

Documenting Discrimination in Voting:

Judicial Findings
Under Section 2
of the Voting Rights Act
Since 1982

*Final Report of the Voting Rights Initiative
University of Michigan Law School*

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Introduction

This year marks the fortieth anniversary of one of the most remarkable and consequential pieces of congressional legislation ever enacted. The Voting Rights Act of 1965 (“the VRA”) targeted massive disfranchisement of African-American citizens in numerous Southern states. It imposed measures drastic in scope and extraordinary in effect. The VRA eliminated the use of literacy tests and other “devices” that Southern jurisdictions had long employed to prevent black residents from registering and voting.¹ The VRA imposed on these jurisdictions onerous obligations to prove to federal officials that proposed changes to their electoral system would not discriminate against minority voters.²

Resistance was immediate both in the streets and in the courts, but the VRA withstood the challenge.³ The result was staggering. The VRA ended the long-entrenched and virtually total exclusion of African Americans from political participation in the South. Black voter registration rose and black participation followed such that, by the early 1970s, courts routinely observed that black voters throughout the South were registering and voting without interference. Similar benefits accrued to non-English speaking voters, particularly to Latino voters in the Southwest, after Congress amended the VRA to protect specified language minorities in 1975. This increased participation exposed less blatant inequalities and problems—complex issues such as racial vote dilution, the contours of which courts are still tackling today.

These persistent problems have led Congress to extend and expand the VRA each time its non-permanent provisions were due to expire. The ban on literacy tests, as well as the “preclearance” provisions contained in Section 5, initially were enacted to last for only five years. Nonetheless, Congress decided to extend these provisions in 1970, again in 1975, and for twenty-five more years in 1982. During the last renewal, Congress also expanded the terms of the core permanent provision of the Voting Rights Act—Section 2.

Four decades after their original enactment, the non-permanent provisions of the VRA are once again set to expire.⁴ Congress must soon determine whether it should renew these provisions, make substantive alterations to them, or simply let them lapse. To make this determination, Congress needs information about the past and present status of minority participation in the political process.

The Voting Rights Initiative (“VRI”) at the University of Michigan Law School was created during the winter of 2005 to help address this need and to help inform the nationwide discussion on voting rights now under way. A cooperative research venture involving 100 students working under faculty direction set out to produce a detailed portrait of litigation brought since 1982 under Section 2. This Report evaluates the results of that survey. The comprehensive data set may be found in an analytically structured as well as searchable form at <http://www.votingreport.org>. The aim of this report, the accompanying website, and the project as a whole is to contribute to a critical understanding of current opportunities for effective political participation on the part of those minorities the Voting Rights Act seeks to protect.

The Project: Background, Goals, and Methods

STATUTORY BACKGROUND

The Voting Rights Act of 1965 was enacted in response to the continued, massive, and unconstitutional exclusion of African Americans from the franchise. Despite the ratification in 1870 of the Fifteenth Amendment, which prohibits denying or abridging the right to vote on the basis of race, color, or previous condition of servitude, state voting officials continued to devise mechanisms to exclude African Americans from the franchise.⁵ Judicial invalidation of one such practice often prompted the creation of another to achieve the same result. Moving from outright violence to explicit race-based exclusions to “grandfather clauses,” literacy tests, and redistricting practices, many former Confederate states (and several others) successfully prevented African Americans from participating in elections for nearly a century.⁶

Prompted by several notorious attacks on civil rights activists and recognition of the scope of African-American disfranchisement, Congress and the President acted to remedy the ineffectiveness of existing anti-discrimination provisions in 1965. The statute they created would both reaffirm the basic constitutional prohibition against race-based exclusions from the franchise and make those constitutional prohibitions effective.

The central provision of the Voting Rights Act is Section 2, which, as originally enacted, closely tracked the wording of the Fifteenth Amendment.⁷ To this Congress added Section 4, which suspended the use of particular exclusionary practices, and Section 5, which demanded that jurisdictions with extremely low levels of voter registration and turnout seek “preclearance” from federal officials before implementing any changes to their voting laws and procedures.⁸ The non-permanent provisions of the Voting Rights Act, including Section 5, were extended in 1970, 1975, and 1982, and are due for reauthorization in 2007.

Congress enacted the current version of Section 2 when it amended the statute in the course of reauthorizing the nonpermanent provisions in 1982. The amendment was a response to the Supreme Court’s interpretation of the VRA in a case brought by African-American residents in Mobile, Alabama.

By the summer of 1975, black citizens in Mobile were registering and voting without hindrance, a feat that would have seemed impossible a decade earlier. And yet, ten years after passage of the Voting Rights Act, black residents in Mobile noticed that their participation seemed to be making little difference to the substance and structure of local governance. At the time, African Americans comprised approximately one third of the city’s population, white and black voters consistently supported different candidates, and no African-American candidate had ever won a seat on the three-person city commission. Housing remained segregated, black city employees were concentrated in the lowest city salary classification, and “a significant difference and sluggishness” characterized the City’s provision of city services to black residents when compared to that provided to whites.⁹ Since 1911, Mobile had chosen its commissioners in city-wide at-large elections.

In June of 1975, African-American residents in Mobile filed a class action lawsuit challenging the city’s at-large electoral system. Two lower federal courts held that this system unconstitutionally diluted black voting strength.¹⁰

In 1980, the Supreme Court reversed. In *City of Mobile v. Bolden*,¹¹ the Court held that neither the Constitution nor Section 2 of the Voting Rights Act prohibited electoral practices simply because they produced racially discriminatory results. The Court determined that these provisions proscribed only those rules or practices enacted with racially invidious intent. Mobile's at-large system remained permissible unless the plaintiffs could demonstrate that the city adopted the at-large system for the purpose of diluting black voting strength.¹²

In 1982, Congress responded to *Mobile* by amending Section 2 to create an explicit "results"-based test for discrimination in voting. As a consequence, Section 2 provides today:

*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 [on account of statutorily designated language minority status].*¹³

Determining whether a particular electoral rule results in a denial or abridgement of the right to vote is a complex inquiry. The statute indicates that to prevail under Section 2, plaintiffs must demonstrate that, "based on the totality of circumstances...the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a [racial or language minority]." Plaintiffs must show that members of these protected classes "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." Relevant to the inquiry is "the extent to which members of a protected class have been elected to office in the State or political subdivision," although the statute is explicit that it creates no right to proportional representation.¹⁴

The Senate Judiciary Committee issued a report to accompany the 1982 amendment to Section 2, now known as the Senate Report.¹⁵ The Supreme Court has since described this report as "the authoritative source" on the meaning of the amended statute.¹⁶ The Senate Report identified several factors, now known as "the Senate Factors," for courts to use when assessing whether a particular practice or procedure results in prohibited discrimination in violation of Section 2. Derived from the Supreme Court's analysis in *White v. Regester*,¹⁷ and the Fifth Circuit's subsequent decision in *Zimmer v. McKeithen*,¹⁸ these "typical" factors are:

- 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 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.*¹⁹

The Senate Report also identified two additional factors that have “probative value” in establishing a plaintiff’s claim under the amended statute, often considered Senate Factors 8 and 9, namely 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”; and whether the justification for the policy behind the practice or procedure is “tenuous.”²⁰

The 1982 Amendment to Section 2 dramatically altered voting rights litigation nationwide. While prior to 1982 plaintiffs had rarely invoked Section 2 in its original form, most plaintiffs alleging racial vote dilution since 1982 have consistently brought their claims under Section 2.²¹

In 1986, the Supreme Court issued its first major decision addressing the 1982 amendments to Section 2. In *Thornburg v. Gingles*, African-American voters in North Carolina challenged a state-wide legislative districting plan, and sought to replace some of the plan’s multi-member districts with single-member districts in which black voters would comprise a majority. The Court used the case as a vehicle to articulate a three-part test for bringing a Section 2 claim: the minority group must demonstrate that, first, that it is “sufficiently large and geographically compact to constitute a majority in a single-member district;” second, that it is “politically cohesive;” and, third, 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.”²² The *Gingles* case itself involved a challenge to multi-member districts, but courts soon extended its framework to cases where plaintiffs challenged single member districts.²³

Eight years after *Gingles*, the Supreme Court decided *Johnson v. De Grandy*, which made clear that the *Gingles* preconditions were precisely that, preconditions, and not a substitute for adjudication under the totality of circumstances test. Courts that find the preconditions met must proceed to evaluate whether under the totality of circumstances relief is warranted. *De Grandy* found such relief unwarranted in the case before it—a challenge to a statewide districting plan brought by African-American and Latino plaintiffs. The Court concluded that the plan achieved “proportionality” because “both minority groups constitute effective voting majorities in a number of state Senate districts substantially proportional to their share in the population.”²⁴

Two years ago, the Supreme Court handed down *Georgia v. Ashcroft*, in which it evaluated whether Georgia could replace several of its majority-minority districts with districts where minority voters constituted only a plurality. In concluding that nothing in Section 5 of the Act prevented Georgia from doing so, the Court relied significantly on its own precedent construing Section 2.²⁵ Recent Section 2 decisions now discuss *Georgia v. Ashcroft* when assessing challenges to various districting practices.²⁶

RESEARCH OBJECTIVES

A detailed understanding of Section 2 litigation informs several issues Congress must confront as it evaluates the reauthorization of the expiring provisions of the Voting Rights Act. First, the record of judicial implementation of Section 2 will inform the question whether the auxiliary provisions, such as Section 5, are still helpful today. To be sure, Section 5 is distinct from Section 2 in that compliance with Section 2 is neither necessary nor sufficient to obtain preclearance from the federal government. Nonetheless, analyzing the judicial record of Section 2 decisions—including the structured nature of the judicial inquiry under the Senate Factors—helps illuminate the extent to which meaningful minority participation in elections has been a reality in recent times. Put another way, Section 5 was originally enacted because “Congress had found that case-by-case litigation was inadequate to combat wide-spread and persistent discrimination in voting, because of the inordinate amount of time and energy required to overcome the obstructionist tactics invariably encountered in these lawsuits.”²⁷ Even though the Voting Rights Act successfully reduced the incidence of those tactics, the persistence of many such “obstructionist tactics,” as this study documents, suggests that Section 5 remains a useful tool today to protect the basic right to political participation.

Second, the record of judicial implementation of the core provision of the VRA provides helpful evidence in determining whether the constitutional predicate necessary for Congress to exercise its legislative powers in this area exists. Recent Supreme Court decisions have demanded increased scrutiny of the connection between the perception of a constitutional evil and the remedy enacted under Congress’s power to enforce the Civil War amendments. In *City of Boerne v. Flores*, the Supreme Court announced a rule that Congress could only invoke its legislative powers under Section 5 of the Fourteenth Amendment where the Congressional legislation was “congruent and proportional” to “remedy or prevent” an underlying constitutional violation.²⁸ The same is true for the power to enforce the Fifteenth Amendment pursuant to Section 2 of that amendment.²⁹

To be sure, Section 2 prohibits more than the Fifteenth Amendment itself prohibits. In particular, Section 2’s “results-based” test goes beyond what the Fifteenth Amendment alone commands. As a consequence, the record of Section 2 violations does not necessarily indicate the existence of constitutional violations, and therefore does not necessarily provide the proper predicate for Congress’s exercise of its enforcement powers under the Fifteenth Amendment.

And yet, an examination of Section 2 cases can provide the requisite foundation for Congress’s exercise of its enforcement powers. As an initial matter, some Section 2 violations are constitutional violations.³⁰ These may figure directly into the calculus of whether the predicate for Congress’s exercise of its enforcement powers exists. Moreover, courts assessing the Senate Factors in the course of adjudicating Section 2 cases have documented evidence that reveals a wide range of unconstitutional conduct by state and local officials in specific regions across the Nation. While these judicial findings are not formal adjudications of unconstitutional conduct, they represent the considered judgments of federal judges nationwide that the evidence they reviewed reveals conduct that runs afoul of the Constitution. These findings accordingly provide a basis on which Congress can rely in determining the scope of unconstitutional conduct and the need for a federal law that goes beyond the simple prohibition of the unconstitutional act itself.

Third, Section 2 decisions tell a powerful story about the health of minority political participation throughout the United States since 1982. And they do so *in Congress's own terms*—in the way Congress asked courts to assess political equality and to determine whether to issue a remedy. Any examination of Congressional policy in this area should therefore begin with how the courts have addressed minority political participation in the course of implementing the VRA.

Fourth, an examination of these decisions illustrates how both claims and remedies have changed over the years. Enacted by Congress in 1965 to address the specific problem of black disfranchisement in the South, the Voting Rights Act has been amended to protect language minorities and today is invoked by several different minority groups to challenge a host of electoral practices throughout the country. The findings in these cases offer a lens, provided by Congress itself, through which variations in political participation over time and region may be viewed and evaluated.

Finally, the reauthorization of the Voting Rights Act's non-permanent provisions offers an opportunity for Congress to give further guidance on how it believes the law as a whole should operate. Documentation of the judicial record in Section 2 cases—in particular, courts' analysis of the various Senate Factors and the judicial choice of remedies—therefore may be useful to inform Congress on how federal judges have understood the instructions contained in the VRA and whether those instructions are in need of revision.

RESEARCH PROJECT AND DESIGN

The Voting Rights Initiative is a faculty-student research collaborative established in January, 2005 at the University of Michigan Law School. Working under the direction of Professor Ellen Katz, a group of more than 100 Michigan law students set out to document the nature and scope of litigation brought under Section 2 of the Voting Rights Act since 1982.

Researchers began by searching the federal court databases on Westlaw and LexisNexis to identify electronically published decisions addressing a Section 2 claim. To develop this list, researchers searched these databases for every federal court decision that cited 42 U.S.C. § 1973 since June 29, 1982, when Section 2 was amended. The resulting list was then narrowed by identifying cases in which plaintiffs had filed an actual *claim* under Section 2, and removing all decisions that merely reference Section 2 without involving a claim brought under that provision.³¹

Researchers then located on these databases all related decisions and organized them by lawsuit with a single litigation title for quick reference.³² Within each lawsuit, researchers determined which opinion provided the final word³³ for the purposes of this project, since many lawsuits included multiple appeals and remands. The final word case in each lawsuit is usually the last case in the lawsuit that assessed liability on the merits and determined whether Section 2 was violated. If there was no such case to analyze, researchers coded as the final word the last published case in the lawsuit making some other determination for or against the plaintiff, including whether to issue a preliminary injunction, whether to approve a settlement, what remedy to order, and whether to grant fees.³⁴ In these latter cases, the contours of the underlying Section 2 claim and the court's analysis of it were often difficult to discern as the reported deci-

sion was addressing a distinct question. Still, these cases, especially preliminary injunction cases, sometimes included reference to some Senate Factors or other substantive Section 2 criteria, and where possible researchers documented these findings. Even where nothing more than the fact of decision could be discerned from these opinions, researchers included the lawsuit in the overall list of lawsuits to attempt to give as broad a picture as possible of Section 2 litigation.

Researchers reviewed each case within a litigation string and followed a standard checklist (see Data Key located at www.votingreport.org) to catalogue the information discussed and determine the outcome in each lawsuit analyzed. Researchers recorded which of the nine Senate Factors, if any, the reviewing court found to exist, and whether the court ultimately found a violation of Section 2. Researchers also tracked how courts have treated the so-called “*Gingles*” threshold test (set forth by the Supreme Court in its 1986 opinion *Thornburg v. Gingles*³⁵), the law or practice challenged in each lawsuit, the implicated governing body, the minority groups bringing the claim, the involvement of expert witnesses, and other basic case data such as the judges and lawyers involved with the case.

Each case was read and catalogued by multiple researchers working independently — then by research directors and then checked for consistency by editors. Since the completion of the case reports, searches have been designed and the database used to document and analyze the particular findings in this report.

All of the case reports and searches to access this data are available at <http://www.votingreport.org>. This site includes lists of cases, organized by lawsuit and by state, that: identify a violation of Section 2; identify such violations in covered jurisdictions; find each of the Senate Factors; challenge specific types of electoral practices; challenge certain governing bodies; and involve particular minority groups.

The Findings: Documenting Discrimination

OVERALL RESULTS

The Numbers

This study identified 322 lawsuits, encompassing 750 decisions that addressed Section 2 claims since 1982.³⁶ These lawsuits, of course, represent only a portion of the Section 2 claims filed or decided since 1982. Of the total number of cases filed, some plaintiffs failed to pursue their claims, many obtained relief through settlement, and others saw their cases go to judgment, but the courts involved did not issue any published opinion or ancillary ruling published on the electronic databases surveyed (i.e., Westlaw, LexisNexis). The total number of claims filed under Section 2 since the statute was amended is accordingly not known.

The ACLU has reported that approximately 1 out of 5 of their plaintiffs' Section 2 cases filed in Georgia and in South Carolina ended with a published decision.³⁷ In Texas, the Section 2 litigation record of attorney Rolando Rios shows that 8 of 211 or 3.8% of his law firm's filed Section 2 lawsuits ending with a reported decision.³⁸ Insofar as these ratios of filings to reported decisions are at all representative, this study's compilation of 323 lawsuits suggests more than 1600 Section 2 filings nationwide with filings in covered jurisdictions possibly exceeding 800 filings.

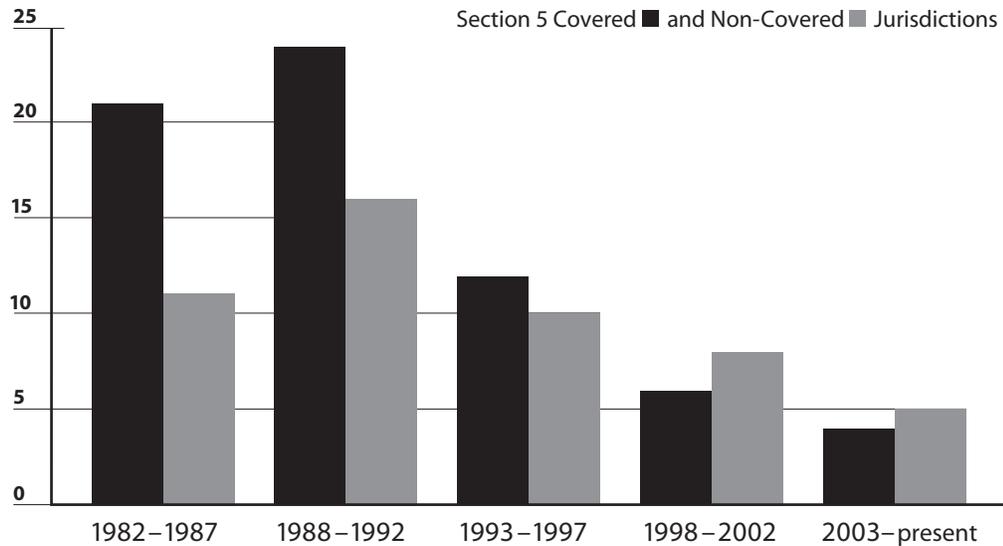
Of the identified lawsuits, 209 produced at least one published liability decision under Section 2. The remaining 113 include lawsuits in which the only decisions published on Westlaw or LexisNexis addressed preliminary matters (73 decisions) or fees, remedy, or settlement issues (40 decisions).³⁹ Of the 209 lawsuits that ended with a determination of liability, 98 (46.9%) originated in jurisdictions covered by Section 5 of the Voting Rights Act, and 111 (53.1%) were filed in non-covered jurisdictions.⁴⁰

Of lawsuits identified, 88 documented a violation of Section 2 — either on the merits or in the course of another favorable determination for the plaintiff. Another 29 lawsuits made a favorable determination for the plaintiff (such as issuing a preliminary injunction, granting a settlement, awarding fees, or crafting a remedy) without stating whether Section 2 was actually violated. Plaintiffs accordingly succeeded in 117 (36.3%) of the lawsuits identified in this study.⁴¹

Plaintiffs won more Section 2 lawsuits in Section 5-covered jurisdictions than they did in non-covered jurisdictions even though less than one-quarter of the U.S. population resides in a jurisdiction covered by Section 5.⁴² Of the 117 successful plaintiff outcomes documented, 67 originated in covered jurisdictions and 50 elsewhere.⁴³ Plaintiffs in covered jurisdictions also won a higher percentage of the cases decided than did those in non-covered ones. Thirty percent of the 163 lawsuits published in non-covered jurisdictions ended favorably for plaintiffs, while 42.1% of the 159 lawsuits from covered jurisdictions produced a result favorable to the plaintiffs. Courts identified violations of Section 2 more frequently between 1982 and 1992 than in the years since. Of the 88 total violations identified, courts found 60.2% of them during the first period, 39.8% since then.⁴⁴

In all, 145 of the 322 total lawsuits challenged at-large districts, and of these, 55 held the practice to violate Section 2.⁴⁵ In addition, 10 lawsuits challenging at-large election systems otherwise ended with a favorable outcome for the plaintiff (indicated by a

Plaintiff Section 2 Success Rate Over Time



settlement, remedy or fees case if not a published finding of a violation). A total of 110 lawsuits challenged redistricting plans. Of those, 43 ended with a favorable outcome for the plaintiffs, of which 30 found a violation of Section 2. Thirty-six lawsuits challenged election procedures (e.g., registration, candidacy, or voting requirements, or polling place rules or practices by election officials), and 14 of these ended with a favorable outcome for the plaintiffs (including 7 violations found). Eleven lawsuits challenged majority-vote requirements such as a run-off, anti-single shot provisions, or numbered-place systems.⁴⁶ Six of these held the practice to violate Section 2; with no other favorable outcomes reported.⁴⁷ Thirty-six challenges addressed annexations, felon disfranchisement provisions, and appointment practices and none of these ended with a favorable outcome for the plaintiff. In some lawsuits, plaintiffs challenged multiple electoral practices, or the practice challenged was not identified clearly in the only published opinion, so the numbers listed here do not add up to the total number of lawsuits.

The nature of Section 2 litigation has changed during the past twenty-three years. Of the 142 lawsuits that ended during the first decade after the 1982 Amendments, most involved challenges to at-large elections (81 or 57%). Since 1993, 180 lawsuits have produced published opinions. Of these, 66 (36.7%) challenged at-large elections, and 73 (40.5%) challenged reapportionment or redistricting plans.

African-American plaintiffs have brought the vast number of published claims (268) under Section 2 since 1982, with an increasing number of cases involving Latino (96), Native American (12) and Asian American (7) plaintiffs. African-American plaintiffs won the vast majority of claims, and were plaintiffs in 103 (88%) of the successful decisions (and 77 of the violations) overall, and 54 (85.7%) of the 63 total successes for plaintiffs since 1990. Of all successful lawsuits, 14 involved multiple minority group plaintiffs.⁴⁸ In addition, Latino plaintiffs won 7 lawsuits independently. Native American plaintiffs won an additional 5 published lawsuits.

Sixty-six lawsuits identified the remedy granted for a Section 2 violation. Of these, 24 (36.3%) replaced an at-large system with a single district system;⁴⁹ 27 (40.9%) ordered new multi-district lines to be drawn;⁵⁰ 15 (22.7%) ordered something else, such as changes to election administration procedures,⁵¹ changes to the actual outcome of an election,⁵² or affirmative steps (such as targeted community voter registration and education) to encourage minority political participation.⁵³

In several lawsuits, courts addressed the constitutionality of Section 2 and all upheld that statute.⁵⁴

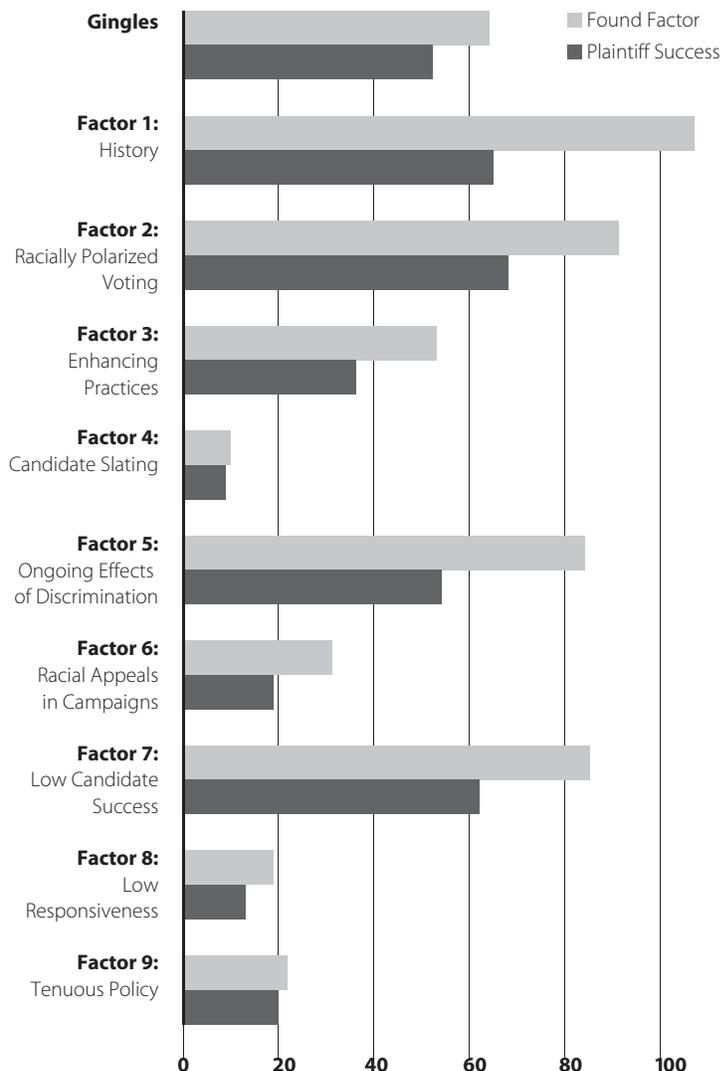
Judicial findings on the Senate Factors are discussed in more detail below. Briefly stated, however, courts found Senate Factor 1 (a history of official discrimination touching the right to vote) in 107 lawsuits. Twenty-four lawsuits identified explicit official discrimination against a racial or language minority group since 1982, of which eleven originated in covered jurisdictions.⁵⁵

Ninety-one lawsuits found racially polarized voting or racial bloc voting since 1982, generally analyzing the question under either Senate Factor 2 or the second and third *Gingles* preconditions.⁵⁶ Where courts found racial bloc voting, plaintiffs prevailed 74.7% of the time (or in 68 lawsuits overall). Courts found racially polarized voting in 44 lawsuits in covered jurisdictions.

Eighty-five lawsuits found that minority candidates had difficulty getting elected (Factor 7).⁵⁷ In 84 lawsuits, courts found that past socioeconomic discrimination hindered effective political participation (Factor 5).⁵⁸ Courts documented the presence of enhancing practices (Factor 3), such as at-large elections or majority vote requirements, in 53 lawsuits not directly challenging these practices. Courts identified overt or subtle racial appeals in 42 campaigns held between 1982 and 2002 (Factor 6).⁵⁹ Ten lawsuits found that minorities were denied access to a candidate slating process (Factor 4); 19 lawsuits documented a significant lack of responsiveness by current officials to the needs of the minority community (Factor 8); and 22 found that only a tenuous policy existed for the challenged practice (Factor 9).⁶⁰ Factors 4, 8 and 9 featured less prominently in analyzed lawsuits, but when these factors were present, courts typically found a statutory violation as well.

Plaintiffs failed to satisfy the *Gingles* preconditions in 99 of the 163 lawsuits to consider *Gingles*.⁶¹ Plaintiffs who crossed the *Gingles* threshold were more likely to prevail in covered jurisdictions than in non-covered ones. Of the 64 lawsuits that deemed the *Gingles* factors satisfied, plaintiffs in covered jurisdictions prevailed in 92.6% of the cases, winning a favorable outcome in 25 of the 27 lawsuits. Plaintiffs in non-covered jurisdictions prevailed in 72.9% of the cases, winning relief in 27 of the 37 cases that satisfied the *Gingles* preconditions.

