294, 16 L.Ed.2d 376 (1966) (quoting *Fortson v. Dorsey*, 379 U.S. 433, 439, 85 S.Ct. 498, 501, 13 L.Ed.2d 401 (1965)). See also *Rogers v. Lodge*, 458 U.S. 613, 617, 102 S.Ct. 3272, 3275, 73 L.Ed.2d 1012 (1982); *White v. Regester*, 412 U.S., at 765, 93 S.Ct., at 2339; *Whitcomb v. Chavis*, 403 U.S. 124, 143, 91 S.Ct. 1858, 1869, 29 L.Ed.2d 363 (1971). The theoretical basis for this type of impairment is that where minority and majority voters consistently prefer different candidates, the majority, by virtue of its numerical superiority, will regularly defeat the choices of minority voters.[14] See, *e.g.*, Grofman, Alternatives, in Representation and Redistricting Issues 113–114. Multimember districts and at-large election schemes, however, are not *per se* violative of minority voters' rights. S.Rep., at 16. Cf. *Rogers v. Lodge, supra*, 458 U.S., at 617, 102 S.Ct., at 3275; *Regester, supra*, 412 U.S., at 765, 93 S.Ct., at 2339; *Whitcomb, supra*, 403 U.S., at 142, 91 S.Ct., at 1868. Minority voters who contend that the multimember form of districting violates § 2, must prove that the use of a multimember electoral structure operates to minimize or cancel out their ability to elect their preferred candidates. See, *e.g.*, S.Rep., at 16.

[7–11] While many or all of the factors listed in the Senate Report may be relevant to a claim of vote dilution through submergence in multimember districts, unless there is a conjunction of the following circumstances, the use of multimember districts generally will not impede the ability of minority voters to elect representatives of their choice.[15] Stated succinctly, ⊥49 a

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

12. The claim we address in this opinion is one in which the plaintiffs alleged and attempted to prove that their ability *to elect* the representatives of their choice was impaired by the selection of a multimember electoral structure. We have no occasion to consider whether § 2 permits, and if it does, what standards should pertain to, a claim brought by a minority group, that is not sufficiently large and compact to constitute a majority in a single-member district, alleging that the use of a multimember district impairs its ability *to influence* elections.

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

13. Commentators are in widespread agreement with this conclusion. See, *e.g.*, Berry & Dye, The Discriminatory Effects of At-Large Elections, 7 Fla.St.U.L.Rev. 85 (1979) (hereinafter Berry & Dye); Blacksher & Menefee, From *Reynolds v. Sims* to *City of Mobile v. Bolden*, 34 Hastings L.J. 1 (1982) (hereinafter Blacksher & Menefee); Bonapfel, Minority Challenges to At-Large Elections: The Dilution Problem, 10 Ga.L.Rev. 353 (1976) (hereinafter Bonapfel); Butler, Constitutional and Statutory Challenges to Election Structures: Dilution and the Value of the Right to Vote, 42 La.L.Rev. 851 (1982) (hereinafter Butler); Carpeneti, Legislative Apportionment: Multimember Districts and Fair Representation, 120 U.Pa.L.Rev. 666 (1972) (hereinafter Carpeneti); Davidson & Korbel, At-Large Elections and Minority Group Representation, in Minority Vote Dilution 65; Derfner; B. Grofman, Alternatives to Single-Member Plurality Districts: Legal and Empirical Issues (hereinafter Grofman, Alternatives), in Representation and Redistricting Issues 107 (B. Grofman, R. Lijphart, H. McKay, & H. Scarrow eds., 1982) (hereinafter Representation and Redistricting Issues); Hartman, Racial Vote Dilution and Separation of Powers, 50 Geo.Wash.L.Rev. 689 (1982); Jewell, The Consequences of Single- and Multimember Districting, in Representation and Redistricting Issues 129 (1982) (hereinafter Jewell); Jones, The Impact of Local Election Systems on Political Representation, 11 Urb.Aff.Q. 345 (1976); Karnig, Black Resources and City Council Representation, 41 J.Pol. 134 (1979); Karnig, Black Representation on City Councils, 12 Urb.Aff.Q. 223 (1976); Parker 87–88.

14. Not only does "[v]oting along racial lines" deprive minority voters of their preferred representative in these circumstances, it also "allows those elected to ignore [minority] interests without fear of political consequences," *Rogers v. Lodge*, 458 U.S., at 623, 102 S.Ct., at 3279, leaving the minority effectively unrepresented. See, *e.g.*, Grofman, Should Representatives be Typical of Their Constituents?, in Representation and Redistricting Issues 97; Parker 108.

15. Under a "functional" view of the political process mandated by § 2, S.Rep., at 30, n. 120, U.S.Code Cong. & Admin.News 1982, p. 208, the most important Senate Report factors bearing on § 2 challenges to multimember districts are the "extent to which minority group members have been elected to public office in the jurisdiction" and the "extent to which voting in the elections of the state or political subdivision is racially polarized." *Id.*, 28–29, U.S.Code Cong. & Admin.News 1982, p. 206. If present, the other factors, such as the lingering effects of past discrimination, the use of appeals to racial bias in election campaigns, and the use of electoral devices which enhance the dilutive effects of multimember districts when substantial white bloc voting exists—for example antibullet voting laws and majority vote requirements, are supportive of, but *not essential to*, a minority voter's claim.

In recognizing that some Senate Report factors are more important to multimember district vote dilution claims than others, the Court effectuates the intent of Congress. It is obvious that unless minority group members experience substantial difficulty electing representatives of their choice, they cannot prove that a challenged electoral mechanism impairs their ability "to elect." § 2(b). And, where the contested electoral structure is a multimember district, commentators and courts agree that in the absence of significant white bloc voting it cannot be said that the ability of minority voters to elect their chosen representatives is inferior to that of white voters. See, *e.g.*, *McMillan v. Escambia County, Fla.*, 748 F.2d 1037, 1043 (CA5 1984); *United States v. Marengo County Comm'n*, 731 F.2d 1546, 1566 (CA11), appeal dism'd and cert. denied, 469 U.S. 976, 105 S.Ct. 375, 83 L.Ed.2d 311 (1984); *Nevett v. Sides*, 571 F.2d 209, 223 (CA5 1978), cert. denied, 446 U.S. 951, 100 S.Ct. 2916, 64 L.Ed.2d 807 (1980); *Johnson v. Halifax County*, 594 F.Supp. 161, 170 (EDNC 1984); Blacksher & Menefee; Engstrom & Wildgen 469; Parker 107. Consequently, if difficulty in electing and white bloc voting are not proved, minority voters have not established that the multimember structure interferes with their ability to elect their preferred candidates.

bloc voting majority must *usually* be able to defeat candidates supported by a politically cohesive, geographically insular minority group. Bonapfel 355; Blacksher & Menefee 34; Butler 903; Carpeneti 696–699; Davidson, Minority Vote Dilution: An Overview (hereinafter Davidson), in Minority Vote Dilution 4; Grofman, Alternatives 117. Cf. *Bolden*, 446 U.S., at 105, n. 3, 100 S.Ct., at 1520, n. 3 (MARSHALL, J., dissenting) ("It is obvious ⊥50 that the greater the degree to which the electoral minority is homogeneous and insular and the greater the degree that bloc voting occurs along majority-minority lines, the greater will be the extent to which the minority's voting power is diluted by multimember districting"). These circumstances are necessary preconditions for multimember districts to operate to impair minority voters' ability to elect representatives of their choice for the following reasons. First, the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district.[16] If it is not, as would be the case in a substantially integrated district, the *multi-member form* of the district cannot be responsible for minority voters' inability to elect its candidates.[17] Cf. *Rogers*, 458 ⊥51 U.S., at 616, 102 S.Ct., at 3275. See also, Blacksher & Menefee 51–56, 58; Bonapfel 355; Carpeneti 696; Davidson 4; Jewell 130. Second, the minority group must be able to show that it is politically cohesive. If the minority group is not politically cohesive, it cannot be said that the selection of a multimember electoral structure thwarts distinctive minority group interests. Blacksher & Menefee 51–55, 58–60, and n. 344; Carpeneti 696–697; Davidson 4. Third, the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances, such as the minority candidate running unopposed, see, *infra*, at 2770, and n. 26—usually to defeat the minority's preferred candidate. See, *e.g.*, Blacksher & Menefee 51, 53, 56–57, 60. Cf. *Rogers*, *supra*, at 616–617, 102 S.Ct., at 3274–3275; *Whitcomb*, 403 U.S., at 158–159, 91 S.Ct., at 1877; *McMillan v. Escambia County, Fla.*, 748 F.2d 1037, 1043 (CA5 1984). In establishing this last circumstance, the minority group demonstrates that submergence in a white multimember district impedes its ability to elect its chosen representatives.

Finally, we observe that the usual predictability of the majority's success distinguishes structural dilution from the mere loss of an occasional election. Cf. *Davis v. Bandemer*, 478 U.S. 109, 131–133, 139–140, 106 S.Ct. 2797, 2809–2811, 2813–2814, 92 L.Ed.2d 85 (1986) (opinion of WHITE, J.); *Bolden*, *supra*, 446 U.S., at 111, n. 7, 100 S.Ct., at 1523, n. 7 (MARSHALL, J., dissenting); *Whitcomb*, *supra*, 403 U.S., at 153, 91 S.Ct., at 1874. See also Blacksher & Menefee 57, n. 333; Note, Geometry and Geography: Racial Gerrymandering and the Voting Rights Act, 94 Yale L.J. 189, 200, n. 66 (1984) (hereinafter Note, Geometry and Geography).

⊥52 III

RACIALLY POLARIZED VOTING

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

A

THE DISTRICT COURT'S TREATMENT OF RACIALLY POLARIZED VOTING

The investigation conducted by the District Court into the question of racial bloc voting credited some testimony of lay witnesses, but relied principally on statistical evidence presented by appellees' expert witnesses, in particular that offered by Dr. Bernard Grofman. Dr. Grofman collected and evaluated data from 53 General Assembly primary and general elections involving black candidacies. These elections were held over a period of three different election years in the six originally challenged multimember districts.[19] Dr. Grofman subjected the data to two complementary methods of analysis—extreme case analysis and bivariate ecological ⊥53 regression analysis[20]—in order to determine whether blacks and whites in these districts differed in their voting behavior. These analytic techniques yielded data concerning the voting patterns of the two races, including estimates of the percentages of members of each race who voted for black candidates.

The court's initial consideration of these data took the form of a three-part inquiry: did the data reveal any correlation between

Minority voters may be able to prove that they still suffer social and economic effects of past discrimination, that appeals to racial bias are employed in election campaigns, and that a majority vote is required to win a seat, but they have not demonstrated a substantial inability to elect caused by the use of a multimember district. By recognizing the primacy of the history and extent of minority electoral success and of racial bloc voting, the Court simply requires that § 2 plaintiffs prove their claim before they may be awarded relief.

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

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

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

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

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

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

the race of the voter and the selection of certain candidates; was the revealed correlation statistically significant; and was the difference in black and white voting patterns "substantively significant"? The District Court found that blacks and whites generally preferred different candidates and, on that basis, found voting in the districts to be racially correlated.[21] The court accepted Dr. Grofman's expert opinion that the correlation between the race of the voter and the voter's choice of certain candidates was statistically significant.[22] Finally, adopting Dr. Grofman's terminology, see Tr. 195, the court found that in all but 2 of the 53 elections[23] the degree of racial bloc voting was "so marked as to be substantively significant, in the sense that the results of the individual election would have been different depending upon whether it had been held among only the white voters or only the black voters." 590 F.Supp., at 368.

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

B

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

1

Appellants' Arguments

North Carolina and the United States argue that the test used by the District Court to determine whether voting patterns in the disputed districts are racially polarized to an extent cognizable under § 2 will lead to results that are inconsistent with congressional intent. North Carolina maintains that the court considered legally significant racially polarized voting to occur whenever "less than 50% of the white voters cast a ballot for the black candidate." Brief for Appellants 36. Appellants also argue that racially polarized voting is legally significant only when it always results in the defeat of black candidates. *Id.*, at 39–40.

The United States, on the other hand, isolates a single line in the court's opinion and identifies it as the court's complete test. According to the United States, the District Court adopted a standard under which legally significant racial bloc voting is deemed to exist whenever " 'the results of the individual election would have been different depending upon whether it had been held among only the white voters or only the black voters in the election.' "

21. The court used the term "racial polarization" to describe this correlation. It adopted Dr. Grofman's definition—"racial polarization" exists where there is "a consistent relationship between [the] race of the voter and the way in which the voter votes," Tr. 160, or to put it differently, where "black voters and white voters vote differently." *Id.*, at 203. We, too, adopt this definition of "racial bloc" or "racially polarized" voting. See, *infra*, at 2768–2770.

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

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

Brief for United States as *Amicus Curiae* 29 (quoting 590 F.Supp., at 368). We read the District Court opinion differently.

2

The Standard for Legally Significant Racial Bloc Voting

The Senate Report states that the "extent to which voting in the elections of the state or political subdivision is racially polarized," S.Rep., at 29, U.S.Code Cong. & Admin.News 1982, p. 206, is relevant to a vote dilution claim. Further, courts and commentators agree that racial bloc voting is a key element of a vote dilution claim. See, *e.g.*, *Escambia County, Fla.*, 748 F.2d, at 1043; *United States v. Marengo County Comm'n*, 731 F.2d 1546, 1566 (CA11), appeal dism'd and cert. denied, 469 U.S. 976, 105 S.Ct. 375, 83 L.Ed.2d 311 (1984); *Nevett v. Sides*, 571 F.2d 209, 223 (CA5 1978), cert. denied, 446 U.S. 951, 100 S.Ct. 2916, 64 L.Ed.2d 807 (1980); *Johnson v. Halifax County*, 594 F.Supp. 161, 170 (EDNC 1984); Blacksher & Menefee; Engstrom & Wildgen, 465, 469; Parker 107; Note, Geometry and Geography 199. Because, as we explain below, the extent of bloc voting necessary to demonstrate that a minority's ability to elect its preferred representatives is impaired varies according to several factual circumstances, the degree of bloc voting which constitutes the threshold of legal significance will vary from district to district. Nonetheless, it is possible to state some general principles and we proceed to do so.

[12] The purpose of inquiring into the existence of racially polarized voting is twofold: to ascertain whether minority group members constitute a politically cohesive unit and to determine whether whites vote sufficiently as a bloc usually to defeat the minority's preferred candidates. See *supra*, at 2765–2767. Thus, the question whether a given district experiences legally significant racially polarized voting requires discrete inquiries into minority and white voting practices. A showing that a significant number of minority group members usually vote for the same candidates is one way of proving the political cohesiveness necessary to a vote dilution claim, Blacksher & Menefee 59–60, and n. 344, and, consequently, establishes minority bloc voting within the context of § 2. And, in general, a white bloc vote that normally will defeat the combined strength of minority support plus white "crossover" votes rises to the level of legally significant white bloc voting. *Id.*, at 60. The amount of white bloc voting that can generally "minimize or cancel," S.Rep., at 28, U.S. Code Cong. & Admin.News 1982, p. 205; *Regester*, 412 U.S., at 765, 93 S.Ct., at 2339, black voters' ability to elect representatives of their choice, however, will vary from district to district according to a number of factors, including the nature of the allegedly dilutive electoral mechanism; the presence or absence of other potentially dilutive electoral devices, such as majority vote requirements, designated posts, and prohibitions against bullet voting; the percentage of registered voters in the district who are members of the minority group; the size of the district; and, in multimember districts, the number of seats open and the number of candidates in the field.[24] See, *e.g.*, Butler 874–876; Davidson 5; Jones, The Impact of Local Election Systems on Black Political Representation, 11 Urb.Aff.Q. 345 (1976); United States Commission on Civil Rights, The Voting Rights Act: Unfulfilled Goals 38–41 (1981).

[13, 14] Because loss of political power through vote dilution is distinct from the mere inability to win a particular election, *Whitcomb*, 403 U.S., at 153, 91 S.Ct., at 1874, a pattern of racial bloc voting that extends over a period of time is more probative of a claim that a district experiences legally significant polarization than are the results of a single election.[25] Blacksher & Menefee 61; Note, Geometry and Geogra-

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

25. The number of elections that must be studied in order to determine whether voting is polar-

phy 200, n. 66 ("Racial polarization should be seen as an attribute not of a single election, but rather of a polity viewed over time. The concern is necessarily temporal and the analysis historical because the evil to be avoided is the subordination of minority groups in American politics, not the defeat of individuals in particular electoral contests"). Also for this reason, in a district where elections are shown usually to be polarized, the fact that racially polarized voting is not present in one or a few individual elections does not necessarily negate the conclusion that the district experiences legally significant bloc voting. Furthermore, the success of a minority candidate in a particular election does not necessarily prove that the district did not experience polarized voting in that election; special circumstances, such as the absence of an opponent, incumbency, or the utilization of bullet voting, may explain minority electoral success in a polarized contest.[26]

As must be apparent, the degree of racial bloc voting that is cognizable as an element of a § 2 vote dilution claim will ⊥58vary according to a variety of factual circumstances. Consequently, there is no simple doctrinal test for the existence of legally significant racial bloc voting. However, the foregoing general principles should provide courts with substantial guidance in determining whether evidence that black and white voters generally prefer different candidates rises to the level of legal significance under § 2.

3

Standard Utilized by the District Court

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

[15] The District Court's findings concerning black support for black candidates in the five multimember districts at issue ⊥59here clearly establish the political cohesiveness of black voters. As is apparent from the District Court's tabulated findings, reproduced in Appendix A to opinion, *post*, p. 2782, black voters' support for black candidates was overwhelming in almost every election. In all but 5 of 16 primary elections, black support for black candidates ranged between 71% and 92%; and in the general elections, black support for black Democratic candidates ranged between 87% and 96%.

stances. One important circumstance is the number of elections in which the minority group has sponsored candidates. Where a minority group has never been able to sponsor a candidate, courts must rely on other factors that tend to prove unequal access to the electoral process. Similarly, where a minority group has begun to sponsor candidates just recently, the fact that statistics from only one or a few elections are available for examination does not foreclose a vote dilution claim.

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

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

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

⊥60While the District Court did not state expressly that the percentage of whites who refused to vote for black candidates in the contested districts would, in the usual course of events, result in the defeat of the minority's candidates, that conclusion is apparent both from the court's factual findings and from the rest of its analysis. First, with the exception of House District 23, see *infra*, at 2780, the trial court's findings clearly show that black voters have enjoyed only minimal and sporadic success in electing representatives of their choice. See Appendix B to opinion, *post*, p. 2783. Second, where black candidates won elections, the court closely examined the circumstances of those elections before concluding that the success of these blacks did not negate other evidence, derived from all of the elections studied in each district, that legally significant racially polarized voting exists in each district. For example, the court took account of the benefits incumbency and running essentially unopposed conferred on some of the successful black candidates,[29] as well as of the ⊥61very different order of preference blacks and whites assigned black candidates,[30] in

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

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

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

reaching its conclusion that legally significant racial polarization exists in each district.

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

C

EVIDENCE OF RACIALLY POLARIZED VOTING

1

Appellants' Argument

North Carolina and the United States also contest the evidence upon which the District Court relied in finding that voting patterns in the challenged districts were racially polarized. They argue that the term "racially polarized voting" must, as a matter of law, refer to voting patterns for which the *principal cause* is race. They contend that the District Court utilized a legally incorrect definition of racially polarized voting by relying on bivariate statistical analyses which merely demonstrated a *correlation* between the race of the voter and the level of voter support for certain candidates, but which did not prove that race was the primary determinant of voters' choices. According to appellants and the United States, only multiple regression analysis, which can take account of other variables which might also explain voters' choices, such as "party affiliation, age, religion, income[,] incumbency, education, campaign expenditures," Brief for ⊥ Appellants 42, "media use measured by cost, ... name, identification, or distance that a candidate lived from a particular precinct," Brief for United States as *Amicus Curiae* 30, n. 57, can prove that race was the primary determinant of voter behavior.[31]

[17] Whether appellants and the United States believe that it is the voter's race or the candidate's race that must be the primary determinant of the voter's choice is unclear; indeed, their catalogs of relevant variables suggest both.[32] Age, religion, income, and education seem most relevant to the voter; incumbency, campaign expenditures, name identification, and media use are pertinent to the candidate; and party affiliation could refer both to the voter and the candidate. In either case, we disagree: For purposes of § 2, the legal concept of racially polarized voting incorporates neither causation nor intent. It means simply that the race of voters correlates with the selection of a certain candidate or candidates; that is, it refers to the situation where different races (or minority language groups) vote in blocs for different candidates. Grofman, Migalski, & Noviello 203. As we demonstrate *infra*, appellants' theory of racially polarized voting would thwart the goals Congress sought to achieve when it amended § 2 and would prevent courts from performing the "functional" analysis of the political process, S.Rep., at 30, n. 119, U.S.Code Cong. & Admin.News 1982, p. 208, and the "searching practical evaluation of the 'past ⊥ and present reality,'" *id.*, at 30, U.S.Code Cong. & Admin.News 1982, p. 208 (footnote omitted), mandated by the Senate Report.

2

Causation Irrelevant to Section 2 Inquiry

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

[18] Both § 2 itself and the Senate Report make clear that the critical question in a § 2 claim is whether the use of a contested electoral practice or structure results in members of a protected group having less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. See, *e.g.*, S.Rep., at 2, 27, 28, 29, n. 118, 36. As we explained, *supra*, at 2764–2765, multimember districts may impair the ability of blacks to elect representatives of their choice where blacks vote sufficiently as a bloc as to be able to elect their preferred candidates in a black majority, single-member district and where a white majority votes sufficiently as a bloc usually to defeat the candidates chosen by blacks. It is the *difference* between the choices made by blacks and whites—not the reasons for that difference—that results in blacks having less opportunity than whites to elect their preferred representatives. Consequently, we conclude that under the "results test" of § 2, only the correlation between race of voter and selection of certain candidates, not the causes of the correlation, matters.

The irrelevance to a § 2 inquiry of the reasons why black and white voters vote differently supports, by itself, our rejection of appellants' theory of racially polarized voting. However, their theory contains other equally serious flaws ⊥ that merit further attention. As we demonstrate below, the addition of irrelevant variables distorts the equation and yields results that are indisputably incorrect under § 2 and the Senate Report.

3

Race of Voter as Primary Determinant of Voter Behavior

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

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

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

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

comes and menial jobs—when the reason most of those voters have menial jobs and low incomes is attributable to past or present racial discrimination—runs counter to the Senate Report's instruction to conduct a searching and practical evaluation of past and present reality, S.Rep., at 30, and interferes with the purpose of the Voting Rights Act to eliminate the negative effects of past discrimination on the electoral opportunities of minorities. *Id.*, at 5, 40.