Judicial Findings under Discriminatory Results Test
Since 1982, Number of Cases by Senate Factor



The Persistence of Discrimination

Four decades after the enactment of the Voting Rights Act, racial discrimination in voting is far from over. Federal judges adjudicating Section 2 cases over the last twenty-three years have documented an extensive record of conduct by state and local officials that they have deemed racially discriminatory and intentionally so. Judicial findings under the various factors set forth in the Senate Report reveal determined, systematic, and recent efforts to minimize minority voting strength.

Examples abound.⁶² Last year's decision in the *Bone Shirt* litigation documents how county officials in South Dakota have purposely blocked Native Americans from registering to vote and from casting ballots. The Charleston County, South Carolina litigation reveals deliberate and systematic efforts by county officials to harass and intimidate African-American residents seeking to vote. The *North Johns* litigation in Alabama describes the town mayor's refusal to provide African-American candidates registration forms required by state law. The *Harris* litigation in Alabama tells of Jefferson County's refusal to hire black poll workers for white precincts — and the blind eye state government turned to the voting discrimination perpetuated at local polls. A Philadelphia lawsuit describes a deliberate and collusive effort by party officials and city election commissioners to trick Latino voters into casting illegitimate absentee ballots that would never be counted. The *Town of Cicero* litigation categorizes an 18-month residency requirement deliberately designed to stymie Hispanic candidacies. Many more cases tell of state and local authorities drawing district lines for the express purpose of diminishing the influence of minority voters, or to protect partisan interests knowing that doing so will hinder minority voting strength.

Section 2 lawsuits also catalogue formal and informal slating procedures implemented by party officials and private associations that function to deny minority candidates meaningful access to the ballot — from the local Democratic party in Albany, NY and the Republican party in Hempstead, NY, to informal groups in Texas and Louisiana and the state-funded firefighters on the Eastern Shore of Maryland.⁶³ Federal judges have identified a host of campaign tactics nationwide designed to appeal to base racial prejudice, tactics that include manipulating photographs to darken the skin of opposing candidates, allusions or threats of minority group “take over,” or imminent racial strife, and cynical attempts to increase turnout among voters perceived to be “anti-black.”⁶⁴

Courts have also documented some instances of suspicious or “tenuous” policies — as when the legislature in Alabama removed the only majority-minority district from its reapportionment plan after the governor threatened a veto.⁶⁵ Courts also carefully considered the ways in which local and state governments responded to minority needs — noting, for example, a Colorado school board's refusal to provide requested bilingual and Native American educational programs in order to keep the curriculum “ethnically clean.”⁶⁶

The Power of Partisanship

Courts adjudicating Section 2 claims must confront the significance of the tight linkage between race and party in many parts of this country. This issue has taken on greater importance with the emergence of the Republican Party as a vibrant and influential force in the Southern United States, a development that complicates claims of racial vote dilution, as traditionally alleged. Courts must now assess how partisan affiliation affects minority electoral success and the legal significance to accord to that relationship.

Courts adjudicating Section 2 lawsuits confront this issue at numerous junctures, but do so most prominently when assessing racial bloc voting. The *LULAC v. Clements* litigation famously declared that Section 2 is “implicated only where Democrats lose because they are black, not where blacks lose because they are Democrats.”⁶⁷ The majority of courts today will examine the claim that party, rather than race, causes minority electoral defeats. Some Section 2 plaintiffs falter on this requirement, particularly as numerous Section 2 lawsuits document the increasing willingness of white Democrats to support minority-preferred candidates in the general election.

Concerned that party affiliation masks instances of racial discrimination among voters, some courts are looking more frequently to the primary elections as a gauge of minority political opportunity. A host of recent Section 2 lawsuits document that significant racial polarization in voting remains prevalent at this juncture of the electoral process, notwithstanding the willingness of voters, minority and non-minority alike, to support the party nominee in the general election. With the proliferation of noncompetitive districts in the United States, the primary now forms the critical locus for political participation today such that the racial composition of the primary electorate is often more critical to minority electoral opportunity than is the composition of the district as a whole.

Emphasis on the centrality of party as an organizing principle in American politics may also obscure the ways in which partisan conduct itself may diminish opportunities for minority political participation. State-mandated white primaries are long gone, but party officials, acting formally or ad hoc, continue to implement slating procedures that stymie minority candidacies. Some lawsuits document what might aptly be labeled backstabbing by party officials who omit minority candidates from party campaign literature or otherwise fail to support their party’s minority candidates. Numerous courts now classify the knowing sacrifice of minority interests to the quest for partisan gain a form of intentional race discrimination.⁶⁸

THE GINGLES THRESHOLD

The Supreme Court’s 1986 decision *Thornburg v. Gingles* distilled three “preconditions” from the totality of the circumstances test that Section 2 requires. Satisfaction of these conditions does not establish a Section 2 violation, but failure to meet them almost always brings a plaintiff’s case to an end.

Since the Court decided *Gingles*, 163 lawsuits addressed its preconditions, and 64 lawsuits found them to be satisfied.⁶⁹ Most (52) of these suits proceeded to a favorable outcome for the plaintiff. In many of these cases, courts have engaged in only a perfunctory review of the Senate Factors. Since *Johnson v. De Grandy*, moreover, a number have restricted their inquiry to assessing whether the challenged practice achieved “proportionality,” and finding a Section 2 violation only if it did not.⁷⁰

In 99 lawsuits, courts held that plaintiffs failed to establish one or more of the *Gingles* factors.⁷¹ A few of these courts nevertheless proceeded to evaluate plaintiffs’ claims under the totality of the circumstances, typically finding that plaintiffs lose under this test as well.⁷² In a few cases, courts have analyzed claims under the totality of circumstances without engaging in review under *Gingles* at all.⁷³

Since *Gingles*, only 7 cases have identified a violation of Section 2 without addressing the *Gingles* factors.⁷⁴ Some courts acknowledge that the *Gingles* factors may “foreclose a meritorious claim,” but find that they serve a useful gate-keeping function because “in general they will ensure that violations for which an effective remedy exists will be considered while appropriately closing the courthouse to marginal cases.”⁷⁵

Plaintiffs crossing the *Gingles* threshold are more likely to prevail in covered jurisdictions than in non-covered ones. Twenty-seven lawsuits originating in covered jurisdictions found the *Gingles* factors, and of these, 25 (92.6%) also ended favorably for the plaintiffs.⁷⁶ In non-covered jurisdictions, 37 lawsuits found all three *Gingles* factors, of which 27 (72.9%) ended with plaintiff success.⁷⁷

Gingles I: Sufficiently Large and Geographically Compact

Sufficiently Large

The first component of the *Gingles* test requires a minority group to demonstrate that it is “sufficiently large and geographically compact to constitute a majority in a single member district.” Courts addressing *Gingles* I have generally engaged in two inquiries: (1) assessing when the minority population is “sufficiently large,” and (2) determining whether a proposed district encompassing that population is “geographically compact.”⁷⁸

Discussion of the “sufficiently large” prong has focused primarily on the size of the population needed to establish a majority in a single member district. Most courts define the relevant majority to be the voting age population, reasoning that absent a majority among voters, the minority group will not be an effective majority.⁷⁹ Where, however, the minority group contains a large proportion of non-citizens, some courts have required that plaintiffs demonstrate the feasibility of creating a district in which the group constitutes a majority of the citizen voting age population.⁸⁰ Finally, a few courts rely on the overall minority population when assessing *Gingles* I.⁸¹

Lower rates of voter registration and turnout in some minority communities have led some courts to require that minority voters (or the minority population overall) constitute more than simply a majority, but in fact a supermajority. Some courts have suggested that population percentages as high as 65% are needed to constitute an effective majority.⁸² Others, however, expressly reject an assessment of likely turnout among minority voters when assessing the size of an effective majority under *Gingles*.⁸³

Several lawsuits involved claims brought by more than one minority group. These plaintiffs argued that, if members of the two (or more) groups were placed together in a single district, they would constitute an effective majority within the meaning of *Gingles* I. The vast majority of courts view this type of claim as cognizable under the statute, so long as the groups can demonstrate political cohesiveness under the second *Gingles* factor,⁸⁴ a requirement on which many aggregation claims falter.⁸⁵

Influence or Coalition Districts: In an increasing number of lawsuits, plaintiffs are raising Section 2 claims on behalf of minority groups too small in number to constitute a majority in a single-member district. Typically, these plaintiffs take issue with district lines that divide the minority group members among several districts, and argue that the challenged districting plans hinder their ability either (1) to elect representatives of choice by forming coalitions with other voters (“coalition districts” or “ability to elect districts”), or (2) more amorously, to influence elections (“influence districts”).⁸⁶

Courts have generally resisted pure influence claims,⁸⁷ expressing concern that allowing them would eviscerate the gate-keeping function performed by *Gingles* I and open federal courts to inundation by “marginal” Section 2 claims.⁸⁸ As such, no plaintiffs identified in this study have succeeded on an influence claim absent an indication that they would have the ability to elect candidates of choice. So, too, some courts have raised concerns with coalition districts. For some, the crossover votes that define coalition districts suggest that voting is not polarized, and thus present an obstacle for plaintiffs trying to establish white bloc voting under *Gingles* III.⁸⁹ Other courts require assurance that minority-preferred candidates will prevail, something they maintain a coalition district cannot provide. These courts thus conclude that plaintiffs suffer no injury when a jurisdiction fails to include a sufficient number of minority voters to give rise to a coalition district.⁹⁰

Some courts, however, have been more receptive to coalition district claims.⁹¹ In the *Armour* litigation, for example, the district court suggested that African-American voters in a 36% black district might be able to elect their preferred candidate, given that Democratic primaries in the region typically determined the winner in the general election, and at least some white voters were willing to support the black-preferred candidate.⁹² In this circumstance, the court held, the jurisdiction’s decision to split the black community between two districts might violate Section 2.⁹³

Employing similar reasoning, the *Page* litigation rejected a Section 2 challenge to New Jersey’s decision to replace several majority-minority districts with districts in which African-American voters constituted a mere plurality.⁹⁴ The court noted that support from Latino and white voters meant that black-preferred candidates could win elections in districts where the African-American population was less than fifty percent.⁹⁵ In this circumstance, the state’s decision not to create majority-black districts, even though such districts were feasible, did not violate Section 2.⁹⁶

In the *Martinez v. Bush* litigation,⁹⁷ black plaintiffs challenged a redistricting plan that replaced majority-minority districts with districts in which the black voting age population was less than fifty percent. Plaintiffs argued that, as a result of the change, they were no longer assured that their preferred candidate would win in the affected districts. The court held, however, that because blacks were the majority of Democrats, and Democrats were the majority of the district, blacks were likely to elect their candidate of choice even when comprising only 41.8% of the voting age population. The district court deemed *Gingles* I satisfied, arguing that the *Gingles* I “majority” requirement should not be interpreted literally,⁹⁸ but rather that it defines any situation where the district is likely to result in the election of minority candidates of choice in most elections.⁹⁹

The courts in *Armour*, *Page*, and *Martinez* all recognized that in safe Democratic districts, the Democratic primary dictates the outcome of the general election such that the racial composition of the primary electorate is a more probative gauge of minority voting strength than is the racial composition of the general electorate. Minority voters in safe Democratic districts often need not constitute a majority of the district’s electorate to elect candidates of choice, particularly when they represent a majority of voters eligible to participate in the primary. Such majority-minority primaries yield results much like majority-minority districts, but do so with fewer minority voters overall. The efficacy of the majority-minority primary in this regard suggests a Section 2 “packing” claim might lie where jurisdictions opt to create or maintain majority-minority districts, notwithstanding the ability of minority voters to elect preferred candidates from plurality districts where the primary is majority-minority.

Black plaintiffs unsuccessfully pursued a related claim in the *Perry* litigation where they challenged a districting plan that reduced the black population in a district where black voters previously had comprised 21.6% of the voting age population.¹⁰⁰ The plaintiffs argued that, prior to the redistricting, they constituted an effective majority for purposes of *Gingles* I notwithstanding their minority status because they controlled the Democratic primary and Anglos and Latinos voted “either in the Republican primary or not at all, but return[ed] home out of party loyalty in the general election.”¹⁰¹ The *Perry* court, however, viewed black influence exerted through the majority-minority primary simply as a facet of party politics rather than as the locus for meaningful black political participation that the courts in *Armour*, *Page*, and *Martinez* viewed as worthy of cognizance under Section 2.¹⁰² For the *Perry* court, the primary was relevant only insofar as it showed that black and Latino voters did not vote cohesively and hence could not combine their strength for the purposes of claiming entitlement to a majority-minority district.¹⁰³

The plaintiffs in *Perry* relied on the Supreme Court’s statement in *Georgia v. Ashcroft* that a coalition district may sometimes provide effective representation to minorities¹⁰⁴ to argue that the requirements of *Gingles* I had been “effectively overruled” and that plurality districts are entitled to protection under Section 2.¹⁰⁵ The *Perry* court read *Ashcroft* differently, finding in it no obligation for states to preserve coalitions: “[t]o so conclude would have profound consequences, freezing ephemeral political alliances, which are the bull’s eyes of partisan redistricting.”¹⁰⁶

In the *Rodriguez* litigation, plaintiffs were similarly unsuccessful in seeking to establish that New York violated Section 2 by “cracking” the minority population among several districts, in a context where a majority-minority district was not possible.¹⁰⁷ Unlike *Perry*, the claim here was not that an existing coalition district had been destroyed, but instead that district lines continued to divide rapidly growing minority communities.¹⁰⁸ The court found no injury, holding that recognition of a pure influence claim would open a “Pandora’s box” because “‘[i]nfluence’ cannot be clearly defined or statistically proved.”¹⁰⁹ Regarding a separate coalition claim, the court, as in *Perry*, concluded that *Georgia v. Ashcroft* “does not broaden the power of federal courts under section 2 of the VRA to require state legislatures to protect or create such ‘ability to elect’ districts.”¹¹⁰

Thus, *Perry* and *Rodriguez* read *Ashcroft* to provide authority for jurisdictions to choose between influence and coalition districts, on the one hand, and majority-minority districts on the other.¹¹¹ Neither court interprets *Ashcroft* to require that jurisdictions protect influence or coalition districts where they already exist.¹¹² In dicta, however, the *Perry* court evinces a preference for the creation of influence or coalition districts where possible.¹¹³ Some other courts have displayed a similar preference¹¹⁴ but doubts remain regarding when such districts should be created and whether they will better serve minority voters.¹¹⁵

Geographically Compact

Courts have consistently used a few different criteria for assessing compactness under *Gingles* I, and have often used them in combination. Courts examine the proposed district’s shape,¹¹⁶ the extent to which it comports with the jurisdiction’s traditional districting principles,¹¹⁷ and how it compares to other proposed or existing districts.¹¹⁸ Some courts view compactness as a “practical or functional” concept to be assessed in terms of whether the district captures a community.¹¹⁹

Since 1994, courts have invoked *Shaw v. Reno* and its progeny¹²⁰ when discussing compactness under *Gingles I*.¹²¹ The *Shaw* cases require close scrutiny of districting plans in which racial considerations predominate over traditional districting principles in the drawing of district lines. An oddly shaped district is not a prerequisite to a *Shaw* claim, but courts often look to shape to assess whether race was the primary consideration when the district was drawn. Since *Shaw*, some courts have invoked bizarre shape to measure compactness under *Gingles I*,¹²² and generally consider districts compact when they appear more compact than those struck down in the *Shaw* cases.¹²³ Some courts have, moreover, invoked *Shaw* and its progeny to voice concern that plans seeking to increase minority voting strength do not pay adequate heed to traditional districting principles.¹²⁴

Gingles II and III: Racial Bloc Voting

Racial polarization in voting, also known as racial bloc voting, constitutes a critical component of a Section 2 claim.¹²⁵ The vast majority of Section 2 violations (87.5%) identified in this study found legally significant racial bloc voting.¹²⁶

Racial bloc voting factors into the evaluation of Section 2 claims at two junctures. The second and third of the *Gingles* “preconditions” to a Section 2 claim call for an inquiry into racial polarization in voting. They require courts to determine whether minority voters are politically cohesive, and whether white voters vote sufficiently as a bloc to defeat the minority-preferred candidate.¹²⁷ Courts who so find (and also find the first *Gingles* factor¹²⁸) must then evaluate whether the plaintiffs can sustain their claim under “the totality of circumstances.”¹²⁹ This inquiry includes analysis of the Senate Factors, one of which is the extent of racially polarized voting.¹³⁰

In practice, however, courts that consider racial bloc voting generally engage in one inquiry, typically under the *Gingles* factors.¹³¹ Of those that deem *Gingles* satisfied and proceed to the totality of circumstances review, some simply refer back to their previous analysis of racial bloc voting under *Gingles*, if in fact they return to racial bloc voting at all. Other courts engage in additional analysis, typically examining within the totality of circumstances the question whether race is the cause of the polarized voting patterns identified under *Gingles*.¹³² This approach notwithstanding, this Report confines its discussion of racial bloc voting to this section, as opposed to parsing it between the *Gingles* factors and the discussion of Senate Factor 2 below.

Of the lawsuits analyzed, 186 considered the extent of racially polarized voting, 91 found the factor to exist. Of those finding this factor, 65 also identified a violation of Section 2 and another 3 granted a preliminary injunction. In covered jurisdictions, 44 lawsuits found racial bloc voting; 47 in non-covered. Twenty-three lawsuits found racially polarized voting but ultimately did not end in a favorable outcome for the plaintiffs. Nearly 70% of these were in non-covered jurisdictions.¹³³ Seven deemed *Gingles I* or II unsatisfied,¹³⁴ eight identified “rough proportionality” as defined in *Johnson v. DeGrandy*,¹³⁵ two remanded the case for further review,¹³⁶ six declined to find a violation under a more general totality of the circumstances review.¹³⁷

Several recurring issues pervade judicial analyses of racial bloc voting. The first concerns the identification of the minority-preferred candidate, the second, the role of causation, and the third, the existence of “special circumstances” that might warrant disregarding particular elections. These are discussed below.

Identifying the Minority-Preferred Candidate

Courts assessing racial bloc voting must identify the minority-preferred candidate in order to determine whether “the white bloc usually votes to defeat” this candidate. In making this determination, courts overwhelmingly agree that the race of the candidates must inform the analysis at least to some degree. Courts have thus not followed Justice Brennan’s position in *Thornburg v. Gingles* that a candidate’s race should be irrelevant when assessing racial bloc voting.¹³⁸

Most courts, for example, more easily identify a minority candidate as minority-preferred than a non-minority candidate, while some implicitly or explicitly assume the minority candidate is the minority-preferred candidate.¹³⁹ Others demand some evidence on point, although typically far less than what they require to demonstrate a white candidate is minority-preferred.¹⁴⁰ No court today holds that white candidates cannot be minority-preferred.¹⁴¹

Decisions in the Third, Eighth, Tenth, and Eleventh Circuits hold that courts should engage in a searching inquiry before identifying a white candidate as minority-preferred. This approach, typically associated with the *Jenkins v. Red Clay School District* litigation that articulated it, deems election results only a preliminary component of the inquiry.¹⁴² Courts must determine not only who gets minority votes, but also the depth and vigor of minority support for that candidate, the scope of that candidate’s interest in the minority community, whether and why a viable minority candidate did not run, and whether minority candidates had run previously.¹⁴³ This approach implicitly imports into the racial bloc voting inquiry some of the Senate Factors such as candidate slating typically reviewed only after the *Gingles* threshold is crossed.¹⁴⁴

Courts in the Second, Sixth, and Ninth Circuits expressly reject this approach, maintaining that this “subjective” inquiry into minority preferences is inappropriate and impractical.¹⁴⁵ These courts posit that the inquiry should be limited almost exclusively to election results to identify the minority-preferred candidate. With a few caveats, these courts define the preferred candidate as the one who receives the most votes from minority voters.¹⁴⁶ While the Fourth Circuit has not explicitly followed this approach, recent decisions suggest it may be using an analogous one.¹⁴⁷

In practice, however, many courts do not strictly adhere to one or the other of these tests.¹⁴⁸ For instance, after adopting the *Jenkins v. Red Clay School District* approach,¹⁴⁹ the Eighth Circuit, in the *St. Louis Board of Education* litigation, noted “it is a near tautological principle that the minority-preferred candidate “should generally be one able to receive [minority] votes.”¹⁵⁰ Likewise, the Eleventh Circuit facially relies on the totality of the circumstances to demonstrate that a white candidate is minority-preferred, but its most recent decisions treat the candidate who receives the majority of the minority vote as minority-preferred.¹⁵¹ In the context of multi-seat elections, moreover, where voters are permitted to cast as many votes as there are seats, both the Fourth and Eleventh Circuits have combined the quantitative and subjective approaches to assess the status of candidates that do not place first among black voters, but do receive a substantial percentage of the black vote.¹⁵²

Probative Elections: Courts in most circuits generally place more weight on elections involving a minority candidate than on those involving only white candidates.¹⁵³ Some courts discount white-on-white elections based on concern that the candidate receiving minority votes is not truly minority-preferred.¹⁵⁴ Others do so because of concern that these elections mask polarized voting patterns that should be deemed legally significant.¹⁵⁵

Not infrequently, candidates preferred by minority voters in elections between white candidates prevail. These victories suggest that white voters are not voting sufficiently as a bloc to defeat minority-preferred candidates. And yet, minority candidates in the same jurisdictions are often defeated even though they receive overwhelming support from minority voters.¹⁵⁶ These elections suggest white voters are voting as a bloc within the meaning of the third *Gingles* factor. Discounting elections between white candidates consequently helps courts discern polarization of a sort that might otherwise be obscured.

For similar reasons, courts have increasingly looked to primary elections to determine which candidate is minority-preferred. Because primary elections remove party as a causal explanation for voting patterns, some courts view these elections as allowing better focus on the role of race in voter decisionmaking.¹⁵⁷ Primaries, moreover, are increasingly the only election of consequence as noncompetitive districts have proliferated nationwide.¹⁵⁸

Many courts, consequently, discount minority support for a particular candidate in the general election where minority voters supported another candidate in the primary.¹⁵⁹ A few courts have also held that white support for a minority-preferred candidate in the general election does not bar finding the third *Gingles* factor, so long as white voters supported a different candidate in the Democratic primary.¹⁶⁰ Highlighting this point, the district court in the *Black Political Task Force* litigation observed that “black and white voters in Boston preferred the [black] Democratic candidate at a general election is hardly news....[and] says less about race than partisan politics.”¹⁶¹

Courts have also relied on primary election results to examine whether two minority groups seeking to aggregate their voting strength in a Section 2 claim prefer the same candidate. While most courts have held that multi-minority coalition claims are cognizable under Section 2, several decisions find that party affiliation masks a lack of cohesiveness between, for example, black and Hispanic voters.¹⁶² In this context, evidence that members of the minority groups supported different candidates in the primary weighs against finding political cohesion, even if voters from both groups supported the same candidate in the general election. As such, voting patterns in primary elections are probative on the issue of cohesion because such elections remove partisanship as an explanation for voting behavior.¹⁶³

Although no court has expressly rejected consideration of primary elections, some courts have identified reasons that suggest caution in weighing primary elections too heavily. For example, some courts have expressed concern that the preferences of politically active members of the minority community should not define the candidate preferred by the minority community as a whole.¹⁶⁴ To the extent that primary voters are fewer in number and more extreme in political persuasion than those participating in the general election, the candidate who garners minority group support in the primary may not be the preferred candidate of most minority voters.

Some courts have also questioned whether general election results should be discounted simply because minority voters supported a different candidate in the primary. These courts suggest that doing so privileges minority voters to an improper extent, effectively relieving them of the obligation to “pull, haul, and trade” that all voters confront.¹⁶⁵

Causation

The justices in *Thornburg v. Gingles* disagreed about the role causation should play in the racial bloc voting inquiry. Justice Brennan rejected causation in his plurality opin-

ion, arguing that “it is the *difference* between the choices made by blacks and whites — not the reasons for that difference” that is important.¹⁶⁶ Justice O’Connor, however, thought the inquiry should address “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.”¹⁶⁷ Justice White was the critical fifth vote on the issue and his separate opinion did not definitively resolve the question.

Lower courts ever since have disputed the role causation should play in the racial bloc voting analysis. Courts in nine judicial circuits now expressly incorporate causation when they assess racial bloc voting, either under the second and third *Gingles* factors or as part of the totality of circumstances.¹⁶⁸ Two circuits have not expressly adopted an approach to causation,¹⁶⁹ while the Ninth Circuit appears to reject causation, though not explicitly.¹⁷⁰

When courts consider causation, they all ask the same underlying question: namely, whether race, as opposed to partisanship or some other factor, best explains why white voters failed to support the minority-preferred candidate. And yet, courts suggest that the juncture at which they ask this question matters. A finding that political party best explains divergent voting patterns under *Gingles* means that the court will not find legally significant racial bloc voting and necessarily that plaintiffs’ claims fail.¹⁷¹ Consideration of causation within the totality of the circumstances review means that the plaintiffs have already satisfied the *Gingles* preconditions and, as a result, an inference may come into play that “racial bias is at work.”¹⁷² In the *Mount Holyoke* litigation, the appellate court posited that “cases will be rare in which plaintiffs establish the *Gingles* preconditions yet fail on a Section 2 claim because other facts undermine the original inference.”¹⁷³

In practice, however, the juncture at which courts consider causation may matter less than these courts suggest. Regardless of where they consider causation, courts do not typically require that plaintiffs disprove that factors other than race caused divergent voting patterns,¹⁷⁴ but most require that plaintiffs demonstrate that race is the causal linkage when defendants proffer evidence supporting an alternative explanation.¹⁷⁵ Proving the linkage is difficult regardless of the juncture, and numerous lawsuits have held that plaintiffs failed to meet their burden on this point,¹⁷⁶ finding that successfully rebutting defendants’ evidence is often quite difficult.¹⁷⁷

Special Circumstances

Courts have identified a variety of “special circumstances” that influence the racial bloc voting inquiry and have excluded or discounted elections involving such special circumstances as distinct from the “usual predictability” of voting patterns.¹⁷⁸ Some circuits have identified numerous special circumstances, others few or none. Typically, the recognition of special circumstances makes an ultimate finding of racial bloc voting more likely. A few cases, however, have discounted elections where the minority-preferred candidate was defeated due to special circumstances, thus having the opposite effect.¹⁷⁹ Some recent decisions voice resistance to discounting elections because of special circumstances, preferring instead to consider all the evidence presented.¹⁸⁰

Incumbency: Numerous courts have held that legally significant white bloc voting may exist, notwithstanding white support for a black candidate, if the black candidate is an incumbent.¹⁸¹ Others disagree, finding that “incumbency plays a significant role in the vast majority of American elections,” such that its use as a special circumstance “would confuse the ordinary with the special.”¹⁸²

The Majority-minority District: Several courts have identified the majority-minority district as a “special circumstance” that alters the conventional racial bloc inquiry. In such districts, white voters are by definition a minority of the population, and thus, courts have reasoned that the inability of white voters to defeat the minority-preferred candidate is less probative evidence of a decline in racial bloc voting than it would be elsewhere. The Ninth Circuit said that “[t]o do otherwise would permit white bloc voting in a majority-white district to be washed clean by electoral success in neighboring majority-Indian districts.”¹⁸³

Post-lawsuit Elections: Some courts discount the results of elections occurring after the lawsuit at issue had been filed. This approach is premised on the view that the very filing of a Section 2 lawsuit makes white voters more likely to support the minority-preferred candidate and that this support is somehow not genuine. The concern is that post-lawsuit elections might “work a one-time advantage for [minority] candidates in the form of unusually organized political support by white leaders concerned to forestall single-member districting.”¹⁸⁴ Other courts will consider such elections, either outright,¹⁸⁵ or with the caveat that plaintiffs are unable to show unusual white support for the minority-preferred candidate.¹⁸⁶

Unusual Elections: Courts have held that the success of minority-preferred candidates may be discounted when reason exists to view voting behavior as unusual. Courts have excluded elections based on a plurality victory,¹⁸⁷ an atypical primary,¹⁸⁸ an unopposed candidacy,¹⁸⁹ and a candidacy against only a third-party candidate.¹⁹⁰ Courts have also excluded elections where a minority candidate was seen as “anti-busing” at a time when a local school desegregation lawsuit was pending,¹⁹¹ a candidate was under federal indictment at the time of the election,¹⁹² a winning black candidate had been a professional athlete,¹⁹³ and a well-financed campaign occurred amidst anti-incumbent sentiment.¹⁹⁴ Further, courts discount elections not involving serious or well-known candidates,¹⁹⁵ and some have approved discounting minority success when the race of the candidate was not widely known.¹⁹⁶ Courts are often skeptical, however, of “special circumstances” that simply illustrate good campaigning on the part of the minority candidate.¹⁹⁷

Low Turnout: Some courts have been unwilling to find white bloc voting where minority voters did not turn out to vote in substantial numbers.¹⁹⁸ Some courts phrase this issue as one of causation: namely, those plaintiffs must establish that white bloc voting caused the minority defeat, as opposed to a seemingly independent cause such as low turnout.¹⁹⁹ The premise is that if there had been higher minority turnout, the minority-preferred candidate might have been elected. Other courts warn that indicators of vote dilution, such as official discrimination, may contribute to low turnout.²⁰⁰

THE SENATE FACTORS

SENATE FACTOR 1: *History of Official Discrimination that Touched the Right to Vote*

The first factor listed in the Senate Report asks courts to assess “the extent of any history of official discrimination” in the jurisdiction that “touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process.”²⁰¹ Courts assessing Factor 1 have documented scores of instances in which

state and local officials engaged in intentional race discrimination.²⁰² These judicial findings record the nature, frequency, and recentness of this conduct.

One hundred and forty-eight lawsuits considered Factor 1.²⁰³ The lawsuits that did not consider this factor generally never reached the Senate Factors at all, finding instead that Section 2 did not apply to the plaintiffs' claim,²⁰⁴ or that, if it did, the plaintiffs had failed to satisfy the threshold *Thornburg v. Gingles* test.²⁰⁵

Of the lawsuits considering this factor, 137 (or 92.5%) found that there was a history of official discrimination. Of these, 107 lawsuits actually found that Factor 1 was met.²⁰⁶ The remaining thirty cases concluded that plaintiffs had failed to establish that the identified history "touched" the present-day ability of members of the minority group to participate in the political process.²⁰⁷

Of the 107 lawsuits that found Factor 1, 65 also found a violation of Section 2 or otherwise issued a decision favorable to the plaintiffs.²⁰⁸ Seven lawsuits found a violation of Section 2 without considering Factor 1 at all.²⁰⁹ Ten others identified a violation of Section 2 after considering but not finding Factor 1.²¹⁰

Lawsuits finding Factor 1 most often found that three additional Senate Factors were satisfied: 66 found racially polarized voting (either in the *Gingles* threshold test or when considering Factor 2), 70 found ongoing socioeconomic effects (Factor 5), and 67 found lack of candidate success (Factor 7).²¹¹

Many courts assessing Factor 1 discussed instances of discriminatory conduct dating from the nineteenth century and continuing through much of the twentieth. These accounts addressed literacy tests, grandfather clauses, poll taxes, white primaries, racially discriminatory voter registration requirements as well as state laws mandating segregation, the separation of names by race on voter registration lists, and other official discriminatory practices in education, employment, and housing.²¹²

Seventy lawsuits considering evidence of Factor 1 identified official discrimination post-dating the enactment of the VRA.²¹³ A number of these focused on instances of discriminatory conduct during the period between 1965 and the 1982 Amendments to the VRA. These cases cited official resistance to school desegregation orders, employment discrimination settlements and judgments against local governments,²¹⁴ and violations of the VRA itself.²¹⁵ Courts took note of various states' and counties' failure to hire minority poll officials,²¹⁶ a county registrar's refusal to register black citizens as voters,²¹⁷ the "hostility and uncooperation" displayed by public officials in Texas when Mexican-American candidates ran for office,²¹⁸ and the race-based retention of a majority-vote and post system in Georgia.²¹⁹ The *City of Starke* litigation noted the City's failure to repeal unenforceable statutes mandating segregation.²²⁰

Official Discrimination Since 1982

Twenty-four lawsuits identified more than 100 instances of intentionally discriminatory conduct in voting since 1982.²²¹ Eleven of these lawsuits originated in covered jurisdictions; 13 in non-covered. While several findings identified intentional discrimination in the drawing of state reapportionment plans, conduct by local governmental officials accounted for the vast number of instances of official discrimination identified, as described below.

Judicial findings documenting official, intentional discrimination on the basis of race or language minority status encompass a wide range of conduct by public officials. The discussion below first lists the findings since 1982 in jurisdictions covered by Section 5, followed by findings in non-covered jurisdictions.

Findings of Intentional Discrimination in Section 5 Covered Jurisdictions Since 1982

IN CHARLESTON COUNTY, SOUTH CAROLINA

— The “consistent and more recent pattern of white persons acting to intimidate and harass African-American voters at the polls during the 1980s and 1990s and even as late as the 2000 general election,” including “significant evidence of intimidation and harassment” that was “undeniably racial” and that “never occurred at predominantly white polling places, including those that tended to support Democratic candidates.”²²²

—The participation of county officials, including at least one member of the Charleston County Election Commission and at least one county-employed poll manager,²²³ in the Ballot Security Group which, in the 1990 election, “sought to prevent African-American voters from seeking assistance in casting their ballots.”²²⁴

—The county’s assignment of white poll managers, described by some as “bulldogs,” in unspecified recent elections since 1982, to majority African-American precincts, where they “caused confusion, intimidated African-American voters, . . . had the tendency to be condescending to those voters,” and engaged in “inappropriate behavior.”²²⁵

—The “routine” assignment by “the Election Commission...[of] one particularly problematic poll manager to predominantly African-American polling places in different parts of the County during the 1980s and early 1990s. At the polls, this poll manager, who is white, routinely approached elderly African-American women seeking to vote.” He would often “make a scene”: approaching them, putting his arm around them and speaking loudly, when “[t]hey just wanted to come in and sign up and vote. And it happened repeatedly just to that class of voter.”²²⁶

—The “recurring” official harassment of elderly African-American voters during the 1980s and 1990s, so severe that that the Charleston County Circuit Court “issue[d] a restraining order against the Election Commission requiring its agents to cease interfering with the voting process.”²²⁷

—The persistence of problematic “treatment of African-American voters by some white poll managers, even though the Election Commission has provided training to poll managers on this subject.”²²⁸

—The refusal of county workers at the polls to provide African-American voters with legally required voting assistance, in elections from 1992–2002; including:

the discriminatory practice employed by white poll managers working at black-majority precincts of hassling African-American voters who asked for help voting, including “asking questions such as: ‘Why do you need assistance? Why can’t you read and write? And didn’t you just sign in? And you know how to spell your name, why can’t you just vote by yourself? And do you really need voter assistance?’”²²⁹

the absence of comparable questioning of white voters who were allowed to have their voting assistant of choice without being challenged: “no evidence exists of any instances of harassment, intimidation, or interference directed against white or African-American voters at predominantly white polling places.”²³⁰

— The county’s retention of a poll manager who had exhibited a “threatening attitude” toward black voters at the Joseph Floyd Major Precinct in the 1996 election, after his refusal to respond to a county election commissioner’s reprimand; and the retention of this poll manager as a county employee at majority African-American polls in Charleston County in 2004.²³¹

— The decision of “the Charleston County Council [to reduce] the salary for the Charleston County Probate Judge in 1991, following the election of the first and only African-American person elected to that position” from \$85,000 to \$59,000 annually.²³²

—The state legislative delegation’s proposal to replace the School Board’s non-partisan electoral system with a partisan one and to remove control of budgetary matters from the Board following African-American candidate success in School Board elections in 2000; both proposals were made without communicating at all with members of the School Board at the time.²³³

IN SOUTH DAKOTA

—The display of discriminatory, “negative reactions” by county voter registrars to Native Americans during voter registration drives in the 1980s, ranging from “unhelpful to hostile.”²³⁴

—The limitation imposed by county officials on the number of voter registration forms given to people intending to register Native American voters despite the absence of a legal limit on the provision of such forms.²³⁵

—The refusal of county officials to accept Internet voter registration forms from Native American voters.²³⁶

—The “erroneous rejections of registration cards” from Native American applicants by county officials who, after apparent protest, accepted them without explaining why they had first been rejected.²³⁷

—The 1986 refusal of the Dewey County Auditor to provide Native Americans with sufficient voter registration cards to conduct a voter registration drive on the Cheyenne River Reservation, conduct that prompted a court order instructing the auditor to supply 750 additional cards and extend the registration deadline.²³⁸

—The 1984 refusal of the Fall River County Auditor “to register Indians who had attempted to register as part of a last-minute voter registration drive on the Pine Ridge Reservation,” a refusal that led to a court order the day before the election requiring that voters be allowed to register and cast their ballots.²³⁹

—The 2002 refusal of Bennett County commissioners to move two polling places to Indian housing areas that would “increase convenience for Indian voters,” after Indian residents petitioned the County for the stations.²⁴⁰

—Wholly unsubstantiated public claims made by Bennett County officials just before the 2002 election that Indians involved in voter registration were engaged in voter fraud, and investigations that followed these claims in Pine Ridge and Rosebud, that produced no actual charges but “intimidated Indian voters.”²⁴¹

—The state’s requirement that voters provide photo identification and other new voting requirements enacted by the South Dakota legislature following the 2002 election,²⁴² passed after a legislative debate that included the following:

Statement by Rep. Van Norman that in passing these provisions, “the legislature was retaliating because the Indian vote was a big factor in new registrants and a close senatorial race.”²⁴³

Statement by Rep. Ted Klaudt defending driver’s license requirements by referring to Native American voters: “The way I feel is if you don’t have enough drive to get up and drive to the county auditor ... maybe you shouldn’t really be voting in the first place.”²⁴⁴

Statement by Rep. Stanford Adelstein opposing provisions that would have made voting registration easier and, in reference to Native American voters, claiming: “Having made many efforts to register people... I realize that those people we want to vote will be given adequate opportunity. I, in my heart, feel that this bill...will encourage those who we don’t particularly want to have in the system....I’m not sure we want that sort of person in the polling place. I think the effort of registration...is adequate.”²⁴⁵

—The state legislature’s 1996 decision to combine two single-member house districts, including a majority-Native American district where a Native American had won the Democratic primary in 1994, in order to create one multi-member, majority-white house district.²⁴⁶

—The discriminatory retention by Buffalo County of “[a] redistricting plan, which had been in use for decades, [and which] confined virtually all of the county’s Indian population to a single district containing approximately 1500 people,” leaving white voters in control of the remaining two districts, “which essentially gave them control over the county government,” an arrangement that prompted a lawsuit settled in 2004, in which the county “admitt[ed] that the plan was discriminatory.”²⁴⁷

—The 1999 refusal by Day County officials to let Native Americans vote in a sanitary district election, an action that prompted a lawsuit which ended in a settlement under which “the county and the district admitted that the district’s boundaries unlawfully denied Indian citizens’ right to vote.”²⁴⁸

IN BLECKLEY COUNTY, GEORGIA

—The county’s 1984 decision to replace numerous polling places that “provid[ed] ready access to voters in the outlying areas,” with a single precinct for the 219 square mile county and to locate this single precinct in an “all-white civic club” (the Jaycee Barn in Cochran); and the county’s decision to use the precinct as the sole polling place for county commissioner and county school board elections throughout the 1980s and up to the court’s 1992 decision.²⁴⁹

IN DALLAS, TEXAS

—The city’s attempts to keep a partially at-large election system after minority voters petitioned for its change and city officials recognized the existing system “denied both blacks and Hispanics access to any of the 3 at-large seats.”²⁵⁰

IN NORTH JOHNS, ALABAMA

—The town mayor’s 1988 refusal to provide registration forms required by state law to two African-American city council candidates, the first African Americans to run for town office after the entry of a consent decree that replaced an at-large regime with a districted one, where “[t]he mayor was aware that Jones and Richardson, as black candidates, were seeking to take advantage of the new court-ordered single-member districting plan and that their election would result in the town council being majority black.”²⁵¹

—The town’s prosecution of the two successful black candidates for failing to file the forms required by state law that the mayor refused to give them, a failure that a federal court later found had happened only because of the mayor’s intentionally discriminatory actions.

—The town’s refusal to seat the candidates after they were elected in 1988 until a federal court ordered the town to do so.²⁵²

IN BIG HORN COUNTY, MONTANA

—The use of a voter registration process, and the appointment of deputy registrars and election judges in 1986 with “an intent to discriminate” against Native Americans.²⁵³

—The county’s failure to include “the names of Indians who had registered to vote... on voting lists in 1982 and 1984”²⁵⁴ and the county’s removal of the names of Indians who had voted in primary elections from voting lists such that they were not allowed to vote in the subsequent general election.²⁵⁵

—The county’s refusal to provide “[a]n Indian candidate for the state legislature... voter registration cards in 1984, forcing her to obtain them at the State Capitol.”²⁵⁶

—County officials’ refusal to provide a Native American man more than a scant number of voter registration cards based on the claim that few cards remained, even though the official shortly thereafter provided a white woman with fifty more cards than the man.²⁵⁷

—The subjection of Native Americans to a more technical and more difficult voter registration process than whites, in which county officials “looked for minor errors in [Native American] registration applications and used them as an excuse to refuse to allow registration.”²⁵⁸

IN JEFFERSON COUNTY, ALABAMA

—The express refusal of Jefferson County officials to appoint black workers in white precincts in 1984 on the ground that white voters would not listen to black poll officials, a refusal found to amount to “open and intentional discrimination” that “is lawless and inexcusable.”²⁵⁹ The court stated that “try[ing] to excuse the practice under cover of the purported intolerance of their own constituents is indefensible and repugnant.”²⁶⁰

IN THE STATE OF ALABAMA

—The intentional failure of the Governor and Attorney General of Alabama to remedy past discrimination or ongoing racial harassment at the polls.²⁶¹

—The conduct of white poll officials who “continue to harass and intimidate black voters” including “numerous instances of where white poll officials refused to help illiterate black voters or refused to allow them to vote, where they refused to allow black voters to cast challenged ballots, and where they were simply rude and even intimidating toward black voters.”²⁶²

IN MONTGOMERY, ALABAMA

—The mayor’s proposal of a city ordinance in 1981, following a series of annexations, to lower the African-American population in majority-black district 3 to “the lowest level he understood to be legally possible in order to reduce the possibility that district 3’s council member could be reelected.”²⁶³ Still in place as of 1983, the ordinance was found to be “in substantial measure the product of a scheme purposefully designed and executed to decrease the voting strength of the black electorate in district 3.”²⁶⁴

IN TERRELL, TEXAS

—The city’s reliance on at-large elections with staggered terms for five member city council, adjudicated on the merits to constitute intentional racial discrimination,²⁶⁵ compounded by the city’s settlement of a lawsuit “alleging that poll workers improperly refused to let certain black citizens vote,”²⁶⁶ and the city’s refusal in 1983 to establish a polling place repeatedly sought by black residents.²⁶⁷

Findings of Intentional Discrimination in Non-Covered Jurisdictions Since 1982

IN THURSTON COUNTY, NEBRASKA

—The County’s refusal to adjust its 1990 redistricting process to address a documented increase in the Native American population, and its decision instead to maintain its existing districting system, a course of action found to embody discriminatory intent.²⁶⁸

IN BERKS COUNTY, PENNSYLVANIA

—Hostile public statements by officials at the polls to Hispanic and Spanish-speaking voters,²⁶⁹ statements such as “This is the U.S.A.—Hispanics should not be allowed to have two last names. They should learn to speak the language and we should make them take only one last name,”²⁷⁰ and “‘Dumb Spanish-speaking people... I don’t know why they’re given the right to vote.’”²⁷¹

—The subjection of Hispanic voters: “to unequal treatment at the polls, including being required to show photo identification where white voters have not been required to do so.”²⁷²

—The county’s refusal to “appoint[] bilingual persons to serve as clerks or machine inspectors, and to fill vacant elected poll worker positions” showing an “apparent unwillingness to ensure that poll workers included persons reflective of the communityBerks County did not provide bilingual oral assistance at the polls prior to this Court’s preliminary injunction” ordering Defendants to translate all written election-related materials and appoint bilingual interpreters.²⁷³

—The conduct of poll officials in the City of Reading, who “turned away Hispanic voters because they could not understand their names, or refused to ‘deal’ with Hispanic surnames.”²⁷⁴

—The County’s imposition of more onerous requirements for applicants seeking to serve as translators at the polls than those applying to be other types of poll officials, a requirement that impeded the court’s order requiring the County to hire bilingual poll officials.²⁷⁵

—Boasts by county officials and poll workers, flaunting their racially discriminatory motivations and practices to federal officials observing elections in May 2001, November 2001, May 2001 and November 2002, including statements from poll officials in the City of Reading to Justice Department observers “boast[ing] of the outright exclusion of Hispanic voters...during the May 15, 2001 municipal primary election.”²⁷⁶

IN MONTEZUMA COUNTY, COLORADO

—The refusal of county officials during the 1980s and early 1990s to allow residents to register to vote at Towaoc on the Ute Reservation, even though the county created satellite registration in the non-Indian communities of Mancus and Dolores.²⁷⁷

—The county’s imposition of significant limitations on the hours it would make available mobile voter registration on the Ute reservation, after the County decided to allow such registration in the 1990s.²⁷⁸

IN PHILADELPHIA, PENNSYLVANIA

—The operation by city election commissioners in conjunction with campaign workers of a fraudulent “minority absentee ballot program” to manipulate the outcome of a 1993 city election; efforts that included “specifically target[ing] Latino and African-Americans as groups to saturate with the illegal absentee ballot program;”²⁷⁹ and “deceiving Latino and African-American voters into believing that the law had changed and that there was a ‘new way to vote’ from the convenience of one’s home.”²⁸⁰

ON THE EASTERN SHORE OF MARYLAND

—The operation of “a kind of unofficial slating organization for white candidates” by some all-white, state-funded volunteer fire departments on the Eastern Shore” until at least the mid-1980s.²⁸¹

—The failure of the State of Maryland to stop funding departments engaging in this practice, until an amendment to the Code of Fair Practices the Governor made upon the recommendation of the Attorney General in 1988.²⁸²

—The discriminatory placement of polling places, that continues “[e]ven today, [of] counties on the lower Shore...in white-dominated volunteer fire companies, a hostile environment that may depress black electoral participation.”²⁸³

IN LITTLE ROCK, ARKANSAS

—Decisions in the 1980s by county officials to move polling places on short notice.²⁸⁴

—The county’s appointment, “with isolated exceptions,” of deputy voting registrars “only as a result of litigation;” other recent, unspecified efforts to “intimidate black candidates.”²⁸⁵

—The intimidation in 1986 by an unnamed white county sheriff of a black lawyer, Roy Lewellen, running for State Senate, including:

first, warning him “not to run,” and,

second, when that advice was ignored, an unnamed prosecutor’s “institution [of] a widely-publicized criminal prosecution against Mr. Lewellen for witness bribery”;²⁸⁶ treatment that “a white lawyer, even one who opposed the political powers that be” would not have received;²⁸⁷ and conduct amounting to “racial intimidation” that shows “that official discrimination designed to suppress black political activity is not wholly a thing of the past, at least not in the Delta.”²⁸⁸

IN BOSTON, MASSACHUSETTS

—The enactment of a redistricting plan in 2001 described by the court as “a textbook case of packing...concentrating large numbers of minority voters within a relatively small number of districts,” devised by the House leadership, which “knew what it was doing.”²⁸⁹

—The manipulation of district lines “to benefit two white incumbents” where the State House did not “paus[e] to investigate the consequences of its actions for minority voting opportunities,” thereby using race “as a tool to ensure the protection of incumbents.”²⁹⁰

IN NEW ROCHELLE, NEW YORK

—The enactment of a city council redistricting plan in 2003 that diluted minority voting strength by replacing a majority-minority district with a plurality district, a plan reflecting “a course of conduct which can only be characterized as intentional and deliberate.”²⁹¹

IN LOS ANGELES COUNTY, CALIFORNIA

—The County’s reliance in 1990 on a districting plan that was found to be discriminatory²⁹² because it “intentionally fragmented the Hispanic population among the various districts in order to dilute the effect of the Hispanic vote in future elections and preserve incumbencies of the Anglo members of the Board of Supervisors.”²⁹³ A concurring judge observed that this conduct illustrated the County’s “single-minded pursuit of incumbency,” which led it to “run roughshod over the rights of protected minorities.”²⁹⁴

IN CHICAGO, ILLINOIS

—The retention and defense in a 1984 lawsuit of a city districting plan that “packed” and “fractured” minority voters to ensure the reelection of an incumbent senator, a plan that exposed how “the requirements of incumbency are so closely intertwined with the need for racial dilution that an intent to maintain a safe, primarily white, district for Senator Joyce is virtually coterminous with a purpose to practice racial discrimination.”²⁹⁵

IN ILLINOIS

— The state legislature’s retention and defense in a 1983 lawsuit of its districting plan for the state legislature, which diluted minority voting strength in order to protect two incumbent white senators in Chicago.

— The state redistricting commission’s drawing of district lines with “the immediate purpose...to preserve the incumbencies of two white state Senators.”²⁹⁶ “[T]his process was so intimately intertwined with, and dependent on, racial discrimination and dilution of minority voting strength that purposeful dilution has been clearly demonstrated in the construction of Commission senate districts 14, 17 and 18.”²⁹⁷

IN WESTERN TENNESSEE

— “[V]oting rights violations by public officials in rural west Tennessee as late as the 1980’s....Official discrimination not only prevents blacks from electing representatives of their choice, it also leads to disillusionment, mistrust, and disenfranchisement. These feelings last beyond the current election, and can cause black voters to drop out of the political process and potential black candidates to forgo an election run.”²⁹⁸

—The city council’s amendment of the Bolivar city charter creating a majority-vote requirement for mayoral elections “in response to the success of two black candidates for mayor,” which was challenged in a 1983 lawsuit against the city of Bolivar. “The district court approved a class action settlement setting up a new ‘system which will ensure the opportunity of black citizens of Bolivar to meaningfully participate in the political process’....[C]ases challenging newly adopted election systems indicate to the court that official discrimination against blacks in voting is not entirely a thing of the past in west Tennessee.”²⁹⁹

In addition, some courts have credited allegations of current official discrimination in the course of issuing Section 2 plaintiffs a preliminary injunction, action that reflects the view of these courts that plaintiffs were highly likely to prevail on their claims, but that did not reach the question of whether Section 2 had been violated on the merits.³⁰⁰

Examples include:

IN CICERO, ILLINOIS

—Town board’s adoption in January 2000 of an 18-month residency requirement to register to vote, and its placement on the March primary ballot—a requirement that “was adopted, at least in part, with the racially discriminatory purpose of targeting potential Hispanic candidates for disqualification and thereby seeking to prevent Hispanic voters from having the opportunity to vote for and/or elect candidates of their choice, in violation of Section 2 of the Voting Rights Act.”³⁰¹

IN CRENSHAW COUNTY, ALABAMA

— The consistent and repeated creation of at-large systems for local governments by the Alabama legislature, “during periods when there was a substantial threat of black participation in the political process.”

—Barriers “consistently erected” by the state “[f]rom the late 1800’s through the present [1986] to keep black persons from full and equal participation in the social, economic, and political life of the state,” where these systems “are still having their intended racist impact.”³⁰²

— The creation of these “systems...in the midst of the state’s unrelenting historical agenda, spanning from the late 1800’s to the 1980’s, to keep its black citizens economically, socially, and politically downtrodden, from the cradle to the grave.”³⁰³

IN HAYWOOD COUNTY, TENNESSEE

— The 1982 decision by the Haywood County Commission to replace 10 district seats for the Road Commission with 9 seats elected at-large after the first black road commissioner was elected, a decision the court “finds from the evidence in the record . . . occurred as a result of the purposeful intention to dilute black voting strength in Haywood County, Tennessee.”³⁰⁴

Sources

Of the 107 lawsuits finding Factor 1, 32 lawsuits (30%) did so without reference to any evidence,³⁰⁵ and another 7 (6.5%) did so based upon defendants’ stipulation to a history of official discrimination.³⁰⁶ Courts addressing lawsuits in Section 5-covered jurisdictions were no more likely than those in non-covered jurisdictions simply to assume or take judicial notice of Factor 1, without any evidentiary discussion. Most courts assessing Factor 1 examined various types of evidence. Sixty-five (60.7% of those finding Factor 1) cited statutes or other official policies.³⁰⁷ Thirty-five (32.7%) noted actions and statements taken by public officials;³⁰⁸ 24 (22.4%) cited expert testimony;³⁰⁹ sixteen (14.9%) mentioned history books, newspapers or scholarly articles,³¹⁰ fifteen (14%) mentioned other witness testimony.³¹¹ Some listed the jurisdiction’s status as a covered (or non-covered) jurisdiction under Section 5 of the Voting Rights Act.³¹²

Fifty-six lawsuits (52.3% of those finding Factor 1) looked to prior judicial decisions identifying official discrimination in a range of conduct.³¹³ Some of these decisions found such discrimination in education, housing, employment. Others specifically addressed claims of discrimination in voting, including a jurisdiction’s failure to comply with the requirements of Section 5 of the VRA.³¹⁴ Numerous cases addressing Factor 1 cited as evidence the Factor 1 findings from a prior Section 2 case in the same state or jurisdiction.³¹⁵ This earlier decision typically engaged in lengthy analysis of the historical record, and the subsequent suit in the state cited back to that decision, sometimes without making further findings.³¹⁶

Some lawsuits (23 or 21.5% of all lawsuits finding the factor) included within their Factor 1 analysis examples of private or unofficial discrimination, although no court relied exclusively on such evidence in finding Factor 1.³¹⁷ For example, in the *Armour* Litigation in Ohio, the court included within Factor 1 the media’s use of racial labels to describe an African-American candidate in 1985, the failure in the same year of party officials to support a minority candidate³¹⁸ and the 1970 bombing (allegedly by private individuals) of the house of the first African-American member of the Youngstown School Board in Youngstown, Ohio.³¹⁹

Discounting History

Forty-one lawsuits addressed but did not find Factor 1.³²⁰ Some courts deemed instances of discrimination too remote in time to count towards Factor 1.³²¹ Some lawsuits found that plaintiffs presented no evidence of official discrimination, and refused to take judicial notice of this factor without such evidence.³²² Several courts deemed Section 5 coverage alone insufficient to satisfy Factor 1, and instead have demanded evidence of official discrimination in the specific locality in question.³²³

Courts in covered and non-covered jurisdictions alike have deemed evidence of intentional discrimination in a neighboring locality inadequate, even when that discrimination was of recent vintage.³²⁴ Three lawsuits specifically found evidence insufficient because it was not linked to the specific, local jurisdiction. In the Alabama lawsuit *Chapman v. Nicholson*, the court found Factor 1 absent because “[t]here was certainly no evidence that black citizens in Jasper have had as much difficulty in voting as has been experienced by black citizens in some Southern communities.”³²⁵ Similarly, in the *Rodriguez* litigation, the court acknowledged as “troubling” the evidence of discrimination from recent litigation in the City of Yonkers, but deemed this evidence insufficient to establish Factor 1 in a challenge to a proposed state senate district, because only a fraction of the challenged district’s residents came from Yonkers.³²⁶ Most lived in the Bronx, where, the court noted, “Hispanics — and the various ethnic groups that fall under that label — have very actively participated in local Bronx politics.”³²⁷ Finally, in the *Kent County* litigation, the district court found that evidence of a city’s official discrimination was not relevant to a Section 2 challenge to a county’s actions.³²⁸

Thirty of the lawsuits addressing but not finding Factor 1 parsed the factor into two components. These cases all identified a history of official discrimination, but deemed insufficient evidence showing that this past history “touched” on the right to vote today.³²⁹ All read Factor 1 as requiring a showing that the official discrimination hindered present-day minority political participation.³³⁰ Under this approach, much evidence of historic discrimination in voting is irrelevant absent linkage to contemporary problems. Thus, in the *Liberty County Commissioners* litigation the defendants conceded an extensive history of official discrimination and the court recounted this history in detail.³³¹ The court then assessed “the extent to which that discrimination still affects the rights of blacks to have equal access to the political process,”³³² and, on this question, the court concluded that it did not. The primary example of more recent official discrimination was a school employment lawsuit decided in 1986, which “indicate[d] lingering prejudice on the part of whites even in their official capacity... [but] did not touch the issues involved in a determination of whether the Voting Rights Act is being violated.”³³³

For some courts, affirmative steps taken by a jurisdiction to improve voting rights ameliorated evidence of historical discrimination. The *Aldasoro* litigation, for example, recounted thirty years of California legislation designed to “improve minority voting participation and to liberalize the political process.”³³⁴ Some deemed the absence of contemporary examples of discrimination reason to discount past evidence. The court in *City of Woodville*, for example, acknowledged a past history of discrimination and the fact that the city “remains a place of almost total racial segregation on a social level,” but it nevertheless minimized this finding because “Blacks and Whites are operating a government which is fair and responsive to Blacks in a community atmosphere of cooperation between the races and devoid of intimidation.”³³⁵ So too, the court in a 1997 case in Massachusetts noted that “[t]he 1995 election witnessed the complete absence of election-related problems that plagued elections in the 1980’s.”³³⁶

For other courts, the very prevalence of discrimination meant it should be discounted. Thus, while courts in Southern States assumed or outlined a long local and state history of official discrimination,³³⁷ some maintained that this discrimination was too common and too widespread to weigh heavily within the Section 2 analysis.³³⁸ The court in *City of Woodville* explained that the city “has a past history of racial discrimination as does every other Mississippi town or city,” thus minimizing that history.³³⁹

Some courts in Northern States minimized a local history of discriminatory practices by contrasting that history with the record of what occurred in the South. In the *Butts* litigation, for example, the appellate court took issue with the district court’s identification of numerous official practices targeting black and Hispanic voters and its suggestion that racial discrimination in voting is hardly confined to the South.³⁴⁰ The appellate court stated that “[u]nlike many of the jurisdictions typically involved in Voting Rights Act cases, New York has ensured to black citizens the right to vote on the same terms as whites since 1874 (when the fifteenth amendment was ratified).”³⁴¹ In another New York lawsuit against the Town of Babylon, the district court noted that “[no]thing in the history of New York even remotely approaches the systematic exclusion of blacks from the political process that existed in the South.”³⁴²

SENATE FACTOR 2: *Extent of Racially Polarized Voting*

Senate Factor 2 calls for an evaluation of the extent of racially polarized voting. This Report discusses this factor in the *Gingles* section above.