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

To illustrate, assume a racially mixed, urban multimember district in which blacks and whites possess the same socioeconomic characteristics that the record in this case attributes to blacks and whites in Halifax County, a part of Senate District 2. The annual mean income for blacks in this district is $10,465, and 47.8% of the black community lives in poverty. More than half—51.5%—of black adults over the age of 25 have only an eighth-grade education or less. Just over half of black citizens reside in their own homes; 48.9% live in rental units. And, almost a third of all black households are without a car. In contrast, only 12.6% of the whites in the district live below the poverty line. Whites enjoy a mean income of $19,042. White residents are better educated than blacks—only 25.6% of whites over the age of 25 have only an eighth-grade education or less. Furthermore, only 26.2% of whites live in rental units, and only 10.2% live in households with no vehicle available. 1 App., Ex-44. As is the case in Senate District 2, blacks in this ⊥66 hypothetical urban district have never been able to elect a representative of their choice.

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

Congress could not have intended that courts employ this definition of racial bloc voting. First, this definition leads to results that are inconsistent with the effects test adopted by Congress when it amended § 2 and with the Senate Report's admonition that courts take a "functional" view of the political process, S.Rep. 30, n. 119, U.S. Code Cong. & Admin.News 1982, p. 208, and conduct a searching and practical evaluation of reality. *Id.*, at 30. A test for racially polarized voting that denies the fact that race and socioeconomic characteristics are often closely correlated permits neither a practical evaluation of reality nor a functional analysis of vote dilution. And, contrary to Congress' intent in adopting the "results test," appellants' proposed definition could result in the inability of minority voters to establish a critical ⊥67 element of a vote dilution claim, even though both races engage in "monolithic" bloc voting, *id.*, at 33, U.S.Code Cong. & Admin.News

1982, p. 211, and generations of black voters have been unable to elect a representative of their choice.

Second, appellants' interpretation of "racially polarized voting" creates an irreconcilable tension between their proposed treatment of socioeconomic characteristics in the bloc voting context and the Senate Report's statement that "the extent to which members of the minority group ... bear the effects of discrimination in such areas as education, employment and health" may be relevant to a § 2 claim. *Id.*, at 29, U.S.Code Cong. & Admin.News 1982, p. 206. We can find no support in either logic or the legislative history for the anomalous conclusion to which appellants' position leads—that Congress intended, on the one hand, that proof that a minority group is predominately poor, uneducated, and unhealthy should be considered a factor tending to prove a § 2 violation; but that Congress intended, on the other hand, that proof that the same socioeconomic characteristics greatly influence black voters' choice of candidates should destroy these voters' ability to establish one of the most important elements of a vote dilution claim.

4

Race of Candidate as Primary Determinant of Voter Behavior

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

[19] First, both the language of § 2 and a functional understanding of the phenomenon of vote dilution mandate the conclusion that the race of the candidate *per se* is irrelevant to racial bloc voting analysis. Section 2(b) states that a violation is established if it can be shown that members of a protected minority group "have less opportunity than other members of the electorate to ... elect representatives *of their choice.*" ⊥69 (Emphasis added.) Because both minority and majority voters often select members of their own race as their preferred representatives, it will frequently be the case that a black candidate is the choice of blacks, while a white candidate is the choice of whites. Cf. Letter to the Editor from Chandler Davidson, 17 New Perspectives 38 (Fall 1985). Indeed, the facts of this case illustrate that tendency—blacks preferred black candidates, whites preferred white candidates. Thus, as a matter of convenience, we and the District Court may refer to the preferred representative of black voters as the "black candidate" and to the preferred representative of white voters as the "white candidate." Nonetheless, the fact that race of voter and race of candidate is often correlated is not directly pertinent to a § 2 inquiry. Under § 2, it is the *status* of the candidate as the *chosen representative of a particular racial group*, not the race of the candidate, that is important.

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

⌊69Second, appellants' suggestion that racially polarized voting refers to voting patterns where whites vote for white candidates because they prefer members of their own race or are hostile to blacks, as opposed to voting patterns where whites vote for white candidates because the white candidates spent more on their campaigns, utilized more media coverage, and thus enjoyed greater name recognition than the black candidates, fails for another, independent reason. This argument, like the argument that the race of the voter must be the primary determinant of the voter's ballot, is inconsistent with the purposes of § 2 and would render meaningless the Senate Report factor that addresses the impact of low socioeconomic status on a minority group's level of political participation.

Congress intended that the Voting Rights Act eradicate inequalities in political opportunities that exist due to the vestigial effects of past purposeful discrimination. S.Rep., at 5, 40; H.R.Rep. No. 97-227, p. 31 (1981). Both this Court and other federal courts have recognized that political participation by minorities tends to be depressed where minority group members suffer effects of prior discrimination such as inferior education, poor employment opportunities, and low incomes. See, *e.g., White v. Regester*, 412 U.S., at 768-769, 93 S.Ct., at 2340-2341; *Kirksey v. Board of Supervisors of Hinds County, Miss.*, 554 F.2d 139, 145-146 (CA5) (en banc), cert. denied, 434 U.S. 968, 98 S.Ct. 512, 54 L.Ed.2d 454 (1977). See also S. Verba & N. Nie, Participation in America 152 (1972). The Senate Report acknowledges this tendency and instructs that "the extent to which members of the minority group ... bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process," S.Rep., at 29, U.S. Code Cong. & Admin.News 1982, p. 206 (footnote omitted), is a factor which may be probative of unequal opportunity to participate in the political process and to elect representatives. Courts and commentators have recognized further that candidates generally must spend more money in order to win ⌊70election in a multimember district than in a single-member district. See, *e.g., Graves v. Barnes*, 343 F.Supp. 704, 720-721 (WD Tex.1972), aff'd in part and rev'd in part *sub nom. White v. Regester, supra.* Berry & Dye 88; Davidson & Fraga, Nonpartisan Slating Groups in an At-Large Setting, in Minority Vote Dilution 122-123; Derfner 554, n. 126; Jewell 131; Karnig, Black Representation on City Councils, 12 Urb.Aff.Q. 223, 230 (1976). If, because of inferior education and poor employment opportunities, blacks earn less than whites, they will not be able to provide the candidates of their choice with the same level of financial support that whites can provide theirs. Thus, electoral losses by candidates preferred by the black community may well be attributable in part to the fact that their white opponents outspent them. But, the fact is that in this instance, the economic effects of prior discrimination have combined with the multimember electoral structure to afford blacks less opportunity than whites to participate in the political process and to elect representatives of their choice. It would be both anomalous and inconsistent with congressional intent to hold that, on the one hand, the effects of past discrimination which hinder blacks' ability to participate in the political process tend to prove a § 2 violation, while holding on the other hand that, where these same effects of past discrimination deter whites from voting for blacks, blacks cannot make out a crucial element of a vote dilution claim. Accord, *Escambia County*, 748 F.2d, at 1043 (" '[T]he failure of the blacks to solicit white votes may be caused by the effects of past discrimination' ") (quoting *United States v. Dallas County Comm'n*, 739 F.2d 1529, 1536 (CA11 1984)); *United States v. Marengo County Comm'n*, 731 F.2d, at 1567.

5

Racial Animosity as Primary Determinant of Voter Behavior

[20] Finally, we reject the suggestion that racially polarized voting refers only to

white bloc voting which is caused by ⌊71white voters' *racial hostility* toward black candidates.[33] To accept this theory would frustrate the goals Congress sought to achieve by repudiating the intent test of *Mobile v. Bolden*, 446 U.S. 55, 100 S.Ct. 1490, 64 L.Ed.2d 47 (1980), and would prevent minority voters who have clearly been denied an opportunity to elect representatives of their choice from establishing a critical element of a vote dilution claim.

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

The Senate Report states that one reason the Senate Committee abandoned the intent test was that "the Committee ... heard persuasive testimony that the intent test is unnecessarily divisive because it involves charges of racism on the part of individual officials or entire communities." S.Rep., at 36, U.S.Code Cong. & Admin.News 1982, p. 214. The Committee found the testimony of Dr. Arthur S. ⌊72Flemming, Chairman of the United States Commission on Civil Rights, particularly persuasive. He testified:

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

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

A second reason Congress rejected the old intent test was that in most cases it placed an "inordinately difficult burden" on § 2 plaintiffs. *Ibid.* The new intent test would be equally, if not more, burdensome. In order to prove that a *specific factor* —racial hostility—*determined* white voters' ballots, it would be necessary to demonstrate that other potentially relevant

33. It is true, as we have recognized previously, that racial hostility may often fuel racial bloc voting. *United Jewish Organizations v. Carey*, 430 U.S. 144, 166, 97 S.Ct. 996, 1010, 51 L.Ed.2d 229 (1977); *Rogers v. Lodge*, 458 U.S., at 623, 102 S.Ct., at 3278. But, as we explain in this decision, the actual motivation of the voter has no relevance to a vote dilution claim. This is not to suggest that racial bloc voting is race neutral; because voter behavior correlates with race, obviously it is not. It should be remembered, though, as one commentator has observed, that "[t]he absence of racial animus is but one element of race neutrality." Note, Geometry and Geography 208.

34. The Senate Report rejected the argument that the words "on account of race," contained in § 2(a), create any requirement of purposeful discrimination. "[I]t is patently [clear] that Congress has used the words 'on account of race or color' in the Act to mean 'with respect to' race or color, and not to connote any required purpose of racial discrimination." S.Rep., at 27-28, n. 109, U.S.Code Cong. & Admin.News 1982, p. 205.

causal factors, such as socioeconomic characteristics and candidate expenditures, do not correlate better than racial animosity with white voting behavior. As one commentator has explained:

> ⊥73"Many of the[se] independent variables ... would be all but impossible for a social scientist to operationalize as interval-level independent variables for use in a multiple regression equation, whether on a step-wise basis or not. To conduct such an extensive statistical analysis as this implies, moreover, can become prohibitively expensive.
>
> "Compared to this sort of *effort*, proving discriminatory intent in the adoption of an at-large election system is both simple and inexpensive." McCrary, Discriminatory Intent: The Continuing Relevance of "Purpose" Evidence in Vote-Dilution Lawsuits, 28 How. L.J. 463, 492 (1985) (footnote omitted).

The final and most dispositive reason the Senate Report repudiated the old intent test was that it "asks the wrong question." S.Rep., at 36, U.S.Code Cong. & Admin. News 1982, p. 214. Amended § 2 asks instead "whether minorities have equal access to the process of electing their representatives." *Ibid.*

Focusing on the discriminatory intent of the voters, rather than the behavior of the voters, also asks the wrong question. All that matters under § 2 and under a functional theory of vote dilution is voter behavior, not its explanations. Moreover, as we have explained in detail, *supra*, requiring proof that racial considerations actually *caused* voter behavior will result—contrary to congressional intent—in situations where a black minority that functionally has been totally excluded from the political process will be unable to establish a § 2 violation. The Senate Report's remark concerning the old intent test thus is pertinent to the new test: The requirement that a "court ... make a separate ... finding of intent, after accepting the proof of the factors involved in the *White* [*v. Regester*, 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314] analysis ... [would] seriously clou[d] the prospects of eradicating the remaining instances of racial discrimination in American elections." *Id.*, at 37, U.S.Code Cong. & Admin.News 1982, p. 215. We therefore decline to adopt such a requirement.

⊥74 6
Summary

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

IV

THE LEGAL SIGNIFICANCE OF SOME BLACK CANDIDATES' SUCCESS

A

[22] North Carolina and the United States maintain that the District Court failed to accord the proper weight to the success of some black candidates in the challenged districts. Black residents of these districts, they point out, achieved improved representation in the 1982 General Assembly election.[35] They also note that blacks in House District 23 have enjoyed proportional representation consistently since 1978 and that blacks in the other districts have occasionally enjoyed nearly proportional representation.[36] This electoral ⊥75success demonstrates conclusively, appellants and the United States argue, that blacks in those districts do not have "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C. § 1973(b). Essentially, appellants and the United States contend that if a racial minority gains proportional or nearly proportional representation in a single election, that fact alone precludes, as a matter of law, finding a § 2 violation.

Section 2(b) provides that "[t]he extent to which members of a protected class have been elected to office ... is one circumstance which may be considered." 42 U.S.C. § 1973(b). The Senate Committee Report also identifies the extent to which minority candidates have succeeded as a pertinent factor. S.Rep., at 29. However, the Senate Report expressly states that "the election of a few minority candidates does not 'necessarily foreclose the possibility of dilution of the black vote,'" noting that if it did, "the possibility exists that the majority citizens might evade [§ 2] by manipulating the election of a 'safe' minority candidate." *Id.*, at 29, n. 115, U.S.Code Cong. & Admin.News 1982, p. 207, quoting *Zimmer v. McKeithen*, 485 F.2d 1297, 1307 (CA5 1973) (en banc), aff'd *sub nom. East Carroll Parish School Board v. Marshall*, 424 U.S. 636, 96 S.Ct. 1083, 47 L.Ed.2d 296 (1976) (*per curiam*). The Senate Committee decided, instead, to "'require an independent consideration of the record.'" S.Rep., at 29, n. 115, U.S.Code Cong. & Admin.News 1982, p. 207. The Senate Report also emphasizes that the question whether "the political processes are 'equally open' depends upon a searching practical evaluation of the 'past and present reality.'" *Id.*, at 30, U.S.Code Cong. & Admin. News 1982, p. 208 (footnote omitted). Thus, the language of § 2 and its legislative history plainly demonstrate that proof that some minority candidates have been elected does not foreclose a § 2 claim.

[23] Moreover, in conducting its "independent consideration of the record" and its "searching practical evaluation of the 'past ⊥76and present reality,'" the District Court could appropriately take account of the circumstances surrounding recent black electoral success in deciding its significance to appellees' claim. In particular, as the Senate Report makes clear, *id.*, at 29, n. 115, the court could properly notice the fact that black electoral success increased markedly in the 1982 election—an election that occurred after the instant lawsuit had been filed—and could properly consider to what extent "the pendency of this very litigation [might have] worked a one-time advantage for black candidates in the form of unusual organized political support by white leaders concerned to forestall single-member districting."[37] 590 F.Supp., at 367, n. 27.

Nothing in the statute or its legislative history prohibited the court from viewing with some caution black candidates' success in the 1982 election, and from deciding on the basis of all the relevant circumstances to accord greater weight to blacks' relative lack of success over the course of several recent elections. Consequently, we hold that the District Court did not err, as

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

36. The United States points out that, under a substantially identical predecessor to the challenged plan, see n. 15, *supra*, House District 21 elected a black to its six-member delegation in 1980, House District 39 elected a black to its five-member delegation in 1974 and 1976, and Senate District 22 had a black Senator between 1975 and 1980.

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

a matter of law, in refusing to treat the fact that some black candidates have succeeded as dispositive of appellees' § 2 claim. Where multimember districting generally works to dilute the minority vote, it cannot be defended on the ground that it sporadically and serendipitously benefits minority voters.

⊥77B

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

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

V

ULTIMATE DETERMINATION OF VOTE DILUTION

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

A

As an initial matter, both North Carolina and the United States contend that the District Court's ultimate conclusion that the challenged multimember districts operate to dilute ⊥78black citizens' votes is a mixed question of law and fact subject to *de novo* review on appeal. In support of their proposed standard of review, they rely primarily on *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 104 S.Ct. 1949, 80 L.Ed.2d 502 (1984), a case in which we reconfirmed that, as a matter of constitutional law, there must be independent appellate review of evidence of "actual malice" in defamation cases. Appellants and the United States argue that because a finding of vote dilution under amended § 2 requires the application of a rule of law to a particular set of facts it constitutes a legal, rather than factual, determination. Reply Brief for Appellants 7; Brief for United States as *Amicus Curiae* 18–19. Neither appellants nor the United States cite our several precedents in which we have treated the ultimate finding of vote dilution as a question of fact subject to the clearly-erroneous standard of Rule 52(a). See, *e.g., Rogers v. Lodge*, 458 U.S., at 622–627, 102 S.Ct., at 3278–3281; *City of Rome v. United States*, 446 U.S. 156, 183, 100 S.Ct. 1548, 1564, 64 L.Ed.2d 119 (1980); *White v. Regester*, 412 U.S., at 765–770, 93 S.Ct., at 2339–2341. Cf. *Anderson v. Bessemer City*, 470 U.S. 564, 573, 105 S.Ct. 1504, 1511, 84 L.Ed.2d 518 (1985).

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

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

> "we are not inclined to overturn these findings, representing as they do a blend of history and an intensely local appraisal of the design and impact of the ... multimember district in the light of past and present reality, political and otherwise." *Id.*, 412 U.S., at 769–770, 93 S.Ct., at 2341.

Quoting this passage from *Regester* with approval, we expressly held in *Rogers v. Lodge, supra*, that the question whether an at-large election system was maintained for discriminatory purposes and subsidiary issues, which include whether that system had the effect of diluting the minority vote, were questions of fact, reviewable under Rule 52(a)'s ⊥79clearly-erroneous standard. 458 U.S., at 622–623, 102 S.Ct., at 3278–3279. Similarly, in *City of Rome v. United States*, we declared that the question whether certain electoral structures had a "discriminatory effect," in the sense of diluting the minority vote, was a question of fact subject to clearly-erroneous review. 446 U.S., at 183, 100 S.Ct., at 1565.

[25] We reaffirm our view that the clearly-erroneous test of Rule 52(a) is the appropriate standard for appellate review of a finding of vote dilution. As both amended § 2 and its legislative history make clear, in evaluating a statutory claim of vote dilution through districting, the trial court is to consider the "totality of the circumstances" and to determine, based "upon a searching practical evaluation of the 'past and present reality,' " S.Rep., at 30, U.S.Code Cong. & Admin.News 1982, p. 208 (footnote omitted), whether the political process is equally open to minority voters. " 'This determination is peculiarly dependent upon the facts of each case,' " *Rogers, supra*, 458 U.S., at 621, 102 S.Ct., at 3277, quoting *Nevett v. Sides*, 571 F.2d 209, 224 (CA5 1978), and requires "an intensely local appraisal of the design and impact" of the contested electoral mechanisms. 458 U.S., at 622, 102 S.Ct., at 3278. The fact that amended § 2 and its legislative history provide legal standards which a court must apply to the facts in order to determine whether § 2 has been violated does not alter the standard of review. As we explained in *Bose*, Rule 52(a) "does not inhibit an appellate court's power to correct errors of law, including those that may infect a so-called mixed finding of law and fact, or a finding of fact that is predicated on a misunderstanding of the governing rule of law." 466 U.S., at 501, 104 S.Ct., at 1960, citing *Pullman-Standard v. Swint*, 456 U.S. 273, 287, 102 S.Ct. 1781, 1789, 72 L.Ed.2d 66 (1982); *Inwood Laboratories, Inc. v. Ives Laboratories, Inc.*, 456 U.S. 844, 855, n. 15, 102 S.Ct. 2182, 2189, n. 15, 72 L.Ed.2d 606 (1982). Thus, the application of the clearly-erroneous standard to ultimate findings of vote dilution preserves the benefit of the trial court's particular familiarity with the indigenous political reality without endangering the rule of law.

⊥80B

[26] The District Court in this case carefully considered the totality of the circumstances and found that in each district racially polarized voting; the legacy of official discrimination in voting matters, education, housing, employment, and health services; and the persistence of campaign appeals to racial prejudice acted in concert with the multimember districting scheme to impair the ability of geographically insular and politically cohesive groups of black voters to participate equally in the political process and to elect candidates of their choice. It found that the success a few black candidates have enjoyed in these districts is too recent, too limited, and, with regard to the 1982 elections, perhaps too aberrational, to disprove its conclusion. Excepting House District 23, with respect to which the District Court committed legal error, see *supra*, at 2780, we affirm the District Court's judgment. We cannot say that the District Court, composed of local judges who are well acquainted with the political realities of the State, clearly erred in concluding that use of a multimember electoral structure has caused black voters in the districts other than House District 23

to have less opportunity than white voters to elect representatives of their choice.

The judgment of the District Court is *Affirmed in part and reversed in part.*

APPENDIX A TO OPINION OF BRENNAN, J.

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

Senate District 22

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

House District 21

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

House District 23

	Primary		*General*	
	White	*Black*	*White*	*Black*
1978 Senate				
Barns (Repub.)	n/a	n/a	17	5
1978 House				
Clement	10	89	n/a	n/a
Spaulding	16	92	37	89

	Primary		*General*	
	White	*Black*	*White*	*Black*
1980 House				
Spaulding	n/a	n/a	49	90
1982 House				
Clement	26	32	n/a	n/a
Spaulding	37	90	43	89

House District 36

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

House District 39

	Primary		*General*	
	White	*Black*	*White*	*Black*
1978 House				
Kennedy, H.	28	76	32	93
Norman	8	29	n/a	n/a
Ross	17	53	n/a	n/a
Sumter (Repub.)	n/a	n/a	33	25
1980 House				
Kennedy, A.	40	86	32	96
Norman	18	36	n/a	n/a
1980 Senate				
Small	12	61	n/a	n/a

APPENDIX A TO OPINION OF BRENNAN, J.—Continued

1982 House				
Hauser	25	80	42	87
Kennedy, A.	36	87	46	94

590 F. Supp., at 369–371.

APPENDIX B TO OPINION OF BRENNAN, J.

Black Candidates Elected From 7 Originally Contested Districts

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

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

Justice WHITE, concurring.

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

Justice BRENNAN states in Part III–C that the crucial factor in identifying polarized voting is the race of the voter and that the race of the candidate is irrelevant. Under this test, there is polarized voting if the majority of white voters vote for different candidates than the majority of the blacks, regardless of the race of the candidates. I do not agree. Suppose an eight-member multimember district that is 60% white and 40% black, the blacks being geographically located so that two safe black single-member districts could be drawn. Suppose further that there are six white and two black Democrats running against six white and two black Republicans. Under Justice BRENNAN's test, there would be polarized voting and a likely § 2 violation if all the Republicans, including the two blacks, are elected, and 80% of the blacks in the predominantly black areas vote Democratic. I take it that there would also be a violation in a single-member district that is 60% black, but enough of the blacks vote with the whites to elect a black candidate who is not the choice of the majority of black voters. This is interest-group politics rather than a rule hedging against racial discrimination. I doubt that this is what Congress had in mind in amending § 2 as it did, and it seems quite at odds with the discussion in *Whitcomb v. Chavis,* 403 U.S. 124, 149–160, 91 S.Ct. 1858, 1872–1878, 29 L.Ed.2d 363 (1971). Furthermore, on the facts of this case, there is no need to draw the voter/candidate distinction. The District Court did not and reached the correct result except, in my view, with respect to District 23.

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

In this case, we are called upon to construe § 2 of the Voting Rights Act of 1965, as amended June 29, 1982. Amended § 2 is intended to codify the "results" test employed in *Whitcomb v. Chavis,* 403 U.S. 124, 91 S.Ct. 1858, 29 L.Ed.2d 363 (1971), and *White v. Regester,* 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314 (1973), and to reject the "intent" test propounded in the plurality opinion in *Mobile v. Bolden,* 446 U.S. 55, 100 S.Ct. 1490, 64 L.Ed.2d 47 (1980). S.Rep. No. 97–417, pp. 27–28 (1982) (hereinafter S.Rep.). Whereas *Bolden* required members of a racial minority who

alleged impairment of their voting strength to prove that the challenged electoral system was created or maintained with a discriminatory purpose and led to discriminatory results, under the results test, "plaintiffs may choose to establish discriminatory results without proving any kind of discriminatory purpose." S.Rep., at 28, U.S. Code Cong. & Admin.News 1982, p. 206. At the same time, however, § 2 unequivocally disclaims the creation of a right to proportional representation. This disclaimer was essential to the compromise that resulted in passage of the amendment. See *id.*, at 193–194 (additional views of Sen. Dole).