SENATE FACTOR 3: *Use of Enhancing Practices: At-large Elections, Majority Vote Requirements*

Factor 3 inquires about 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.”³⁴³ Section 2 did not categorically outlaw the practices identified in Factor 3, even though numerous decisions have invalidated specific uses of such practices as violations of the statute.

Many more courts adjudicated challenges to the practices listed in Factor 3 than actually found the factor. In all, 53 lawsuits found that at least one practice existed that might enhance the opportunity for discrimination potentially resulting from the practice *directly* challenged in those lawsuits.³⁴⁴

Of those finding Factor 3, 35 (or 66.0%) also identified a violation of Section 2 (and 1 additional lawsuit ended with a settlement favorable to the plaintiffs). Thirty-two lawsuits found majority-vote requirements,³⁴⁵ 26 found anti-single shot provisions, such as staggered terms and/or numbered-place requirements,³⁴⁶ 23 found the use of at-large elections,³⁴⁷ 11 found unusually large districts,³⁴⁸ and 6 found other enhancing practices, including the use of an automatic voter removal or “purge” law (based upon voting frequency), a short interval between an initial election and the runoff election, candidate registration fee, candidate residency requirement, or low financial compensation for elected officials.³⁴⁹

Thirty-four (64.2%) of the lawsuits finding Factor 3 arose in covered jurisdictions.³⁵⁰ Of these, 23 also found Section 2 was violated.³⁵¹ Of the 19 lawsuits (35.8%) finding this factor in non-covered jurisdictions, 12 also found a violation of Section 2.³⁵²

Factor 3 differs from the other Senate Factors in that courts addressing it usually engaged in virtually no analysis. Unlike, for example, identifying a racial appeal (Factor 6) or an exclusive slating process (Factor 4), identifying Factor 3 devices is almost always perfectly obvious. The jurisdiction either uses an at-large system or it does not. Most courts have found little to analyze and little to say apart from identifying the practice.

Even so, some courts that found Factor 3 discounted its import, typically by deeming the identified practice as having a minimally discriminatory effect on the ground.³⁵³ These courts suggested that while Factor 3 practices may generally foster discriminatory results, no evidence establishing that effect was presented in the particular case.

The Senate Report's inclusion of the practices identified in Factor 3 in the totality of the circumstances recognizes the history underlying these practices. Legitimate reasons may exist for their continued use, but numerous notorious and historic examples attest to their adoption and use as devices for limiting political participation by racial minorities, and, in particular, participation by African Americans in the South.³⁵⁴ The Senate Report recognizes this by providing that a jurisdiction's decision to use such practices is evidence, albeit hardly dispositive standing alone, that Section 2 may have been violated.

SENATE FACTOR 4: *Candidate Slating*

Factor 4 asks whether members of the minority group have been denied access to a candidate slating process, assuming such a process exists in the jurisdiction. A denial of such access was an important component of a Section 2 claim prior to the 1982 amendments,³⁵⁵ but the factor appears to be of diminished importance under the amended provision. Sixty-four lawsuits determining Section 2 was violated did not find Factor 4.³⁵⁶

More than 20 lawsuits specifically addressed evidence relating to Factor 4. Ten of these found the existence of a discriminatory slating process. Of these 10 lawsuits, 4 originated in jurisdictions covered by Section 5. All but one also found a violation of Section 2. Five of the 10 involved challenges to at-large districts. Eight also found racially polarized voting existed; all courts in these 10 lawsuits also found that the minority group had difficulty getting elected.³⁵⁷

While the term "slating" is not defined by the Senate Report, the Fifth Circuit has described it as "a process in which some influential non-governmental organization selects and endorses a group or 'slate' of candidates, rendering the election little more than a stamp of approval for the candidates selected."³⁵⁸ Courts finding the factor have identified slating in four general circumstances.

Official Slating

Three courts identified instances where official party conduct constituted discriminatory slating. The *Town of Hempstead* litigation documented a slating process under which the Republican Party Chairman for the County selected candidates to run for office subject to approval by the Party's 69-member executive committee.³⁵⁹ Deeming this process racially exclusive within the meaning of Factor 4, the district court noted that the executive committee invariably approved the Chairman's selections without debate, making the participation of three African Americans on the committee of little consequence. The only African-American candidate ever slated was not initially supported by a town-based organization of African-American Republicans, but instead was "a close

friend and tennis partner” of the Party Chairman.³⁶⁰ These circumstances led the appellate court to observe that, in this predominantly white, predominantly Republican town, the lack of access to the Republican slating process meant that “blacks simply are unable to have any preferred candidate elected to the Town Board.”³⁶¹

Similarly, in the *City of New Rochelle* litigation the district court found that candidate selection by party members placed barriers on non-party affiliated candidates and limited the prospects for candidates preferred by the African-American community to gain access to the ballot.³⁶² So too, in the *Albany County* litigation the district court found a lack of access based on anecdotal evidence coupled with the major parties’ failure ever to nominate a minority candidate for county-wide office.³⁶³

The *Marylanders* litigation, as described in the Factor 1 section above, documented a recent instance of official slating, albeit not by party officials. Although the court did not expressly address this evidence under Factor 4, the court cited the practice through the mid-1980s of allowing state-funded, all-white fire departments on the Eastern Shore of Maryland to control the candidate slating process.

Unofficial Party Slating or Backstabbing

Two courts found unofficial conduct by party officials to constitute slating.³⁶⁴ In the *City of Springfield* litigation, the court called unofficial party endorsements and support in ostensibly nonpartisan elections “a subtle and covert” form of slating, one that contributed to the failure of African-American candidates to be elected.³⁶⁵ In the *Bone Shirt* litigation the court found that informal activities by the party organizations stymied Native American candidacies. The court highlighted as evidence the conduct of the chairman of the Democratic Central Committee, who campaigned against his own party’s nominees for county commissioner in the 2002 general election after Indian candidates unseated non-Indian incumbents in the primary.³⁶⁶

Although not characterized as “slating,” conduct documented in two other lawsuits may be similarly understood. In the *Armour* litigation, the court cited the failure of party officials to support minority candidates despite rules requiring such support.³⁶⁷ The *City of Philadelphia* litigation cited campaign materials distributed by the Democratic Party listing all city council candidates running at-large except for one African-American and one Latino candidate.³⁶⁸

Private Slating

Three courts found that conduct by private organizations denied minority candidates access to slating processes.³⁶⁹ In the *City of Chicago Heights* litigation the court identified such conduct in the activities of an organization called the Concerned Citizens Group, a group that had no African-American members and chose candidates for city council elections. The court noted the absence of evidence showing either that black voters had input into this slating process or that they could gain access to the ballot absent access to that process.³⁷⁰ In the *City of Gretna* litigation, the district court found that electoral success hinged on the endorsement of a local political faction known as the Miller-White Ticket, and that the Ticket routinely blocked black candidates.³⁷¹ In the *Pasadena Independent School District* litigation, the court noted that essential campaign contributions flowed to candidates endorsed by a group called Communities United for Better Schools (“CUBS”). Since a CUBS endorsement typically led to candidate success on election day, and because CUBS had only once endorsed a Hispanic candidate, the court concluded that Factor 4 was satisfied.³⁷²

Inference of Slating

One court inferred a denial of access to slating processes given the absence of African-American candidates running for office.³⁷³

Slating Not Found

In an additional 13 cases, plaintiffs introduced what they contended was evidence of slating but courts did not find that minority candidates had been denied access. Courts in 5 cases rejected evidence regarding private slating processes either because the activities of the group in question did not fit the court's definition of a slating organization³⁷⁴ or because the slating organizations were defunct by the time litigation was initiated.³⁷⁵ For example, in the *City of Dallas* litigation the district court noted that an organization known as the Citizen's Charter Association had denied black and Latino candidates access to slating through 1977, but because the group no longer existed, the factor was not found.³⁷⁶ Anecdotal evidence of slating was conclusorily rejected in another two lawsuits.³⁷⁷

Three lawsuits viewed electoral success by minority candidates as evidence of access to slating processes. Additionally, in the *Alamosa County* litigation,³⁷⁸ the court assumed without deciding that the Democratic Central Committee played a functional role in the selection of county commission candidates, but concluded that anecdotal testimony about ethnically biased comments and "boorish behavior" by some members of the committee was insufficient to establish a "policy or practice" that denied non-white candidates access to slating. Finally, 2 lawsuits attributed the exclusion of minority candidates from slating processes to partisanship rather than race.³⁷⁹

SENATE FACTOR 5: *Ongoing Effects of Discrimination (Education, Employment, Health)*

The fifth Senate Factor calls for evaluation of "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." Of the 129 lawsuits addressing this factor, 84 found the factor to be met. Forty-five lawsuits finding Factor 5 originated in jurisdictions covered by Section 5 of the VRA. In 50 lawsuits finding Factor 5, Section 2 was violated, and an additional 4 lawsuits ended favorably for the plaintiffs.³⁸⁰ Courts have evaluated Factor 5 in several different ways.

Depressed Socioeconomic Status Alone

Several courts found Factor 5 based on a finding of historic discrimination and some showing that the minority group experiences comparatively low socioeconomic status. In 12 lawsuits, courts used this approach and found the factor met.³⁸¹

Nexus Between Discrimination and Participation

Most courts require some kind of nexus not only between a history of discrimination and lowered socioeconomic status, but also between depressed socioeconomic status and the ability to participate in the political process. In 31 cases, courts assumed or deduced, sometimes aided by expert testimony, that lower socioeconomic status hindered the minority group's ability to participate effectively in the political process and found the factor met.³⁸² These courts pointed out, for example, that depressed socioeconomic status hinders one's ability to raise money and mount a campaign,³⁸³ and to

campaign in large districts.³⁸⁴ Moreover, lower socioeconomic status often creates geographic and social isolation from other members of the community, connection with whom may be critical to engage in effective political action.³⁸⁵ One district court specifically noted that depressed socioeconomic status makes it difficult for minority candidates to run for particularly low paying public positions.³⁸⁶

Proof of Depressed Participation

In the majority of lawsuits, however, courts concluded that Factor 5 requires concrete evidence of depressed participation as measured through voter registration and turnout statistics. Out of the 35 cases quantifying minority political participation according to voter registration and turnout statistics, 24 found Factor 5 based on depressed minority registration and turnout,³⁸⁷ while 11 courts found the factor unsatisfied when presented with nearly equal voting participation rates.³⁸⁸ As a measure of political participation, several courts view turnout as more probative than registration rates.³⁸⁹

In 2 cases, the courts made conclusory assertions that socioeconomic disadvantage did not hinder political participation by the minority group in question.³⁹⁰ In 10 cases, the court did not find Factor 5 met because plaintiffs had not presented sufficient evidence to show whether or not the minority group actually suffered from lower political participation.³⁹¹

Holistic Approach to Participation

Other courts considered statistical measures of voting participation but did so in combination with significant testimonial evidence. Five courts, for example, examined under Factor 5 the effect of various forms of de facto racial segregation on the ability of minority groups to participate in the political process.³⁹² Thus, the district court in the *Charleston County* litigation noted severe societal and housing segregation and found that this ongoing racial separation “makes it especially difficult for African-American candidates seeking county-wide office to reach out to and communicate with the predominately white electorate from whom they must obtain substantial support to win an at-large elections [sic].”³⁹³ The district court in the *Neal* litigation likewise concluded that similar segregation meant “that whites in the County have historically had little personal knowledge of or social contact with blacks...Quite simply, whites do not know blacks and are, as a result, highly unlikely to vote for black candidates.”³⁹⁴

Causation and Voter Apathy

Five courts refused to find Factor 5 notwithstanding specific evidence of both depressed socioeconomic status and low levels of political participation.³⁹⁵ These courts required additional evidence showing that discrimination directly caused depressed participation.

Some defendants have argued that low participation results not from discrimination, but instead from voter apathy. Courts have disputed the relevance of voter apathy within this inquiry into causation. Four courts concluded that voter apathy, as opposed to socioeconomic status, best explained low levels of political participation by minority voters in the jurisdiction.³⁹⁶ At least 5 other courts, however, attributed voter apathy to the sources of discrimination Factor 5 identifies.³⁹⁷ In the *City of Gretna* litigation, for example, the district court held that voter apathy was not an independent cause of low political participation, but was instead a product of the very discrimination that depressed black socioeconomic status. The court noted that “[d]epressed levels of participation in voting and candidacy are inextricably involved in the perception

of futility and impotence” engendered by “severe historical disadvantage.”³⁹⁸ The court concluded that “[t]hese historical disadvantages continue through the present day and undoubtedly hinder the ability of the black community to participate effectively in the political process within the City of Gretna.”³⁹⁹

Significance of Past Discrimination

In one case, the district court required plaintiffs to establish that official discrimination caused the current socioeconomic disparities.⁴⁰⁰ In another, the district court concluded that plaintiffs had not carried their burden of proof because they could not show that socioeconomic disparities were the specific result of discrimination within the challenged jurisdiction itself.⁴⁰¹ In three cases, district courts discounted evidence of low socioeconomic status among Latinos because the evidence did not distinguish recent immigrants from longstanding residents. This approach posits that new immigrants cannot bear the effects of discrimination in housing, employment or health within the meaning of Factor 5 and thus the failure to distinguish them from other members of the minority group leaves courts unable to find the factor satisfied.⁴⁰²

Intransigence of Inequality

Some courts discounted evidence of low socioeconomic status because they determined that the status was too intransigent to receive significant weight.⁴⁰³ In the *Magnolia Bar Association* litigation, the district court found sufficient evidence to establish the factor,⁴⁰⁴ but concluded that Factor 5 described a condition too common to weigh heavily in plaintiffs’ failure. The court observed that because “the socioeconomic standing of blacks vis-a-vis whites has changed little and it is unlikely that standing will improve markedly in the foreseeable future,” continuing socioeconomic effects of discrimination “will be a factor on which the plaintiffs in voting rights cases will always win in the foreseeable future. The issue thus becomes one of weight to be afforded this factor.”⁴⁰⁵

SENATE FACTOR 6: *Racial Appeals in Campaigns*

The sixth factor in the Senate Report instructs courts to assess whether political campaigns have been characterized by overt or subtle racial appeals. Of the cases surveyed, 48 lawsuits considered evidence addressing this factor. Thirty-one of these identified such an appeal and found the factor met. Seventeen (or 54.8%) of these 31 lawsuits were in covered jurisdictions, while 14 were in non-covered jurisdictions. Eighteen also held that Section 2 was violated and another issued a preliminary injunction. Of the successful lawsuits finding this factor, 12 (or 63.2%) occurred in covered jurisdictions.⁴⁰⁶

Some courts noted that campaigns generally have been marked by racial appeals,⁴⁰⁷ but most decisions finding Factor 6 identified appeals in specific campaign years. These courts have identified racial appeals in 59 specific elections occurring in 1950, 1954, 1960, 1968, 1970, 1971, 1972, 1975, 1976, 1977, 1982, 1983, 1984, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1995, 2000 and 2002.⁴⁰⁸ Courts finding Factor 6 identified 42 specific racial appeals or campaigns characterized by racial appeals since 1982.⁴⁰⁹ Of these, 27 occurred in covered jurisdictions.⁴¹⁰

While some courts have stated without elaboration that elections have been marked by racial appeals,⁴¹¹ others have identified racial appeals in a wide range of conduct. Courts have disagreed, however, as to what conduct should be considered a racial appeal.

Identification of the Candidate's Race

In 6 lawsuits, courts identified as racial appeals a variety of statements in which a candidate's race was identified, including comments by white candidates or their campaign workers that their opponent was black,⁴¹² statements by minority candidates in which they identified their minority status,⁴¹³ and newspaper articles that mentioned the race of the candidates.⁴¹⁴

Photographs

Numerous courts have identified the use of photographs in campaign flyers and advertisements as racial appeals. The majority of these cases involved campaign materials distributed by a white candidate or the candidate's supporters that featured the photograph of an African-American opponent.⁴¹⁵

No court has deemed the decision by a newspaper to publish candidates' photographs a racial appeal.⁴¹⁶ In the *City of Jackson* litigation, for example, the district court acknowledged that the publication of candidates' photographs might prompt "some white voters [to] vote for a white candidate and some black voters [to] vote for a black candidate," but, the court concluded, "that is merely a fact of political life in Jackson."⁴¹⁷

Two lawsuits characterized as racial appeals the manipulation of photographs to darken the skin of opposing candidates, be they minority or white.⁴¹⁸ The *Charleston County* litigation recounted the use of this tactic in three separate campaigns occurring in 1988, 1990, and 1992. In each instance, white candidates and their campaigns distributed official campaign literature or placed newspaper ads featuring the darkened photos of African-American opponents.⁴¹⁹ The *City of Philadelphia* litigation discussed the use of similar tactics in two different campaigns. In a state senate campaign in the early 1990s, one white candidate published a brochure containing a darkened photograph of his white opponent next to a photograph of Philadelphia's black mayor.⁴²⁰ The other involved a televised campaign advertisement in the 1985 district attorney campaign that portrayed light-skinned African-American candidates as having much darker skin.⁴²¹

The Specter of Minority Governance

Courts have held Factor 6 satisfied by a variety of allusions or threats of minority control of government. Conduct of this sort includes references by white candidates or their campaigns that minority voters will engage in "bloc voting" and turn out in high numbers,⁴²² that a minority will be elected if whites do not turn out,⁴²³ and that minority candidates, when elected, will appoint other minorities to positions of power.⁴²⁴ Similarly characterized are statements by white candidates that the minority community wants to "take over" the local government, and the country.⁴²⁵

In the *Armour* litigation, for example, campaign workers for a white 1985 mayoral candidate went door to door telling voters that if the black candidate was elected, "his cabinet would be black." They also drove a sound truck around Youngstown announcing that should the minority candidate be elected "we will have a black police chief, we will have a black fire chief," and adding "we cannot have that."⁴²⁶ More recently, in the *Bone Shirt* litigation, the district court identified racial appeals occurring during the 2002 primary elections for county commission, in which three Native American candidates confronted accusations that Indians were seeking to "take over the county politically...[and] trying to take back land and put it in trust."⁴²⁷

In-group and Out-group

Two courts identified as racial appeals campaign advertisements making reference to a candidate's being "one of us"⁴²⁸ or promising to stand against vandalism and crime that "drive our people and our businesses out" of the community.⁴²⁹ In the *City of Holyoke* litigation the district court categorized as a racial appeal the "us versus them" sentiment featured in one candidate's 1987 campaign materials where "the 'us' was fairly clearly the longtime white residential community, the 'them' the more recent Hispanic minority."⁴³⁰ The district court noted, for example, the campaign's focus on "teach[ing] the 'Spanish' English ...as an answer to increasing crime and vandalism" and featured an advertisement with a "large picture of an Hispanic young man, cigarette dangling from his lips and the caption 'The people who really should read this, can't.'" ⁴³¹

Race-baiting

In the *Charleston County* litigation, the district court identified as a racial appeal the efforts to increase turnout among voters perceived to be "anti-black."⁴³² In 1990, the campaign of a candidate for Lt. Governor of South Carolina paid Benjamin Hunt, Jr., "a nearly illiterate African-American man" to run in a congressional primary.⁴³³ The candidate took no part in the campaign beyond allowing his picture to be taken while standing in front of a Kentucky Fried Chicken restaurant. A consultant hired by the would-be Lt. Governor's campaign mailed out thousands of leaflets featuring this picture with the caption "Hunt for Congress."⁴³⁴

The Portent of Racial Strife

Also counting as racial appeals are statements suggesting racial strife or even violence will ensue if minority candidates or candidates associated with minority interests were supported or elected.⁴³⁵

Guilt By Association

Efforts to link a candidate with polarizing figures or organizations have been deemed racial appeals. Four courts, for example, have identified as racial appeals statements by white candidates linking a minority candidate with Jesse Jackson⁴³⁶ or Louis Farrakhan and the Nation of Islam.⁴³⁷ Another characterized as a racial appeal statements by an African-American candidate that his white opponent was supported by the Ku Klux Klan.⁴³⁸

Courts have also found evidence supporting a finding of Factor 6 in efforts to link a white opponent with minority elected officials or issues of minority concern. For example, two district courts classified as racial appeals the campaign literature of white candidates who featured photographs of their opponents, also white, alongside pictures of African-American elected officials.⁴³⁹ Another district court identified as a racial appeal a private slating organization's reference to a white candidate's association with a black candidate and his support for voter registration in the minority community.⁴⁴⁰

Discussion of Racially Charged Issues

In 5 lawsuits courts identified as racial appeals candidates' statements on certain racially charged issues. These issues included illegal immigration,⁴⁴¹ low income housing,⁴⁴² bus-ing and school desegregation,⁴⁴³ and crime.⁴⁴⁴ In the *Town of Hempstead* litigation, the district court found a racial appeal in a campaign brochure distributed by a candidate for town council in 1997. The brochure noted the candidate's awareness of "his com-

munity's proximity to the City of New York," his opposition to those who would seek to "Queensify" the town, and his concern about the danger of "urban crime spilling over the county border." The brochure celebrated the candidate's efforts to "sensitize[] local patrolmen to the special concerns of the community," a statement the court identified as a reference to an "unofficial border patrol policy" under which the police were to stop black youth from Queens, "find out their business and ensure that they 'go back where they belong.'"⁴⁴⁵

One district court identified as a racial appeal public debate on a racially charged issue, absent any linkage to any particular candidate or campaign.⁴⁴⁶ Another viewed such debate as evidence supporting the inference that other campaigns are characterized by racial appeals.⁴⁴⁷

Not all courts treat the presence of racially charged issues in campaigns or general public debate as racial appeals. Three district courts rejected plaintiffs' contentions that candidates' discussion of busing and school desegregation should be classified as racial appeals.⁴⁴⁸ The district court in the *City of Norfolk* litigation stated that the inclusion of such issues in campaigns was of "legitimate public concern and not an appeal to racial prejudices," and noted that both black and white candidates addressed the issue of busing "reluctantly and often only when questioned by the public about their stance."⁴⁴⁹ Similarly, the court in the *City of St. Louis* litigation stated that while school desegregation has "an undeniable racial dimension," plaintiffs presented no evidence that the issue was raised "in an effort to appeal to members of a particular race."⁴⁵⁰ In the *Red Clay School District* litigation, plaintiffs introduced into evidence a candidate's flyer that warned of increasing percentages of minority students at local high schools and the potential for "major disruption for our children." The flyer stated that "Bill Manning is the only candidate who has said over and over again that he favors stability. To deal with overcrowding, he supports change within our same feeders, keeping our children together." While the court characterized the flyer as "shrill," it declined to characterize it as a racial appeal because it does not identify the race of any candidate nor does it "malign one of the candidates or his supporters because of race."⁴⁵¹

One district court refused to characterize debate about at-large and single-member districts as a racial appeal.⁴⁵² Another district court refused to "consider every discussion of or question about" Indian exemption from certain taxes a racial appeal, notwithstanding the district court's recognition that "white voters harbor a resentment over this issue, making white support for Indian candidates unlikely."⁴⁵³

Racial Bias in Press Coverage

Racial bias exhibited by the press has been deemed a racial appeal in 2 cases. In the *Bone Shirt* litigation, the court credited as evidence of racial appeals unsubstantiated and false news stories circulating throughout 2002 linking Native Americans to voter fraud.⁴⁵⁴ Likewise, in the *City of Dallas* litigation, a 1989 newspaper column warning that a vote for the African-American candidate running against the incumbent white mayor "could lead to racial violence and white flight" was classified as a racial appeal.⁴⁵⁵

Candidate Intimidation

Some courts have characterized as racial appeals conduct directed at minority candidates as opposed to voters. In the *Jeffers* litigation, for example, the court termed a racial appeal a black candidate's receipt of anonymous calls where the caller used obscenities and racial slurs as well as a later incident in which the same candidate was

run off the road by a group of individuals wearing hoods.⁴⁵⁶ *Jeffers* also deemed a racial appeal government retaliation against an unsuccessful minority candidate. Prior to his political involvement, the candidate had enjoyed a business relationship with the county that was terminated after his campaign.⁴⁵⁷

In the *Garza v. Los Angeles* litigation, the district court cited “substantial evidence” of racial appeals including hostility directed at a Latino candidate for city council who “had doors slammed in his face” while campaigning in a predominantly white neighborhood.⁴⁵⁸ It similarly characterized the destruction of the candidate’s campaign literature.

Racial Slurs or Stereotypes

Courts have also deemed a racial appeal the public use of racial epithets and slurs by white candidates running against black candidates.⁴⁵⁹ One district court found a white official’s admission before the court in 2002 that he casually and regularly uses the word “nigger” to be a racial appeal, even though the plaintiffs made no allegation that racial appeals existed.⁴⁶⁰

So too, courts have identified stereotypes about minority candidates’ lack of qualifications as racial appeals. For example, the district court in the *City of Dallas* litigation so classified a 1970 ad where the white incumbent described his opponent simply as “A black man (no qualifications of any kind).”⁴⁶¹ In the same case, the district court also noted a boast made by a white female candidate and printed in the League of Women Voters 1972 voter guide that “evidence of [her] proven ability” was the fact that no white men opposed her, and that her only opponents were black men.⁴⁶² The district court in the *Neal* litigation identified a similar type of racial appeal in an editorial run in the local newspaper. The editorial announced the race of two black candidates only to go on to urge voters “not to vote on account of race, but rather on merit.” Still, the editorial noted that one of the races involving an African-American candidate was “of great concern to many county residents” because the black candidate could win “solid black support” and defeat the white incumbent. The editorial weighed in for the re-election of the “more experienced” incumbents.⁴⁶³

Sources of Evidence

In most cases, plaintiffs seeking to prove Factor 6 introduce campaign literature and advertisements from previous elections, documentation of media coverage, and witness testimony from minority and non-minority candidates, elected officials, and community members. In the *Wamser* litigation, the district court looked beyond these usual sources of evidence and appeared to dismiss the defendant’s expert testimony on racial appeals, based on the judge’s own experience — “Dr. Wendel’s observation that other political campaigns are devoid of racial appeals would be most credible perhaps to persons who were not in St. Louis during the recent campaign for the City school board.”⁴⁶⁴

Discounting Racial Appeals

Several lawsuits identifying racial appeals discounted their import. Some characterized the appeals as merely “isolated” incidents.⁴⁶⁵ Others called the appeals ineffective because the targeted candidate was elected, at times with significant white support.⁴⁶⁶ In the *Alamosa County* litigation, the court identified “a fundamental electoral truth — that to be elected in Alamosa County, a candidate must appeal to both Anglo and Hispanic

voters,” such that racial appeals by Hispanic candidates certainly did not weigh in favor of a finding of vote dilution.⁴⁶⁷

Eight lawsuits held that racial appeals occurred too long ago to be probative in contemporary claims.⁴⁶⁸ Appeals deemed too remote include ones occurring more than thirty years earlier,⁴⁶⁹ as well as ones occurring a decade past.⁴⁷⁰ Two courts discounted evidence of racial appeals as outdated by noting a new political reality characterized by “racial harmony.”⁴⁷¹

In the *Charleston County* litigation, the court identified numerous racial appeals, but concluded without explanation that “[e]vidence of racial appeals has not materially assisted the Court in reaching a conclusion” on Section 2 liability.⁴⁷² Likewise, in the *Magnolia Bar Association* litigation, the district court acknowledged the presence of both overt and subtle racial appeals in campaigns, while concluding that “the appeal for voters by both black and white candidates crosses racial lines, thereby minimizing the importance of this factor under the totality of the circumstances.”⁴⁷³

SENATE FACTOR 7: *Success of Minority Candidates*

Under Senate Factor 7, courts must evaluate the “extent to which members of the minority group have been elected to public office in the jurisdiction.”⁴⁷⁴ Of the lawsuits analyzed, 137 specifically addressed this factor, and 85 found a lack of minority candidate success.⁴⁷⁵ Of these, 60 (71%) also found a violation of Section 2. Two additional lawsuits ended in outcomes favorable to plaintiffs, albeit not with an adjudicated Section 2 violation. Twenty-five lawsuits found Factor 7 but did not find a violation of the statute. Fifty-two lawsuits addressed but did not find Factor 7, and of these, only one found a Section 2 violation. Forty-nine (57.6%) of the Factor 7 findings were in covered jurisdictions, while 36 (42.4%) were in non-covered jurisdictions.⁴⁷⁶

Courts evaluating Factor 7 looked primarily at election results and counted the number of minority candidates elected. Courts generally examined minority success over the course of several elections, typically occurring over decades.⁴⁷⁷ Several cases distinguished election results occurring before the lawsuit was initiated and those afterward, and often discounted evidence of post-filing minority success as strategic efforts to frustrate the lawsuit.⁴⁷⁸

Unsurprisingly, Factor 7 weighed heavily in the plaintiffs’ favor in cases where electoral results revealed a total failure or near total failure of minority candidates to be elected. Courts have repeatedly found a lack of minority success in this situation.⁴⁷⁹ On the other hand, Factor 7 favored defendants where electoral results showed significant success of minority candidates.⁴⁸⁰

Electoral results do not constitute the entire inquiry under Factor 7. Numerous courts have also considered the record of minority electoral success in conjunction with population statistics. Because Section 2 is explicit that the statute provides no right to proportional representation,⁴⁸¹ some courts have deemed an absence of proportional representation irrelevant to the Factor 7 analysis.⁴⁸² Others, however, have viewed proportional minority representation (or its absence) as informing the Factor 7 inquiry. Several courts deemed the absence of such representation to suggest a lack of minority electoral success under Factor 7,⁴⁸³ while others viewed evidence that minority officeholders approached or exceeded the proportion of minorities in the electorate as proof of minority electoral success.⁴⁸⁴ Still, some courts concluded that greater-than-proportional electoral success did not compel a finding that Factor 7 was unsatisfied.⁴⁸⁵

The nature and prominence of the offices to which minority candidates had been elected also informed the Factor 7 inquiry. Some courts deemed the absence of minority candidates in top offices evidence of a lack of minority success, notwithstanding minority election to “lesser” positions.⁴⁸⁶ Other courts viewed minority success in these “lesser” elections as sufficient evidence of minority electoral success, even where minority candidates did not win top offices.⁴⁸⁷ For some courts, the success of minority candidates in exogenous elections was sufficient evidence of minority electoral success, even where minority candidates did not win *any* office in the challenged jurisdiction.⁴⁸⁸ Many courts compared minority electoral success in endogenous elections to other elections for city, county or statewide offices. Most, however, emphasized that exogenous elections were less probative of electoral difficulty or success.⁴⁸⁹ Some courts accorded almost no weight to exogenous electoral evidence,⁴⁹⁰ and several appellate courts reversed district court decisions finding that plaintiffs failed to meet Factor 7 based on exogenous electoral success.⁴⁹¹

Some courts cited the *appointment* of minority officials to support a finding that Factor 7 had,⁴⁹² or had not been met.⁴⁹³ For instance, in the *Town of Hempstead* litigation, the appellate court acknowledged that black Republicans had been appointed to various offices in the surrounding area and to “a number of positions” in the Town, but emphasized that the “one black . . . elected to Town office since the establishment of the Town Board . . . [was] a Republican who was appointed to the Board in 1993 and elected the same year.”⁴⁹⁴ Thus, where minority electoral “success” hinges on the advantages of incumbency secured through appointment, some courts have found that such “success” has little bearing on the ability of minority candidates to win elections generally.

Several lawsuits looked beyond electoral results to assess the number of minority candidates participating in given races. Some courts noted that the failure of minority citizens to “offer themselves” as candidates weighed against finding a lack of minority electoral success.⁴⁹⁵ In the *Red Clay School District* litigation, for example, the district court noted the absence of black candidates running for the school board in several elections. Although it acknowledged that “a sustained inability to elect black preferred candidates could create an atmosphere” that might discourage African-American candidacies, the court found evidence supporting the existence of such an “atmosphere” lacking in the case before it. It noted in particular the success of one black candidate and the absence of an onerous slating process.⁴⁹⁶ Other courts, however, considered the possibility that a dearth of minority candidates might itself stem from “the very barriers to political participation that Congress has sought to remove” and weighed the small number of minority candidates in favor of plaintiffs.⁴⁹⁷

A few lawsuits included within the Factor 7 inquiry an examination of the qualifications of successful and unsuccessful minority candidates. Evidence suggesting that minority candidates were not serious or viable weighed against plaintiffs in the *Fort Bend Independent School District* litigation,⁴⁹⁸ while the defeat of well-qualified minority candidates contributed to findings of a lack of minority electoral success in a small number of cases.⁴⁹⁹ The failure of prominent white Democrats to rally behind a minority candidate contributed to finding Factor 7 in at least one case.⁵⁰⁰

In 12 lawsuits, courts distinguished minority candidates from minority-preferred candidates. Seven of these courts seemed willing to gauge minority electoral success based on the success of minority-*preferred* candidates, even when those candidates themselves were *non-minority*.⁵⁰¹ In 5 lawsuits, courts were more skeptical about whether non-minority candidates were minority-*preferred*.⁵⁰² In the *City of Cincinnati*

litigation, for example, the appellate court stated that “the Act’s guarantee of equal opportunity is not met when . . . candidates favored by blacks can win, but only if the candidates are white.”⁵⁰³ The court suggested that the inability of black voters to elect their preferred candidate unless that candidate is white signals that black voters have been denied an “opportunity enjoyed by white voters, namely, the opportunity to elect a candidate of their own race.”⁵⁰⁴

Under certain circumstances, courts discounted evidence of minority electoral success or an apparent lack thereof. Some lawsuits, for example, viewed the defeat of minority candidates by relatively small margins as mitigating evidence of limited minority electoral success.⁵⁰⁵ At least one lawsuit discounted the election of a minority candidate where that candidate was “emphatically not the candidate of choice of the county’s African-American voters.”⁵⁰⁶

Several courts examining Factor 7 tended to discount minority electoral success absent evidence that the minority candidate received the support of white voters. Apparently agreeing with the Supreme Court’s characterization of the majority-minority district as the “politics of second best,”⁵⁰⁷ these courts seemed to place more weight on minority success in at-large elections than in majority-minority districts.⁵⁰⁸ So too, a few courts discounted as evidence of minority electoral success the experience of an African-American official, first appointed to the city board and then re-elected because the official not only enjoyed the benefits of incumbency but also never faced a white opponent.⁵⁰⁹ Conversely, another court credited as evidence of minority electoral success the election of candidates who had originally been appointed to office where evidence established that these candidates subsequently developed “sustained biracial coalitions” and retained their positions through more than “sheer power of incumbency.”⁵¹⁰

SENATE FACTOR 8: *Significant Lack of Responsiveness*

In addition to the seven “typical” factors listed above, the Senate Report adds two additional factors “that in some cases have had probative value” in establishing a Section 2 violation. The first is 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.”⁵¹¹ Of the lawsuits surveyed, 106 lawsuits addressed this factor and 19 (17.9%) found responsiveness lacking.⁵¹² Of those finding the factor, 13 (68.4%) ended favorably for the plaintiffs.⁵¹³ Thus, only 6 lawsuits (31.6%) that found a significant lack of responsiveness found in favor of the defendant. Thirty-four lawsuits that addressed but failed to find Factor 8 also held Section 2 to be violated.⁵¹⁴ Thirteen cases considered lack of responsiveness but did not decide whether or not Factor 8 was met.⁵¹⁵

Nine (47.4%) of the lawsuits that found a significant lack of responsiveness were in jurisdictions covered under Section 5; ten (52.6%) were not.⁵¹⁶ Of the 19 lawsuits that found a significant lack of responsiveness, all found a history of discrimination, 14 found Factor 1 was met, 15 found the minority candidate had difficulty getting elected, and 14 found racial bloc voting.⁵¹⁷

Courts addressing responsiveness took varying approaches to evaluating the factor and what it encompasses. The Senate Report did not define the term, and courts have rarely attempted a general definition, opting instead to evaluate the factor based on specific examples presented in any given case.⁵¹⁸ Nevertheless, the cases suggest that courts view responsiveness as having two distinct components: substantive and procedural.

Substantive Responsiveness

In the majority of lawsuits addressing Factor 8, courts viewed the responsiveness inquiry as requiring examination of the substantive policies enacted or implemented by the jurisdiction at issue. Courts applying this approach nevertheless disagreed significantly about which substantive policies signal responsiveness and which do not.

Numerous courts have held that evidence of affirmative discrimination directed at the minority group established a lack of responsiveness to that community.⁵¹⁹ Courts have cited adjudicated court decisions addressing school desegregation, employment discrimination and a violation of Section 5 of the Voting Rights Act,⁵²⁰ resistance to school desegregation orders,⁵²¹ evidence of disparate treatment,⁵²² and instances of racial hostility.⁵²³ In making this determination, courts generally restricted their inquiry to conduct within the jurisdiction of the governing body, be it a school board⁵²⁴ or a general local government.⁵²⁵ Courts generally did not consider discriminatory conduct outside the jurisdictional authority of the challenged governing body.⁵²⁶

In 24 lawsuits, courts held that elected officials are responsive absent evidence they engage in affirmative discrimination against the minority group.⁵²⁷ In this context, courts have cited the absence of evidence establishing such discrimination, including the nondiscriminatory provision of city services,⁵²⁸ and in particular road paving policy.⁵²⁹ Courts have also deemed as responsive efforts by local officials to address or correct discriminatory practices. For instance, courts have deemed “responsive” governing bodies that achieve “unitary” status for previously *de jure* segregated schools,⁵³⁰ that enter into consent decrees,⁵³¹ or that change to randomized selection of jury roles from a system where commissioners choose who will serve on grand and petit juries.⁵³² For other courts, the failure of localities to make similar efforts to remedy past discrimination is evidence of unresponsiveness.⁵³³ Courts have also held that a jurisdiction’s failure to remedy evident inequalities absent a court order or other compulsion suggests unresponsiveness,⁵³⁴ while a willingness to provide such remedies absent legal compulsion favors finding the jurisdiction responsive to minority needs. Thus, the Red Clay School District’s recalcitrance in implementing a school desegregation plan signaled its unresponsiveness, while Monroe County’s initiative in being one of the first Mississippi counties to implement randomized jury selection weighed in its favor.⁵³⁵

In lawsuits challenging judicial elections, courts also equated nondiscrimination with responsiveness. None of the 8 lawsuits to address unresponsiveness in this context found the factor to be present.⁵³⁶ Four expressly state that the only type of responsiveness a judge may properly demonstrate is to be fair and impartial,⁵³⁷ and 3 deemed the absence of evidence suggesting judges were unfair or biased proof that Factor 8 was not met.⁵³⁸

Thirty lawsuits suggested that nondiscrimination alone was insufficient to establish responsiveness.⁵³⁹ These courts looked for evidence of affirmative measures serving the minority community before finding responsiveness.⁵⁴⁰

A few lawsuits deemed the failure to adopt an affirmative action policy evidence of unresponsiveness;⁵⁴¹ while others cited such a policy to support finding responsiveness.⁵⁴² Several courts viewed the failure to hire or to appoint minority employees evidence of a lack of responsiveness,⁵⁴³ while in 16 lawsuits, courts viewed jurisdictions as responsive because they employed or appointed minorities or were making a good faith effort to do so.⁵⁴⁴ Further, the provision of bilingual education supported a finding of responsiveness.⁵⁴⁵

Numerous courts have focused on funding decisions in assessing responsiveness.⁵⁴⁶ As noted above, several courts have held that failure to provide equal funding

for projects in minority neighborhoods shows unresponsiveness,⁵⁴⁷ while other courts cited the absence of discrimination in funding decisions sufficient to establish responsiveness.⁵⁴⁸ Some courts, by contrast, have suggested that equal funding of particular projects, road paving in particular, is insufficient to establish responsiveness, where the needs of minority communities had long been neglected.⁵⁴⁹ Six courts found a lack of responsiveness where elected officials failed to fund projects in minority neighborhoods,⁵⁵⁰ (particularly while funding comparable projects in white neighborhoods⁵⁵¹), or failed to participate in federal programs which would fund such projects for the minority community.⁵⁵² In 14 lawsuits, courts have found responsiveness where officials provided minority communities disproportionately large amounts of funding⁵⁵³ and directed funds to minority neighborhoods for improvements.⁵⁵⁴

A few courts viewed the acceptance of federal aid or efforts to secure such aid directed to minority interests as evidence of responsiveness.⁵⁵⁵ In other lawsuits, however, courts viewed the same conduct as bearing little weight on the responsiveness inquiry. The Fifth Circuit suggested such evidence was “suspect” in making a responsiveness finding because the funding showed no actual commitment on the part of the jurisdiction to minority interests.⁵⁵⁶

Finally, some courts have discounted conduct that might otherwise count as responsive when the jurisdiction implementing it does so under legal or economic compulsion.⁵⁵⁷ Thus, increased efforts toward hiring minorities do not establish responsiveness where the threatened withdrawal of federal funds propelled the action.⁵⁵⁸ Similarly, desegregating long-segregated schools does little to show responsiveness where the school board pursues this course only after threats from the state board of education.⁵⁵⁹

Procedural Responsiveness

A number of courts viewed responsiveness more as a question of process than of outcome. Here, courts focus on communication between elected officials and their minority constituents and the extent to which elected representatives advocate for measures that serve the particularized needs of the minority community. The effort to secure enactment or implementation of such measures matters as much as, if not more than, achieving the desired outcome.

Officials are unresponsive under this model when they actively oppose or otherwise evince hostility to the desires of the minority community.⁵⁶⁰ They are also unresponsive when they fail to address policies that the minority community seeks to have addressed, or they do not respond to requests from or advocate for the needs of the minority community.⁵⁶¹ For instance, in the *Jeffers* litigation, the district court considered under Factor 8 the reluctance of white legislators to co-sponsor “bills of interest to black voters — for example, the bill to create a holiday in honor of Dr. Martin Luther King, Jr.”⁵⁶² The district court noted the difficulties faced by both black constituents and black members of the Arkansas State Legislature when lobbying for such support.⁵⁶³

By contrast, evidence that an official supports causes championed by minorities weighs in favor of responsiveness. The focus is less on securing the desired outcome than on the official’s engagement with the issue.⁵⁶⁴ In the *Cincinnati* litigation, the court considered that the minority community “vocally protested that the at-large election system dilutes their voting strength, and has demanded change,” and found “the City Council has debated the issue a number of times and several proposed ordinances have been before the Council. Council-members have made statements supporting change

and decrying the lack of minority proportional representation on City Council.”⁵⁶⁵ This provided evidence of the city’s responsiveness.

A lack of responsiveness is sometimes found when an elected official simply ignores minority requests or complaints,⁵⁶⁶ or refuses or otherwise fails to meet with minority constituents.⁵⁶⁷ The district court in the *Jeffers* litigation, for example, recounted an incident in which at least one white state representative referred black constituents to black members of the state legislature, rather than meeting with them.⁵⁶⁸ Similarly, courts have found evidence of unresponsiveness when white elected officials were unable to identify any concerns particular to their constituent minority community.⁵⁶⁹

Meeting with or generally being available to meet with minority constituents, by contrast, favors responsiveness,⁵⁷⁰ as does seeking out minority groups or purposely including them in the decision making process.⁵⁷¹ For instance, in the *Terrazas* litigation the court considered the process the county went through to adopt a redistricting plan and found “far from evidencing official discrimination, [the plan] convincingly evidences full minority access to the redistricting process and a willingness on the part of almost all involved in that process to consider and effectuate minority proposals.”⁵⁷²

In 11 lawsuits, courts found responsiveness when an elected official was dependent on minority votes either for election or to implement a desired policy.⁵⁷³ Many of the courts simply asserted that officials dependent on minority voters will be responsive to these constituents. Some courts assessing this question considered electoral mechanisms such as a plurality feature,⁵⁷⁴ or racially polarized voting⁵⁷⁵ as affecting the chances that a candidate will be “dependent” on particular voters. Implicit in some of these cases and explicitly stated in others is the observation that dependency on minority votes prompts responsiveness largely of a procedural sort. These “dependent” officials will meet with their minority constituents, seek out their views, be familiar with their concerns, and advocate on their behalf.

In related reasoning, 4 lawsuits suggested that responsiveness may be shown by candidates who actively solicit minority votes, either via “door-knocking,” or seeking endorsements from minority organizations.⁵⁷⁶ Further, 6 lawsuits held that evidence that elected officials promoted voter registration, or otherwise encouraged political participation by the minority community established responsiveness.⁵⁷⁷ Thus, efforts to facilitate black voter registration through home visits and special assistance available at voting precincts demonstrated that jurisdiction’s responsiveness.⁵⁷⁸

Finally, courts in 4 lawsuits found a significant lack of responsiveness where jurisdictions did not facilitate minority political participation by failing, for instance, to establish a polling place in a minority community or to appoint as volunteer registrars minority community members offering their services.⁵⁷⁹ All of these lawsuits happened within the first five years of the passage of the 1982 Amendments to Section 2.

SENATE FACTOR 9: *Tenuous Policy Justification for the Challenged Practice*

The second additional factor the Senate Report lists for consideration, called in this report Factor 9, is “whether the justification for the policy behind the practice is tenuous.”⁵⁸⁰ Governmental policy underlying a practice is “less important under the results test” than it was under the intent test. It remains relevant, however, both because a bad purpose or policy “is circumstantial evidence that the device has a discriminatory result,” and because “the tenuousness of the justification for a state policy may indicate that the policy is unfair.”⁵⁸¹

Of the lawsuits analyzed, 66 lawsuits considered whether the policy underlying the challenged practice or procedure was tenuous. Twenty-two of these lawsuits held the identified justification to be tenuous, twelve coming from Section 5-covered jurisdictions and 10 from non-covered. Of this total, 20 lawsuits also held Section 2 was violated.⁵⁸² Of the lawsuits that found this factor, 20 also found Factor 1, 20 found legally significant racial bloc voting, 19 found Factor 5, and 21 found Factor 7. The vast majority of lawsuits found a Section 2 violation or ended with a successful outcome for the plaintiffs without finding Factor 9. Of these, most did not consider tenuousness, and the remainder accepted the justification proffered.⁵⁸³

Twelve lawsuits addressed Factor 9 in cases where defendants offered no justification for the challenged policy.⁵⁸⁴ In this circumstance, 8 courts deemed the justification (or lack thereof) tenuous.⁵⁸⁵ Four did not, either because the plaintiffs presented no evidence on tenuousness, or because the court itself came up with what it deemed to be a legitimate justification for the policy.⁵⁸⁶

Defendants offered a number of substantive justifications for plans challenged under Section 2. Most courts accepted these justifications as not tenuous. Those that did not generally deemed the reason proffered to be (1) false, (2) impermissible, or (3) outweighed by other considerations.

In a number of cases, for example, defendants claimed challenged districting plans preserved municipal and other political boundaries. Most courts accepted this justification as nontenuous,⁵⁸⁷ although one deemed this goal tenuous where the jurisdiction did not consistently adhere to it.⁵⁸⁸ So too, when defendants claimed the challenged policy was based on political will, some courts accepted this justification,⁵⁸⁹ but others did not where they found it was not the true underlying reason for the policy.⁵⁹⁰

Several jurisdictions defended their at-large districts on the ground that the practice fostered accountability and responsiveness among elected representatives. Many courts accepted this policy justification as nontenuous,⁵⁹¹ but some did not, including a few that rejected the argument because they had already found the jurisdiction was unresponsive under Factor 8.⁵⁹² Courts, however, have consistently upheld as nontenuous the claim that defendant jurisdictions designed at-large judicial election systems to prevent judges from being more responsive to particular constituents.⁵⁹³

Many jurisdictions defended their districting choices or other electoral practices on the ground that the plans or practices protected incumbents or other political allies. Some courts accepted this justification as nontenuous.⁵⁹⁴ A number of courts, however, deemed this justification tenuous when protecting white incumbents necessarily diluted minority voting strength and the defendant was aware of this consequence.⁵⁹⁵ Indeed, some courts have concluded that these policies amount to intentional racial discrimination.⁵⁹⁶

In several lawsuits, jurisdictions defended challenged practices on grounds of efficiency or ease of administration, and many courts accepted these justifications.⁵⁹⁷ The court in the *Operation Push* litigation, however, deemed administrative ease tenuous as a justification for a dual registration system, concluding that “[m]ere inconvenience to the state is no justification for burdening citizens in the exercise of their protected right to register to vote.”⁵⁹⁸

In several lawsuits, jurisdictions invoked historical practice to justify challenged electoral practices. Most courts accepted this justification as nontenuous.⁵⁹⁹ In *Milwaukee NAACP* litigation, for example, the court noted that Wisconsin’s historic practice of electing judges at-large, a practice dating to 1848, set the default basis for

what was reasonable in the state.⁶⁰⁰ In the *Kirksey v. Allain* litigation, however, the court deemed historic practice a tenuous justification for using a numbered post system because other judicial bodies in the state no longer used it.⁶⁰¹

Some jurisdictions defended challenged practices on the ground that the Fourteenth Amendment and Voting Rights Act required the adopted policy. Some courts have held such claims to be nontenuous.⁶⁰² In the *Bone Shirt* litigation, however, the district court found this justification to be tenuous, holding that Section 2 did not require South Dakota to create a district that was 90% Native American, and rejecting the State's claim that low turnout among Native American voters rendered such a district necessary in order for Native Americans to elect their preferred candidate. *Bone Shirt* held that not only does Section 2 not compel a district with this concentration of minority residents, but that the statute in fact prohibits packing of this sort as a form of racial vote dilution.⁶⁰³

Proportionality as a Tenth Factor?