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

The Court attempts to resolve all these difficulties today. First, the Court supplies definitions of racial bloc voting and minority voting strength that will apparently be applicable in all cases and that will dictate the structure of vote dilution litigation. Second, the Court adopts a test, based on the ⊥85 level of minority electoral success, for determining when an electoral scheme has sufficiently diminished minority voting strength to constitute vote dilution. Third, although the Court does not acknowledge it expressly, the combination of the Court's definition of minority voting strength and its test for vote dilution results in the creation of a right to a form of proportional representation in favor of all geographically and politically cohesive minority groups that are large enough to constitute majorities if concentrated within one or more single-member districts. In so doing, the Court has disregarded the balance struck by Congress in amending § 2 and has failed to apply the results test as described by this Court in *Whitcomb* and *White*.

I

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

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

Alternatively, it would usually be possible to draw four single-member districts in *two* of which black voters constituted much narrower majorities of about 60%. The black ⊥86 voters in these districts would often be able to elect the representative of their choice in each of these two districts,

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

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

Finally, it would be possible to elect all four representatives in a single at-large election in which each voter could vote for four candidates. Under this scheme, white voters could elect all the representatives even if black voters turned out in large numbers and voted for one and only one candidate. To illustrate, if only four white candidates ran, and each received approximately equal support from white voters, each would receive about 700 votes, whereas black voters could cast no more than 300 votes for any one candidate. If, on the other hand, eight white candidates ran, and white votes were distributed less evenly, so that the five least favored white candidates received fewer than 300 votes while three others received 400 or more, it would be feasible for blacks to elect one representative with 300 votes even without substantial white support. If even 25% of the white voters⊥87 backed a particular minority candidate, and black voters voted only for that candidate, the candidate would receive a total of 475 votes, which would ensure victory unless white voters also concentrated their votes on four of the eight remaining candidates, so that each received the support of almost 70% of white voters. As these variations show, the at-large or multimember district has an inherent tendency to submerge the votes of the minority. The minority group's prospects for electoral success under such a district heavily depend on a variety of factors such as voter turnout, how many candidates run, how evenly white support is spread, how much white support is given to a candidate or candidates preferred by the minority group, and the extent to which minority voters engage in "bullet voting" (which occurs when voters refrain from casting all their votes to avoid the risk that by voting for their lower ranked choices they may give those candidates enough votes to defeat their higher ranked choices, see *ante*, at 2760, n. 5).

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

Although § 2 does not speak in terms of "vote dilution," I agree with the Court that proof of vote dilution can establish a violation of § 2 as amended. The phrase "vote dilution," in the legal sense, simply refers to the impermissible discriminatory effect that a multimember or other districting plan has when it operates "to cancel out or minimize the voting strength of racial groups." *White*, 412 U.S., at 765, 93 S.Ct., at 2339. See also *Fortson v. Dorsey*, 379 U.S. 433, 439, 85 S.Ct. 498, 501, 13 L.Ed.2d 401 (1965). This definition, however, conceals some very formidable difficulties. Is the "voting strength" of a racial group to be assessed solely ⊥88 with reference to its

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

The Court resolves the first question summarily: minority voting strength *is* to be assessed solely in terms of the minority group's ability to elect candidates it prefers. *Ante*, at 2765–2766, n. 15. Under this approach, the essence of a vote dilution claim is that the State has created single-member or multimember districts that unacceptably impair the minority group's ability to elect the candidates its members prefer.

In order to evaluate a claim that a particular multimember district or single-member district has diluted the minority group's voting strength to a degree that violates § 2, however, it is also necessary to construct a measure of "undiluted" minority voting strength. "[T]he phrase [vote dilution] itself suggests a norm with respect to which the fact of dilution may be ascertained." *Mississippi Republican Executive Committee v. Brooks*, 469 U.S. 1002, 1012, 105 S.Ct. 416, 422, 83 L.Ed.2d 343 (1984) (REHNQUIST, J., dissenting from summary affirmance). Put simply, in order to decide whether an electoral system has made it harder for minority voters to elect the candidates they prefer, a court must have an idea in mind of how hard it "should" be for minority voters to elect their preferred candidates under an acceptable system.

Several possible measures of "undiluted" minority voting strength suggest themselves. First, a court could simply use proportionality as its guide: if the minority group constituted 30% of the voters in a given area, the court would regard the minority group as having the potential to elect 30% of the representatives in that area. Second, a court could posit some alternative districting plan as a "normal" or "fair" electoral scheme and attempt to calculate how many candidates preferred by the minority group would probably be elected under that scheme. There are, as we have seen, a variety of ways in which even single-member districts could be drawn, and each will present the minority group with its own array of electoral risks and benefits; the court might, therefore, consider a range of acceptable plans in attempting to estimate "undiluted" minority voting strength by this method. Third, the court could attempt to arrive at a plan that would maximize feasible minority electoral success, and use this degree of predicted success as its measure of "undiluted" minority voting strength. If a court were to employ this third alternative, it would often face hard choices about what would truly "maximize" minority electoral success. An example is the scenario described above, in which a minority group could be concentrated in one completely safe district or divided among two districts in each of which its members would constitute a somewhat precarious majority.

The Court today has adopted a variant of the third approach, to wit, undiluted minority voting strength means the maximum feasible minority voting strength. In explaining the elements of a vote dilution claim, the Court first states that "the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district." *Ante*, at 2766. If not, apparently the minority group has no cognizable claim that its ability to elect the representatives of its choice has been impaired.[1] Second, "the minority group must

1. I express no view as to whether the ability of a minority group to constitute a majority in a single-member district should constitute a threshold requirement for a claim that the use of multimember districts impairs the ability of minority voters to participate in the political

be able to show that it is politically cohesive," that is, that a significant proportion of the minority group supports the same candidates. *Ante*, at 2766. Third, the Court requires the minority group to "demonstrate that the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances . . .—usually to defeat the minority's preferred candidate." *Ante*, 2766–2767. If these three requirements are met, "the minority group demonstrates that submergence in a white multimember district impedes its ability to elect its chosen representatives." *Ante*, 2767. That is to say, the minority group has proved vote dilution in violation of § 2.

The Court's definition of the elements of a vote dilution claim is simple and invariable: a court should calculate minority voting strength by assuming that the minority group is concentrated in a single-member district in which it constitutes a voting majority. Where the minority group is not large enough, geographically concentrated enough, or politically cohesive enough for this to be possible, the minority group's claim fails. Where the minority group meets these requirements, the representatives that it could elect in the hypothetical district or districts in which it constitutes a majority will serve as the measure of its undiluted voting strength. Whatever plan the State actually adopts must be assessed in terms of the effect it has on this undiluted voting strength. If this is indeed the single, universal standard for evaluating undiluted minority voting strength for vote dilution purposes, the standard is applicable whether what is challenged is a multimember district or a particular single-member districting scheme.

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

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

processes and to elect representatives of their choice. Because the plaintiffs in this case would meet that requirement, if indeed it exists, I need not decide whether it is imposed by § 2. I note, however, the artificiality of the Court's distinction between claims that a minority group's "ability *to elect* the representatives of [its] choice" has been impaired and claims that "its ability to *influence* elections" has been impaired. *Ante*, at 2764, n. 12. It is true that a minority group that could constitute a majority in a single-member district ordinarily has the potential ability to elect representatives without white support, and that a minority that could not constitute such a majority ordinarily does not. But the Court recognizes that when the candidates preferred by a minority group are elected in a multimember district, the minority group has *elected* those candidates, even if white support was indispensable to these victories. On the same reasoning, if a minority group that is not large enough to constitute a voting majority in a single-member district can show that white support would probably be forthcoming in some such district to an extent that would enable the election of the candidates its members prefer, that minority group would appear to have demonstrated that, at least under this measure of its voting strength, it would be able to elect some candidates of its choice.

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

To be sure, the Court also requires that plaintiffs prove that racial bloc voting by the white majority interacts with the challenged districting plan so as usually to defeat the minority's preferred candidate. In fact, however, this requirement adds little that is not already contained in the Court's requirements that the minority group be politically cohesive and that its preferred candidates usually lose. As the Court acknowledges, under its approach, "in general, a white bloc vote that normally will defeat the combined strength of minority support plus white 'crossover' votes rises to the level of legally significant white bloc voting." *Ante*, at 2769. But this is to define legally significant bloc voting by the racial majority in terms of the extent of the racial minority's electoral success. If the minority can prove that it could constitute a majority in a single-member district, that it supported certain candidates, and that those candidates have not usually been elected, then a finding that there is "legally significant white bloc voting" will necessarily follow. Otherwise, by definition, those candidates would usually have won rather than lost.

As shaped by the Court today, then, the basic contours of a vote dilution claim require no reference to most of the "*Zimmer* factors" that were developed by the Fifth Circuit to implement *White*'s results test and which were highlighted in the Senate Report. S.Rep., at 28–29; see *Zimmer v. Mc⊥Keithen*, 485 F.2d 1297 (CA5 1973) (en banc), aff'd *sub nom. East Carroll Parish School Board v. Marshall*, 424 U.S. 636, 96 S.Ct. 1083, 47 L.Ed.2d 296 (1976) *(per curiam)*. If a minority group is politically and geographically cohesive and large enough to constitute a voting majority in one or more single-member districts, then unless white voters usually support the minority's preferred candidates in sufficient numbers to enable the minority group to elect as many of those candidates as it could elect in such hypothetical districts, it will routinely follow that a vote dilution claim can be made out, and the multimember district will be invalidated. There is simply no need for plaintiffs to establish "the history of voting-related discrimination in the State or political subdivision," *ante*, at 2763, or "the extent to which the State or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group," *ibid.* or "the exclusion of members of the minority group from candidate slating processes," *ibid.* or "the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health," *ibid.*, or "the use of overt or subtle racial appeals in political campaigns," *ibid.*, or that "elected officials are unresponsive to the particularized needs of the members of the minority group." *Ibid.* Of course, these other factors may be supportive of such a claim, because they may strengthen a court's confidence that minority voters will be unable to overcome the relative disadvantage at which they are placed by a particular districting plan, or suggest a more general lack of opportunity to participate in the political process. But the fact remains that electoral success has now emerged, under the Court's standard, as the linchpin of vote dilution claims, and that the elements of a vote dilution claim create an entitlement to roughly proportional representation within the framework of single-member districts.

⊥ II

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

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

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

The Court goes well beyond simply sustaining the District Court's decision to employ this measure of undiluted minority voting strength as a reasonable one that is consistent with § 2. In my view, we should refrain from deciding in this case whether a court must invariably posit as its measure of "undiluted" minority voting strength single-member districts in which minority group members constitute a majority. There is substantial doubt that Congress intended "undiluted minority voting strength" to mean "maximum feasible minority voting strength." Even if that is the appropriate definition in some circumstances, there is no indication that Congress intended to mandate a single, universally applicable ⊥ standard for measuring undiluted minority voting strength, regardless of local conditions and regardless of the extent of past discrimination against minority voters in a particular State or political subdivision. Since appellants have not raised the issue, I would assume that what the District Court did here was permissible under § 2, and leave open the broader question whether § 2 *requires* this approach.

What appellants *do* contest is the propriety of the District Court's standard for vote dilution. Appellants claim that the District Court held that "[a]lthough blacks had achieved considerable success in winning state legislative seats in the challenged districts, their failure to consistently attain the number of seats *that numbers alone would presumptively give them* (*i.e.*, in proportion to their presence in the population)," standing alone, constituted a violation of § 2. Brief for Appellants 20 (emphasis in original). This holding, appellants argue, clearly contravenes § 2's proviso that "nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population." 42 U.S.C. § 1973.

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

2. At times, the District Court seems to have looked to simple proportionality rather than to

tached great weight to this circumstance as one part of its ultimate finding that "the creation of each of the multi-member districts challenged in this action results in the black registered voters of that district being submerged as a voting minority in the district and thereby having less opportunity than do other members of the electorate to participate in the political process and to elect representatives of their choice." *Id.*, at 374. But the District Court's extensive opinion clearly relies as well on a variety of the other *Zimmer* factors, as the Court's thorough summary of the District Court's findings indicates. See *ante*, at 2759–2761.

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

> "The language of the subsection explicitly rejects, as did *White* and its progeny, the notion that members of a protected class have a right to be elected in numbers equal to their proportion of the population. The extent to which members of a protected class have been elected under the challenged practice or structure is just one factor, among the totality of circumstances to be considered,[97] and is not dispositive." S.Rep., at 194, U.S. Code Cong. & Admin.News 1982, p. 364 (additional views of Sen. Dole).

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

In enacting § 2, Congress codified the "results" test this Court had employed, as an interpretation of the Fourteenth Amendment, in *White* and *Whitcomb*. The factors developed by the Fifth Circuit and relied on by the Senate Report simply fill in the contours of the "results" test as described in those decisions, and do not pur-

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

port to redefine or alter the ultimate showing of discriminatory effect required by *Whitcomb* and *White*. In my view, therefore, it is to *Whitcomb* and *White* that we should look in the first instance in determining how great an impairment of minority voting strength is required to establish vote dilution in violation of § 2.

The "results" test as reflected in *Whitcomb* and *White* requires an inquiry into the extent of the minority group's opportunities to participate in the political processes. See *White*, 412 U.S., at 766, 93 S.Ct., at 2339–40. While electoral success is a central part of the vote dilution inquiry, *White* held that to prove vote dilution, "it is not enough that the racial group allegedly discriminated against has not had legislative seats in proportion to its voting potential," *id.*, at 765–766, 93 S.Ct., at 2339–40, and *Whitcomb* flatly rejected the proposition that "any group with distinctive interests must be represented in legislative halls if it is numerous enough to command at least one seat and represents a majority living in an area sufficiently compact to constitute a single member district." 403 U.S., at 156, 91 S.Ct., at 1875. To the contrary, the results test as described in *White* requires plaintiffs to establish "that the political processes leading to nomination and election were not equally open to participation by the group in question—that its members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice." 412 U.S., at 766, 93 S.Ct., at 2339–40. By showing both "a history of disproportionate results" and "strong indicia of lack of political power and the denial of fair representation," the plaintiffs in *White* met this standard, which, as emphasized just today, requires "a substantially greater showing of adverse effects than a mere lack of proportional representation to support a finding of unconstitutional vote dilution." *Davis v. Bandemer*, 478 U.S. 109, 131, 106 S.Ct. 2797, 2809, 92 L.Ed.2d 85 (1986) (plurality opinion).

When Congress amended § 2 it intended to adopt this "results" test, while abandoning the additional showing of discriminatory intent required by *Bolden*. The vote dilution analysis adopted by the Court today clearly bears little resemblance to the "results" test that emerged in *Whitcomb* and *White*. The Court's test for vote dilution, combined with its standard for evaluating "voting potential," *White*, *supra*, 412 U.S., at 766, 93 S.Ct., at 2339–2340, means that any racial minority with distinctive interests must *usually* "be represented in legislative halls if it is numerous enough to command at least one seat and represents a minority living in an area sufficiently compact to constitute" a voting majority in "a single member district." *Whitcomb*, 403 U.S., at 156, 91 S.Ct., at 1875. Nothing in *Whitcomb*, *White*, or the language and legislative history of § 2 supports the Court's creation of this right to usual, roughly proportional representation on the part of every geographically compact, politically cohesive minority group that is large enough to form a majority in one or more single-member districts.

I would adhere to the approach outlined in *Whitcomb* and *White* and followed, with some elaboration, in *Zimmer* and other cases in the Courts of Appeals prior to *Bolden*. Under that approach, a court should consider all relevant factors bearing on whether the minority group has "less opportunity than other members of the electorate to participate in the political process *and* to elect representatives of their choice." 42 U.S.C. § 1973 (emphasis added). The court should not focus solely on the minority group's ability to elect representatives of its choice. Whatever measure of undiluted minority voting strength the court employs in connection with evaluating the presence or absence of minority electoral success, it should also bear in mind that "the power to influence the political process is not limited to winning elections." *Davis v. Bandemer*, *supra*, 478 U.S., at 132, 106 S.Ct., at 2810. Of course, the relative lack of minority electoral success under a challenged plan, when com-

pared with the success that would be predicted under the measure of undiluted minority voting strength the court is employing, can constitute powerful evidence of vote dilution. Moreover, the minority group may in fact lack access to or influence upon representatives it did not support as candidates. Cf. *Davis v. Bandemer, supra,* at 169–170, 106 S.Ct., at 2829–2830 (POWELL, J., concurring in part and dissenting in part). Nonetheless, a reviewing court should be required to find more than simply that the minority group does not usually attain an undiluted measure of electoral success. The court must find that even substantial minority success will be highly infrequent ⌊100 under the challenged plan before it may conclude, on this basis alone, that the plan operates "to cancel out or minimize the voting strength of [the] racial grou[p]." *White, supra,* 412 U.S., at 765, 93 S.Ct., at 2339.

III

Only three Justices of the Court join Part III–C of Justice BRENNAN's opinion, which addresses the validity of the statistical evidence on which the District Court relied in finding racially polarized voting in each of the challenged districts. Insofar as statistical evidence of divergent racial voting patterns is admitted solely to establish that the minority group is politically cohesive and to assess its prospects for electoral success, I agree that defendants cannot rebut this showing by offering evidence that the divergent racial voting patterns may be explained in part by causes other than race, such as an underlying divergence in the interests of minority and white voters. I do not agree, however, that such evidence can never affect the overall vote dilution inquiry. Evidence that a candidate preferred by the minority group in a particular election was rejected by white voters for reasons other than those which made that candidate the preferred choice of the minority group would seem clearly relevant in answering the question whether bloc voting by white voters will consistently defeat minority candidates. Such evidence would suggest that another candidate, equally preferred by the minority group, might be able to attract greater white support in future elections.

I believe Congress also intended that explanations of the reasons why white voters rejected minority candidates would be probative of the likelihood that candidates elected without decisive minority support would be willing to take the minority's interests into account. In a community that is polarized along racial lines, racial hostility may bar these and other indirect avenues of political influence to a much greater extent than in a community where racial animosity is absent although the interests of racial groups diverge. Indeed, the ⌊101 Senate Report clearly stated that one factor that could have probative value in § 2 cases was "whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group." S.Rep., at 29, U.S.Code Cong. & Admin. News 1982, p. 207. The overall vote dilution inquiry neither requires nor permits an arbitrary rule against consideration of all evidence concerning voting preferences other than statistical evidence of racial voting patterns. Such a rule would give no effect whatever to the Senate Report's repeated emphasis on "intensive racial politics," on "racial political considerations," and on whether "racial politics ... dominate the electoral process" as one aspect of the "racial bloc voting" that Congress deemed relevant to showing a § 2 violation. *Id.*, at 33–34. Similarly, I agree with Justice WHITE that Justice BRENNAN's conclusion that the race of the candidate is always irrelevant in identifying racially polarized voting conflicts with *Whitcomb* and is not necessary to the disposition of this case. *Ante*, at 2783 (concurring).

In this case, as the Court grudgingly acknowledges, the District Court clearly erred in *aggregating* data from all of the challenged districts, and then relying on the fact that on average, 81.7% of white voters did not vote for any black candidate in the primary elections selected for study. *Ante*, at 2771, n. 28. Although Senate District 22 encompasses House District 36, with that exception the districts at issue in this case are distributed throughout the State of North Carolina. *White* calls for "an intensely local appraisal of the design and impact of the ... multimember district," 412 U.S., at 769–770, 93 S.Ct., at 2341, and racial voting statistics from one district are ordinarily irrelevant in assessing the totality of the circumstances in another district. In view of the specific evidence from each district that the District Court also considered, however, I cannot say that its conclusion that there was severe racial bloc voting was clearly erroneous with regard to any of the challenged districts. Except in House District 23, where racial bloc voting did not prevent sustained and virtually ⌊102 proportional minority electoral success, I would accordingly leave undisturbed the District Court's decision to give great weight to racial bloc voting in each of the challenged districts.

IV

Having made usual, roughly proportional success the sole focus of its vote dilution analysis, the Court goes on to hold that proof that an occasional minority candidate has been elected does not foreclose a § 2 claim. But Justice BRENNAN, joined by Justice WHITE, concludes that "persistent proportional representation" will foreclose a § 2 claim unless the plaintiffs prove that this "sustained success does not accurately reflect the minority group's ability to elect its preferred representatives." *Ante*, at 2780. I agree with Justice BRENNAN that consistent and sustained success by candidates preferred by minority voters is presumptively inconsistent with the existence of a § 2 violation. Moreover, I agree that this case presents no occasion for determining what would constitute proof that such success did not accurately reflect the minority group's actual voting strength in a challenged district or districts.

In my view, the District Court erred in assessing the extent of black electoral success in House District 39 and Senate District 22, as well as in House District 23, where the Court acknowledges error. As the evidence summarized by the Court in table form shows, *ante*, at 2783, Appendix B, the degree of black electoral success differed widely in the seven originally contested districts. In House District 8 and Senate District 2, neither of which is contested in this Court, no black candidate had ever been elected to the offices in question. In House District 21 and House District 36, the only instances of black electoral success came in the two most recent elections, one of which took place during the pendency of this litigation. By contrast, in House District 39 and Senate District 22, black successes, although intermittent, dated back to 1974, and a black candidate had been elected in each ⌊103 of these districts in three of the last five elections. Finally, in House District 23 a black candidate had been elected in each of the last six elections.

The District Court, drawing no distinctions among these districts for purposes of its findings, concluded that "[t]he overall results achieved to date at all levels of elective office are minimal in relation to the percentage of blacks in the total population." 590 F.Supp., at 367. The District Court clearly erred to the extent that it considered electoral success in the aggregate, rather than in each of the challenged districts, since, as the Court states, "[t]he inquiry into the existence of vote dilution ... is district-specific." *Ante*, at 2771, n. 28. The Court asserts that the District Court was free to regard the results of the 1982 elections with suspicion and to decide "on the basis of all the relevant circumstances to accord greater weight to blacks' relative lack of success over the course of several recent elections," *ante*, at 2779, but the Court does not explain how this technique would apply in Senate District 22, where a black candidate was elected in three consecutive elections from 1974 to 1978, but no black candidate was elected in 1982, or in House District 39, where black

candidates were elected in 1974 and 1976 as well as in 1982. Contrary to what the District Court thought, see 590 F.Supp., at 367, these pre-1982 successes, which were proportional or nearly proportional to black population in these three multimember districts, certainly lend *some* support for a finding that black voters in these districts enjoy an equal opportunity to participate in the political process and to elect representatives of their choice.