Eleven years ago, *Johnson v. De Grandy* introduced “proportionality” as a consideration in the totality of the circumstances analysis.⁶⁰⁴ The Court stated that proportionality—which “links the number of majority-minority voting districts to minority members’ share of the relevant population”—is not a “safe harbor” insulating a jurisdiction from liability under Section 2, but that its existence weighs against a finding of vote dilution.⁶⁰⁵

Seventeen lawsuits both considered and made a finding on proportionality or the lack thereof, treating it as a distinct factor under the totality of the circumstances test.⁶⁰⁶ The eleven lawsuits that found proportionality identified no violation of Section 2.⁶⁰⁷ Five lawsuits found a lack of proportionality,⁶⁰⁸ and of these 4 identified a Section 2 violation.⁶⁰⁹ One lawsuit found neither proportionality nor a violation of section 2.⁶¹⁰ Most courts considered proportionality one of many factors, though in the *City of St. Louis* litigation, the appellate court affirmed the grant of summary judgment in favor of defendants solely on the basis of “sustained proportionality.”⁶¹¹

De Grandy spoke of proportionality as involving districts with a “clear majority” of minority voters.⁶¹² One court has consequently refused to consider the presence of “opportunity” or “coalition” districts when assessing proportionality.⁶¹³ Another deemed an absence of “mathematical” proportionality inconsequential where the proposed additional majority-minority district was one with a bare 50.3% Hispanic majority, and consequently not one the court thought would yield “effective” electoral opportunity.⁶¹⁴

De Grandy found proportionality by comparing the number of majority-Hispanic districts to the proportion of Hispanics of voting age living in the Miami-Dade area, as opposed to making that comparison statewide.⁶¹⁵ The courts in the *Rural West I* and *II*, *Bone Shirt* and *Austin* lawsuits followed this approach and limited the proportionality inquiry to subregions of the state, rather than applying the concept statewide in challenges to statewide districting plans.⁶¹⁶ The *Rural West I* court acknowledged the difficulty it faced “in using regional statistics. . . because there are several equally valid ways to decide precisely which districts should be included in a regional analysis.”⁶¹⁷ In *Rural West II*, a subsequent challenge to a redistricting plan for the Tennessee House of Representatives, the Sixth Circuit explained its regional, rather than statewide, focus, finding that “neither over-proportionality in one area of the State nor substantial proportionality in the State as a whole should ordinarily be used to offset a

problem of vote dilution in one discrete area of the State.”⁶¹⁸ The district court in *Austin* offered a distinct explanation for its regional focus, pointing out that it limited “the geographic scope of [its] assessment to Wayne and Oakland Counties, because the plaintiffs d[id] not dispute the State’s drawing of district lines except in those areas.”⁶¹⁹ Still, not all courts addressing statewide districting plans examined proportionality only by region. The district court in *Perry* examined proportionality statewide,⁶²⁰ while the appellate court in *Old Person* found disproportionality under both regional and state-wide analyses and thus found it unnecessary to choose between the two.⁶²¹

Two courts substituted proportional representation for proportionality when confronted with challenges to at-large elections for which no majority-minority districts existed.⁶²² The district court in the *Liberty County* litigation made the same substitution,⁶²³ but the appellate court reversed, emphasizing that proportionality and proportional representation are distinct concepts, and that “Section 2 explicitly disclaims any ‘right to have members of a protected class elected in numbers equal to their proportion in the population.’”⁶²⁴

Notes

1. As originally enacted, the Act banned the use of any “test or device,” such as a literacy test for five years, in areas of the country where a significant portion of the voting age population either was not registered to vote or failed to vote in the 1964 presidential election. See 42 U.S.C. § 1973b (2000) as amended Pub. L. 94-73, tit. I, § 101, tit. II, §§ 201-203, 206, Aug. 6, 1975, 89 Stat. 400-402 (making ban permanent and nationwide).
2. Section 5 of the Act required that these so-called “covered” jurisdictions obtain federal “preclearance” before they changed any aspect of their electoral rules. 42 U.S.C. § 1973c (2000). Covered jurisdictions may obtain a declaratory judgment to this effect from the United States District Court for the District of Columbia, or, alternatively, submit a preclearance request to the United States Department of Justice. *Id.* § § 1973b, 1973c. The Act required that these jurisdictions demonstrate that the new practice did “not have the purpose and will not have the effect of denying or abridging the right to vote based on race.” *Id.* § 1973c.
3. See *South Carolina v. Katzenbach*, 383 U.S. 301 (1966) (upholding constitutionality of major portions of the VRA).
4. These provisions are the preclearance requirements of Section 5, the federal election monitoring and observer provisions set forth in Sections 6, 7, 8 and 9, and the language minority ballot coverage provisions of Sections 203 and 4(f). See 42 U.S.C. § 1973b(a) (8) (setting 2007 as the next required reauthorization date).
5. U.S. CONST. amend. XV.
6. See generally QUIET REVOLUTION IN THE SOUTH: THE IMPACT OF THE VOTING RIGHTS ACT 1965-1990, at 3 (Chandler Davidson & Bernard Grofman eds., 1994) [hereinafter QUIET REVOLUTION].
7. “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.” U.S. CONST. amend. XV § 1.
8. 42 U.S.C. § 1973c (2000).
9. *Bolden v. City of Mobile*, 423 F. Supp. 384, 391 (S.D. Ala. 1976).
10. *Id.*, *aff’d* 571 F.2d 238 (5th Cir. 1978), *rev’d* 446 U.S. 55 (1980).
11. *City of Mobile v. Bolden*, 446 U.S. 55, 60-61 (1980) (“[I]t is apparent that the language of § 2 no more than elaborates upon that of the Fifteenth Amendment, . . . [and] that it was intended to have an effect no different from that of the Fifteenth Amendment itself.”).
12. *Id.* On remand, the district court struck down the at-large system based on evidence of such intent. See SAMUEL ISSACHAROFF, PAMELA S. KARLAN & RICHARD H. PILDES, LAW OF DEMOCRACY 711 (2d ed. 2002) [hereinafter ISSACHAROFF, KARLAN & PILDES]; Peyton McCrary, *The Significance of Mobile v. Bolden*, in MINORITY VOTE DILUTION 47, 48-49 (Chandler Davidson ed., 1989).
13. 42 U.S.C. § 1973(a) (2000).
14. *Id.* § 1973(b).
15. S. REP. NO. 97-417 (1982), *reprinted in* 1982 U.S.C.C.A.N. 177 [hereinafter SENATE REPORT].
16. *Thornburg v. Gingles*, 478 U.S. 30, 43 n.7 (1986).
17. 412 U.S. 755 (1973).
18. 485 F.2d 1297 (5th Cir. 1973) (en banc), *aff’d sub nom.*, *East Carroll Parish Sch. Bd. v. Marshall*, 424 U.S. 636 (1976) (per curiam).
19. SENATE REPORT, *supra* note 15, at 27-30.
20. *Id.*
21. ISSACHAROFF, KARLAN & PILDES, *supra* note 12, at 747.
22. *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986).
23. See *Emison v. Grove*, 507 U.S. 25, 39-40 (1993).
24. *Johnson v. De Grandy*, 512 U.S. 997, 1024 (1994).
25. *Georgia v. Ashcroft*, 539 U.S. 461 (2003).
26. See, e.g., *Perry Litig.*, discussion at 298 F. Supp. 2d 451, 481 (E.D. Tex. 2004); *Rodriguez Litig.*, discussion at 308 F. Supp. 2d 346, 384 (S.D.N.Y. 2004).
27. *South Carolina v. Katzenbach*, 383 U.S. 301, 327-28 (1966).
28. *City of Boerne v. Flores*, 521 U.S. 507, 519-20 (1997).
29. *Id.* at 518 (discussing “Congress’ parallel power to enforce the provisions of the Fifteenth Amendment” as co-extensive with Section 2 of the Fourteenth Amendment).
30. See, e.g., *Black Political Task Force Litig.*, 300 F. Supp. 2d 291 (D. Mass. 2004) (finding the state legislature had used race as a proxy to protect incumbents, and in so doing had engaged in an intentional violation of Section 2, therefore not reaching the constitutional claim also raised by the plaintiffs); *Harris v. Graddick Litig.*, 695 F. Supp.

- 517 (M.D. Ala. 1988) (finding intentional and results-based discrimination under Section 2 in the Governor's failure to remedy the lack of African-American poll workers); *Harris v. Graddick Litig.*, discussion at 601 F. Supp. 70 (M.D. Ala. 1984) (enforcing a preliminary injunction against Jefferson County for failing to hire African-American poll workers).
31. The resulting list includes decisions also published in the federal reporters, as well as some only published on the electronic databases. The list also includes a few lawsuits decided after the 1982 amendment to Section 2 but which did not apply the new results test. *See, e.g.,* *Brown v. Board of School Comm'rs*, 706 F.2d 1103 (11th Cir. 1983) (finding that the at-large system to elect the Mobile, Ala. School District was enacted with unconstitutional intent and consequently not evaluating it under the new results test); *Cross v. Baxter*, 704 F.2d 143 (5th Cir. 1983) (remanding case for consideration under newly amended results test, outcome unclear).
 32. The Master Lawsuit List, located at: <http://www.votingreport.org> or <http://www.sitemaker.umich.edu/votingrights/files/masterlist.xls>, sorts all lawsuits by state, and then by the shorthand litigation title given each lawsuit. The litigation title includes the jurisdiction challenged wherever possible; if not included as a party name, however, one or sometimes both of the party names is used as the litigation title. Note that this Report regularly cites to a lawsuit a whole using these titles and the final word citation only. Even if the factor finding did not occur in that final case, the final case provides the best starting place for a researcher considering the lawsuit as a whole, and serves as a short hand way of citing to all relevant cases within the lawsuit in its entirety. This Report also cites sometimes to the discussion of a factor or issue within a lawsuit by naming the litigation and then citing to the case that includes that discussion.
 33. Most lawsuits have only one final word case. In the rare situations in which merits issues were severed (e.g. by racial group or by practice challenged) and addressed in separate proceedings, a lawsuit may have more than one "final word" case, each corresponding to the final decision on one such issue. Many lawsuits may also contain decisions subsequent to the final word opinion, that addressed other matters, such as fees, remedies or other related claims. This study has included these other cases to give a full view of the lawsuit as a whole.
 34. These miscellaneous types of cases were coded as falling into four main categories: 1) preliminary—deciding whether to issue a preliminary injunction, whether to dismiss for failure to state a claim or some other pre-merits question, 2) settlement—deciding whether to allow a case to settle by consent decree or approve an agreement reached by the parties, 3) remedy—deciding, after a violation found, how to fix it, or 4) fees—deciding whether to grant attorney, expert witness fees or both.
 35. *Thornburg v. Gingles*, 478 U.S. 30 (1986).
 36. *See* Master Lawsuit List of the Voting Rights Initiative Database (2005) [hereinafter Master Lawsuit List]; *see also* <http://www.votingreport.org> (click Search).
 37. *See* American Civil Liberties Union Voting Rights Project, Post-1982 Litigation Report, 2005 (forthcoming) (on file with the Voting Rights Initiative).
 38. *See* List of Cases Litigated by Rolando L. Rios, Law Office, sometimes in cooperation with the Mexican American Legal Defense and Education Fund or with Texas Rural Legal Aid (on file with the Voting Rights Initiative).
 39. *See* Master Lawsuit List (filterable and sortable by Column: Case Type).
 40. *Id.* (filter Column: Case Type = *liability* and Column: Jurisdiction = *True* or *False*.)
 41. *Id.* (filter Column: Success = *1*, noting that this includes *both* those lawsuits that ended with a court finding or parties stipulating to a violation and, where no such liability was recognized in a published opinion, those lawsuits that ended with a published opinion documenting another form of a favorable outcome for the plaintiff, such as a preliminary injunction or other remedy ordered, a settlement reached, and/or fees granted).
 42. The raw numbers are 67,767,900 out of 281,421,906. *See* U.S. Census 2000 Data, www.census.gov (last visited Nov. 1, 2005). In addition, this data shows that 39.3% of African Americans in the United States live in Section 5-covered areas, 31.8% of Hispanics or Latinos live in covered jurisdictions, and 25% of Native Americans live in covered jurisdictions. *Id.*
 43. *See* Master Lawsuit List (filter Column: Jurisdiction = *True*).
 44. *See* Master Lawsuit List (filter Column: WasSection2Violated = *True* and sort, ascending, Column: Year). Of these 88 lawsuits, 53 found violations between 1982 and 1992, 27 between 1993 and 2002, and 8 from 2003 through the date of this report. *Id.*
 45. *See* Master Lawsuit List (filter Column: Practices Challenged *contains* **large** and filter Column: WasSection2Violated = *True*).
 46. *See id.* (instead filtering Column: Practices Challenged *contains* **majority** or **shot** or **number**); *see also infra*, Factor 3 Section.
 47. *See id.* (also filtering Column: WasSection2Violated = *True* and/or filtering Column: Success = *1*).

48. See Master Lawsuit List (filter Column: Other Info on Minority Group Contains *multi* while filtering Column: Success = 1).
49. Charleston County Litig. (SC), 365 F.3d 341 (4th Cir. 2004); Blaine County Litig. (MT), 363 F.3d 897 (9th Cir. 2004); Town of Hempstead Litig. (NY), 180 F.3d 476 (2d Cir. 1999); Pittsburgh Litig. (PA), 686 F. Supp. 97 (3d Cir. 1998) (approving single member district plan settlement agreed to by defendant and class counsel); Marylanders Litig., 849 F. Supp. 1022 (D. Md. 1994) (ordering the state to submit proposal that creates a single-member district with a majority African-American voting-age citizen population); Autauga County Litig., 859 F. Supp. 1118 (M.D. Ala. 1994) (approving single member district settlement in determining attorney fees); Fort Lauderdale Litig. (FL), 985 F.2d 1471 (11th Cir. 1993); Kershaw County Litig., 838 F. Supp. 237 (D.S.C. 1993) (ordering a combination of at-large and single districts in remedy proceedings following earlier determination of liability); Love Litig., No. CV 679-037, 1992 WL 96307 (S.D. Ga. Apr. 23, 1992) (approving the settlement plan which created single member districts); Clark Litig., 777 F. Supp. 44 (D. La. 1990) (ordering sub-districts in the “guilty districts”); City of Norfolk Litig. (VA), 883 F.2d 1232 (4th Cir. 1989); Bladen County Litig., No. 87-72-CIV-7, 1989 WL 253428 (E.D.N.C. Dec. 11, 1989) (ordering a combination of at-large and single districts and finding that plaintiffs are entitled to attorney’s fees); Dillard v. Chilton Litig., 699 F. Supp. 870 (M.D. Ala. 1988) (approving settlement plan to create single member districts and establish cumulative voting); Granville County Litig., 860 F.2d 100 (4th Cir. 1988) (approving the county’s single district remedial plan in remedy proceeding following determination of liability); Dillard v. Baldwin Board of Education Litig., 686 F. Supp. 1459 (M.D. Ala. 1988); Smith-Crittenden County Litig., 687 F. Supp. 1310 (E.D. Ark. 1988) (ordering the parties to submit proposals for single election districts); LULAC-Midland Litig., (TX), 829 F.2d 546 (5th Cir. 1987); County of Big Horn Litig., 647 F. Supp. 1002 (D. Mont. 1986); Washington County Litig., 653 F. Supp. 121 (N.D. Fla. 1986) (approving defendant’s single member district plan in remedial proceeding following determination of liability); City of Statesville Litig., 606 F. Supp. 569 (W.D.N.C. 1985) (ordering a combination of at-large and single districts in a consent decree); Marengo County Litig., 623 F. Supp. 33 (S.D. Ala. 1985); City of Greenwood I Litig., 599 F. Supp. 397 (N.D. Miss. 1984) (ordering the city to submit a proposal for the election of council members other than the mayor by single districts or wards); Lubbock Litig. (TX), 727 F.2d 364 (5th Cir. 1984); Mobile School Board Litig. (AL), 706 F.2d 1103 (11th Cir. 1983) (affirming trial court remedy of dividing county into 5 single member districts, 2 of which were majority African American).
50. Bone Shirt Litig. (SD), 336 F. Supp. 2d 976 (D.S.D. 2004); Black Political Task Force Litig. (MA), 300 F. Supp. 2d 291 (D. Mass 2004); City of New Rochelle Litig., 308 F. Supp. 2d 152 (S.D.N.Y 2003); Rural West II Litig. (TN), 209 F.3d 835 (6th Cir. 2000); Bonilla-Barnett Litig., 17 F. Supp. 2d 753 (N.D. Ill. 1998) (ordering legislature to come up with new lines); St. Francisville Litig. (LA), 135 F.3d 996 (5th Cir. 1998) (ordering new district lines in determining attorney fees); Lafayette County Litig., 20 F. Supp. 2d 996 (N.D. Miss. 1998); Chickasaw County II Litig., No. CIV.A. 1:92CV142-JAD, 1997 U.S. Dist. LEXIS 22087 (N.D. Miss. Oct. 28, 1997) (ordering parties to attempt to reach agreement on a plan with a majority African-American district); Walthall County Litig., 157 F.R.D. 388 (S.D. Miss. 1994) (approving new district lines in settlement plan); Texarkana Litig., 861 F. Supp. 756 (W.D. Ark. 1992); Elections Board Litig., 793 F. Supp. 859 (W.D. Wis. 1992); Wesch Litig., 785 F. Supp. 1491 (S.D. Ala. 1992) (approving new districting plan in settlement proceedings following determination of liability); Jefferson Parish I Litig. (LA), 926 F.2d 487 (5th Cir. 1991); Armour Litig., 775 F. Supp. 1044 (N.D. Ohio 1991); Garza Litig. (CA), 918 F.2d 763 (9th Cir. 1990); Monroe County Litig., 740 F. Supp. 417 (N.D. Miss. 1990); Gretna Litig. (LA), 834 F. 2d 496 (5th Cir. 1987); Mehfoed Litig., 702 F. Supp. 588 (E.D. Va. 1988); Neal Litig., 689 F. Supp. 1426 (E.D. Va. 1988); Reyes v. Stefaniak Litig., No. 93 C 308, 1995 WL 38958 (N.D. Ill. Jan. 30, 1995) (finding that the new single district plan with one majority-minority district entitled Plaintiff to attorney fees); Chickasaw County I Litig., 705 F. Supp. 315 (N.D. Miss. 1989); Fifth Ward Litig., CIV.A. No. 86-2963, 1989 WL 3801 (E.D. La. Jan. 18, 1989) (approving single district settlement plan following determination of liability); City of Crystal Springs, 626 F. Supp. 987 (S.D. Miss. 1986) (ordering new district lines in determining attorney fees); Rybicki Litig., 574 F. Supp. 1147 (N.D. Ill. 1983); Buskey v. Oliver Litig., 565 F. Supp. 1473 (M.D. Ala. 1983); Major Litig., 574 F. Supp. 325 (D. La. 1983); Grenada County Litig., No. WC84-136-S-O, 1989 WL 251321 (N.D. Miss. Sept. 13, 1980) (approving new district lines in settlement plan).
51. Beaufort County Litig. (NC), 936 F.2d 159 (4th Cir. 2004) (approving consent decree agreed to by parties which created staggered elections with limited voting); Common Cause Litig., No. 01-03470 SVW(RZX), 2002 WL 1766436 (C.D. Cal. Feb. 19, 2002) (approving consent decree for punch-card systems to be replaced); Town of Cicero Litig., No. Civ.A. 00C 1530, 2000 WL 34342276 (N.D. Ill. Mar. 15, 2000) (ordering a preliminary injunction preventing the town from enforcing certain requirements on absentee voting and candidacy requirements); Dillard v. Chilton Litig., 699 F. Supp. 870 (M.D. Ala. 1988) (approving settlement plan to create single member districts and establish cumulative voting); Madison County Litig., 610 F. Supp. 240 (S.D. Miss.

- 1985) (ordering the Board of Election Commissioners to convene and make a determination as to which absentee ballots were properly cast); *Dean Litig.*, 555 F. Supp. 502 (D.R.I. 1982) (ordering polling place not to be moved from public housing community center by preliminary injunction).
52. *City of Dallas Litig.*, 734 F. Supp. 1317 (W.D. Tex. 1990) (ordering special election to remedy effects of the at-large system); *Town of North Johns Litig.*, 717 F. Supp. 1471 (M.D. Ala. 1989) (ordering that plaintiffs be certified as elected members of the city council); *Marks-Philadelphia Board of Elections Litig.*, No. CIV. A. 93-6157, 1994 WL 146113 (E.D. Pa. Apr. 26, 1994) (enjoining the certification of one of the candidates and ordering the certification of another, ordering changes to the processes used for absentee ballots).
 53. *Berks County Litig.*, 277 F. Supp. 2d 570 (E.D. Pa. 2003) (ordering county to allow federal officials to oversee election processes, provide election material in Spanish, and provide bilingual poll officers or interpreters); *White v. Alabama Litig.*, 867 F. Supp. 1519 (M.D. Ala. 1994) (holding that the settlement reached by the State and plaintiffs was reasonable, ordering the following: 1) each appellate court's size would increase by two seats, 2) a new "judicial nomination commission" would recommend three African-American judicial candidates to the Governor, and the Governor would choose to appoint two to each court, and they would serve a six-year term, before standing for re-election under state law) (this remedy was later found unconstitutional following *Holder v. Hall* in *White v. Alabama*, 74 F.3d 1058, 1073-74 (11th Cir. 1996)); *City of Tampa Litig.*, 693 F. Supp. 1051 (M.D. Fla. 1988) (approving settlement by parties which agreed to provide voter instructions, voter education programs, and outreach); *Harris v. Graddick Litig.*, 695 F. Supp. 517 (M.D. Ala. 1988) (ordering state to have African-American poll workers and submit proposals to rectify the current effect of discriminatory laws and procedures); *Campaign for a Progressive Bronx Litig.*, 631 F. Supp. 975 (S.D.N.Y. 1986) (ordering bilingual voter education, outreach, and election officials in fees proceeding following liability determination); *Citizen Action Litig.*, Civ. No. N 84-431, 1984 U.S. Dist. LEXIS 24869 (D. Conn. Sept. 27, 1984) (ordering registrar to authorize volunteers to conduct registration drives and provide materials in Spanish in preliminary injunction proceeding).
 54. *Blaine County Litig. (MT)*, 363 F.3d 897, 904 (9th Cir. 2004) (declining to consider whether Section 2 is constitutional because of the summary affirmance in *Mississippi Republican Executive Committee v. Brooks*, 469 U.S. 1002 (1984), and further stating "in the Supreme Court's congruence-and-proportionality opinions, the VRA stands out as the prime example of a congruent and proportionate response to well documented violations of the Fourteenth and Fifteenth Amendments. Most tellingly, when the Supreme Court first announced the congruence-and-proportionality doctrine in *City of Boerne v. Flores*, it twice pointed to the VRA as the model for appropriate prophylactic legislation." (citation omitted)); *Alamosa County Litig.*, 306 F. Supp. 2d 1016 (D. Colo. 2004) (declining to reopen the issue, finding that both the Tenth Circuit and the Supreme Court had affirmed its constitutionality); *Sanchez-Colorado*, 97 F.3d 1303, 1314 (10th Cir. 1996) ("Just as the Court has affirmed its unflinching championship of the Fourteenth and Fifteenth Amendments in *Shaw II* and *Bush*, it has also declared the constitutionality of § 2 of the VRA, observing, 'it would be irresponsible for a State to disregard the § 2 results test.' " (citing O'Connor's concurrence in *Bush v. Vera* at 1969)); *Elections Board Litig.*, 793 F. Supp. 859, 868-69 (W.D. Wis. 1992) ("The Voting Rights Act authorizes and in some instances compels racial gerrymandering in favor of blacks and other minorities. Because the Act implements the Fifteenth Amendment, it is constitutional despite its discriminatory character."); *Wesley Litig.*, 605 F. Supp. 802, 808 (M.D. Tenn. 1985) (citing *Marengo County*); *Lubbock Litig.*, 727 F.2d 364, 375 (5th Cir. 1984) (considering the record before Congress in 1982 and stating "Where Congress, on the basis of a factual investigation, perceives that a facially neutral measure carries forward the effects of past discrimination, Congress may even enact blanket prohibitions against such rules. Here, Congress has taken the more modest step of shifting to states and municipalities the burden of accommodating their political systems when that system seriously prejudices minority groups, even though the result is either unintended or, at least, not demonstrably intended." (citation omitted)); *Jordan Litig.*, 604 F. Supp. 807 (N.D. Miss. 1984) (citing *Major v. Treen* and declining to reopen the question); *El Paso Indep. Sch. Dist.*, 591 F. Supp. 802 (W.D. Tex. 1984) (following *Lubbock*); *City of Greenwood Litig.*, 599 F. Supp. 397 (N.D. Miss. 1984) (citing *Lubbock* and *Marengo County*); *Marengo County Litig. (AL)*, 731 F.2d 1546, 1558 (11th Cir. 1984) (considering Congressional enforcement power in *Katzenbach v. Morgan*, *South Carolina v. Katzenbach*, and *Oregon v. Mitchell* and holding, "[t]he 1982 amendment to Section 2 of the Voting Rights Act is clearly within the enforcement power. Congress conducted extensive hearings and debate on all facets of the Voting Rights Act and concluded that the "results" test was necessary to secure the right to vote and to eliminate the effects of past purposeful discrimination. The *Senate Report* explains in detail why the results test was necessary and appropriate."); *Major Litig.*, 574 F. Supp. 325, 345 (E.D. La. 1983) (citing *Katzenbach v. Morgan* and *Fullilove v. Klutznick* for the proposition that "congressional authority [embodied in § 2 of the Fifteenth Amendment] extends beyond the prohibition of purposeful discrimination to encompass state action that has discriminatory impact perpetuating the effects of past discrimination.").
 55. *See infra*, Factor 1 Section; *see also* Master Lawsuit List (filter Column 1f = I).

56. See Master Lawsuit List (filter Column RPV = 1) and see *id.* (filter Column RPV=1 and also filter Column Success= True and also filter Column Jurisdiction = True).
57. See *id.* (filter Column 7f = 1).
58. See *id.* (filter Column 5f = 1).
59. See *id.* (for findings on Factor 3 filter Column 3f = 1, for Factor 6, filter Column 6f = 1).
60. See *id.* (for findings on Factor 4 filter Column 4f = 1, for Factor 8, filter Column 8f = 1, for Factor 9, filter Column 9f = 1).
61. See *id.* (filter Column Gthreshold = 1); for *infra*, filter the same, with Column Jurisdiction = True and Column Success = 1).
62. See *infra*, Factor 1 Section.
63. See *infra*, Factor 4 Section.
64. See *infra*, Factor 6 Section.
65. See *infra*, Factor 9 Section.
66. See *infra*, Factor 8 Section.
67. LULAC v. Clements Litig., 999 F.2d 831, 854 (5th Cir. 1993).
68. See, e.g., Garza v. Los Angeles Litig. (CA), 918 F.2d 763 (9th Cir. 1995); City of New Rochelle Litig., discussion at 308 F. Supp. 2d 152, 158 (S.D.N.Y. 2003); Ketchum Litig. (IL), discussion at 740 F.2d 1398, 1408 (7th Cir. 1984).
69. See Master Lawsuit List (filter Column Gcon=1, and Gthresholdmet=1).
70. See, e.g., Little Rock Litig. (AR), 56 F.3d 904, 910 (8th Cir. 1995) (assuming that plaintiffs can meet their burden on the *Gingles* threshold factors, equating proportionality with the presence of proportional representation, and ultimately finding in favor of defendants); Austin Litig., 857 F. Supp. 560, 569-570 (E.D. Mich. 1994) (assuming for purposes of this challenge that the *Gingles* factor can be met, equating proportionality with the presence and continued likelihood of proportional representation, and ultimately finding in favor of defendants); see also City of St. Louis Litig. (MO), 54 F.3d 1345 (8th Cir. 1995) (holding that the district court properly granted summary judgment in favor of defendants on the basis of substantial proportionality alone); see also *infra*, *Proportionality as a Tenth Factor* Section.
71. See Master Lawsuit List (filter Column: Gthresholdmet does not = 1).
72. See, e.g., Town of Babylon Litig., at 914 F. Supp. 843 (E.D.N.Y. 1996); Meza Litig., discussion at 322 F. Supp. 2d 52, 69 (D. Mass. 2004) (declining to find for the defendant based solely on plaintiffs' failure to meet the third *Gingles* factor and instead "turn[ing] to the totality of the circumstances.").
73. Lucas Litig. (GA), 967 F.2d 549 (11th Cir. 1992); Marks-Philadelphia Litig., No. CIV. A. 93-6157, 1994 WL 146113 (E.D. Pa. Apr. 26, 1994); Maxey Litig., No. 91 Civ. 7328 (TPG), 1996 WL 529024 (S.D.N.Y. Sept. 18, 1996); Montiel v. Davis Litig., 215 F. Supp. 2d 1279 (S.D. Ala. 2002); Muntaqim Litig. (NY), 366 F.3d 102 (2d Cir. 2004); Salt River Project Litig. (AZ), 109 F.3d 586 (9th Cir. 1997); Operation Push Litig. (MS), 932 F.2d 400 (5th Cir. 1991); Osburn Litig. (GA), 369 F.3d 1283 (11th Cir. 2004); Prejean Litig. (LA), 83 Fed. App'x 5 (5th Cir. 2003); Prewitt v. Moore Litig., 840 F. Supp. 436 (N.D. Miss. 1993); Town of North Johns Litig., 717 F. Supp. 1471 (M.D. Ala. 1989); U.S. v. Jones Litig. (AL), 57 F.3d 1020 (11th Cir. 1995); Varner v. Smitherman Litig., CIV. A. No. 92-0586-BH-M, 1993 WL 663327, 1993 U.S. Dist. LEXIS 17721 (S.D. Ala. Dec. 8, 1993).
74. Berks County Litig., 277 F. Supp. 2d 570 (E.D. Pa. 2003); Arakaki Litig., 314 F.3d 1091 (9th Cir. 2002); Marks-Philadelphia Litig., No. CIV. A. 93-6157, 1994 WL 146113 (E.D. Pa. Apr. 26, 1994); Elections Board Litig., 793 F. Supp. 859 (W.D. Wis. 1992); Harris v. Graddick Litig., 695 F. Supp. 517 (M.D. Ala. 1988); Operation Push Litig., 932 F.2d 400 (5th Cir. 1991); Town of North Johns Litig., 717 F. Supp. 1471 (M.D. Ala. 1989).
75. See, e.g., City of Springfield Litig. (IL), discussion at 851 F.2d 937, 943 (7th Cir. 1988).
76. See Master Lawsuit List (filter Column: Gthresholdmet= 1, and Column: Jurisdiction = True; see also Column: WasSection2Violated = True or False).
77. See *id.* (except, filter Column: Jurisdiction = False).
78. Other courts have simply asserted in conclusory terms that *Gingles* I is, or is not, satisfied, or have noted that the parties stipulated to its existence. See e.g., Rural West II Litig. (TN), discussion at 209 F.3d 835, 839 (6th Cir. 2000) (noting that the parties stipulated that *Gingles* I and II were met); City of LaGrange Litig., discussion at 969 F. Supp. 749, 774 (N.D. Ga. 1997) ("Plaintiffs have established the first *Gingles* factor—that the African-American community in LaGrange is sufficiently large and geographically compact to constitute a majority in a single member district."); Blytheville Sch. Dist. Litig., discussion at 759 F. Supp. 525, 526 (E.D. Ark. 1991) ("The black population in the School District is geographically compact."); Chattanooga Litig., 722 F. Supp. 380, 390 (E.D. Tenn. 1989) ("There is no doubt whatsoever that the black population of Chattanooga is sufficiently compact and numerous as to be an effective majority in various combinations of single member districts.").