Despite this error, I agree with the Court's conclusion that, except in House District 23, minority electoral success was not sufficiently frequent to compel a finding of equal opportunity to participate and elect. The District Court found that "in each of the challenged districts racial polarization in voting presently exists to a substantial or severe degree, and ... in each district it presently operates to minimize the voting strength of black voters." *Id.*, at 372. I cannot say that this finding was clearly erroneous with respect to House District 39 or Senate District 22, particularly when taken together with the District Court's findings concerning the other *Zimmer* factors, and hence that court's ultimate conclusion of vote dilution in these districts is adequately supported.

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

Zimmer's caveat against *necessarily* foreclosing a vote dilution claim on the basis of isolated black successes, 485 F.2d, at 1307; see S.Rep., at 29, n. 115, cannot be pressed this far. Indeed, the 23 Court of Appeals decisions on which the Senate Report relied, and which are the best evidence of the scope of this caveat, contain no example of minority electoral success that even remotely approximates the consistent, decade-long pattern in District 23. See, *e.g.*, *Turner v. McKeithen*, 490 F.2d 191 (CA5 1973) (no black candidates elected); *Wallace v. House*, 515 F.2d 619 (CA5 1975) (one black candidate elected), vacated on other grounds, 425 U.S. 947, 96 S.Ct. 1721, 48 L.Ed.2d 191 (1976).

I do not propose that consistent and virtually proportional minority electoral success should always, as a matter of law, bar finding a § 2 violation. But, as a general rule, such success is entitled to great weight in evaluating whether a challenged electoral mechanism has, on the totality of the circumstances, operated to deny black voters an equal opportunity to participate in the political process and to elect representatives of their choice. With respect to House District 23, the District Court's failure to accord black electoral success such weight was clearly erroneous, and the District Court identified no reason for not giving this degree of success preclusive effect. Accordingly, I agree with Justice BRENNAN that appellees failed to establish a violation of § 2 in District 23.

V

When members of a racial minority challenge a multimember district on the grounds that it dilutes their voting strength, I agree with the Court that they must show that they possess such strength and that the multimember district impairs it. A court must therefore appraise the minority group's undiluted voting strength in order to assess the effects of the multimember district. I would reserve the question of the proper method or methods for making this assessment. But once such an assessment is made, in my view the evaluation of an alleged impairment of voting strength requires consideration of the minority group's access to the political processes generally, not solely consideration of the chances that its preferred candidates will actually be elected. Proof that white voters withhold their support from minority-preferred candidates to an extent that consistently ensures their defeat is entitled to significant weight in plaintiffs' favor. However, if plaintiffs direct their proof solely towards the minority group's prospects for electoral success, they must show that substantial minority success will be highly infrequent under the challenged plan in order to establish that the plan operates to "cancel out or minimize" their voting strength. *White*, 412 U.S., at 765, 93 S.Ct., at 2339.

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

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

In my opinion, the findings of the District Court, which the Court fairly summarizes, *ante*, at 2759–2761; 2767–2768, and n. 23; 2770–2772, and nn. 28 and 29, adequately support the District Court's judgment concerning House District 23 as well as the balance of that judgment.

I, of course, agree that the election of one black candidate in each election since 1972 provides significant support for the State's position. The notion that this evidence creates some sort of a conclusive, legal presumption, *ante*, at 2779–2780 is not, however, supported by the language of the statute or by its legislative history.[1] I therefore cannot agree with the Court's view that the District Court committed error by failing to apply a rule of law that emerges today without statutory support. The evidence of candidate success in District 23 is merely one part of an extremely large record which the District Court carefully considered before making its ultimate findings of fact, all of which should be upheld under a normal application of the "clearly erroneous" standard that the Court traditionally applies.[2]

The Court identifies the reason why the success of one black candidate in the elections in 1978, 1980, and 1982 is not inconsistent with the District Court's ultimate finding concerning House District 23.[3] The fact that one black candidate was also elected in the 1972, 1974, and 1976 elections, *ante*, at 2783, Appendix B, is not sufficient, in my opinion, to overcome the additional findings that apply to House District 23, as well as to other districts in the State for each of those years. The Court accurately summarizes those findings:

> "The District Court in this case carefully considered the totality of the circumstances and found that in each district racially polarized voting; the legacy of official discrimination in voting matters, education, housing, employment, and health services; and the persistence of campaign appeals to racial prejudice acted in concert with the multimember districting scheme to impair the ability of geographically insular and politically

1. See *ante*, at 2779 ("Section 2(b) provides that '[t]he extent to which members of a protected class have been elected to office ... is one circumstance which may be considered.' 42 U.S.C. § 1973(b).... However, the Senate Report expressly states that 'the election of a few minority candidates does not "necessarily foreclose the possibility of dilution of the black vote,"' noting that if it did, 'the possibility exists that the majority citizens might evade [§ 2] by manipulating the election of a "safe" minority candidate.' ... The Senate Committee decided, instead, to '"require an independent consideration of the record"'") (internal citations omitted).

2. See *ante*, at 2781 ("[T]he application of the clearly-erroneous standard to ultimate findings of vote dilution preserves the benefit of the trial court's particular familiarity with the indigenous political reality without endangering the rule of law").

3. See *ante*, at 2767–2768, and n. 23, 2771, n. 29, 2779–2780.

cohesive groups of black voters to participate equally in the political process and to elect candidates of their choice. It found that the success a few black candidates have enjoyed in these districts is too recent, too limited, and, with regard to the 1982 elections, perhaps too aberrational, to disprove its conclusion." *Ante*, at 2781.

To paraphrase the Court's conclusion about the other districts, *ibid.*, I cannot say that the District Court, composed of local judges who are well acquainted with the political realities of the State, clearly erred in concluding that use of a multimember electoral structure has caused black voters in House District 23 to have less opportunity than white voters to elect representatives of their choice.[4] Accordingly, I concur[108] in the Court's opinion except Part IV-B and except insofar as it explains why it reverses the judgment respecting House District 23.

4. Even under the Court's analysis, the decision simply to reverse—without a remand—is mystifying. It is also extremely unfair. First, the Court does not give appellees an opportunity to address the new legal standard that the Court finds decisive. Second, the Court does not even bother to explain the contours of that standard, and why it was not satisfied in this case. Cf. *ante*, at 2780, n. 38 ("We have no occasion in this case to decide what types of special circumstances could satisfactorily demonstrate that sustained success does not accurately reflect the minority's ability to elect its preferred representatives"). Finally, though couched as a conclusion about a "matter of law," *ante*, at 2780, the Court's abrupt entry of judgment for appellants on District 23 reflects an unwillingness to give the District Court the respect it is due, particularly when, as in this case, the District Court has a demonstrated knowledge and expertise of the entire context that Congress directed it to consider.

their supervisors' alleged misconduct was a city custom.[1] The evidence only established that Butler had discretion to hire and fire his own personal staff and that termination of Williams was the result of a personal vendetta and not the result of a decision made on behalf of the city. I conclude that under the particular facts of this case, § 1983 liability cannot be imposed on the city purely on the basis of Butler's act.

[1] I believe that the majority incorrectly analyzed the "custom" element of *Monell*. The question is not whether Butler "customarily" hired and fired his own staff, but whether the constitutional injury-inflicting act, i.e., firing an employee in violation of her first amendment rights, was a city custom.

Williams v. Butler, 746 F.2d at 444 (emphasis and footnote in original).

After remand by the Supreme Court for consideration in light of *Pembauer*, Judge Ross, in his dissent to the second decision by this court en banc, referred to Judge McMillian's conclusion set forth above and stated:

> Because there is insufficient evidence to support a finding that Butler had the authority to make final employment *policy* for the City, as opposed to mere final employment *decisions* for the City, the City cannot be held liable for Butler's decision to fire Williams.
>
> Even if Butler had somehow been given authority to make employment policy for the City, the facts in this case do not support a conclusion that Butler's vengeful and self-motivated decision to fire Williams actually created employment policy for the City.

Williams v. Butler, 802 F.2d 296 at 302 (emphasis in original). Now, after *Praprotnik*, the court continues to hold that Judge Butler was vested with final policy-making authority. In spite of the district judge's determination to this effect, I believe that this conclusion is unsupported.

Praprotnik emphasizes the importance of municipal policy. In outlining the four requirements of *Pembauer*, Justice O'Connor, in her plurality opinion, states:

First, a majority of the Court agreed that municipalities may be held liable under § 1983 only for acts for which the municipality itself is actually responsible, "that is, acts which the municipality has officially sanctioned or ordered." 475 U.S. at 480, 106 S.Ct. at 1298. Second, only those municipal officials who have "final policymaking authority" may by their actions subject the government to § 1983 liability. *Id.* at 483, 106 S.Ct. at 1300. Third, whether a particular official has "final policymaking authority" is a question of *state law*. *Ibid.* Fourth, the challenged action must have been taken pursuant to a policy adopted by the official or officials responsible under state law for making policy in *that area* of the city's business. *Id.*, at 482–483, and n. 12, 106 S.Ct., at 1299–1300, and n. 12

City of St. Louis v. Praprotnik, 108 S.Ct. at 924 (emphasis in original). Justice O'Connor's opinion continues:

> The city cannot be held liable under § 1983 unless respondent proved the existence of an unconstitutional municipal policy. * * * The mayor and aldermen enacted no ordinance designed to retaliate against respondent or against similarly situated employees.

Id. at 926. In discussing Civil Service Commission review of the employment decision at issue in *Praprotnik*, Justice O'Connor states:

> It would be a different matter if a particular decision by a subordinate was cast in the form of a policy statement and expressly approved by the supervising policymaker. It would also be a different matter if a series of decisions by a subordinate official manifested a "custom or usage" of which the supervisor must have been aware.

Id. at 927.

In the case before us, the farthest reach of Arkansas law is to place final decision-making authority as to hiring and firing in the hands of the municipal judge. Nothing grants to the municipal judge final policy-making authority in these employment matters. Neither the court's opinion today nor the concurring opinion establishes a source for any such authority. Finally, nothing in the record indicates that the judge's decision was cast as a policy statement, was condoned by those who were delegated policy-making authority by the City of Little Rock, or constituted part of a larger series of decisions manifesting a "custom or usage" of which such policy-makers must have been aware. The result is that the city has been held liable on no more than the theory of *respondeat superior*. I would reverse the judgment against the city.

Dolores Cruz GOMEZ; Patricia Leal; and Waldo Rodriguez, Plaintiffs-Appellants,

v.

The CITY OF WATSONVILLE; Ann Soldo, Mayor of the City of Watsonville; Rex Clark; Vido Deretich; Joe Marsano; Roy Ingersoll; Betty Murphy; Gwen Carroll, councilmembers of the City of Watsonville, in their official capacities as members of the City Council of the City of Watsonville; Lorraine Washington, City Clerk, in her official capacity as City Clerk for the City of Watsonville, California, Defendants-Appellees.

No. 87-1751.

United States Court of Appeals, Ninth Circuit.

Argued and Submitted Jan. 15, 1988.

Decided July 27, 1988.

As Amended on Denial of Rehearing and Rehearing En Banc Dec. 7, 1988.

Hispanic voters challenged legality of city's at-large mayoral and city council elections. The United States District Court for the Northern District of California, William A. Ingram, J., upheld election system. Voters appealed. The Court of Appeals, Nelson, Circuit Judge, held that: (1) district

court improperly considered that approximately 60% of Hispanics eligible to vote would reside in five districts outside two single-member, heavily Hispanic districts; (2) district court improperly focused on low minority voter registration and turnout as evidence that Hispanic community was not politically cohesive; and (3) district court improperly relied on socioeconomic disparities and differences of political opinion within Hispanic community and could have considered discrimination against Hispanics by parties other than city.

Reversed and remanded.

1. Municipal Corporations ⟹80

Residence of 60% of eligible, Hispanic voters in five districts outside two single-member, heavily Hispanic districts in proposed plan did not establish lack of geographic insularity; rather, Hispanics in city with at-large mayoral and city council elections were sufficiently large and geographically compact, where they constituted majority in at least one district. Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

2. Elections ⟹12(6)

Districting plans with some members of minority group outside minority-controlled districts are valid. Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

3. Elections ⟹12(7)

Determination of political cohesiveness of minority group in challenge to multi-member elections is essentially inquiry whether minority group has expressed clear political preferences that are distinct from those of majority; issue of political cohesiveness is to be judged primarily on basis of voting preferences expressed in actual elections. Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

4. Municipal Corporations ⟹80

Low minority voter registration and turnout could not be considered as evidence that Hispanic community was not politically cohesive in city with at-large mayoral and city council elections; district court

improperly speculated why Hispanics were apathetic and should have looked only to actual voting patterns. Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

5. Municipal Corporations ⟹80

Finding that predominantly Hispanic sections of city demonstrated unanimous support for Hispanic candidates established political cohesion of Hispanics in city with at-large mayoral and city council elections. Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

6. Municipal Corporations ⟹80

Socioeconomic disparities and differences of political opinion within Hispanic community was irrelevant to determination of Hispanics' political cohesiveness in city with at-large mayoral and city council elections, where Hispanics coalesced behind Hispanic candidates. Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

7. Municipal Corporations ⟹80

Non-Hispanic majority in city with at-large mayoral and city council elections engaged in racial bloc voting; no Hispanic had ever been elected as mayor or city council member prior to trial; Hispanic candidates ran unsuccessfully for city council positions from 1971 through 1985; one Hispanic ran for mayor in 1979; and 25 of 51 non-Hispanic candidates ran successfully for city council positions from 1971 through 1985. Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

8. Municipal Corporations ⟹80

Discrimination against Hispanics by parties other than city could be considered in challenge to city's at-large mayoral and city council elections. Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

9. Elections ⟹12(7)

Factors other than geographic concentration and political cohesiveness of minorities and racial bloc voting of majority are not essential to minority voter's challenge to multimember election district. Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

10. Municipal Corporations ⟹80

Lack of showing of discrimination against Hispanics in California did not defeat Hispanics' challenge to city's at-large mayoral and city council elections, where city's Hispanics overwhelmingly and consistently had distinct voting preferences from white voters, where white voters consistently voted as racial bloc against Hispanic candidates, and where single-member district system would result in some districts having Hispanic majority. Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

11. Elections ⟹12(10)

Attorney fees should be awarded in vote dilution claims unless special circumstances make award of fees unjust. Voting Rights Act of 1965, §§ 2, 14(e), as amended, 42 U.S.C.A. §§ 1973, 1973*l*(e); 42 U.S.C.A. § 1988.

12. Federal Civil Procedure ⟹2727, 2743

Prevailing Hispanics in challenge to city's at-large mayoral and city council elections were entitled to award of costs and reasonable attorney fees, including fees incurred on appeal. Voting Rights Act of 1965, §§ 2, 14(e), as amended, 42 U.S.C.A. §§ 1973, 1973*l*(e); 42 U.S.C.A. § 1988.

Joaquin G. Avila, Fremont, Cal. (argued), with Barbara Y. Phillips, Rosen & Phillips, Morris J. Baller, Marron Reid & Sheehy, and Denise Hulett and Jose Garza, Mexican American Legal Defense & Educational Fund, Inc., San Francisco, Cal., on the briefs, for plaintiffs-appellants.

Vincent R. Fontana, Wilson, Elser, Moskowitz, Edelman & Dicker, New York City, for defendants-appellees.

Appeal from the United States District Court for the Northern District of California.

Before GOODWIN and NELSON, Circuit Judges, and GILLIAM,* District Judge.

NELSON, Circuit Judge:

Dolores Cruz Gomez, Patricia Leal, and Waldo Rodriguez ("Appellants") challenge the district court's ruling that the City of Watsonville's at-large mayoral and city council election system does not violate Section 2 of the Voting Rights Act as amended in 1982. 42 U.S.C. § 1973. The district court had jurisdiction pursuant to 28 U.S.C. § 1343(a)(3) & (4). We have jurisdiction pursuant to 28 U.S.C. § 1291. We reverse and remand for implementation of a plan that comports with Section 2.

PROCEDURAL AND FACTUAL BACKGROUND

Appellants, Mexican-American citizens of Watsonville ("the City") eligible to vote, brought suit for declaratory and injunctive relief under 42 U.S.C. § 1973 ("Section 2"), 42 U.S.C. § 1983, and the fourteenth and fifteenth amendments. They have not appealed the district court's finding that no constitutional or § 1983 violations occurred. The appellants instead claim that the City's at-large system of mayoral and city council elections violates Section 2 by lessening the opportunity of Hispanics to participate in the political process and to elect representatives of their choice. Appellants seek implementation of a single-member districting plan to redress the alleged violation, and attorneys' fees and costs pursuant to 42 U.S.C. §§ 1973*l*(e) & 1988.

Appellants filed suit on May 21, 1985. On November 3, 1986, they filed a motion to enjoin the mayoral and city council election scheduled for May 1987. The district court denied this motion and held a trial from January 20–26, 1987. The district court found that racially polarized voting exists in Watsonville. The court did not find, however, that the Hispanic community was sufficiently politically cohesive or geographically insular to meet the Section 2 test. The district court issued a decision in favor of the City on January 30, 1987, and affirmed that decision after further briefing on February 20, 1987. The court awarded attorneys' fees and costs to the City. Appellants timely appealed.

The parties agree on many of the facts in this case. Appellants primarily challenge the district court's application of the legal standards governing Section 2 claims. The parties stipulated to the following facts, largely drawn from 1960–80 census data.

The City is governed by the city council, comprised of six council members and a mayor. Persons are elected to these positions on an at-large basis, with three council members elected each odd-numbered year. The three candidates with the highest number of votes are elected. Before the citizens voted for an at-large system in November 1952, the City used a district or ward system.

According to the 1980 census, 48.9% of the City's population is Hispanic, 45.2% Anglo, 5.4% Asian and Pacific Islander, and 0.5% Black. In 1960, Hispanics comprised 1,001 persons in a total population of 11,-373. As of 1980, 11,500 of Watsonville's 23,543 residents are Hispanic. Of those persons eighteen years and older, 40% are Hispanic and 60% non-Hispanic. However, Hispanics comprise only 37.0% of Watsonville's citizens because 41.5% of the Hispanics in Watsonville are non-citizens.

No Hispanic had ever been elected as mayor or city council member in Watsonville under the at-large system prior to the trial. Eight Hispanic candidates ran unsuccessfully for city council positions from 1971 to 1985 and one Hispanic ran for mayor in 1979.[1] Twenty-five of the 51

* Honorable Earl B. Gilliam, United States District Judge for the Southern District of California, sitting by designation.

1. After trial, one Hispanic was elected in May 1987 to the city council. This result was inevitable, however, because there were only two Anglo candidates, and three Hispanic candidates, for three positions. This does not affect the validity of appellants' claim. *See Thornburg v. Gingles*, 478 U.S. 30, 75–76 & n. 37, 106 S.Ct. 2752, 2779–80 at n. 37, 92 L.Ed.2d 25 (1986) (success of minority candidates at polls does not necessarily foreclose vote dilution claim).

non-Hispanic candidates ran successfully for city council positions from 1971 to 1985. Hispanic persons have been appointed to City boards and commissions.

According to census data, many more non-Hispanics than Hispanics are employed in managerial and professional jobs in Watsonville. A fairly equal number of Hispanics and non-Hispanics are employed as operators, fabricators and laborers. Many more Hispanics than non-Hispanics work in the farming, forestry and fishing industries in Watsonville. The number of Hispanics employed by the City itself has increased by 20% since 1973.

As of 1980, educational attainment levels differed among Hispanics and Anglos. Below are the number of persons 25 years and older completing school in the City.

		ANGLO	HISPANIC
Elementary		2,730	[illegible]
High School	(1-3 yrs.)	1,564	[illegible]
	(4 yrs.)	2,792	610
College	(1-3 yrs.)	1,730	311
	(4 or more yrs.)	1,084	171

Although the parties stipulated to the above facts, they dispute the *significance* of socioeconomic characteristics of the City's Hispanic community derived from the census data. Appellants maintain that the evidence reveals large discrepancies between the City's Hispanics and non-Hispanics in educational levels, income, and employment. Appellants stress that the Hispanic population has lower educational attainment levels; are employed in lower status professions, or more commonly are unemployed, and have lower family incomes; and rent instead of own their homes twice as often as other City residents. Appellants also emphasize that of the Watsonville Hispanics over age 5, 41% speak Spanish at home and approximately one-third do not speak English well or at all.

Appellees interpret the same statistics as showing less disparity between the two groups. They emphasize the increasing level of education among Hispanics during the 1970s and the increasing level of employment of Hispanics by the City itself in recent years. However, appellees fail to compare those figures to the education and employment levels of the City's non-Hispanics. Appellees also emphasize disparities within the City's Hispanic population. For example, they note that lower and higher income Hispanics sometimes reside in the same census tracts, and that the Hispanics who do own homes own those of comparable value to those owned by non-Hispanics.

The district court here found that racially polarized voting exists in Watsonville. It relied on appellants' expert, Dr. Bernard Grofman, who analyzed the census data and concluded that voting is racially polarized in Watsonville. *Cf. Thornburg v. Gingles*, 478 U.S. 30, 52–61, 106 S.Ct. 2752, 2767–72, 92 L.Ed.2d 25 (1986) (relying on similar testimony from Dr. Grofman in upholding the trial court's finding of legally significant racially polarized voting). The district court found the evidence of racially polarized voting here "essentially uncontradicted" and found Dr. Grofman's methodology "completely without criticism."

However, the court ruled against appellants. It found Watsonville's Hispanic population insufficiently geographically compact to meet the requirements of a Section 2 claim. The district court recognized that the Hispanics have the potential to control two single-member districts, but rejected appellants' vote dilution claim because the majority of Hispanics would still reside in Anglo-controlled districts in which their vote was ineffective.

The district court also found that appellants failed to demonstrate sufficient political cohesiveness among the Watsonville Hispanics. Although the court found that 95% of Hispanic voters vote for the same candidates, the court considered low voter registration and turnout among Hispanics, and concluded that all Hispanics *eligible* to vote might not all vote alike. Further, the court found that socioeconomic differences and differences in political opinion supported a conclusion that Hispanics had shown low enthusiasm for past Hispanics candidates and this, in turn, undermined political cohesiveness.

The district court appears to have misunderstood the proper legal inquiry after the 1982 amendments. Because this circuit has not yet decided a case interpreting the 1982 amendments to Section 2 of the Voting Rights Act, we will begin with an analysis of the legal standards that are to be applied to challenges to at-large electoral schemes under the newly amended Section 2.