79. *See, e.g.*, Black Political Task Force Litig., discussion at 300 F. Supp. 2d 291, 300 (D. Mass. 2004) (using voting age population statistics in the *Gingles* I analysis); Hamrick Litig. (GA), discussion at 296 F.3d 1065, 1067 (11th Cir. 2002) (finding that “it is clear that blacks could not constitute a majority of the voting age population in Proposed District 3, and, thus, plaintiffs have failed to satisfy prong one of *Gingles*”); Old Person Litig. (MT), discussion at 230 F.3d 1113, 1121 (9th Cir. 2000) (upholding the district court’s finding that *Gingles* I was met where “American Indians would represent 55% of the voting age population” in the proposed district); Marylanders Litig., 849 F. Supp. 1022, 1051 (D. Md. 1994) (finding the first *Gingles* prong met where “African-Americans comprise well over 50% of both the total population and the voting-age population”); Brewer Litig. (TX), discussion at 876 F.2d 448, 452 (5th Cir. 1989) (“Only voting age persons can vote. It would be a Pyrrhic victory for a court to create a single-member district in which a minority population dominant in absolute, but not in voting age numbers, continued to be defeated at the polls. *Thornburg* implicitly recognized this fact...”); Springfield Litig. (IL), discussion at 851 F.2d 937, 945 (7th Cir. 1988) (“The threshold requirement roughly measures minority voters’ potential to elect candidates of their choice. Because only minorities of voting age can affect this potential, it is logical to assume that the [*Gingles*] Court intended the majority requirement to mean a voting age majority.”); *cf.* Dickinson Litig. (IN), 933 F.2d 497 (7th Cir. 1991) (finding that the lower court erred in finding the first *Gingles* factor not met where plaintiffs were 50.27% of the total population and observing that the *Gingles* court required only a simple majority, but indicating that the court should explore the “facts surrounding the proposed district.”).
80. *See, e.g.*, Meza Litig., discussion at 322 F. Supp. 2d 52, 59 (D. Mass. 2004); Pasadena Indep. Sch. Dist. Litig. (TX), discussion at 165 F.3d 368 (5th Cir. 1999); City of Chicago-Bonilla Litig. (IL), discussion at 141 F.3d 699, 705 (7th Cir. 1998); Nipper Litig. (FL), discussion at 113 F.3d 1563, 1569 (11th Cir. 1994); Pomona Litig., 883 F.2d 1418, 1426 (9th Cir. 1988); *see also* Suffolk County Litig., discussion at 268 F. Supp. 2d 243, 263 (E.D.N.Y. 2003) (holding that plaintiffs’ two plans both failed to consider citizenship of Latino population, and that even if they had they could not show Latino VAP in the proposed districts); Cano Litig., discussion at 211 F. Supp. 2d 1208, 1234 (C.D. Cal. 2002) (noting that the Ninth Circuit considers CVAP the proper measure, but holding that, where CVAP data had not yet been released by the census bureau, “the ability to construct a district that is so substantially Latino both in overall population and in VAP is sufficient to raise a genuine issue of material fact as to the first *Gingles* pre-condition.”).
81. *See, e.g.*, Albany County Litig., discussion at No. 03-CV-502, 2003 WL 21524820, at *5 (N.D.N.Y. Jul. 7, 2003) (“[A] majority group is sufficiently large if it comprises more than 51% of the population of the voting district”); City of New Rochelle Litig., discussion at 308 F. Supp. 2d 152, 159 (S.D.N.Y. 2003) (finding *Gingles* I “clearly established” where 60.5% black district was replaced by a “mere plurality district”); *see also* Thurston County Litig. (NE), 129 F.3d 1015, 1025 (8th Cir. 1997) (finding *Gingles* I not met in part because “[u]nder the proposed plans, if 4 or 5 Native Americans moved from the proposed majority-minority districts created for the School Board and Village Board, respectively, and they were replaced by non-Native Americans, the majority-minority composition would be destroyed.”); *Aldasoro v. Kennerson* Litig., 922 F. Supp. 339, 372 (S.D. Cal. 1995) (finding *Gingles* I not met because at the time the white bloc voting occurred Hispanics did not constitute a majority).
82. *See, e.g.*; Campuzano Litig., discussion at 200 F. Supp. 2d 905, 910 (N.D. Ill. 2002) (“In the absence of more reliable data regarding African-American voting strength, courts employ the general guideline that African-Americans must comprise 65% of a district’s total population to control the electoral outcome in that district... When reliable VAP statistics are available, we may instead evaluate minority voting strength by using a 60% VAP rule of thumb.”); African-American Voting Rights Legal Defense Fund Litig. (MO), discussion at 54 F.3d 1345, 1348 n.4 (8th Cir. 1995) (“We conclude that either 60% of the voting age population or 65% of the total population is reasonably sufficient to provide black voters with an effective majority.”); Elections Board Litig., discussion at 793 F. Supp. 859, 869 (W.D. Wis. 1992) (adopting 60% voting age population as the size required “to give blacks a reasonable assurance of obtaining a majority of votes in a district”); City of Norfolk Litig., discussion at 679 F. Supp. 557, 566 (E.D. Va. 1988) (finding *Gingles* I met, but holding that the black population was sufficiently large and compact to create only two, rather than three, “safe” districts with 65% black population); *United Jewish Org. v. Carey*, 430 U.S. 144, 163-64 (1977) (reasoning that 65% minority population in a district is required to yield a majority of minority voting age population), *cf.* Alamosa County Litig., discussion at 306 F. Supp. 2d 1016, 1028 (D. Colo. 2004) (“Although the current precinct lines cannot be used to create a single-member district with a majority of Hispanic registered voters, the Government has proposed three hypothetical districts in which Hispanic residents would comprise at least 60% of the voting age population.”); Kingman Litig., 348 F.3d 1033, 1042 (D.C. Cir. 2003) (assuming without deciding *Gingles* I was met while noting that a reduction of the black population from 68.7% to 62.3% in D.C.’s Ward Six “might deprive African Americans of an ‘effective’ or ‘safe’ voting majority”).

83. *See, e.g.*, Old Person Litig., discussion at 230 F.3d 1113, 1121-23 (9th Cir. 2000) (upholding district court finding that rejected defendants argument that proposed district would “be insufficient to confer effective voting power” because of low turnout); Jenkins v. Red Clay Sch. Dist. Litig., 780 F. Supp. 221, 226 n.3 (D. Del. 1991) (“Although the Defendants agree that the Plaintiffs’ evidence satisfies the first Gingles factor, they question whether such a district would allow the black citizens to consistently elect one candidate of their choice. This concern, however, does not negate a finding that the Plaintiffs have proven the first Gingles factor.”) (citation omitted); Mehfoud Litig., discussion at 702 F. Supp. 588, 592 (E.D. Va. 1988) (“Plaintiffs need not demonstrate that blacks could comprise a majority of those actually turning out to vote, but rather, must show that blacks would comprise a majority of the voting age population.”).
84. *See, e.g.*, Albany County Litig., discussion at No. 03-CV-502, 2003 WL 21524820, at *6 (N.D.N.Y. July 7, 2003); City of Baytown Litig. (TX), discussion at 840 F.2d 1240, 1244 (5th Cir. 1988); Hardee County Litig., discussion at 906 F.2d 524, 526 (11th Cir. 1990); *cf.* Brewer Litig. (TX), discussion at 876 F.2d 448, 451-52 (5th Cir. 1989) (finding *Gingles* I unsatisfied because no district could be created large enough to have clear majority-minority voting age population, even if black, Hispanic, and Asian populations were combined). *But see* Kent County Litig., 76 F.3d 1381 (6th Cir. 1996) (en banc) (not allowing multiple minority groups to combine for purposes of the *Gingles* I analysis).
85. *See e.g.*, Perry Litig., discussion at 298 F. Supp. 2d 451 (E.D. Tex. 2004) (acknowledging that the Fifth Circuit precedent permits plaintiffs to combine minority groups to satisfy *Gingles* majority requirement provided the groups are politically cohesive, but concluding that plaintiffs failed to demonstrate political cohesiveness); Rodriguez Litig., discussion at 308 F. Supp. 2d 346, 409 (S.D.N.Y. 2004) (allowing coalition claim, but concluding that plaintiffs failed to show that blacks and Hispanics were cohesive); Forest County Litig. (WI), discussion at 336 F.3d 570, 575-76 (7th Cir. 2003) (finding that blacks and Indians had clearly divergent interests); San Diego County Litig., discussion at 794 F. Supp. 990, 998 (S.D. Cal. 1992) (allowing aggregation, but concluding that plaintiffs had failed to show that Hispanics, African Americans, and Asian Americans were politically cohesive); Stockton Litig. (CA), 956 F.2d 884, 886 (9th Cir. 1992) (affirming the district court’s finding of lack of Hispanic-black political cohesion); Hardee County Litig. (FL), discussion at 906 F.2d 524, 527 (11th Cir. 1990) (finding that blacks and Hispanics were not sufficiently cohesive to satisfy *Gingles* II); Pomona Litig. (CA), 883 F.2d 1418 (9th Cir. 1989) (assuming “aggregation theory” is cognizable but finding no cohesion between the minority groups). Plaintiffs do sometimes succeed in proving cohesiveness, however, and are thus allowed to proceed to the first *Gingles* precondition. *See, e.g.* County of Albany Litig., discussion at No. 03-CV-502, 2003 WL 21524820, at *11 (N.D.N.Y. July 7, 2003), France Litig., 71 F. Supp. 2d 317, 327 (S.D.N.Y. 1999); LULAC-N.E. Indep. Sch. Dist. Litig., discussion at 903 F. Supp. 1071, 1092 (W.D. Tex.1995); Baytown Litig. (TX), discussion at 840 F.2d 1240, 1248 (5th Cir.1988); *cf.* De Grandy Litig., discussion at 815 F. Supp. 1550, 1570-71 (N.D. Fla. 1992) (finding that Cubans and non-Cuban Hispanics were cohesive in spite of party differences, because Hispanic Democrats will vote for Hispanic Republicans and because both groups have similar views on education, housing, medical aid, and civil rights).
86. *Gingles* itself expressly left open this question. *See Gingles* Litig., discussion at 478 U.S. 30, 46 n.12 (U.S. 1986) (reserving the question of “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”). The Supreme Court again reserved the question in the *Quilter* litigation. 507 U.S. 146 (1993) (assuming but not deciding that influence districts are a cognizable claim under Section 2).
87. *See e.g.*, *Second Circuit*: Rodriguez Litig., 308 F. Supp. 2d 346, 378-79 (S.D.N.Y. 2004) (“We agree with the nearly universal opinion of federal courts that section 2 of the VRA does not require the creation of influence districts where minority voters will not be able to elect candidates of choice.”). *Fifth Circuit*: Perry Litig., discussion at 298 F. Supp. 2d 451, 485 (E.D. Tex. 2004) (“Considering that District 24 as a pure influence district is unprotected by § 2, we are persuaded that alterations to it raised questions primarily of § 5, which have been answered by the Department of Justice.”); Alamo Heights Indep. Sch. Dist. Litig. (TX), discussion at 168 F.3d 848, 853-54 (5th Cir. 1999) (rejecting plaintiffs’ claim that they can satisfy *Gingles* I with less than a 50% majority and reaffirming Fifth Circuit precedent requiring plaintiffs to prove that they constitute more than 50% of the relevant population in their demonstration district); Concerned Citizens Litig. (TX), discussion at 63 F.3d 413, 416-17 (5th Cir. 1995) (“As blacks do not constitute a majority in any of the four extant JP Precincts in Orange County, CCE cannot satisfy the first *Gingles* precondition.”); Brewer Litig. (TX), discussion at 876 F.2d 448, 450 (5th Cir. 1989) (affirming district court’s requirement that plaintiffs present evidence that they can constitute more than 50% of voting age population in a proposed district); Kirksey v. Allain Litig., discussion at 658 F. Supp. 1183, 1204 (S.D. Miss. 1987) (declining to “design single- member districts to raise the black voter percentage by concentrating blacks in order to ‘influence’ the outcome of the elections” in districts where “black majority single-

- member sub-districts” could not be drawn); *Sixth Circuit*: Parker Litig., discussion at 263 F. Supp. 2d 1100, 1105 (E.D. Ohio 2003), summarily affirmed by 540 U.S. 1013 (2003), (“Because influence claims are not cognizable in our circuit and the plaintiffs have failed to establish the first *Gingles* precondition...[t]he plaintiffs’ claim under Section 2 of the Voting Rights Act must fail.”); O’Lear v. Miller Litig., discussion at 222 F. Supp. 2d 850 (E.D. Mich. 2002) (following *Cousin* Litig.); *Cousin* Litig. (TN), discussion at 145 F.3d 818, 828 (6th Cir. 1998) (“As the following analysis will indicate, we would reverse any decision to allow such a claim to proceed since we do not feel that an “influence” claim is permitted under the Voting Rights Act.”); *Seventh Circuit*: LaPaille Litig., discussion at 786 F. Supp. 704, 715 (N.D. Ill. 1992) (citing *McNeil v. Springfield Park District* and refusing to recognize “influence districts” because of the “lack of an objective limit to such claims.”); *City of Springfield Litig.*, discussion at 851 F.2d 937, 947 (7th Cir. 1988) (refusing to “consider claims that multi-member districts merely impair plaintiffs’ ability to influence elections. Plaintiffs’ ability to win elections must also be impaired.”); *Williams v. State Bd. of Elections Litig.*, discussion at 718 F. Supp. 1324, 1333 (N.D. Ill. 1989) (rejecting influence districts because “even if all eligible black voters supported a single candidate in the proposed single-member district, that candidate *would not be assured* of electoral success”); *but see* *Elections Board Litig.*, discussion at 793 F. Supp. 859, 869 (W.D. Wis. 1992) (distinguishing *Springfield Litig.* and considering the creation of a “stronger influence district . . . a modest plus” in favor of a proposed redistricting plan). *Eighth Circuit*: *Turner Litig.*, 784 F. Supp. 553 (E.D. Ark. 1991); *Ninth Circuit*: *San Diego County Litig.*, discussion at 794 F. Supp. 990, 996 (S.D. Cal. 1992) (following *Chula Vista Litig.*); *Chula Vista Litig.*, discussion at 723 F. Supp. 1384, 1392 (S.D. Cal. 1989) (“Accordingly, the Court finds that there exists no legally cognizable ‘influence’ claim under § 2 that would require a lesser standard of proof than set forth in *Thornburg*.”); *Eleventh Circuit*: *Baldwin County Comm’n Litig.* (AL), 376 F.3d 1260, 1269 (11th Cir. 2004) (“If the group is too small to elect candidates of its choice in the absence of a challenged structure or practice, then it is the size of the minority population that results in the plaintiff’s injury, and not the challenged structure or practice.”).
88. *Baldwin County Comm’n Litig.* (AL), discussion at 376 F. 3d 1260, 1268-69 (11th Cir. 2004) (finding that “an unrestricted breach of this precondition ‘would likely open a Pandora’s box of marginal Voting Rights Act claims by minority groups of all sizes,’” and seeing no way to award plaintiffs relief “without awarding similar relief to even smaller minority groups in future cases.”); *see also* *Rodriguez Litig.*, discussion at 308 F. Supp. 2d 346, 379 (S.D.N.Y. 2004) (“Allowing influence claims would open the door for a legal challenge any time a minority population could be shifted to increase the minority population in a nearby district. It would open the door for cases like this one, where the plaintiffs are arguing that the defendants had an affirmative obligation to create a district that has never existed in order to unite all minority communities in a particular region to maximize the proportion of a minority in at least one district.”); *City of Springfield Litig.*, discussion at 851 F.2d 937, 947 (7th Cir. 1988) (“Courts might be flooded by the most marginal section 2 claims if plaintiffs had to show only that an electoral practice or procedure weakened their ability to influence elections.”).
 89. *See e.g.*, *Metts Litig.* (RI), discussion at 363 F.3d 8, 12 (1st Cir. 2004) (“To the extent that African-American voters have to rely on cross-over voting to prove they have the “ability to elect” a candidate of their choosing, their argument that the majority votes as a bloc against their preferred candidate is undercut.”); *Turner Litig.*, 784 F. Supp. 553, 570-71 (E.D. Ark. 1991) (“[P]laintiffs argue here, contrary to the position of the plaintiffs in *Jeffers*, that if the percentage of black voters in District Four is increased from 27 percent (as it is under Act 1220 of 1991) to 38 percent (as it would be under plaintiffs’ proposal), it will be easier for black voters to “elect representatives of their choice” by forming coalitions with white voters. Their argument not only ignores the need to prove under *Gingles* that polarized voting prevents this from happening, but it directly undercuts their Section 2 claim by showing that even absent a majority, they could elect candidates of their choice if they sought alliances and coalitions with other voters in the traditional political manner.” (citation omitted)); *cf.* *Brooks Litig.* (GA), discussion at 158 F.3d 1230, 1237 (11th Cir. 1998) (noting, in the context of a challenge to runoffs in democratic primaries, the “fine line” between plaintiffs’ argument that minority candidates would be able to garner enough support to win the general election if they could succeed in the primary and plaintiffs’ claim of white bloc voting); *City of Chicago Litig.* (IL), discussion at 141 F.3d 699, 703 (7th Cir. 1998) (stating that the court is not rejecting the notion of the influence ward by requiring majority minority districts to have a 65% minority voting age population, but finding the concept “inapplicable” to the facts of the case “because of the rigid racial bloc voting on all sides”).
 90. *See e.g.*, *Rodriguez Litig.*, discussion at 308 F. Supp. 2d 346, 379 (E.D. Tex. 2004) (“If a minority population is too small to elect candidates of choice in a reconfigured district even with the assistance of reliable crossover voters, then it is the size of the population and not the voting practice or procedure that is preventing the minority group from electing representatives of their choice. Dilution of the ability to influence representatives is not an injury cognizable under section 2(b) of the VRA.”); *Hall Litig.* (VA), discussion at 385 F.3d 421, 430 (4th Cir. 2004) (“[T]o establish a vote dilution claim under Section 2, minorities must prove that they have been unlawfully

denied the political opportunity they would have enjoyed as a voting-age majority in a single-member district: namely, the opportunity to ‘dictate electoral outcomes independently’ of other voters in the jurisdiction.”); *see also* Kent County Litig. (MI), discussion at 76 F.3d 1381, 1386 (6th Cir. 1996) (en banc) (“Nothing in the clear, unambiguous language of § 2 allows or even recognizes the application of the Voting Rights Act to coalitions as urged by plaintiffs.”).

91. *See, e.g., Second Circuit*: Albany County Litig., discussion at No. 03-CV-502, 2003 WL 21524820, at *9 (N.D.N.Y. July 7, 2003) (considering defendants’ stipulation in a 1991 consent decree and joint political and social activities of the Latino and African-American communities); Rodriguez Litig., discussion at 308 F. Supp. 2d 346, 443 (S.D.N.Y. 2004). *Third Circuit*: Page Litig., discussion at 144 F. Supp. 2d 346, 364-66 (D.N.J. 2001); *Fifth Circuit*: Brewer Litig. (TX), discussion at 876 F.2d 448, 453 (5th Cir. 1989) (citing Baytown for the proposition that “the most persuasive evidence of inter-minority political cohesion for Section 2 purposes is to be found in voting patterns”); City of Austin Litig. (TX), discussion at 871 F.2d 529, 529 (5th Cir. 1989) (noting that, because plaintiffs could not create a district where Mexican-Americans enjoyed a voting age majority, they must demonstrate political cohesiveness with the Black population); Jefferson Parish I Litig., 691 F. Supp. 991, 1006 (E.D. La. 1988) (“[P]laintiffs may have the legal ability to seek and obtain some relief if they prove that they are politically cohesive, that a majority voting bloc usually defeats its preferred candidates, and that they are geographically compact so that a proposed remedy will insure them *equal access* to the political process and provide them the ability to *influence* elections. The court possesses the equity power to fashion the relief to remedy the effects of the prior dilution and to give the minority group the opportunity to participate equally in the electoral process....however, such relief does not mandate a safe district with a super majority of 60%.”); LULAC-Midland Litig., discussion at 648 F. Supp. 596, 606 (W.D. Tex. 1986) (“Testimony presented showed that Blacks and Hispanics worked together and formed coalitions when their goals were compatible. Additionally, the bringing of this lawsuit provides evidence that Blacks and Hispanics have common interests that induce the formation of coalitions.”). *Seventh Circuit*: Forest County Litig. (WI), discussion at 336 F. 3d 570, 575-76 (7th Cir. 2003) (rejecting an “Indian/black district” that would pair a longstanding Indian community with a transient black community at the local Job Corps center, because the idea that their local interests coincided struck the court as “ludicrous”); *Ninth Circuit*: Stockton Litig. (CA), 956 F.2d 884 (9th Cir. 1992) (considering expert and lay testimony regarding cohesion between the minority groups); National City Litig., discussion at No. 88-301-R(M), 1991 WL 421115 (S.D. Cal. May 16, 1991), *aff’d* 976 F.2d 1293 (9th Cir. 1992); Watsonville Litig. (CA), 863 F.2d 1407 (9th Cir. 1988) (noting minority population statistics); Pomona Litig., discussion at 665 F. Supp. 853 (C.D. Cal. 1987) (finding that neither black nor Hispanic group was sufficiently large on its own to satisfy *Gingles I*, and that the two groups were not politically cohesive and, thus, failed to meet *Gingles II*), *aff’d* 883 F.2d 1418 (9th Cir. 1988). *Eleventh Circuit*: Hardee County Litig. (FL), discussion at 906 F.2d 524, 527 (11th Cir. 1990) (considering voting patterns regarding whether blacks and Hispanics “worked together and formed political coalitions”); Metro Dade County Litig. (FL), discussion at 908 F.2d 1540, 1545-46 (11th Cir. 1990), *aff’d in part, rev’d in part* 985 F.2d 1471 (11th Cir. 1993); De Grandy Litig., discussion at 815 F. Supp. 1550, 1572-73 (N.D. Fla. 1992).
92. Armour Litig., discussion at 775 F. Supp. 1044, 1059-60 (N.D. Ohio 1991) (“In a reconfigured district plaintiffs will constitute nearly one-third of the voting age population and about half of the usual Democratic vote. Therefore, the Democratic Party and its candidates will be forced to be sensitive to the minority population by virtue of that population’s size.”).
93. *Id.*; *see also* Metts Litig. (MA), discussion at 363 F.3d 8, 11 (1st Cir. 2004) (articulating the court’s unwillingness “to foreclose the possibility that a section 2 claim can ever be made out where the African-American population of a single member district is reduced in redistricting legislation from 26 to 21 percent.”).
94. Page Litig., 144 F. Supp. 2d 346 (D.N.J. 2001).
95. *Id.* at 362.
96. *Id.*
97. Martinez Litig., discussion at 234 F. Supp. 2d. 1275, 1316 (S.D. Fla. 2002).
98. *Id.* at 1321 n.56.
99. *Id.* at 1322. This court considered *Gingles I* in order to determine that the plaintiffs were protected by Section 2, before concluding that the districting plan did not violate Section 2.
100. Perry Litig., discussion at 298 F. Supp. 2d 451, 484-85 (E.D. Tex. 2004).
101. *Id.* at 484.
102. *Id.* at 481.
103. *Id.* at 484-85.
104. Georgia v. Ashcroft, 539 U.S. 461, 481 (2003).
105. Perry Litig., discussion at 298 F. Supp. 2d 451, 480 (E.D. Tex. 2004).