STANDARD OF REVIEW

In analyzing a Section 2 claim, we review the district court's factual findings under the clearly erroneous standard of Fed.R.Civ.P. 52(a). *Thornburg v. Gingles*, 478 U.S. 30, 79, 106 S.Ct. 2752, 2781, 92 L.Ed.2d 25 (1986). However, "Rule 52(a) 'does not inhibit an appellate court's power to correct errors of law, including those that may infect a so-called mixed finding of law and fact, or a finding of fact that is predicated on a misunderstanding of the governing rule of law.'" *Id.* (quoting *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 501, 104 S.Ct. 1949, 1960, 80 L.Ed.2d 502 (1984)). Accordingly, the district court's findings will be set aside to the extent that they rest upon an erroneous view of the law. *Pullman-Standard v. Swint*, 456 U.S. 273, 287, 102 S.Ct. 1781, 1789, 72 L.Ed.2d 66 (1982). When findings have been set aside on this basis, the normal procedure is to remand the case so that the district court can redetermine the issue using the correct legal standard. *See id.* at 292, 102 S.Ct. at 1792. However, a remand is not necessary where the record on appeal "permits only one resolution of the factual issue." *Id.* at 287, 102 S.Ct. at 1789.

2. The full text of the amended 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 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

42 U.S.C. § 1973, as amended, 96 Stat. 134.

ANALYSIS

I. SECTION 2 VIOLATIONS

In 1982, Congress amended Section 2 of the Voting Rights Act of 1965. The amendments were designed to repudiate the "intent test" described in the plurality opinion in *City of Mobile v. Bolden*, 446 U.S. 55, 100 S.Ct. 1490, 64 L.Ed.2d 47 (1980), which stated that an electoral scheme could not be challenged under Section 2 absent a showing that the scheme was intentionally designed or maintained for a discriminatory purpose. The 1982 Amendments replace the intent test with a "results test." Under the new test, a plaintiff in a Section 2 case must show that, based on the totality of the circumstances, the electoral process is "not equally open to participation by the members of a [racial or language minority] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C. § 1973.[2]

The Senate Judiciary Committee Report accompanying the act that amended Section 2 stated that the impact of a challenged electoral device should be judged "on the basis of objective factors." S.Rep. No. 417, 97th Cong., 2d Sess. 27, *reprinted in* 1982 U.S.Code Cong. & Admin.News 177, 205. The report listed a number of objective factors that might be probative of a violation under the "totality of the circumstances test":

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. at 28–29, 1982 U.S.Code Cong. & Admin.News at 206–07.[3]

The Report emphasized, however, that this list of factors was not a mandatory seven-pronged test; the list was only meant as a guide to illustrate some of the variables that should be considered by the court. As stated in the Report, "there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other." *Id.* at 29, 1982 U.S.Code Cong. & Admin.News at 207; *accord id.* at 29 n. 118, 1982 U.S.Code Cong. & Admin.News at 207 n. 118 ("[T]he Committee [does not] intend [that these factors] be used as a mechanical 'point counting' device. The failure of plaintiff to establish any particular factor is not rebuttal evidence of [no violation].").

The Senate Committee also noted that, while the basic "totality of the circumstances" test remains the same, the range of factors that would be relevant in any given case will vary depending upon the nature of the claim and the facts of the case. *See id.* at 28, 1982 U.S.Code Cong. & Admin.News at 206 ("To establish a violation, plaintiffs could show a variety of factors, depending upon the kind of rule, practice, or procedure called into question."); *see also id.* at 30, 1982 U.S.Code Cong. & Admin.News at 207 (noting that the proof sufficient to sustain a challenge based upon a series of events or episode "would not necessarily involve the same factors" that would be relevant in a challenge to a permanent structural barrier).

The Supreme Court first interpreted the 1982 amendments to Section 2 in *Thornburg v. Gingles*, 478 U.S. 30, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986). *Thornburg* involved a challenge to the redistricting plan adopted by the North Carolina General Assembly. Several black citizens challenged the plan on the grounds that, *inter alia*, the plan's use of large, multimember voting districts had the effect of impermissibly diluting the voting strength of black voters, in violation of Section 2. The district court found that the use of multimember districts constituted impermissible vote dilution, and enjoined the state from conducting elections under the plan. The state appealed this judgment to the Supreme Court.

The Supreme Court began by noting that, "[w]hile many or all of the factors listed in the Senate Report may be relevant to a claim of vote dilution through submergence in multimember districts," only certain factors were "*essential*" to a successful claim of vote dilution. 478 U.S. at 48 & n. 15, 106 S.Ct. at 2765 & n. 15. The Court cited many of the provisions of the Report quoted above, emphasizing that the Senate "list of typical factors is neither comprehensive nor exclusive." *Id.* at 45, 106 S.Ct. at 2764. The Court noted that, rather than applying the factors in a mechanical fashion, courts must judge Section 2 claims based on a "searching practical evaluation of the 'past and present reality' and on a 'functional' view of the political process." *Id.*

The Court stated that a plaintiff challenging a multimember district plan under Section 2 must show three things. First, "the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district." *Id.* at 50, 106 S.Ct. at 2766. The Court reasoned that, unless the minority group could constitute a majority in a single-member district, there is no sense in which "the *multimember form* of the district" is responsible for any inability of the minority group to participate equally. *Id.* (emphasis in original). That is, "[u]nless minority voters possess the *potential* to elect representatives in the absence of the challenged structure or practice, they cannot claim to have been injured by that structure or practice." *Id.* at 50 n. 17, 106 S.Ct. at 2767 n. 17. Second, "the minority group must be able to show that it is politically cohesive." The Court stated that, unless the minority group is politically cohesive, "it cannot be said that the selection of a multimember electoral structure thwarts distinctive minority group interests." *Id.* at 51, 106 S.Ct. at 2767. Third, "the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances, such as the minority candidate running unopposed—usually to defeat the minority's preferred candidate." *Id.* at 50–51, 106 S.Ct. at 2766–67 (citations omitted). This showing of racial bloc voting establishes the required casual link between the use of a multimember district and the inability of the minority group "to elect its chosen representatives." *Id.* at 51, 106 S.Ct. at 2767. Furthermore, by showing that the majority is usually able to defeat the minority's candidates, the minority group is able to distinguish a "structural dilution from the mere loss of an occasional election." *Id.*

The Supreme Court noted that its analysis put substantially greater emphasis on some of the Senate factors than on others. The Court stated that the most important Senate factors in a case involving a challenge to a multimember electoral scheme are (1) "the 'extent to which minority group members have been elected to public office in the jurisdiction'" and (2) "the 'extent to which voting in the elections of the state or political subdivision is racially polarized.'" 478 U.S. at 48 n. 15, 106 S.Ct. at 2765 n. 15. These two factors overlap substantially with the last of the three elements which the Court stated must be proved. The Court went on to note that while the presence of the other Senate factors might be supportive of a challenge to a multimember voting scheme, they were "*not essential to*" such a claim. *Id.* (emphasis in original). The Court stated that, by recognizing that some of the Senate factors are more important to a multimember district vote dilution claim than others, it was simply "effectuat[ing] the intent of Congress." *Id.*

The Court then applied this test to the facts before it, and concluded that, under the applicable clearly erroneous standard, the district court's finding of a Section 2 violation must be affirmed, except with respect to one district in which there had already been sustained black electoral success. *Id.* at 77–80, 106 S.Ct. at 2780–82.

As the district court in this case recognized, Watsonville's at-large scheme is the functional equivalent of the electoral scheme at issue in *Gingles*. Having enunciated the legal standards spelled out in the Senate Report and in *Gingles*, we may now apply these standards to the facts of this case.

II. APPLICATION OF GINGLES

A. *Geographic Concentration of Hispanics*

[1] The first element of a Section 2 challenge to an at-large or other multimember voting scheme is a showing that the minority group "is sufficiently large and

3. These factors are derived from *White v. Regester*, 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314 (1973), as developed by *Zimmer v. McKeithen*, 485 F.2d 1297 (1973), *aff'd*, 434 U.S. 636, 96 S.Ct. 1083, 47 L.Ed.2d 296 (1976) (per curiam). *See Gingles*, 478 U.S. at 36 n. 4, 106 S.Ct. at 2759 n. 4.

geographically compact to constitute a majority in a single-member district." *Gingles*, 478 U.S. at 50, 106 S.Ct. at 2767. Accordingly, we use the single-member district as the measure in evaluating whether Watsonville's at-large procedure results in vote dilution. *See id.* at 50 n. 17, 106 S.Ct. at 2767 n. 17 ("The single-member district is generally the appropriate standard against which to measure minority group potential to elect because it is the smallest political unit from which representatives are elected.").

Dr. Grofman demonstrated that 68.3% of the City's Hispanic population resides in three of nine census tracts. He analyzed the number of Hispanics eligible to vote, considering age and citizenship requirements, and concluded that they are compact geographically. Appellees have not refuted these statistical findings on appeal. The district court found, however, that Watsonville Hispanics are not sufficiently geographically insular because appellants' proposed plan includes only two districts that would have contained a majority of Hispanic voters. The district court reasoned that because the plan would alleviate vote dilution for only one-third of the Hispanics eligible to vote, the appellants had not shown geographic insularity.

[2] The district court erred in considering that approximately 60% of the Hispanics eligible to vote in Watsonville would reside in five districts outside the two single-member, heavily Hispanic districts in appellants' plan. Districting plans with some members of the minority group outside the minority-controlled districts are valid. *See, e.g., Ketchum v. City Council*, 630 F.Supp. 551, 567 (N.D.Ill.1985); *Gingles v. Edmisten*, 590 F.Supp. 345, 357–59 (E.D.N.C.1984), *aff'd in relevant part sub nom Thornburg v. Gingles*, 478 U.S. 30, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986). As the Fifth Circuit stated in *Campos v. City of Baytown, Texas*, 840 F.2d 1240, 1244 (5th Cir.1988): "The fact that there are members of the minority group outside the minority district is immaterial. All that is required is that the minority group be '*sufficiently* large and geographically compact to constitute a majority in a single member district.'" (quoting *Gingles*, 478 U.S. at 50; 106 S.Ct. at 2766 (emphasis added by Fifth Circuit)). The fact that the proposed remedy does not benefit all of the Hispanics in the City does not justify denying any remedy at all.

The appellants' plan proposes two districts in which Hispanics would constitute a majority of the voters and would be able to elect representatives of their choice. It is sadly ironic that the district court concluded that because many Hispanic voters would still not be able to elect representatives of their choice under the proposed plan, no Section 2 claim could be maintained, thereby relegating all Hispanic voters to having no political effectiveness. The district court's finding is premised on a misunderstanding of the applicable legal standard. The Hispanics in Watsonville are capable of constituting a majority in at least one district, and therefore the court's finding that the group is not sufficiently geographically compact is clearly erroneous. Appellants have demonstrated the first element of the *Gingles* test.

B. *Political Cohesiveness of Hispanics*

The second requirement of the *Gingles* test is that appellants demonstrate that Watsonville Hispanics are politically cohesive. The district court found that 95% of the Hispanic voters in heavily Hispanic precincts support Hispanic candidates and that Hispanic voters ranked Hispanic candidates first or tied for first. Although the district court here found that "in actua[lity] those Hispanics who have voted have tended to vote for the same Hispanic candidates," the district court nonetheless concluded that the Hispanic community is not politically cohesive.

At the trial below, Dr. Grofman testified that Watsonville Hispanics voted the same way in substantial proportions in those elections analyzed. Dr. Grofman testified that this racial bloc voting is the primary factor in evaluating political cohesiveness, but he also pointed to other socioeconomic and cultural differences between Hispanics and non-Hispanics that contribute to the political cohesiveness of Hispanics in the City. He also cited evidence of single-shot voting (where minority members vote only for certain candidates and do not use their remaining votes) among Watsonville Hispanics to reinforce his conclusion.

Appellees argued below that Watsonville Hispanics are not politically cohesive and that appellants are not representative of Hispanics in Watsonville. The appellee's expert, Dr. Peter Morrison, and two lay Hispanic witnesses testified to the existence of political differences within the Watsonville Hispanic community. Dr. Morrison concluded that he would "not expect ... to find all Hispanics in Watsonville voting alike." He based this projection on socioeconomic differences among Hispanics and the failure of many eligible Hispanics to register and/or vote. Appellee's lay witnesses, whom the district court found credible, enumerated reasons why they believed that members of the Hispanic community did not always support Hispanic candidates enthusiastically.

In reviewing all of this evidence, the district court concluded that, *with respect to those Hispanics who have actually voted*, the evidence favored a finding of political cohesiveness. Nonetheless, the court concluded that, because "no significant number of eligible Hispanics have voted in the elections under consideration," the Hispanic community as a whole was too apathetic to be politically cohesive.

[3] The district court's finding on this issue is based on a misunderstanding of what is meant by "political cohesiveness." The inquiry is essentially whether the minority group has expressed clear political preferences that are distinct from those of the majority. Thus, a "showing that a significant number of minority group members usually vote for the same candidates is one way of proving the political cohesiveness necessary to a vote dilution claim." *Gingles*, 478 U.S. at 56, 106 S.Ct. at 2769. Indeed, the Court recognized that one of the reasons for focusing on the Senate factor concerning "racially polarized voting" is that proof that the minority has consistently voted differently helps one "to ascertain whether minority group members constitute a politically cohesive unit." *Id.* The Supreme Court's definition of "political cohesiveness" is further elucidated by referring to the articles that the Court cites as its primary source for the concept. In one passage cited by the Court, *see id.* at 51, 56, 106 S.Ct. at 2767, 2770, Blacksher and Menefee state that "[w]hether a racial group is politically cohesive depends on its *demonstrated propensity* to vote as a bloc for candidates or issues popularly recognized as being affiliated with the group's particularized interests." Blacksher & Menefee, *From Reynolds v. Sims to City of Mobile v. Bolden: Have the White Suburbs Commandeered the Fifteenth Amendment?*, 34 Hastings L.J. 1, 59 (1982) (emphasis added).

Accordingly, under the "functional" approach mandated by Section 2, *see Gingles*, 478 U.S. at 48, 106 S.Ct. at 2765 (quoting S.Rep. at 30 n. 120, 1982 U.S.Code Cong. & Admin.News at 208 n. 120), the issue of political cohesiveness is to be judged primarily on the basis of the voting preferences expressed in actual elections. This conclusion finds additional support in the decisions of other circuits. In *Collins v. City of Norfolk, Va.*, 816 F.2d 932, 935 (4th Cir.1987), the Fourth Circuit stated that "the existence of racially polarized voting ... establishes both cohesiveness of the minority group and the power of white bloc voting to defeat the minority's candidates." The court then emphasized that "[t]he legal standard for the existence of racially polarized voting looks *only to the difference between how majority votes and minority votes were cast.*" Id. (emphasis added). *Similarly, in* Campos, *the Fifth Circuit noted that the determination as to whether a minority is politically cohesive "is not an inquiry to be made prior to and apart from a study of polarized voting, ... because the central focus is on voting patterns." 840 F.2d at 1244. After quoting from* Gingles, *the Fifth Circuit concluded that "[i]t follows that a minority group is politically cohesive if it votes together."* Id.

[4] Applying these standards to the district court's decision, it is clear that the

court applied the wrong legal standard. The district court erred by focussing on low minority voter registration and turnout as evidence that the minority community was not politically cohesive. The court should have looked only to *actual voting patterns* rather than speculating as to the reasons why many Hispanics were apathetic. In fact, there is nothing in the record to support the district court's apparent conclusion that lack of enthusiasm for Hispanic candidates was responsible for the low rates of voter registration among Hispanics. *See United States v. Dallas County Comm'n*, 739 F.2d 1529, 1536 (11th Cir. 1984).[4]

[5] The district court expressly found that predominantly Hispanic sections of Watsonville have, in actual elections, demonstrated near unanimous support for Hispanic candidates. This establishes the requisite political cohesion of the minority group.

[6] The district court's reliance on socioeconomic disparities and differences of political opinion within the Hispanic community as support for Dr. Morrison's projection was also erroneous. Such differences within the community are only relevant to the extent that they reflect differences in voting behavior among Hispanics. Here, however, the district court found that Hispanics vote alike, coalescing behind Hispanic candidates. Given this degree of cohesion in their voting behavior, the fact that Watsonville Hispanics differ amongst themselves along many other dimensions is irrelevant.

This conclusion is supported by two recent decisions of the Fifth Circuit. In *Campos*, 840 F.2d at 1245–47, and *League of United Latin American Citizens v. Midland Independent School Dist.*, 812 F.2d 1494, 1500 (5th Cir.), *vacated and aff'd on other grounds*, 829 F.2d 546 (1987), the Fifth Circuit concluded that groups of Blacks and Hispanics in certain cities were politically cohesive for purposes of Section 2 violations. Thus, despite the many ethnic and cultural differences between Blacks and Hispanics, the two groups were found to have "political goals that are inseparable." *Midland*, 812 F.2d at 1500. The defendants in *Midland* offered a survey indicating that Blacks and Hispanics have mutually exclusive interests and are politically distinct groups. The Fifth Circuit, however, emphasized that "the survey does not prove that the two minority groups would *vote differently* in any particular election in which a member of one of their groups is a candidate against [a white person]." *Id.* at 1501 (emphasis added). These decisions teach that a finding that Hispanics over-whelmingly vote for different candidates than do non-Hispanics, as was found by the district court here, is ample support for political cohesiveness.

In the face of the actual voting patterns found by the district court, its finding of noncohesiveness, based on Dr. Morrison's projection that not all Hispanics are *likely* to vote alike and on anecdotal lay testimony about the differences within the Hispanic community, was clearly erroneous. Appellants have established the second element of the *Gingles* test.

C. *Racial Bloc Voting Among Majority*

[7] Finally, to maintain a Section 2 claim appellants must demonstrate racial bloc voting among the majority. "[A] white bloc vote that normally will defeat the combined strength of minority support plus white 'crossover' votes rises to the level of legally significant white bloc voting." *Gingles*, 478 U.S. at 56, 106 S.Ct. at 2770; *accord Campos*, 840 F.2d at 1248–49.

4. Indeed, if defendants could defeat a showing of political cohesion by showing little more than that many minority voters were apathetic, Section 2 would be seriously weakened. Low voter registration and turnout have often been considered evidence of minority voters' lack of ability to participate effectively in the political process. *See, e.g., Gingles*, 478 U.S. at 38–39, 106 S.Ct. at 2760–61. Courts have repeatedly noted that depressed registration rates may often be traceable in part to historical discrimination. *Id.* at 39, 106 S.Ct. at 2761; *Dallas County*, 739 F.2d at 1538; *Buckanaga v. Sisseton Independent School Dist.*, 804 F.2d 469, 475 (8th Cir. 1986) (low voter registration evidences the lingering socioeconomic effects of past discrimination).

As noted above, 60% of Watsonville residents over age 18 are non-Hispanic and 41.5% of the Hispanics in Watsonville are non-citizens. The district court found that only an average of 13% of the voters in predominantly Anglo precincts vote for Hispanic candidates while 96% of the Hispanic voters in heavily Hispanic precincts support Hispanic candidates. The court also found that Anglo voters ranked Hispanic candidates last or near last while Hispanic voters ranked Hispanic candidates first or tied for first.

Time is also probative in establishing a pattern of racial bloc voting. The Court in *Gingles* found persuasive a series of elections in which the minority group had sponsored candidates without electoral success. 478 U.S. at 57, 106 S.Ct. at 2770. The parties here have stipulated that a similar pattern exists in Watsonville. No Hispanic had ever been elected as mayor or city council member under the at-large system prior to the trial. Eight Hispanic candidates ran unsuccessfully for city council positions from 1971 to 1985 and one Hispanic ran for mayor in 1979. Twenty-five of 51 non-Hispanic candidates ran successfully forcity council positions from 1971 to 1985. Such a pattern over time of minority electoral failure strongly indicates racial bloc voting. *Gingles*, 478 U.S. at 57, 106 S.Ct. at 2770.

The district court accepted these statistics and held that racial bloc voting occurs in the City. The court found strong evidence that Hispanics and Anglos supported different candidates. Although the court did not separately find that Anglo bloc voting occurs, it is clear that the non-Hispanic majority in Watsonville usually votes sufficiently as a bloc to defeat the minority votes plus any crossover votes.

D. *Other factors*

The district court found that the third Senate factor was not present, emphasizing that Watsonville does not employ electoral devices with the potential to dilute minority voting strength such as an anti-single shot voting requirement or a majority vote requirement. However, the third Senate factor also includes "unusually large election districts" as a disfavored voting procedure. It is not disputed that an at-large system is employed in Watsonville.[5] The parties also stipulated to the lack of a district residency requirement for mayoral or city council candidates. The absence of a district residency requirement can hinder the political access of minority groups because all the candidates can come from outside minority neighborhoods. *See Rogers v. Lodge*, 458 U.S. 613, 627, 102 S.Ct. 3272, 3280, 73 L.Ed.2d 1012 (1978); *White v. Regester*, 412 U.S. 755, 766 n. 10, 93 S.Ct. 2332, 2340, n. 10, 37 L.Ed.2d 314 (1973). Therefore the third Senate factor was present, at least in part.

The district court correctly found that no evidence of the fourth and sixth Senate factors, exclusion from the candidate slating process or the use of racial appeals in campaigns, had been shown.

The first and fifth Senate factors are, respectively, a history of official discrimination against the minority group and the extent to which the minority continues to bear the effects of discrimination in socioeconomic areas that hinder their ability to participate in the political process effectively. Appellants did not present evidence of historical discrimination against Hispanics other than the socioeconomic differences between Hispanics and non-Hispanics stipulated to by the parties. The appellants did not introduce such evidence because they believed that they had amply demonstrated a Section 2 violation. The district court disagreed and concluded that the first and fifth Senate factors were not present. Indeed, the district court found "no evidence whatever of official discriminatory practices of any sort directed at the Hispanic residents of Watsonville, either presently or historically." It emphasized that the City government had not been unresponsive to the needs of Hispanics and that the City had been "singularly free of overt discrimination against Hispanics" during

5. Of course, at-large districts are not per se violative of Section 2. Plaintiffs must demonstrate vote dilution based upon a totality of the circumstances. *Gingles*, 478 U.S. at 46, 106 S.Ct. at 2764; *accord* S.Rep. No. 417, 97th Cong., 2d Sess. 16, 28–29, 33, *reprinted in* 1982 U.S.Code Cong. & Admin.News 177, 193, 206, 211.

the thirty-year period covered by the evidence. Further, the court found "no evidence that any differences in educational attainment, job opportunity, income or health benefits are the result of past discrimination of any kind, or that past discrimination has caused those factors to impede the ability of the Hispanic community to participate in the [political] process."

[8] Although we do not believe that the district court committed clear error in finding that the City of Watsonville has not itself engaged in discrimination against Hispanics, we nonetheless remain troubled by the court's handling of the first and fifth Senate factors. The district court apparently believed that it was required to consider only the existence and effects of discrimination committed *by the City of Watsonville itself.* This conclusion is incorrect.

The first Senate factor requires consideration of "[t]he extent of any history of official discrimination *in the state or political subdivision* that touched the right of members of the minority group ... to participate in the political process." S. No. 417 Rep. at 28, 1982 U.S.Code Cong. & Admin.News at 206 (emphasis added). Arguably, this limitation requires that one consider only electoral discrimination committed by the relevant political subdivision. Such a reading, however, would result in precisely the sort of mechanistic application of the Senate factors that the Senate Report emphatically rejects. The court is required to consider the totality of the circumstances, and given that the enumerated Senate factors are "neither comprehensive nor exclusive," *Gingles*, 478 U.S. at 45, 106 S.Ct. at 2764, there is nothing to suggest that courts are *forbidden* to consider discrimination committed by parties other than the relevant political subdivision. Thus, even if the first Senate factor does embrace only discrimination committed by Watsonville, that does not imply that the district court may not consider any relevant history or effects of discrimination committed by others, such as the state of California.

Furthermore, such a restrictive reading places too much emphasis on the plaintiff's ability to prove intentional discrimination. Section 2 was amended by Congress precisely to relieve plaintiffs of the burden of showing such intent. While any intent to discriminate by Watsonville would indeed be supportive of the plaintiffs' claim, plaintiffs need only show that, considering the totality of the circumstances, they do not have an equal opportunity to participate in the political process. There is no apparent reason why other forms of discrimination against Watsonville Hispanics may not be considered as factors that contribute to making the Watsonville at-large election scheme a device that impedes Hispanics' equal participation in the electoral process.

Lastly, the court decisions from which the Senate factors were derived, *see* note 3, *supra*, both considered the existence of *statewide* discrimination as a factor in concluding that at-large elections in particular counties violated Section 2. *See White v. Regester*, 412 U.S. 755, 766–67, 93 S.Ct. 2332, 2339–40, 37 L.Ed.2d 314 (1973) (referring to statewide and countywide discrimination against blacks in Dallas County, Texas); *id.* at 767–68, 93 S.Ct. at 2340–41 (noting statewide discrimination against Mexican-Americans); *Zimmer v. McKeithen*, 485 F.2d 1297, 1306 (5th Cir.1973) (referring to the effect of statewide racial segregation in education).

These arguments apply with equal force to the fifth Senate factor, which states that courts may consider "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." (emphasis added). Moreover, the literal language of the fifth Senate factor does not even support the reading that only discrimination by Watsonville may be considered; the limiting language describes the people discriminated against, not the discriminator.

The district court does not appear to have considered whether Watsonville Hispanics have suffered from discrimination by parties other than the City of Watsonville or whether any such discrimination has affected the ability of Hispanics to participate effectively in the city's electoral process. Thus, while the district court's interpretation of the first and fifth Senate factors rested on an erroneous view of the law, the appellants did not present, and the record does not contain, sufficient evidence of historical discrimination against Hispanics to permit this court to find that Watsonville Hispanics have suffered from such discrimination.

[9, 10] Were it necessary to decide this issue, we would consider the propriety of taking judicial notice of the pervasive discrimination against Hispanics in California, including discrimination, committed by the state government, that has touched the ability of California Hispanics to participate in the electoral process.[6] *See, e.g., Castro v. State*, 2 Cal.3d 223, 231, 466 P.2d 244, 249, 85 Cal.Rptr. 20, 25 (1970) (declaring a California constitutional provision making the ability to read English a prerequisite for voting unconstitutional as applied to those literate in another language). However, we conclude that, even without such a showing, plaintiffs have clearly established a violation of Section 2. As noted earlier, factors other than the three elements discussed above, while supportive of a Section 2 violation, are "*not essential to* a minority voter's claim." *Gingles*, 478 U.S. at 48 n. 15, 106 S.Ct. at 2766 n. 15. Here, the plaintiffs have shown that Watsonville Hispanics overwhelmingly and consistently have voting preferences that are distinct from those of white voters, that white voters have consistently voted as a racial bloc against such candidates, and that a single-member district system would result in some districts having a Hispanic majority. Considering all of these circumstances, we cannot but conclude that, regardless of the good faith of city officials, Watsonville's at-large system is an impermissible obstacle to the ability of Hispanics to participate effectively in the political process.

We remand for implementation of a plan that comports with Section 2. The district court has broad equitable powers to fashion relief which will remedy the Section 2 violation completely. *See* S.Rep. No. 417 at 31, 1982 U.S.Code Cong. & Admin.News at 208.

III. ATTORNEYS' FEES

[11] Appellants request attorneys' fees and costs for this appeal pursuant to 42 U.S.C. §§ 1973*l*(e) & 1988. The district court awarded the costs of suit to the City. "[T]he court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs." 42 U.S.C. § 1988; *see also id.* § 1973*l*(e). Attorneys' fees can be awarded at the trial or appellate level to prevailing parties under 42 U.S.C. § 1988. *See Sotomura v. County of Hawaii*, 679 F.2d 152 (9th Cir.1982). Attorneys' fees should be awarded in vote dilution claims unless special circumstances make such an award unjust. *Campaign for a Progressive Bronx v. Black*, 631 F.Supp. 975, 980 (S.D.N.Y.1986).

[12] Appellants are clearly the prevailing party in this litigation and no special circumstances prevent an award in this case. We thus reverse the district court's award of costs to appellees. On remand, the district court should award appellants costs and reasonable attorneys' fees, including the fees incurred in pursuing this appeal. The court should determine the appropriate amount after implementation of a plan that does not violate Section 2.

CONCLUSION

We reverse the district court's judgment in favor of the City because of its legal misunderstandings and erroneous findings of insufficient geographical insularity and political cohesiveness. We find that, based on the totality of the circumstances, the at-large scheme of mayoral and city council elections in Watsonville impermissibly dilutes the voting strength of Hispanics. We remand for implementation of a plan that comports with the requirements of Section 2.

REVERSED AND REMANDED.

6. Were we to do so, we would of course be required to provide Watsonville with an opportunity to be heard with regard to our use of judicial notice of this fact. *See* Fed.R.Evid. 201(e).

APPENDIX 3

FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

DR. GLORIA J. ROMERO, WILLIE E. WHITE, JOSEPH LEE DUNCAN, TOMAS URSUA, AND HAROLD WEBB, *Plaintiffs-Appellants/ Cross-Appellees,* v. THE CITY OF POMONA; G. STANTON SELBY; MAYOR OF THE CITY OF POMONA; VERNON M. WEIGAND, COUNCILMAN DISTRICT 1; E.J. GUALDING, COUNCILMAN DISTRICT 2; DONNA SMITH; COUNCILPERSON DISTRICT 3; MARK NYMEYER, COUNCILMAN DISTRICT 4; IN THEIR OFFICIAL CAPACITIES, *Defendants-Appellees/ Cross-Appellants.*	Nos. 87-6326, 87-6517 and 88-5688 D.C. No. CV 85-3359 JMI (Gx) **OPINION**

Appeal from the United States District Court
for the Central District of California
James M. Ideman, District Judge, Presiding

Argued and Submitted
November 3, 1988—Pasadena, California

Filed August 24, 1989

Before: Betty B. Fletcher, Arthur L. Alarcon and
Alex Kozinski, Circuit Judges.

Opinion by Judge Kozinski

COUNSEL

Rolando L. Rios, San Antonio, Texas, William Garrett, Dallas, Texas, Richard P. Fajardo and E. Richard Larson, Los Angeles, California, for the plaintiffs-appellants/cross-appellees.

John E. McDermott and Erich R. Luschei, Los Angeles, California, for the defendants-appellees/cross-appellants.

OPINION

KOZINSKI, Circuit Judge:

I. Background

The plaintiffs, Gloria J. Romero, Willie E. White, Joseph Lee Duncan, Tomas Ursua and Harold Webb, eligible voters and residents of the City of Pomona, California, allege that that city's at-large districting plan impermissibly dilutes the right of black and Hispanic voters to elect candidates of their choice to the Pomona City Council.

These facts are not in dispute: Since its incorporation in 1888, Pomona has employed an at-large election system for choosing its mayor and four city council members. Under its 1911 Charter, the city is divided into four electoral districts. A candidate for city council competes only against other candidates residing in the same district, but must be elected by a majority of the voters city-wide; if no candidate in a district election achieves a majority, there is a runoff election between the two candidates who receive the most votes in the primary election. The mayor, who serves for two years and is also a member of the city council, is elected in a city-wide election and may reside in any district. City council members hold office for staggered four-year terms. Thus, the voters of

Pomona elect the mayor and two city council members every other year.

As of the time the judgment below was entered, two Hispanics have been elected to the Pomona City Council: the first in 1967; the second in 1973 and again in 1977. *See Romero* v. *City of Pomona,* 665 F. Supp. 853, 856 (C.D. Cal. 1987).[1] No black has served on the city council, although eleven have run for office in fourteen campaigns. According to the 1980 census, the City of Pomona's population is 92,742, of which 30.5% or 28,287 have Spanish surnames, 18.6% or 17,250 are black, and 46.7% or 43,318 are white. According to a 1984 update, the population total increased to 97,998, of whom 30.5% were Spanish-surnamed and 19% were black. As of 1984, blacks and Hispanics together made up 49.5% of Pomona's population.

Plaintiffs brought this action under section 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1973 (as amended June 29, 1982), seeking: (1) a declaration that the at-large system of electing members of the Pomona City Council unlawfully dilutes Hispanic and black voting strength; and (2) an injunction against future city council elections under the at-large system and requiring the implementation of a plan whereby city council members would be elected from wards or single districts.

The case proceeded to trial but, following plaintiffs' case-in-chief, the district court granted defendants' motion for involuntary dismissal under Federal Rule of Civil Procedure 41(b). Applying *Thornburg* v. *Gingles,* 478 U.S. 30 (1986), decided after plaintiffs' presentation of their case-in-chief, the

[1]Two additional Hispanics were elected to the city council after the district court rendered its opinion: the first in 1987; the second in 1989. While we may take judicial notice of the results of these elections, contained in the reports of a public body, Fed. R. Evid. 201(b)(2), we may not, of course, rely thereon in reviewing the district court judgment.

district court found that plaintiffs failed to establish any of the three threshold requirements for proving a violation of section 2 of the Voting Rights Act: (1) geographical compactness; (2) minority group cohesion; and (3) bloc voting by the majority. More specifically, the district court found that plaintiffs failed to prove that the black and Hispanic voters of Pomona comprised a politically cohesive group. Relying on exit polls of the March 1985 city council primary, the district court found that a majority of black voters supported the white opponents of the Hispanic candidate for City Council District 3, while a majority of Hispanic voters supported the white opponents of Joseph Duncan, the black candidate for City Council District 2. *Romero,* 665 F. Supp. at 858. The district court concluded that, in the absence of significant cross-racial electoral support, blacks and Hispanics could not be considered a single, politically cohesive group. *Id.* The district court also found that "[a]fter taking into consideration factors such as eligible voting age and citizenship, the evidence conclusively establishes that neither hispanics nor blacks can constitute a majority of the voters of any single member district." *Id.*

Perhaps out of an abundance of caution, the district court went on to apply the so-called "Senate" or "*Zimmer*" factors, *see Thornburg,* 478 U.S. at 36-37, and concluded that "the City has not used any of the enumerated voting practices or procedures to discriminate against hispanic or black voters." *Romero,* 665 F. Supp. at 868.[2]

[2]The district court found, for example, that the "overall success rate of hispanic candidates [to the city council] for the period from 1965-1985 was 33%, compared to a success rate of only 27.7% for white candidates." *Romero,* 665 F. Supp. at 860-61. The absence of any successful black candidates, the district court concluded, was the result of candidate selection and campaign strategies and not racial bloc voting. The district court also found that Pomona's electoral practices, such as open access to voter registration, bilingual ballots, absentee voting, single-shot or "bullet" voting and candidate residency requirements, encouraged the election of minority candi-

Having prevailed on the merits, defendants moved for retaxing of costs for the production of exhibits under 28 U.S.C. § 1920(4) (1982) and Local Rule 16.4.17(a). The district court denied this motion, along with defendants' motion for attorney's fees under Rule 11, 28 U.S.C. § 1927 (1982) and 42 U.S.C. §§ 1973*l*(e), 1988 (1982).

On appeal, plaintiffs argue that the Supreme Court's opinion in *Thornburg* significantly altered the requirements for proving a section 2 vote dilution claim. They suggest that the district court should have allowed them to present additional evidence made relevant under *Thornburg*. On the merits, they contend that the district court misapplied *Thornburg* by measuring geographic compactness by comparing eligible voters, rather than raw population totals, and by measuring the political cohesiveness of black and Hispanic voters by determining whether blacks and Hispanics voted in tandem, rather than determining whether the two groups voted differently from whites. Third, plaintiffs challenge the district court's failure to make detailed findings as to the Senate factors and the district court's "verbatim" and "wholesale" adoption of defendants' proposed findings of fact. Appellants' Opening Brief at 36, 37. Finally, they object to the district court's refusal of class certification. Defendants appeal the district court's denial of certain costs and attorney's fees.[3]

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dates, as did the absence of candidate slating. *Id.* at 861-62. Finally, the district court found that the government of Pomona has been responsive to the needs of racial minorities, and that Pomona's minorities have not been denied access to the candidate nominating process. The district court concluded that the inability of Hispanic, and in particular black, candidates to achieve greater success at the polls reflected the fact "that minority voters are neither very large [sic] nor very concentrated [in the city of Pomona]." *Id.* at 857. Indeed, "[u]nlike heavily segregated Southern cities, the City of Pomona is very 'integrated' as described by plaintiff, Tomas Ursua, thereby making it impossible to draw a 'safe' district for either hispanics or blacks." *Id.*

[3]Plaintiffs have not appealed the district court's ruling that Pomona's at-large districting plan violated neither 42 U.S.C. § 1983 nor the fourteenth and fifteenth amendments. Defendants have not appealed the district court's denial of attorney's fees under sections 1973*l*(e) and 1988.

II. Refusal to Reopen

[1] *Thornburg* v. *Gingles,* 478 U.S. 30 (1986), which interpreted the 1982 amendments to the Voting Rights Act, held that a violation may be proved "by a showing of discriminatory effect alone." *Id.* at 35.[4] In order to prove that the mul-

[4]Congress amended the Voting Rights Act in 1982 in response to the Supreme Court's decision in *City of Mobile* v. *Bolden,* 446 U.S. 55 (1980). *Bolden* was a plurality opinion declaring that proof of discriminatory intent is not only essential to a vote dilution claim under the fourteenth and fifteenth amendments, but is also a necessary element of a claim brought under section 2 of the Act. A violation of section 2 can now be established

> if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided,* That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

42 U.S.C. § 1973(b) (as amended June 29, 1982) (emphasis original).

The "totality of circumstances" referred to in section 2 incorporates the analytical framework established in the pre-*Bolden* cases of *White* v. *Regester,* 412 U.S. 755 (1973) and *Zimmer* v. *McKeithen,* 485 F.2d 1297 (5th Cir. 1973) (en banc), *aff'd sub nom. East Carroll Parish School Bd.* v. *Marshall,* 424 U.S. 636 (1976) (per curiam). These so-called "*Zimmer*" or "Senate" factors were enumerated in the Senate Report on the 1982 Voting Rights Act amendments:

> 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;

tidistrict voting scheme impermissibly diluted minority voting strength, plaintiffs had to show that "a bloc voting majority [is] *usually* . . . able to defeat candidates supported by a politically cohesive, geographically insular minority group." *Id.* at 49. The Court noted seven factors, the presence of which would tend to establish an impermissible scheme.[5] As a preliminary matter, however, plaintiffs had to show the existence of three threshold elements: (1) geographical compactness, (2) minority political cohesion, and (3) majority bloc voting. *Id.* at 50-51. As noted, the district court dis-

> 3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
>
> 4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;
>
> 5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;
>
> 6. whether political campaigns have been characterized by overt or subtle racial appeals;
>
> 7. the extent to which members of the minority group have been elected to public office in the jurisdiction.
>
> Additional factors that in some cases have had probative value as part of plaintiffs' evidence to establish a violation are:
>
> whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group.
>
> whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.

S. Rep. No. 417, 97th Cong., 2d Sess. 28-29 (footnotes omitted), *reprinted in* 1982 U.S. Code Cong. & Admin. News 177, 206-07.

[5]*See Thornburg*, 478 U.S. at 36-37; *see also* note 4 *supra*.

missed plaintiffs' case because it found they had failed to prove any of these elements.

Plaintiffs argue that, had they been given the opportunity to reopen, they would have presented further evidence on three issues: (1) the feasibility of redrawing city council district lines to create a single district in Pomona with a majority of black and Hispanic voters; (2) the political cohesiveness of minority voters; and (3) the impact of Pomona's at-large city council election system on the ability of minority voters to "influence" the election of preferred candidates.

[2] "A motion to reopen for additional proof is addressed to the sound discretion of the trial judge." *Contempo Metal Furn. Co.* v. *East Texas Motor Freight Lines*, 661 F.2d 761, 767 (9th Cir. 1981); *accord United States* v. *Kelm*, 827 F.2d 1319, 1323 (9th Cir. 1987). Although a change of law may warrant reopening a case where plaintiff wishes to present evidence pertinent to the new legal standard, a change that does not "substantially affect" the burden of proof and was reasonably anticipated by existing law will not warrant reopening. *See Skehan* v. *Board of Trustees*, 590 F.2d 470, 479 (3rd Cir. 1978), *cert. denied*, 444 U.S. 832 (1979); 6A J. Moore, J. Lucas & G. Grotheer, Jr., *Moore's Federal Practice* ¶ 59.04[13], at 33-34 (2d ed. 1987). Further, only "reasonably genuine surprise," *Moylan* v. *Siciliano*, 292 F.2d 704, 705 (9th Cir. 1961); *see also Air et Chaleur, S.A.* v. *Janeway*, 757 F.2d 489, 495 (2d Cir. 1985), combined with a reasonably specific description of the additional evidence made relevant by the change in the law, *cf. Berns* v. *Pan American World Airways*, 667 F.2d 826, 829 (9th Cir. 1982), will justify reopening.

[3] We agree with the district court that *Thornburg* did not announce such a fundamental, unanticipated or sweeping change in the law as to warrant reopening plaintiffs' case. First, *Thornburg* did not substantially alter plaintiffs' burden of proof; it merely explained which of the Senate factors were

most relevant in proving a section 2 violation. Two of the "necessary preconditions," 478 U.S. at 50, discussed in *Thornburg* (minority group cohesion and majority bloc voting) were the component parts of one Senate factor — racially polarized voting. *See Thornburg,* 478 U.S. 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."). Even prior to *Thornburg,* proof of polarized voting, or "[v]oting along racial lines," *Rogers* v. *Lodge,* 458 U.S. 613, 623 (1982), was one of the cornerstones of a section 2 claim. *See, e.g., McMillan* v. *Escambia County,* 748 F.2d 1037, 1043 (5th Cir. 1984); *United States* v. *Marengo County Comm'n,* 731 F.2d 1546, 1566 (11th Cir.), *appeal dismissed and cert. denied,* 469 U.S. 976 (1984); *Gingles* v. *Edmisten,* 590 F. Supp. 345, 367, 374 (E.D.N.C. 1984) (three-judge court), *aff'd in part, rev'd in part sub nom. Thornburg* v. *Gingles,* 478 U.S. 30 (1986).

[4] *Thornburg,* moreover, did not alter the statistical methods used to prove racially polarized voting. Both before and after *Thornburg,* plaintiffs, including plaintiffs in this case, utilized exit polls, ecological regression and homogeneous precinct analysis, and anecdotal testimony to show the existence of polarized voting. *Thornburg* merely confirmed what has been understood all along: proof of racially polarized voting is at the heart of any section 2 claim.

[5] Plaintiffs clearly recognized this. Much of their proffered evidence was directed to showing that (a) blacks and Hispanics are politically cohesive and (b) that the minority's voting power was submerged by majority bloc voting.[6] There-

[6]Indeed, plaintiffs acknowledge that they followed *United States* v. *Marengo County Comm'n,* 731 F.2d 1546 (11th Cir.), *appeal dismissed and cert. denied,* 469 U.S. 976 (1984), which recognized that it is essential for a plaintiff to prove racially polarized voting.

fore, *Thornburg*'s threshold requirements of minority political cohesion and majority bloc voting added nothing not already recognized by existing case law and the Senate factors.

[6] Although *Thornburg*'s geographical compactness requirement was not among the enumerated Senate factors, *see McNeil* v. *Springfield Park Dist.*, 851 F.2d 937, 942 (7th Cir. 1988), *cert. denied*, 109 S. Ct. 1769 (1989), its addition did not materially alter the burden of proving a section 2 claim. In fact, cases prior to *Thornburg* held that no section 2 claim could be brought unless plaintiffs demonstrated that the minority group was capable of forming a majority of voters in a single district. *See, e.g., Latino Political Action Comm.* v. *City of Boston*, 609 F. Supp. 739, 746-47 (D. Mass. 1985), *aff'd*, 784 F.2d 409 (1st Cir. 1986); *Gingles* v. *Edmisten*, 590 F. Supp. at 381 n.3.[7] Plaintiffs have in fact attempted to show geographical compactness; they sought to prove that political cohesion of blacks and Hispanics together could comprise a majority in a proposed single-member city council district.[8] Moreover, plaintiffs offered alternative plans to show that existing precincts could be used to redraw districts to create a majority minority district. Because they

[7]We are aware of no successful section 2 voting rights claim ever made without a showing that the minority group was capable of a majority vote in a designated single district. *See, e.g., White* v. *Regester*, 412 U.S. at 768; *Zimmer* v. *McKeithen*, 485 F.2d at 1301. Indeed, the trial court in *Gingles* recognized that "no aggregation of less than 50% of an area's voting age population can possibly constitute an effective voting majority." 590 F. Supp. at 381 n.3. Less than a majority, of course, might suffice in a district where candidates are elected by plurality.

[8]One of the issues listed in the pretrial conference order, signed by both parties, was "[w]hether Blacks [and Hispanics] are geographically distinct and numerous enough to determine the electoral outcome in a single-member race." Excerpts of Record (ER) CR 27, at 9. Plaintiffs are therefore precluded from arguing that they lacked notice that geographical compactness would be an issue. *See Moylan*, 292 F.2d at 705 (only "reasonably genuine surprise" justifies reopening of case).

attempted — albeit unsuccessfully — to demonstrate geographical compactness during their case-in-chief, plaintiffs cannot now claim surprise that *Thornburg* required such a showing.

[7] Plaintiffs also contend that they should be afforded an opportunity to "establish political cohesiveness by methods other than vote analysis of city elections," Motion to Re-Open Plaintiffs' Case-in-Chief, *Romero* v. *City of Pomona,* C.A. No. 85-3359 JMI (Gx) (Aug. 28, 1986), at 4. However, *Thornburg* certainly did nothing to change the methodology by which political cohesiveness could be proved. Moreover, plaintiffs have failed to indicate what new evidence they intended to introduce to prove the political cohesiveness of Pomona's minority voters. *See Air et Chaleur,* 757 F.2d at 495 (plaintiff must show surprise and explain nature of proposed additional evidence to warrant remand following district court denial of motion to reopen).

Finally, plaintiffs suggest that they should have been permitted to reopen their case so they could demonstrate that Pomona's at-large plan diminished the ability of minority voters to *influence* the outcome of city council elections. Their argument is based on footnote 12 of *Thornburg,* which states:

> We have no occasion to consider whether § 2 permits, and if it does, what standards should pertain to, a claim brought by a minority group, that is not sufficiently large and compact to constitute a majority in a single-member district, alleging that the use of a multimember district impairs its ability to *influence* elections.

478 U.S. at 46 (emphasis original). This language, which does nothing more than expressly leave open the question, did not change existing legal standards and therefore provides no basis for a motion to reopen.

Nor does *Davis* v. *Bandemer*, 478 U.S. 109 (1986), decided the same day as *Thornburg*, support plaintiffs' claim. *Davis* involved a constitutional challenge to a districting plan, and therefore required proof of discriminatory intent. *Id.* at 140-42. Plaintiffs raised an equal protection claim at trial, which the district court rejected on the ground that plaintiffs failed to prove discriminatory purpose. *Romero*, 665 F. Supp. at 869. Plaintiffs do not challenge this finding on appeal. It was not an abuse of discretion for the district court to refuse to reopen under *Davis* where the plaintiffs had already tried but failed to prove discriminatory intent.

III. Geographical Compactness

[8] Plaintiffs contend that the district court misapplied *Thornburg*'s "geographical compactness" test by focusing on the number of blacks and Hispanics eligible to vote, rather than on total minority populations. They suggest that *Thornburg* established total minority population, rather than the population of eligible voters, as the proper standard for measuring geographical compactness in a single-member district.[9] Alternatively, they contend that, because blacks and Hispanics are politically cohesive, they should be considered in tandem for purposes of determining geographical compactness.

A. The district court held that "only those individuals eligible to vote can be counted in determining whether a minority group can constitute a voting majority of a single-member district." *Romero*, 665 F. Supp. at 864. Applying this standard, the district court found that none of the districts proposed by plaintiffs[10] have majority Hispanic or black

[9]This argument is crucial to plaintiffs' case because under their proposed 4-1 districting plan no minority group, when considering voting age and citizenship requirements, could make up a majority of a single district. *See Romero*, 665 F. Supp. at 858.

[10]The plaintiffs offered a variety of alternative districting plans to show that it was possible, using existing voter precinct lines but different city

populations, once citizenship and voting age are considered[11]: "After taking into consideration factors such as eligible voting age and citizenship, the evidence conclusively establishes that neither hispanics nor blacks can constitute a majority of the voters of any single member district." *Id.* at 858.[12]

[9] Plaintiffs contend that the district court misread *Thornburg,* which, they argue, merely requires that plaintiffs demonstrate that the minority group constitute a majority of the *total population* in the single-member district. They are mistaken. *Thornburg* repeatedly makes reference to effective voting majorities, rather than raw population totals, as the touchstone for determining geographical compactness.[13]

council district lines, to create single-member districts with heavy concentrations of minority voters. Two of the suggested plans (the 6-1 and 8-1 plans) proposed the redrawing of district lines and the creation of two or four additional city council seats. The third plan proposed redrawing the existing district lines without adding any seats to the city council (the 4-1 plan). The district court properly refused to consider any plans that expanded the number of seats on the city council. If proposed districting plans with additional district seats could be considered to prove a section 2 violation, there would be no case where geographical compactness could not be demonstrated by artful gerrymandering. *See McNeil,* 851 F.2d at 946.

[11]The district court found that, under plaintiffs' proposed 4-1 districting plan, the largest concentration of Hispanics (51%) was in District C. Once citizenship and voting age was considered, however, that number fell below 50%. *Romero,* 665 F. Supp. at 858.

[12]The evidence showed that, whether one considered existing districts or the population under the plaintiffs' proposed districting plan, it was impossible for them to construct a single district with a majority of one minority group, unless one considered raw population totals. Further, the district court found that plaintiffs' own homogeneous precinct analysis indicated that "in 1985, out of 25 precincts, none had over a 60% hispanic population. Most of the concentrated black precincts were only 62% black." *Id.* In short, Pomona is so integrated that it is impossible to construct a single-member district with a majority of black or Hispanic eligible voters.

[13]Raw population totals are relevant only to the extent that they reveal whether the minority group constitutes an effective voting majority in a

Indeed, the purpose of geographical compactness is to first determine whether minorities are capable of commanding a majority vote in a single-member district:

> Unless *minority voters* possess the *potential* to elect representatives in the absence of the challenged structure or practice, they cannot claim to have been injured by that structure or practice. The single-member district is generally the appropriate standard against which to measure minority group potential to elect because it is the smallest political unit from which representatives are elected. Thus, if the minority group is spread evenly throughout a multimember district, or if, although geographically compact, the minority group is so small in relation to the surrounding white population that it could not constitute a majority in a single-member district, these *minority voters* cannot maintain that they would have been able to elect representatives of their choice in the absence of the multimember electoral structure. As two commentators have explained:
>
> "To demonstrate [that *minority voters* are injured by at-large elections], the *minority voters* must be sufficiently concentrated and politically cohesive that a putative districting plan would result in districts in which members of a racial minority would

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proposed single-member district given such factors as low voter registration and turnout patterns. *See, e.g., Ketchum* v. *Byrne*, 740 F.2d 1398, 1413, 1415-16 (7th Cir. 1984), *cert. denied sub. nom. City Council* v. *Ketchum*, 471 U.S. 1135 (1985) (minority population should be 65 percent of the total population in a district in order for the minority group to have the ability to elect candidates of its choice); *see also United Jewish Orgs.* v. *Carey*, 430 U.S. 144, 163-64 (1977) ("*substantial* nonwhite population majority — in the vicinity of 65% — would be required to achieve a nonwhite majority of eligible voters") (emphasis original).

> constitute *a majority of the voters,* whose clear electoral choices are in fact defeated by at-large voting."

478 U.S. at 50-51 n.17 (emphasis added) (brackets original) (quoting Blacksher & Menefee, *From* Reynolds v. Sims *to* City of Mobile v. Bolden*: Have the White Suburbs Commandeered the Fifteenth Amendment?,* 34 Hasting L.J. 1, 55-56 (1982)).

Cases before and after *Thornburg* acknowledge that 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. *See, e.g., McNeil,* 851 F.2d at 945 ("Because only minorities of voting age can affect this potential [to elect candidates of their choice], it is logical to assume that the Court intended the majority requirement to mean a voting age majority."); *Latino Political Action Comm.*, 609 F. Supp. at 746-47 (rejecting section 2 claim where plaintiffs failed to establish that minority voters could constitute an effective voting majority in a single-member district); *Gingles* v. *Edmisten,* 590 F. Supp. at 381 (for purposes of determining minority vote dilution, "effective voting majority" appropriate standard). More recently, in *Gomez* v. *City of Watsonville,* 863 F.2d 1407 (9th Cir. 1988), *cert. denied,* 109 S. Ct. 1534 (1989), our assessment of geographical compactness was based upon the number of eligible minority voters, rather than total minority population. *Id.* at 1414 (presence of two districts where "Hispanics would constitute a *majority of the voters* and would be able to elect representatives of their choice" satisfies *Thornburg*'s geographical compactness standard) (emphasis added). The district court was correct in holding that eligible minority voter population, rather than total minority population, is the appropriate measure of geographical compactness.

[10] B. Alternatively, plaintiffs contend that, for the purpose of satisfying *Thornburg*'s geographical compactness requirement, Hispanics and blacks can be considered a politi-

cally cohesive minority coalition, because white voters tend to vote differently from blacks and Hispanics in Pomona.[14] This claim is foreclosed, however, by the district court's finding that blacks and Hispanics in Pomona are not politically cohesive. 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 for District 3, Tomas Ursua, and in favor of white candidates. That same exit poll revealed that 71% of all Hispanic voters cast their ballots in favor of the white opponents of Joseph Duncan, a black candidate for District 2. *Romero*, 665 F. Supp. at 858. Based as they are on substantial evidence, these findings must be given great deference. *See Thornburg*, 478 U.S. at 79 ("[T]he application of the clearly-erroneous standard to ultimate findings of vote dilution preserves the benefit of the trial court's particular familiarity with the indigenous political reality without endangering the rule of law."). We therefore hold that the district court did not err in concluding that blacks and Hispanics were not politically cohesive and could not be combined to form a majority of the voters in any district.[15]

[14]Under plaintiffs' proposed 4-1 districting plan, the largest concentration of blacks and Hispanics (68%) would be in District C, where Spanish-surnamed residents numbered 51% and blacks 17%.

[15]The district court appears to have concluded that plaintiffs did not prove geographic compactness even if blacks and Hispanics were treated together. *Romero*, 665 F. Supp. at 858. The district court did not explain why this would be the case, in light of the fact that blacks and Hispanics would have comprised a 68% population majority in one district. We need not consider whether this finding was erroneous because we affirm the district court's finding that the two groups were not politically cohesive in any event.

Also, we express no opinion as to whether section 2's protections extend to a *coalition* of racial or language minorities. *See Campos* v. *City of Baytown*, 840 F.2d 1240, 1244 (5th Cir. 1988) (holding that section 2 extends to protect coalition of black and Hispanic voters), *cert. denied*, 109 S. Ct. 3213 (1989).

[11] Because plaintiffs must meet all three *Thornburg* preconditions in order to succeed on a section 2 claim, *id.* at 50-51; *see, e.g., City of Carrollton Branch of NAACP* v. *Stallings,* 829 F.2d 1547, 1550 (11th Cir. 1987), *cert. denied sub. nom. Duncan* v. *City of Carrollton, Georgia, Branch of NAACP,* 108 S. Ct. 1111 (1988); *Collins* v. *City of Norfolk,* 816 F.2d 932, 935 (4th Cir. 1987); *Buckanaga* v. *Sisseton Indep. School Dist.,* 804 F.2d 469, 471-72 (8th Cir. 1986), we agree with the district court that plaintiffs' failure to show geographical compactness bars their section 2 claim.[16]

IV. Motion to Retax Costs

Following the district court's grant of involuntary dismissal, defendants filed a Notice of Application for Costs together with a Bill of Costs, requesting $160,584.74 for costs expended in defense of the lawsuit, including $146,926.94 in expert witness fees, $5000 for duplication and exemplification and $8,657.80 for depositions. Without agreeing as to entitlement, the parties stipulated to the amount of costs taxable for exemplification and copies of papers ($3000) and for deposition transcripts ($6,837.10), totaling $9,837.10. The clerk awarded costs to defendants in that amount. Defendants then moved to retax to add $146,926.94 in expert witness fees, expended for research and analyses by Pomona's

[16]Plaintiffs launch a somewhat pro forma attack on the district court's findings and its denial of class certification. Neither issue warrants reversal of the district court's decision.

Plaintiffs argue that the district court erred in not discussing the existence of a white voting bloc and in not making detailed findings regarding the evidence on the "Senate" factors. However, because we affirm the district court's findings regarding lack of geographic compactness and cohesion, we need not consider this assignment of error.

The district court denied class certification because it found that black and Hispanic voters in Pomona lacked commonality of interests, a showing required under Federal Rule of Civil Procedure 23(a)(2). Because we affirm the district court's dismissal of plaintiffs' case on the merits, the class certification issue is moot.

five expert witnesses.[17] Plaintiffs filed a cross-motion to retax, seeking to eliminate all costs. Both motions were denied by the district court. Because only defendants appeal, the sole issue we must consider is whether defendants were entitled to $146,926.94 in expert witness fees as taxable costs under 28 U.S.C. § 1920 (1982).

Defendants argue that recoverable "exemplification" costs under section 1920(4) include not merely the cost of physical preparation of exhibits, but the expert research expenses incurred in assembling and preparing the content of those exhibits. Defendants maintain that the fees paid to the experts who assembled, analyzed and distilled the data incorporated into their trial exhibits are an integral part of the costs of exemplification and therefore should be recoverable under section 1920(4).

While we have never considered the issue, some other circuits have limited recovery under section 1920(4) to the actual costs of physically producing the exhibits. In *Webster v. M/V Moolchand, Sethia Liners, Ltd.*, 730 F.2d 1035 (5th Cir. 1984), the Fifth Circuit held that "the language of [§ 1920(4)] seems to preclude its extension beyond the payment of the actual cost of exemplification and reproduction of copies." *Id.* at 1040. Similarly, in *CleveRock Energy Corp. v. Trepel*, 609 F.2d 1358 (10th Cir. 1979), *cert. denied*, 446 U.S. 909 (1980), the Tenth Circuit denied expert witness fees as "adjunct to the preparation of exhibits." *Id.* at 1363; *accord Union Carbide & Carbon Corp. v. Nisley*, 300 F.2d 561 (10th Cir. 1961) (under Rule 54(d), accountant's fees incurred in connection with trial preparation in antitrust litigation not

[17]This included over $16,000 for "computer programming/data entry/computer usage for graphics, charts and maps," $6500 for a "voter survey," and approximately $22,904 for "research assistants" and "archive assistants". Supplemental Excerpts of Record (SER) at 4-5. Of the roughly $147,000 in expert witness fees charged Pomona, $99,000, or 67 percent, was for "research and analysis" conducted by the experts themselves. SER 6-7.

allowable), *cert. dismissed sub. nom. Wade* v. *Union Carbide & Carbon Corp.*, 371 U.S. 801 (1962).

Defendants cite contrary authority from two other circuits. In *EEOC* v. *Kenosha Unified School Dist.*, 620 F.2d 1220 (7th Cir. 1980), the Seventh Circuit held that the district court may use "equity power to allow recovery of costs beyond the mere physical production of court materials." *Id.* at 1228. *Kenosha*, which relied on the district court's equitable powers, has been fatally undermined by the Supreme Court's recent decision in *Crawford Fitting Co.* v. *J.T. Gibbons, Inc.*, 482 U.S. 437 (1987). *Crawford* held that, notwithstanding the district court's discretionary authority under Federal Rule of Civil Procedure Rule 54(d) to *refuse* to tax costs in favor of a prevailing party, a district court may not rely on its "equity power" to tax costs beyond those expressly authorized by section 1920: "The discretion granted by Rule 54(d) is not a power to evade this specific congressional command. Rather, it is solely a power to decline to tax, as costs, the items enumerated in § 1920." *Id.* at 442; *see also Maxwell* v. *Hapag-Lloyd Aktiengesellschaft*, 862 F.2d 767, 770 (9th Cir. 1988) (*Crawford* strictly limits reimbursable costs to those enumerated in section 1920).

Defendants also rely on *In re Air Crash Disaster*, 687 F.2d 626 (2d Cir. 1982), where the Second Circuit construed section 1920(4) to allow recovery of "the expense of an expert's research and analysis in . . . producing an exhibit." *Id.* at 631. We must part company with our sister circuit on this issue because we believe it has read section 1920 too broadly. Section 1920(4) speaks narrowly of "[f]ees for exemplification and copies of papers," suggesting that fees are permitted only for the physical preparation and duplication of documents, not the intellectual effort involved in their production. Were the term exemplification read any broader, it could well swallow up other statutory provisions of the Code and rules, such as the prohibition against the award of attorney's fees or expert witness fees in the normal case. *See, e.g.*, 28 U.S.C.

§ 1821(b) (1982) (limiting court-ordered award of witness fees to thirty dollars per day); 28 U.S.C. § 1927 (1982) (attorney's fees may be awarded where attorney acted recklessly or in bad faith); Fed. R. Civ. P. 11 (allowing award of attorney's fees incurred in defense of bad faith motion or pleading); Fed. R. Civ. P. 26(b)(4)(C) (party seeking discovery may, under certain circumstances, be required to pay expert witness fees for time and effort expended in responding to discovery requests). *See CleveRock*, 609 F.2d at 1363. This is because any document "necessarily produced" for purposes of the litigation will contain somebody's intellectual input, be it a lawyer, an expert witness or a lay witness.

This case illustrates the problem with defendants' proposed construction. Defendants are asking the court to shift their expert witness costs to plaintiffs under the guise of exemplification costs. Reading section 1920(4) *in pari materia* with other applicable provisions precludes this result. We therefore affirm the district court's denial of the motion to retax costs.

V. Attorney's Fees and Sanctions

Following the district court's grant of involuntary dismissal in favor of Pomona, defendants moved for attorney's fees, based on 28 U.S.C. § 1927 and Rule 11 of the Federal Rules of Civil Procedure. The district court denied both requests and defendants appeal. "The imposition of sanctions under section 1927 requires a finding that counsel acted 'recklessly or in bad faith.' " *United States* v. *Blodgett*, 709 F.2d 608, 610 (9th Cir. 1983), (quoting *Barnd* v. *City of Tacoma*, 664 F.2d 1339, 1343 (9th Cir. 1982)). *See also United States* v. *Assoc'd Convalescent Enters.*, 766 F.2d 1342, 1346 (9th Cir. 1985); *Optyl Eyewear Fashion Internat'l Corp.* v. *Style Cos.*, 760 F.2d 1045, 1048 (9th Cir. 1985). The district court refused to make such a finding and we see no basis for holding that it abused its discretion.

Pomona also argues that it is entitled to sanctions under Rule 11 because several of the allegations raised in the complaint and at the outset of discovery — in particular, allegations concerning the existence of facts relevant to the Senate factors enumerated in *Thornburg*[18] — either later proved to be without foundation or were otherwise abandoned as the trial progressed.

Rule 11 sanctions are appropriate "only when the pleading as a whole is frivolous or of a harassing nature, not when one of the allegations or arguments in the pleading may be so characterized." *Murphy* v. *Business Cards Tomorrow, Inc.*, 854 F.2d 1202, 1205 (9th Cir. 1988) (rejecting Rule 11 sanctions where defendants argued that two allegations in amended complaint were plainly false). That some of the allegations made at the outset of the litigation later proved to be unfounded does not render frivolous a complaint that also contains some non-frivolous claims. *See Golden Eagle Distr. Corp.* v. *Burroughs Corp.*, 801 F.2d 1531, 1540-41 (9th Cir. 1986) (Rule 11 sanctions inappropriate where only a portion of an otherwise meritorious pleading, motion or paper is frivolous).

VI. Conclusion

The district court's judgment is affirmed in all respects.

[18]Plaintiffs alleged either in their complaint or at the outset of discovery that (a) Pomona intentionally adopted and maintained the at-large system for the purpose of discriminating against black and Hispanic residents; (b) racial appeals were made by white candidates in Pomona City Council elections; (c) Pomona officials were not responsive to the needs of its minority citizens; (d) the tenuous justifications for Pomona's adoption and maintenance of its at-large system suggested discriminatory motivation; and (e) the city council's staggered term elections had a discriminatory effect on the ability of blacks and Hispanics to effectively exercise their franchise.

APPENDIX 4

A.B. No. 2—Chacon (Principal coauthor: Polanco) Vasconcellos, Bane, Bates, Willie Brown, Calderon, Campbell, Elder, Floyd, Hannigan, Harris, Hughes, Murray, Peace, Roos, Roybal-Allard, and Maxine Waters (Senators Bill Greene, Montoya, Roberti, and Torres, coauthors).

An act to add Section 5019.3 to the Education Code, and to add Section 37117 to the Government Code, relating to school districts.

1988

Dec. 5—Read first time. To print.
Dec. 8—From printer. May be heard in committee January 7.

1989

Jan. 19—Referred to Com. on E.R. & C.A.
Mar. 2—From committee chairman, with author's amendments: Amend, and re-refer to Com. on E.R. & C.A. Read second time and amended.
Mar. 6—Re-referred to Com. on E.R. & C.A.
April 24—From committee: Do pass, and re-refer to Com. on W. & M. Re-referred. (Ayes 6. Noes 4.) (April 19).
May 16—From committee chairman, with author's amendments: Amend, and re-refer to Com. on W. & M. Read second time and amended.
May 17—Re-referred to Com. on W. & M.
May 25—From committee: Do pass. (Ayes 12. Noes 8.) (May 24).
May 26—Read second time. To third reading.
June 19—Read third time. Passage refused. (Ayes 38. Noes 33. Page 2641). Motion to reconsider on Thursday, June 22 made by Assembly Member Chacon.
June 22—Motion to reconsider continued until next Legislative day.
June 26—Motion to reconsider continued until next Legislative day.
June 27—Reconsideration granted. Read third time, passed, and to Senate. (Ayes 44. Noes 31. Page 2929.)
June 27—In Senate. Read first time. To Com. on RLS. for assignment.
July 1—Referred to Com. on E. & R.
July 19—From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 5. Noes 1.).
Aug. 21—In committee: Set, first hearing. Hearing canceled at the request of author.
Aug. 30—Referred to APPR. suspense file.
Sept. 5—Joint Rule 61 suspended.
Sept. 8—From committee: Amend, and do pass as amended. (Ayes 7. Noes 5.). Read second time and amended. Ordered to third reading.
Sept. 12—Read third time, passed, and to Assembly. (Ayes 22. Noes 11. Page 3822.)
Sept. 13—In Assembly. Concurrence in Senate amendments pending.
Sept. 14—Senate amendments concurred in. To enrollment. (Ayes 43. Noes 31. Page 4896.)
Sept. 18—Enrolled and to the Governor at 1 p.m.
Sept. 29—Vetoed by Governor.

. NUMBER: AB 2

BILL TEXT

PASSED THE ASSEMBLY SEPTEMBER 14, 1989
PASSED THE SENATE SEPTEMBER 12, 1989
AMENDED IN SENATE SEPTEMBER 8, 1989
AMENDED IN ASSEMBLY MAY 16, 1989
AMENDED IN ASSEMBLY MARCH 2, 1989

RODUCED BY Assembly Members Chacon, Vasconcellos, Bane, Bates, Willie Brown, Calderon, Campbell, Elder, Floyd, Hannigan, Harris, Hughes, Murray, Peace, Roos, Roybal-Allard, and Maxine Waters
(Principal coauthor: Assembly Member Polanco)
(Coauthors: Senators Bill Greene, Montoya, Roberti, and Torres)

DECEMBER 5, 1988

act to add Section 5019.3 to the Education Code, and to add Section 37117 he Government Code, relating to school districts.

LEGISLATIVE COUNSEL'S DIGEST

B 2, Chacon. School districts: trustee areas.
xisting law authorizes the election of the members of a school district rning board by an at-large method, by trustee area where each member is ted by the voters of that trustee area, or by trustee area where each er is elected by the voters of the entire district but resides in the tee area that he or she represents.
his bill would require that the members of a school district governing d in every school district having, in the 1987-88 fiscal year, a pupil llment of 20,000 or more, of which 21% or more were members of an ethnic rity, be elected by trustee area, such that each member residing in a tee area is elected by the voters of that trustee area, thereby

L NUMBER: AB 2

BILL TEXT

ablishing a state-mandated local program. This bill would also authorize governing board to seek assistance from the legislative body of a city in establishment of single-member trustee areas. This bill would provide t it does not require a change in the manner of electing the members of a

nty board of education and does not apply to the election of members of a ool district governing board as provided by a city or city and county rter.

Existing statutory law and provisions of the State Constitution prescribe powers and duties of the legislative bodies of chartered and general law ies in the conduct of their affairs.

This bill would provide that the legislative body of a city may assist the erning board of an affected school district in the establishment of gle-member trustee areas pursuant to this bill.

This bill would become operative on January 1, 1992, and would apply only elections conducted on or after this date.

The California Constitution requires the state to reimburse local agencies school districts for certain costs mandated by the state. Statutory visions establish procedures for making that reimbursement, including the ation of a State Mandates Claims Fund to pay the costs of mandates which do exceed $1,000,000 statewide and other procedures for claims whose tewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates ermines that this bill contains costs mandated by the state, reimbursement those costs shall be made pursuant to those statutory procedures and, if statewide cost does not exceed $1,000,000, shall be made from the State idates Claims Fund.

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

SECTION 1. The Legislature finds and declares as follows:

(a) Although over 20 percent of the state's population is Hispanic, only 6 cent of elected school board members are Hispanic.

(b) While African-Americans constitute 8 percent of California's ulation, only 2 percent of elected school board members are

rican-Americans.
(c) The United States Supreme Court recognized, in Thornburg v. Gingles, a connection between at-large elections and the low percentage of elected ficials who are members of minorities.
(d) The United States Court of Appeals for the Ninth Circuit has held, in nez v. City of Watsonville, that at-large elections, under certain rcumstances, may dilute minority voting strength.
(e) Five percent of the state's population consists of Asian-Americans, ile less than 1 percent of elected school board members are Asian-Americans.

(f) Single-member district elections promote increased participation in the mocratic process, by giving citizens greater impact on the election of their cally elected officials.
(g) Single-member district elections increase the accountability of elected ficials to their local area, as they are elected by a specific and defined nstituency.
SEC. 2. Section 5019.3 is added to the Education Code, to read:
5019.3. (a) Notwithstanding any other provision of law, in every school strict that had, in the 1987-88 fiscal year, a pupil enrollment of 20,000 or re, of which 21 percent or more were members of an ethnic minority, ngle-member trustee areas shall be established for the election of governing ard members, on the basis of one member residing in each trustee area to be ected by the voters of that trustee area. No governing board member shall elected in an at-large district election or from a multimember trustee ea.
(b) The governing board may seek the assistance of the legislative body of city pursuant to Section 37117 of the Government Code in the establishment

single-member trustee areas under this section.
(c) Nothing in this section shall require a change in the manner of ecting the members of a county board of education.
(d) This section shall not apply to the manner in which members of a school strict governing board are elected as provided for by a city or city and unty charter pursuant to subdivision (a) of Section 16 of Article IX of the lifornia Constitution.
SEC. 3. Section 37117 is added to the Government Code, to read:
37117. The legislative body of any city may assist the governing board of school district that had, in the 1987-88 fiscal year, a pupil enrollment of),000 or more in the establishment of single-member trustee areas, pursuant) Section 5019.3 of the Education Code.
SEC. 4. The provisions of this act shall not become operative until January , 1992, and shall apply only to elections conducted on or after January 1,)92.
SEC. 5. Notwithstanding Section 17610 of the Government Code, if the ommission on State Mandates determines that this act contains costs mandated

/ the state, reimbursement to local agencies and school districts for those osts shall be made pursuant to Part 7 (commencing with Section 17500) of ivision 4 of Title 2 of the Government Code. If the statewide cost of the

.aim for reimbursement does not exceed one million dollars ($1,000,000), ›imbursement shall be made from the State Mandates Claims Fund. ›twithstanding Section 17580 of the Government Code, unless otherwise ›ecified in this act, the provisions of this act shall become operative on ›e same date that the act takes effect pursuant to the California ›nstitution.

AB 2

CONCURRENCE IN SENATE AMENDMENTS

AB 2 (Chacon) - As Amended: September 8, 1989

SEMBLY VOTE 44-31 (June 6, 1989) SENATE VOTE 22-1 (September 12,
39)

iginal Committee Reference: E. R., & C.A.

GEST

isting law permits a school district to elect its governing board members
ther at large or from or by districts.

passed by the Assembly, this bill required election of school member from
ngle-member districts in every school district that had, in the 1987-88
scal year, a pupil enrollment of 20,000 or more. The bill applied to
ections on or after January 1, 1992.

e Senate amendments:

Make legislative findings and declarations.

Add the further stipulation that at least 21% of a school districts's student population must be members of an ethnic minority group before the school district would be required to elect their school board members from single-member districts.

SCAL EFFECT

ate-mandated local program; contains a state-mandated costs disclaimer.

A.B. No. 343—Chacon.

An act to amend Sections 5020 and 5030 of the Education Code, relating to elections.

1969

Jan. 24—Read first time. To print.
Jan. 25—From printer. May be heard in committee February 24.
Feb. 6—Referred to Com. on E.R. & C.A.
April 24—From committee: Do pass, and re-refer to Com. on W. & M. Re-referred. (Ayes 8. Noes 1.) (April 19).
May 2—From committee chairman, with author's amendments: Amend, and re-refer to Com. on W. & M. Read second time and amended.
May 4—Re-referred to Com. on W. & M.
June 1—From committee: Amend, and do pass as amended. (Ayes 17. Noes 0.) (May 24).
June 5—Read second time and amended. Ordered returned to second reading.
June 6—Read second time. To third reading.
June 15—Read third time, passed, and to Senate. (Ayes 65. Noes 1. Page 2535.)
June 15—In Senate. Read first time. To Com. on RLS. for assignment.
June 22—Referred to Com. on E. & R.
July 5—In committee: Hearing postponed by committee.
July 19—From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 5. Noes 0.).
Aug. 21—In committee: Set first hearing. Failed passage. Reconsideration granted.

AMENDED IN ASSEMBLY JUNE 5, 1989

AMENDED IN ASSEMBLY MAY 2, 1989

CALIFORNIA LEGISLATURE—1989–90 REGULAR SESSION

ASSEMBLY BILL No. 343

Introduced by Assembly Member Chacon

January 24, 1989

An act to amend Sections 5020 and 5030 of the Education Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

AB 343, as amended, Chacon. Elections: School and community college districts.

Existing law provides that, except as to charter cities and cities and counties, the county committee on school district organization may establish trustee areas in any school district or community college district, rearrange the boundaries of, or abolish, trustee areas, increase to 7 or decrease to 5 the number of members, or adopt an alternate method of electing board members, as specified.

Existing law provides that a county committee may at any time recommend one of specified alternate methods of electing governing board members of a school district or community college district having trustee areas, including that the member or members residing in each trustee area be elected by the voters of that particular trustee area.

This bill would extend that general authority to the voters of the district but would authorize the committee or the voters to recommend that one or more members residing in each trustee area be elected by the voters of that area.

Existing law provides that whenever trustee areas are established or rearranged in a district, provision shall be made for one of the specified alternative methods of electing

governing board members.

This bill would delete the reference to rearrangement of trustee areas.

Existing law provides that if a petition requesting an election on a proposal to rearrange trustee area boundaries is filed containing a specified number of signatures of the district's registered voters, the proposal shall be presented to the district voters within a specified time period.

This bill would impose a state-mandated local program by including within this provision a petition to establish or abolish trustee areas, to increase or decrease the number of board members, or to adopt one of specified alternative methods of electing governing board members.

This bill would specify the language to be included on the ballot for the above proposals.

Existing law provides that if more than one proposal appears on the ballot, all must carry in order for any to become effective.

This bill would repeal and reenact this provision, but would except therefrom a proposal to adopt one of the specified alternative methods of electing governing board members, unless an inconsistent proposal is approved by a greater number of voters.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed $1,000,000, shall be made from the State Mandates Claims Fund.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Section 5020 of the Education Code is
2 amended to read:
3 5020. (a) The resolution of the county committee
4 approving a proposal to establish or abolish trustee areas
5 or to increase or decrease the number of members of the
6 governing board shall constitute an order of election, and
7 the proposal shall be presented to the electors of the
8 district not later than the next succeeding election for
9 members of the governing board.
10 (b) If a petition requesting an election on a proposal
11 to rearrange trustee area boundaries, to establish or
12 abolish trustee areas, to increase or decrease the number
13 of members of the board, or to adopt one of the
14 alternative methods of electing governing board
15 members specified in Section 5030 is filed, containing at
16 least 5 percent of the signatures of the district's registered
17 voters as determined by the elections official, the
18 proposal shall be presented to the electors of the district,
19 ~~not later than the next succeeding election for the~~
20 ~~members of the governing board; provided, however,~~ *at*
21 *the next succeeding election for the members of the*
22 *governing board, at the next succeeding statewide*
23 *primary or general election, or at the next succeeding*
24 *regularly scheduled election at which the electors of the*
25 *district are otherwise entitled to vote, provided* that
26 there is sufficient time to place the issue on the ballot. For
27 each proposal there shall be a separate proposition on the
28 ballot. The ballot shall contain the following words:
29 "For the establishment (or abolition or
30 rearrangement) of trustee areas in ________ (insert
31 name) School District—Yes" and "For the establishment
32 (or abolition or rearrangement) of trustee areas in
33 ________ (insert name) School District—No."
34 "For increasing the number of members of the
35 governing board of ________ (insert name) School
36 District from five to seven—Yes" and "For increasing the
37 number of members of the governing board of ________
38 (insert name) School District from five to seven—No."

1 "For decreasing the number of members of the
2 governing board of ______ (insert name) School
3 District from seven to five—Yes" and "For decreasing
4 the number of members of the governing board of
5 ______ (insert name) School District from seven to
6 five—No."
7 "For the election of each member of the governing
8 board of the ______ (insert name) School District by
9 the registered voters of the entire ______ (insert name)
10 School District—Yes" and "For the election of each
11 member of the governing board of the ______ (insert
12 name) School District by the registered voters of the
13 entire ______ (insert name) School District—No."
14 "For the election of one member of the governing
15 board of the ______ (insert name) School District
16 residing in each trustee area elected by the registered
17 voters in that trustee area—Yes" and "For the election of
18 one member of the governing board of the ______
19 (insert name) School District residing in each trustee
20 area elected by the registered voters in that trustee
21 area—No."
22 "For the election of one member*, or more than one*
23 *member for one or more trustee areas,* of the governing
24 board of the ______ (insert name) School District
25 residing in each trustee area elected by the registered
26 voters of the entire ______ (insert name) School
27 District—Yes" and "For the election of one member*, or*
28 *more than one member for one or more trustee areas,* of
29 the governing board of the ______ (insert name)
30 School District residing in each trustee area elected by
31 the registered voters of the entire ______ (insert name)
32 School District—No."
33 If more than one proposal appears on the ballot, all
34 must carry in order for any to become effective, except
35 that a proposal to adopt one of the methods of election of
36 board members specified in Section 5030 which is
37 approved by the voters shall become effective unless a
38 proposal which is inconsistent with that proposal has
39 been approved by a greater number of voters. An
40 inconsistent proposal approved by a lesser number of

1 voters than the number which have approved a proposal
2 to adopt one of the methods of election of board members
3 specified in Section 5030 shall not be effective.
4 SEC. 2. Section 5030 of the Education Code is
5 amended to read:
6 5030. Except as provided in Sections 5027 and 5028, in
7 any school district or community college district having
8 trustee areas, the county committee on school district
9 organization and the registered voters of a district,
10 pursuant to Sections 5019 and 5020, respectively, may at
11 any time recommend one of the following alternate
12 methods of electing governing board members:
13 (a) That each member of the governing board be
14 elected by the registered voters of the entire district.
15 (b) That one or more members residing in each
16 trustee area be elected by the registered voters of that
17 particular trustee area.
18 (c) That each governing board member be elected by
19 the registered voters of the entire school district or
20 community college district, but reside in the trustee area
21 which he or she represents.
22 The recommendation shall provide that any affected
23 incumbent member shall serve out his or her term of
24 office and that succeeding board members shall be
25 nominated and elected in accordance with the method
26 recommended by the county committee.
27 Whenever trustee areas are established in a district,
28 provision shall be made for one of the alternative
29 methods of electing governing board members.
30 In counties with a population of less than 25,000, the
31 county committee on school district organization or the
32 county board of education, if it has succeeded to the
33 duties of the county committee, may at any time, by
34 resolution, with respect to trustee areas established for
35 any school district, other than a community college
36 district, amend the provision required by this section
37 without additional approval by the electors, to require
38 one of the alternate methods for electing board members
39 to be utilized.
40 SEC. 3. Notwithstanding Section 17610 of the

1 Government Code, if the Commission on State Mandates
2 determines that this act contains costs mandated by the
3 state, reimbursement to local agencies and school
4 districts for those costs shall be made pursuant to Part 7
5 (commencing with Section 17500) of Division 4 of Title
6 2 of the Government Code. If the statewide cost of the
7 claim for reimbursement does not exceed one million
8 dollars ($1,000,000), reimbursement shall be made from
9 the State Mandates Claims Fund. Notwithstanding
10 Section 17580 of the Government Code, unless otherwise
11 specified in this act, the provisions of this act shall become
12 operative on the same date that the act takes effect
13 pursuant to the California Constitution.

O

A.C.R. No. 35—Chacon (Principal coauthor: Senator Torres) Willie Brown, Burton, Calderon, Campbell, Cortese, Eastin, Hannigan, Harris, Hughes, Isenberg, Katz, Killea, Klehs, Murray, Polanco, Roybal-Allard, Speier, Tucker, Vasconcellos, and Maxine Waters (Senators Marks, Montoya, and Roberti, coauthors).

Relative to the Legislative Task Force on District Elections.

1989

Feb. 27—Introduced. To print.
Feb. 28—From printer.
Mar. 30—Referred to Com. on RLS.
May 9—From committee chairman, with author's amendments: Amend, and re-refer to Com. on RLS. Amended.
May 11—Re-referred to Com. on RLS.
May 26—From committee chairman, with author's amendments: Amend, and re-refer to Com. on RLS. Amended.
May 30—Re-referred to Com. on RLS.
June 13—From committee: Amend, and be adopted as amended.
June 14—Amended. To third reading.
June 22—Amended. To third reading.
June 26—Adopted and to Senate. (Ayes 76. Noes 0. Page 2870.)
June 27—In Senate. To Com. on RLS.
July 1—Referred to Com. on E. & R. & Com. on RLS.
July 19—From committee: Amend, and be adopted as amended.
July 20—Read second time, amended, and to third reading.
Aug. 28—To inactive file - Senate Rule 29.
Aug. 31—From inactive file. To second reading.
Sept. 1—Read second time. To third reading.
Sept. 7—To inactive file - Senate Rule 29.
Sept. 8—From inactive file. To second reading.
Sept. 11—Read second time. To third reading.
Sept. 12—To inactive file on motion of Senator Torres.

AMENDED IN SENATE JULY 20, 1989

AMENDED IN ASSEMBLY JUNE 22, 1989

AMENDED IN ASSEMBLY JUNE 14, 1989

AMENDED IN ASSEMBLY MAY 26, 1989

AMENDED IN ASSEMBLY MAY 9, 1989

CALIFORNIA LEGISLATURE—1989–90 REGULAR SESSION

Assembly Concurrent Resolution No. 35

Introduced by Assembly Member Chacon
(Principal coauthor: Senator Torres)
(Coauthors: Assembly Members Willie Brown, Burton, Calderon, Campbell, Cortese, Eastin, Hannigan, Harris, Hughes, Isenberg, Katz, Killea, Klehs, Murray, Polanco, Roybal-Allard, Speier, Tucker, Vasconcellos, and Maxine Waters)
(Coauthors: Senators Marks, Montoya, and Roberti)

February 27, 1989

Assembly Concurrent Resolution No. 35—Relative to the Legislative Task Force on District Elections.

LEGISLATIVE COUNSEL'S DIGEST

ACR 35, as amended, Chacon. Legislative Task Force on District Elections.

This measure would provide for the appointment of a Legislative Task Force on District Elections by the Speaker of the Assembly and the Senate Rules Committee to conduct a study of the desirability of district elections at the local level in this state and on changes, other than district elections, which would increase minority representation among local elected officials.

This measure would request cooperation from the

Department of Finance and the Secretary of State. ~~The~~ *It would require the* task force ~~would~~ ~~be~~ ~~required~~ to submit to the Legislature a preliminary report no later than June 30, 1990, and a final report no later than December 31, 1991.
Fiscal committee: no.

1 WHEREAS, Minority groups comprise approximately
2 one-third of California's population—over 20 percent are
3 Hispanic, 8 percent are Black, and 5 percent are Asian; by
4 the year 2000 the percentage of minority groups will
5 probably increase to nearly 50 percent; and
6 WHEREAS, Minorities are seriously underrepresented
7 among California's local elected officials; of the state's
8 more than 5,000 school board members approximately 6
9 percent are Hispanic, 2 percent are Black, and less than
10 1 percent are Asian; of the state's more than 2,000 city
11 council members, approximately 6 percent are Hispanic
12 and 3 percent are Black; and
13 WHEREAS, Experience has shown that the most
14 effective way to increase the number of minorities
15 elected to local office is to switch from at-large to district
16 elections; over 95 percent of the state's school boards and
17 city councils are elected at-large; and
18 WHEREAS, the United States Court of Appeal in the
19 case of Gomez v. City of Watsonville, 863 F. 2d 1407,
20 required the City of Watsonville to switch to district
21 elections in order to protect the voting rights of
22 minorities, and lawsuits requesting district elections have
23 been and continue to be filed in California; and
24 WHEREAS, There is a need to determine whether
25 there are other cities or school districts in California in
26 which minority voters are prevented from electing
27 candidates of their choice because of the use of at-large
28 elections; the statistical information needed to make that
29 determination is not readily available for all local
30 government agencies; and
31 WHEREAS, There may be changes that can be made
32 in the electoral process, other than district elections, that
33 would have the effect of increasing minority
34 representation among local elected officials; and

1 WHEREAS, Women are substantially
2 underrepresented among California's elected city
3 officials; women comprise almost 51 percent of
4 California's population; and 23.5 percent of city council
5 members are women; now, therefore, be it
6 *Resolved by the Assembly of the State of California, the*
7 *Senate thereof concurring,* That the Legislature, working
8 through a task force appointed by the Speaker of the
9 Assembly and the Senate Rules Committee, conduct a
10 study of the desirability of district elections at the local
11 level in California and that this task force be known as the
12 Legislative Task Force on District Elections; and be it
13 further
14 *Resolved,* That the task force have 14 members, seven
15 each appointed by the Speaker of Assembly and Senate
16 Rules Committee, of whom one shall be appointed as
17 chair; and the task force shall include at least one
18 representative from Hispanic organizations or groups,
19 one representative from Black organizations or groups,
20 one representative from Asian organizations or groups,
21 one representative of Filipino or other Pacific Islander
22 organizations or groups, and one representative from a
23 group representing city council members, one
24 representative from a group representing school district
25 board members, one representative from a group
26 representing community college trustees, and one
27 representative of a women's organization or group, one
28 local elected official, one member of the faculty or the
29 research staff of the University of California *or of any*
30 *other university in California* who has expertise in areas
31 related to the subject matter to be addressed by the task
32 force, and may include Members of the Legislature, or
33 their representatives, and any other persons interested in
34 correcting the underrepresentation of minorities in local
35 elective office; and be it further
36 *Resolved,* That the task force be provided necessary
37 staff and support by the Senate Office of Research and
38 the Assembly Office of Research, and is requested to do
39 all of the following:
40 (a) Collect and analyze information, including, but

1 not limited to, the following:
2 (1) Information on minority members of city councils,
3 community college boards of trustees, and school boards,
4 including the number of these officials, the offices they
5 hold, and whether they were originally elected or
6 appointed.
7 (2) The level of voter registration and voter turnout of
8 Spanish surname individuals and other minority groups
9 that can be identified by surnames from the records of
10 the Secretary of State and the county clerks. The
11 Secretary of State is urged to make this information
12 available to the task force, and to assist in the
13 identification of Spanish surnames and other voters.
14 (3) Information on minority candidates for city
15 councils, community college boards of trustees, and
16 school boards, including the number of these candidates,
17 the offices for which they sought election, and the results
18 of the elections in which they were candidates.
19 (4) Information on those cities, community college
20 districts, and school districts which have, or which have
21 had, elections by single member district, and the number
22 of minority elected officials in each of these jurisdictions,
23 both before and after the adoption of district elections.
24 (5) Information on those cities, community college
25 districts, and school districts which have minority
26 populations of 25 percent or more, and the type of
27 electoral system and the number of minority candidates
28 and minority elected officials in each jurisdiction. The
29 Department of Finance is urged to assist the task force in
30 obtaining this information.
31 (b) Conduct an analysis of selected cities, community
32 college districts, and school districts which now have
33 at-large election systems, or variations on these systems,
34 to evaluate whether a change to district elections would
35 be likely to increase the number of minority elected
36 officials. In conducting this analysis, the task force shall
37 consider the criteria set forth in the case of Gomez v. City
38 of Watsonville. The task force shall analyze at least two
39 cities, two community college districts, and two school
40 districts, choosing at least one city with a population of

1 200,000 or more, one community college district with a
2 student enrollment of 25,000 or more, and one school
3 district with a student enrollment of 100,000 or more. If
4 the task force has adequate resources, it shall analyze up
5 to 10 different school districts.
6 (c) Analyze whether there are changes which could
7 be made to the electoral process, other than district
8 elections, which would have the effect of increasing
9 minority representation among local elected officials.
10 (d) Analyze the effect, if any, of district elections on
11 women candidates.
12 (e) Solicit information, assistance, and advice from
13 various sources, including the Secretary of State, the
14 county clerks, outside experts, state and local agencies
15 and departments, and other states so as to accomplish its
16 mandate. The Secretary of State, the county clerks, and
17 all other state and local agencies and departments are
18 urged to cooperate with the task force.
19 (f) Hold hearings concerning the need for district
20 elections. At least one hearing shall be held in a city, one
21 in a community college district, and one in a school
22 district, which is evaluated pursuant to subdivision (b).
23 (g) Identify ways in statutes or the California
24 Constitution might hinder a switch to district elections in
25 jurisdictions in which district elections may be
26 appropriate, and identify changes that could be made in
27 statutes or the California Constitution to facilitate a
28 switch to district elections when appropriate.
29 (h) Identify ways in which the state could assist local
30 jurisdictions which wish to change to district elections.
31 (i) Submit a preliminary report to the Legislature no
32 later than June 30, 1990, containing the information
33 required by subdivision (a), and stating which
34 jurisdictions will be analyzed in depth pursuant to
35 subdivision (b).
36 (j) Submit a final report to the Legislature no later
37 than December 31, 1991. The final report shall include all
38 the information and analysis required by this measure.
39 The information required by subdivision (a) shall be
40 updated from the preliminary report. The final report

1 shall include recommendations based on the information
2 and analysis; and be it further
3 *Resolved,* That the task force shall cease operation on
4 December 31, 1991; and be it further
5 *Resolved,* That the task force may accept grants,
6 contributions, and appropriations, and may contract for
7 any services which cannot satisfactorily be performed by
8 the Assembly Office of Research or the Senate Office of
9 Research; and be it further
10 *Resolved,* That the Chief Clerk of the Assembly
11 transmit a copy of this resolution to the Secretary of State,
12 the Department of Finance, the county clerks, and all
13 other state and local agencies.

O