106. *Id.* at 481.
107. Rodriguez Litig., discussion at 308 F. Supp. 2d 346, 373 (S.D.N.Y. 2004).
108. *Id.*
109. *Id.* at 379.
110. *Id.* at 384.
111. Perry Litig., discussion at 298 F. Supp. 2d 451, 481 (E.D. Tex. 2004); Rodriguez Litig., discussion at 308 F. Supp. 2d 346, 384 (S.D.N.Y. 2004) (stating that, under Ashcroft, “states have the flexibility to choose between safe majority-minority districts...and ‘coalitional’ districts”).
112. Perry Litig., discussion at 298 F. Supp. 2d 451, 481 (E.D. Tex. 2004); Rodriguez Litig., discussion at 308 F. Supp. 2d 346, 384 (S.D.N.Y. 2004) (“While *Ashcroft* allows crossover districts under Section 5, its reasoning does not broaden the power of federal courts under section 2 of the VRA to require state legislatures to protect or create such ‘ability to elect’ districts.”).
113. Perry Litig., discussion at 298 F. Supp. 2d 451, 485 (E.D. Tex. 2004).
114. *See, e.g.,* Rural West I Litig., discussion at 877 F. Supp. 1096, 1104 (W.D. Tenn. 1995).
115. West Litig., discussion at 786 F. Supp. 803, 807 (W.D. Ark. 1992) (“If the Act does not always require the maximization of minority voting power, how do we distinguish those cases in which an ‘influence’ district should be created, from those in which it should not? Plaintiffs have suggested no legal standards to differentiate these two kinds of cases....They are not numerous enough to elect a representative without help, and there is no proof that they would have enough help to elect a different representative, nor even that the same representative would behave differently in some relevant way.”). Still other courts faced with influence claims have failed to address them, resolving lawsuits on other grounds. *See e.g.,* Meza Litig., discussion at 322 F. Supp. 2d 52, 64 (D. Mass. 2004) (declining to decide whether plaintiffs may satisfy *Gingles* I without a numerical majority because the case could be resolved on alternative grounds); City of Minneapolis Litig., No. 02-1139(JRT/FLN), 2004 U.S. Dist. LEXIS 19708 (D. Minn. Sept. 30, 2004); Hardee County Litig. (FL), discussion at 906 F.2d 524 (11th Cir. 1990).
116. *See e.g.,* Sensley Litig. (LA), discussion at 385 F.3d 591, 596 (5th Cir. 2004) (“[I]t is clear that shape is a significant factor that courts can and must consider in a *Gingles* compactness inquiry”); Mallory-Ohio Litig. (OH), discussion at 173 F.3d 377, 382-83 (6th Cir. 2000) (upholding district court’s decision that plaintiffs “had the burden of showing that those minority voters lived in a geographically compact pattern such that it would be possible to draw a ‘majority-minority’ district with a rational shape” and stating “But the only evidence submitted by the class to demonstrate geographical compactness was a set of maps that purported to show the concentration of African-American populations within each of Ohio’s largest counties.”); Montezuma-Cortez Sch. Dist. Litig., discussion at 7 F. Supp. 2d 1152, 1167 (D. Colo. 1998) (considering an existing plan in a case where defendants sought to get out of a settlement and return to an at-large system: “A simple visual inspection shows that District D is compact, normally shaped, completely rationale [*sic*] in appearance and similar to all other districts contained in the existing plan.”); Jefferson Parish I Litig., 691 F. Supp. 961, 1007 (E.D. La. 1988) (criticizing plaintiffs’ proposed plan: “[t]he district contains no less than 35 sides...”), Worcester County Litig., discussion at 840 F. Supp. 1081, 1086-87 (D. Md. 1994), *rev’d in part on other grounds* 35 F.3d 921 (4th Cir. 1994) (“The plaintiffs’ proposed Plan 1 is not unreasonably irregular in shape, considering the population dispersal within the County....The districts may not be symmetrical, but they are compact. They do not rely on districts that run through several ‘tentacle-like corridors’ nor are the district’s boundary lines so unreasonably irregular, bizarre or uncouth as to approach obvious gerrymandering.”).
117. *See e.g.,* City of Minneapolis Litig., No. 02-1139(JRT/FLN), 2004 U.S. Dist. LEXIS 19708, at *10 (Minn. Sept. 30 2004) (considering any plan must conform to a 2:1 length to width ratio to comport with the city charter); Sensley Litig. (LA), discussion at 385 F.3d 591, 597-98 (5th Cir. 2004) (concluding that there was no clear error where the district court held the proposed districts not compact while ignoring traditional districting principles); Bone Shirt Litig., discussion at 336 F. Supp. 2d 976, 989, 992 (D.S.D. 2004) (finding that the proposed plans adhered to state’s traditional redistricting principles, including respect for geographical and political boundaries, and protection of minority voting rights.”), Montezuma-Cortez Sch. Dist. Litig., 7 F. Supp. 2d 1152, 1167 (D. Colo. 1998) (finding the district was drawn in adherence to traditional districting principles); Town of Hempstead Litig., discussion at 956 F. Supp. 326, 350 (E.D.N.Y. 1997) (“[P]laintiffs have amply demonstrated that a majority-minority district can be fashioned without subordinating traditional districting principles to racial considerations.”).
118. *See e.g.,* Bone Shirt Litig., discussion at 336 F. Supp. 2d 976, 989, 992 (D.S.D. 2004) (stating that there was no *Shaw v. Reno* problem where districts, while irregular in shape, were no more irregular than those in the state’s plan); Town of Hempstead Litig. (NY), discussion at 180 F.3d 476, 492 (2d Cir. 1999) (“This proposed District 3 was found to be more compact than the average congressional district.”); City of Columbia Litig., discussion at 850 F. Supp. 404, 413 (D.S.C. 1993) (finding compactness where “Plaintiffs’ single-member district plans are

- reasonably compact and are no more irregular in shape than the districts actually in use under the existing 4-2-1 plan.”); Nash Litig., 797 F. Supp. 1488, 1497 (W.D. Mo. 1992) (“A visual inspection of the two plans demonstrates Dr. Jones’ plan is less compact than the Commission’s plan.”); Jeffers Litig., discussion at 730 F. Supp. 196 (E.D. Ark. 1989) (noting plaintiffs’ proposed districts “look rather strange” but that they “are not materially stranger in shape than at least some of the districts contained in the present apportionment plan.”).
119. See e.g., Albritton Litig. (LA), discussion at 385 F.3d 591, 597-98 (5th Cir. 2004) (concluding that there was no clear error in the district court’s holding that compactness was lacking where proposed districts separated distinct communities); City of Chicago-Bonilla Litig., discussion at 17 F. Supp. 2d 753, 758 (N.D. Ill. 1998) (considering and rejecting claims that displacement of part of the community “into another aldermanic ward will result in the destruction of the community.”); Columbus County Litig., discussion at 782 F. Supp. 1097, 1105 (E.D.N.C. 1991) (finding compactness where the districts were not “so spread out as to prevent the constituents and their representative from communicating with each other” and “none of these districts are so convoluted that its members and representatives would not be able to tell who actually lived in each district.”); Jefferson Parish I Litig., 691 F. Supp. 961, 1007 (E.D. La. 1988) (“A proposed district is sufficiently compact if it retains a natural sense of community. To retain that sense of community, a district should not be so convoluted that its representative could not easily tell who actually lives within the district.”); Baldwin County Bd. of Educ. Litig., 686 F. Supp. 1459 (M.D. Ala. 1988) (applying a functional approach and suggesting that a district would not be sufficiently compact, the court suggested, if it destroyed all “sense of community.”).
 120. Bush v. Vera, 517 U.S. 952 (1996); Miller v. Johnson, 515 U.S. 900 (1995); Shaw v. Reno, 509 U.S. 600 (1993).
 121. Sensley Litig. (LA), discussion at 385 F.3d 591, 596-98 (5th Cir. 2004); City of New Rochelle Litig., discussion at 308 F. Supp. 2d 152, 159 (S.D.N.Y. 2003); France Litig., discussion at 71 F. Supp. 2d 317, 325-26 (S.D.N.Y. 1999); Town of Hempstead Litig., discussion at 180 F.3d 476, 492 (2d Cir. 1999); Lafayette County Litig., discussion at 20 F. Supp. 2d 996, 999-1000 (N.D. Miss. 1998); Davis v. Chiles Litig., discussion at 139 F.3d 1414 (11th Cir. 1998); City of Rome Litig., discussion at 127 F.3d 1355 (11th Cir. 1997); Chickasaw County II Litig., No. CIV.A. 1:92CV142-JAD, 1997 WL 33426761, at *1 (N.D. Miss. Oct. 28, 1997); Town of Babylon Litig., discussion at 914 F. Supp. 843, 873 (E.D.N.Y. 1996); Calhoun County Litig., discussion at 881 F. Supp. 252, 253-54 (5th Cir. 1996); Marylanders Litig., 849 F. Supp. 1022, 1056 (D. Md. 1994); Hamrick Litig. (GA), 296 F.3d 1065 (11th Cir. 2002).
 122. See e.g., City of Minneapolis Litig., discussion at No. 02-1139(JRT/FLN), 2004 U.S. Dist. LEXIS 19708, at *50-51 (D. Minn. Sept. 30, 2004) (“[E]xamination of the redistricting maps clearly demonstrates that the ward shapes in this case are neither bizarre nor irregular. The Court is not alone in reaching this conclusion. Plaintiffs’ expert testified that ‘it would be hard to conclude that either [the previous wards or the redistricting plan wards] are bizarre.’ Similarly, defendant’s expert testified that, based on his review of numerous redistricting plans, he did not find any of the districts to be ‘bizarre in terms of their shapes.’ ” (citations omitted)); Thurston County Litig. (NE), discussion at 129 F.3d 1015, 1025 (8th Cir. 1997) (holding no violation of Section 2 for either the school board or the village board of elections because of their bizarre shape).
 123. See e.g., Montezuma-Cortez Sch. Dist. Litig., discussion at 7 F. Supp. 2d 1152, 1168 (D. Colo. 1998) (“A simple visual inspection shows that District D is compact, normally shaped, completely rationale [*sic*] in appearance and similar to all other districts contained in the existing plan. It is plainly not the kind of district criticized in *Shaw v. Reno* and *Miller v. Johnson*.”); Lafayette County Litig., discussion at 20 F. Supp. 2d 996, 999-1000 (N.D. Miss. 1998) (“[T]he question is not whether the plaintiff residents’ proposed district was oddly shaped, but whether the proposal demonstrated that a geographically compact district could be drawn.” While both of plaintiffs’ plans had some “ragged edges,” and one district “even contain[ed] three thin appendages that reach[ed] awkwardly into minority communities located in and around the City of Oxford” the court found *Gingles* I met because “the Fifth Circuit has also reviewed the plans and concluded that at least one of them is not nearly as bizarre as those rejected in *Shaw v. Reno*.” (internal quotations omitted)); Sanchez-Colorado Litig., discussion at 97 F.3d 1303, 1315 (10th Cir. 1996) (“We would also note by comparison to the districts the Court recently found ‘bizarre’ in *Shaw II* and *Bush*, plaintiffs’ proposed district is nonobjectionable.”); Town of Babylon Litig., discussion at 914 F. Supp. 843, 873 (E.D.N.Y. 1996) (noting although the districts were oddly shaped, they were not as odd as the ones in *Shaw*, so the district would not fail on this alone; it failed because the expert failed to adequately take traditional districting principles into account, including a consideration of similarity to existing districts in the county); Little Rock Litig. (AR), discussion at 56 F.3d 904, 912 (8th Cir. 1995) (“[A]lthough the plaintiffs’ proposed zone boundaries are nowhere nearly so bizarre as the ones held presumptively unconstitutional by the Supreme Court in *Shaw*, they are markedly less regular and compact than those in LRSD’s adopted plan.”).
 124. See e.g., Sensley Litig. (LA), discussion at 385 F.3d 591, 596-98 (5th Cir. 2004) (citing *Vera* and *Abrams v. Johnson*, the court focused on the district’s odd shape and plaintiffs’ failure to observe traditional districting principles in holding that *Gingles* I was not met); France Litig., discussion at 71 F. Supp. 2d 317, 325-26

- (S.D.N.Y. 1999) (finding that plaintiffs’ plan was “primarily driven by considerations of race” and that plaintiffs “failed to meet their burden of showing that their districting plan takes into account traditional districting criteria such as compactness, geography, and the integrity of political subdivisions;” applying strict scrutiny and finding that the district was not narrowly tailored because it failed on the *Gingles* factors); *Town of Babylon Litig.*, discussion at 914 F. Supp. 843, 873-74 (E.D.N.Y. 1996) (declining “to find that plaintiffs have met their burden of proof of showing that their districting plan, drawn with a near-exclusive focus on race, by chance adequately takes into account districting criteria such as compactness, respect for the Town’s geography, contiguity and the integrity of political subdivisions and communities of interests.”). *But see* *City of New Rochelle Litig.*, 308 F. Supp. 2d 152, 159 (S.D.N.Y. 2003) (maintaining that a return to a prior districting plan would not be contrary to *Shaw* and *Vera* and that it was not “directing such a race conscious gerrymander; instead it is directing the restoration of the *status quo ante*, which was unnecessarily disrupted in violation of Plaintiffs rights under Section 2 of the Voting Rights Act.”).
125. SENATE REPORT *supra* note 15, at 27-30 (including “racially polarized voting” as one of the factors “relevant” to a Section 2 inquiry). Unlike the other Senate Factors, which were largely derived from judicial decisions predating the 1982 amendments, racial bloc voting emerged as a formal element of the Section 2 inquiry for the first time in 1982. *See, e.g.*, *Lubbock Litig.* (TX), discussion at 727 F.2d 364, 384 (5th Cir. 1984). Supporters of the 1982 Amendments to Section 2 invoked racial bloc voting as the critical restraint that would keep the amended statute from devolving into a mandate for proportional representation. *See* ISSACHAROFF, KARLAN & PILDES, *supra* note 12, at 741 (“[O]ne factor that emerges as central in the Senate Report is the extent to which voting is ‘racially polarized.’ This factor is nowhere directly mentioned in the *White/Zimmer* line of cases; it starts to rise in the Senate debates when proponents are forced to respond to Senator Hatch’s argument that the amended Section 2 will guarantee proportional representation along racial lines.”).
 126. *See* Master Lawsuit List (filter Column: RPV = 1 and filter Column: WasSection2Violated = 1). The exceptions are cases involving challenges to specific voting procedures that identified Section 2 violations without considering racially polarized voting, *see* *Berks County Litig.*, 277 F. Supp. 2d 570 (E.D. Pa. 2003) (poll official conduct); *Marks-Philadelphia Litig.*, No. CIV. A. 93-6157, 1994 WL 146113 (E.D. Pa. Apr. 26, 1994) (absentee ballots); *Operation Push Litig.*, 932 F.2d 400 (5th Cir. 1991) (voter registration system); *Town of North Johns Litig.*, 717 F. Supp. 1471 (M.D. Ala. 1989) (withholding of candidacy filing forms); *Harris v. Graddick Litig.*, 695 F. Supp. 517 (M.D. Ala. 1988) (policy of appointing only white poll officials); *Madison County Litig.*, 610 F. Supp. 240 (S.D. Miss. 1985) (invalidation of absentee ballots), and two cases that found a violation of Section 2 based on invidious intent without considering racially polarized voting, *see* *Arakaki Litig.* (HI), 314 F.3d 1091 (9th Cir. 2002); *Rybicki Litig.*, 574 F. Supp. 1147 (N.D. Ill. 1983).
 127. *See* *Gingles Litig.* (NC), discussion at 478 U.S. 30, 50-51 (1986).
 128. *See id.* at 32; *see also infra*, *Gingles* I Section.
 129. *See, e.g.*, *City of Holyoke Litig.* (MA), discussion at 72 F.3d 973, 983 (1st Cir. 1995); *De Grandy Litig.* (FL), discussion at 512 U.S. 997, 1011-12 (1994); *LULAC v. Clements Litig.* (TX), discussion at 999 F.2d 831, 850 (5th Cir. 1993).
 130. *See* SENATE REPORT, *supra* note 15, at 27-30.
 131. Decisions decided between the 1982 Amendments and the Court’s decision in *Gingles* obviously do not employ the *Gingles* test. Instead, these courts applied varied standards to evaluate racial bloc voting under Senate Factor 2. *See, e.g.*, *Terrell Litig.*, discussion at 565 F. Supp. 338, 348-49 (N.D. Tex. 1983) (“Typically, the degree of racial polarity in voting is determined by examining election races in which blacks opposed whites, taking the percentage of voters who supported a candidate of their own race, and subtracting the percentage of voters who voted for a candidate of another race, to obtain a “racial polarization score.”).
 132. *See, e.g.*, *Charleston County Litig.*, discussion at 316 F. Supp. 2d 268, 277-78 (D.S.C. 2003) (discussing racially polarized voting in totality review via a brief recap of experts’ statistics already analyzed under *Gingles*); *Westwego Litig.* (LA), 946 F.2d 1109, 1116 (5th Cir. 1991) (referencing *Gingles* analysis in totality of the circumstances review). *But cf.* *Chickasaw County II Litig.*, No. CIV.A. 1:92CV142-JAD, 1997 WL 33426761, at *3 (N.D. Miss. Oct. 28, 1997) (briefly finding racial bloc voting under *Gingles*, with more discussion in the totality review). Many courts also hold that causation should be considered in the totality of the circumstances assessment, *see infra*, *Gingles* II and III Section. Some courts then import the causation question into a consideration of Factor 2, *see, e.g.*, *Alamosa County Litig.*, 306 F. Supp. 2d 1016, 1029-33 (D. Colo. 2004) (finding *Gingles* met, but no racially polarized voting due to causation), while others simply consider causation as a different part of the totality of the circumstances *see e.g.*, *Alamance County Litig.* (NC), discussion at 99F.3d 600, 604 (4th Cir. 1996) (“[T]he best reading of *Gingles*...is one that treats causation as irrelevant in the inquiry into the three *Gingles* preconditions but relevant in the totality of the circumstances inquiry.”); *see also infra* note 161.

133. See Master Lawsuit List (filter Column: RPV = 1, and filter Column: Jurisdiction, and filter Success = 0).
134. See e.g., Baldwin County Comm'n Litig. (AL), 376 F.3d 1260 (11th Cir. 2004) (defendant conceded that racial bloc voting existed); Sensley Litig. (LA), 385 F.3d 591 (5th Cir. 2004) (parties stipulated that racial bloc voting existed); Baldwin County Comm'n Litig. (AL), 376 F.3d 1260 (11th Cir. 2004) (defendant conceded that racial bloc voting existed); DeSoto County (FL), 204 F.3d 1335 (11th Cir. 2000) (finding of *Gingles* I reversed thus appellate court never addressed district court's finding of *Gingles* II or III); Pasadena Indep. Sch. Dist. Litig. (TX), 165 F.3d 368, 371 (5th Cir. 1999) ("Although the district court found that plaintiffs failed to meet the first *Gingles* requirement, the court exhaustively considered the evidence presented, addressed the remaining two *Gingles* requirements, and considered the 'totality of circumstances' using the Zimmer factors."); Davis v. Chiles Litig. (FL), 139 F.3d 1414, 1416 (11th Cir. 1998) (finding *Gingles* threshold met, but no remedy therefore modifying *Gingles* I to state it unmet); Holder v. Hall Litig. (GA), 512 U.S. 874 (1994) (reversed on another factor and did not address bloc voting).
135. See *infra*, *The Gingles Threshold* Section (discussing cases that found *Gingles* but no violation due to proportionality).
136. City of Chicago-Bonilla Litig. (IL), 141 F.3d 699 (7th Cir. 1998) (remanding for review of totality of circumstances); Carrollton NAACP Litig. (GA), 829 F.2d 1547 (11th Cir. 1987) (remanding for a finding on the other two *Gingles* factors).
137. Old Person Litig. (MT), 312 F.3d 1036, 1050 (9th Cir. 2002) ("This is one of those not unusual cases where our decision is controlled by the proper standard of review. On one side of the scale lies a history of official discrimination, the presence of racially polarized elections, the presence of socioeconomic factors limiting Indians' political participation, the use of racial appeals in elections, and disproportionality. On the other side of the scale we see the absence of discriminatory voting practices, the viable policy underlying the existing district boundaries, the success of Indians in elections, and officials' responsiveness to Native Americans' needs. We have fully considered the legal issues presented and the detailed factual record with which the district court grappled. We cannot say that the district court's determination that there was no vote dilution, considered in the totality of circumstances, was clearly erroneous."); NAACP v. Fordice Litig. (MS), 252 F.3d 361, 374 (5th Cir. 2001) ("In summary, the district court found that, although Mississippi has an undeniable history of official discrimination from which its African-American citizens still suffer the effects, Wilson failed to demonstrate that this reality hindered the ability of Mississippi's African-American citizens to participate effectively in the state's political process. Moreover, the court determined that the factors of majority vote requirement, the size of the contested electoral districts, candidate slating, responsiveness, and tenuousness did not favor Wilson. The record before us supports the district court's determinations regarding these factors. As such, we cannot conclude that these findings were clearly erroneous."); Liberty County Comm'rs Litig. (FL), 221 F.3d 1218 (11th Cir. 2000); Niagara Falls Litig. (NY), 65 F.3d 1002 (2d Cir. 1995); Democratic Party of Arkansas Litig. (AR), 902 F.2d 15 (8th Cir. 1990); City of Boston Litig. (MA), 784 F.2d 409 (1st Cir. 1986) (finding that "moderate racially polarized voting" does not establish a Section 2 violation when no voting practices minimize minority votes, there is an absence of racial animus, and no alternative plan would not sacrifice other districting considerations).
138. *Gingles* Litig., 478 U.S. 30, 68 (1986).
139. *First Circuit*: City of Boston Litig. (MA), discussion at 784 F.2d 409, 413 (1st Cir. 1986) (assuming that black candidates are the preferred candidates of black voters); cf. City of Holyoke Litig. (MA), discussion at 72 F.3d 973, 988 (1st Cir. 1995) (considering only elections in which Hispanic candidates ran for office); *Second Circuit*: Albany County Litig., discussion at No. 03-CV-502, 2003 WL 21524820, at *10-11 (N.D.N.Y. Jul. 7, 2003) (equating minority candidate with minority-preferred candidate by noting the absence of minority candidates for county-wide office and concluding that "no evidence exists as to whether white voters County-wide supported a minority-preferred candidate"); Green Litig., discussion at No. CV-96-3367 (CPS), 1996 WL 524395, at *10 (E.D.N.Y. Sept. 5, 1996) ("[N]o evidence has been presented that plaintiff voters and registered voters have been outvoted by a white majority class. According to the defendants, eight of the nine newly elected board members are African Americans . . ."); cf. Niagara Falls Litig. (NY), discussion at 65 F.3d 1002, 1018-19 (2d Cir. 1995) (holding that a white candidate may be minority-preferred and adopting a race-blind bright line rule for the Second Circuit); *Third Circuit*: Red Clay Sch. Dist. Litig. (DE), discussion at 4 F.3d 1103, 1126 (3d Cir. 1993) (adopting presumption that the minority candidate is minority-preferred and noting that "experience does demonstrate that minority candidates will tend to be candidates of choice among the minority community," but nevertheless insisting that plaintiffs must present some evidence establishing this presumption); Harrison Litig., discussion at Civ. A. No. 92-0603, 1992 U.S. Dist. LEXIS 5315, at *7-8 (E.D. Pa. Apr. 21, 1992) (agreeing with defendant expert testimony that African Americans tend to vote for African-American candidates); *Fourth Circuit*: Columbus County Litig., discussion at 782 F. Supp. 1097, 1100-02 (E.D.N.C. 1991) (considering only black-white elections). *But see* City of Hampton Litig., discussion at 919 F. Supp. 212, 214 (E.D. Va. 1996) ("[T]he focus of

the Plaintiffs' presentation was the race of the candidate elected, whereas the focus of the Voting Rights Act is upon the opportunity of a minority to elect the candidate of its choice"); *Fifth Circuit*: St. Bernard Parish School Board Litig., discussion at No. CIV.A. 02-2209, 2002 WL 2022589, at *6 (E.D. La., Aug. 26, 2002) ("In assessing whether racial bloc voting occurs, the appropriate focus is on elections in which a minority group member is a candidate"); *LULAC v. Clements Litig. (TX)*, discussion at 999 F.2d 831, 864 (5th Cir. 1993) (citing *Gretna* for proposition that elections without a minority candidate are less probative because they do not provide minority voters with the choice of a minority candidate); *Gretna Litig. (LA)*, discussion at 834 F.2d 496, 503 (5th Cir. 1987) ("We consider Jones to be an aldermanic candidate sponsored by Gretna's minority group because he received a significant portion of the black vote, and because he is black.") (footnote omitted); *Sixth Circuit*: Anthony Litig., discussion at 35 F. Supp. 2d 989, 992 (E.D. Mich. 1999) (finding all African-American candidates but one were the minority-preferred candidate); *Rural West I Litig.*, discussion at 877 F. Supp. 1096, 1108 (W.D. Tenn. 1995) ("As a practical matter . . . in most racially polarized districts where white voters prefer white candidates (as is effectively required by the third *Gingles* precondition to find a § 2 violation), black voters will choose to vote for black candidates. This is certainly true in Tennessee."); *Seventh Circuit*: Campuzano Litig., discussion at 200 F. Supp. 2d 905, 914 (N.D. Ill. 2002) ("The parties agree that, with few exceptions, African-Americans overwhelmingly prefer representation by African-American candidates"); *City of Chicago Litig. (IL)*, discussion at 141 F.3d 699, 703 (7th Cir. 1998) (dismissing arguments that white candidates in some areas with substantial minority populations are responsive to minority interests and explaining that "[i]t may be highly regrettable that a candidate's race should matter to the electorate; but it does; and the cases interpreting the Voting Rights Act do not allow the courts to ignore that preference."); *Eighth Circuit*: Blytheville Sch. Dist. Litig. (AR), discussion at 71 F.3d 1382, 1387-88 (8th Cir. 1995) (adopting *Jenkins v. Red Clay School District* methodology for determining the minority-preferred candidate which includes a presumption in favor of the minority candidate). The Eighth Circuit, however, requires additional evidence to establish the minority-preferred candidate. *See infra* note 140. *Ninth Circuit*: The Ninth Circuit always requires evidence to establish the minority-preferred candidate. *See infra* note 140. *Tenth Circuit*: Alamosa County Litig., discussion at 306 F. Supp. 2d 1016, 1029-33 (D. Colo. 2004) (permitting presumption that the minority candidate was the minority-preferred candidate to stand without independent evidence because both plaintiff and defendant expert agreed); *Eleventh Circuit*: Brooks Litig. (GA), discussion at 158 F.3d 1230, 1235, 1240 (11th Cir. 1998) (assuming without discussion that all black candidates are minority-preferred and all white candidates are majority preferred); *Southern Christian Leadership Conference Litig. (AL)*, 56 F.3d 1281 (11th Cir. 1995) (same); *Holder v. Hall Litig. (GA)*, discussion at 955 F.2d 1563, 1571-72 (11th Cir. 1992) (same); *Baldwin Bd. of Educ. Litig.*, 686 F. Supp. 1459 (M.D. Ala. 1988) (same); *Dillard v. Crenshaw Litig.*, 640 F. Supp. 1347 (M.D. Ala. 1986) (same).

140. The following circuits allow for a lesser burden to establish a minority candidate is minority-preferred: *Third Circuit*: *Jenkins v. Red Clay Sch. Dist. Litig. (DE)*, discussion at 4 F.3d 1103, 1129 (3d Cir. 1993) (adopting a presumption that the minority is the minority-preferred candidate but allowing white candidate to be minority-preferred and adopting different tests for both); *Fifth Circuit*: *Pasadena Indep. Sch. Dist. Litig.*, discussion at 958 F. Supp. 1196 (S.D. Tex. 1997) (discussing several elections in which, despite evidence of consistent Hispanic support for the Hispanic candidate at the polls, the plaintiffs' expert witness could not identify the Hispanic preferred candidate); *LULAC v. Roscoe Indep. Sch. Dist. Litig.*, discussion at Civ. A. No. 1:94-CV-104-C, 1996 WL 453584, *2 (N.D. Tex. May 14, 1996) (struggling to identify the minority-preferred candidate in an election with multiple Hispanic candidates.); *City of Dallas Litig.*, discussion at 734 F. Supp. 1317, 1393, 1395 (N.D. Tex. 1990) (suggesting that voting patterns and witness testimony can help identify the minority-preferred candidate); *Gretna Litig.*, discussion at 636 F. Supp. 1113, 1133 (D. La. 1986) ("Unless it can be shown that an election occurred in which a white candidate ran on issues strongly affecting the black community and with an open, positive and strong identification with the black community—which has not been shown in this matter—candidacies of black persons are the proper focus of inquiry concerning the extent to which elections are polarized."); *Seventh Circuit*: *Rockford Bd. of Educ. Litig.*, discussion at Civ.A. No. 89 C 20168, 1991 WL 299104, at *4 (N.D. Ill. Sept. 12, 1991) ("The African Americans in the School District have tended to vote as a group and to vote for African American candidates."); *Springfield Park District Litig. (IL)*, 851 F.2d 937 (7th Cir. 1988) (citing trend of minorities voting for the minority candidate found in district court); *Tenth Circuit*: *Sanchez-Colorado Litig. (CO)*, discussion at 97 F.3d 1303, 1320-21 (10th Cir. 1996) (adopting *Jenkins v. Red Clay* methodology); *Sanchez-Bond Litig. (CO)*, discussion at 875 F.2d 1488, 1495 (10th Cir. 1989) (holding the minority-preferred candidate does not have to be a minority and elections with only white candidates should be given "such weight as the circumstances warrant"); *Eleventh Circuit*: *De Grandy Litig.* discussion at 815 F. Supp. 1550, 1572-73 (N.D. Fla. 1992) (presuming that minority candidates are minority-preferred after reviewing evidence that blacks and Hispanics generally prefer candidates of the own race); *but see*, *City of Rome Litig. (GA)*, discussion at 127 F.3d 1355, 1377, 1379 n.9 (11th Cir. 1997) (finding that all black candidates were

strongly supported by the black community and were black preferred, including one black candidate who did not receive a plurality of the black vote, and then finding that white candidates minority where they had almost as much support as black candidates).

Other circuits require the same evidence regardless of the candidate's race: *First Circuit*: Black Political Task Force Litig., 300 F. Supp. 2d 291 (D. Mass. 2004) (relying on regression analyses of minority voting patterns to identify the minority-preferred candidate); Meza Litig., 322 F. Supp. 2d 52 (D. Mass. 2004) (same); *Second Circuit*: Rodriguez Litig., discussion at 308 F. Supp. 2d 346, 388, 389 (S.D.N.Y. 2004) (noting that the "minority-preferred candidate is generally the candidate that receives the most votes from the relevant minority group" and citing *Niagara Falls* for the proposition that the courts must consider elections where the white majority defeats a minority-preferred white candidate); *Fourth Circuit*: Alamance County Litig. (NC), discussion at 99 F.3d 600, 615 (4th Cir. 1996) (holding any candidate who receives the plurality of the minority votes is the minority-preferred candidate); *Sixth Circuit*: Quilter Litig., discussion at 794 F. Supp. 695, 701 (N.D. Ohio 1992) (criticizing plaintiffs expert for merely stating that "given the opportunity there is a much higher percentage of black vote for black candidates than white vote for black candidates" and not finding racial bloc voting); Armour Litig., discussion at 775 F. Supp. 1044, 1057 (N.D. Ohio 1991) (finding the minority candidate was the preferred candidate because of testimony that "the relationship between the candidate's race and the race of the voter was consistently near linear"); *Eighth Circuit*: While the Eighth Circuit expressly follows Jenkins and allows a presumption that the minority candidate is the minority-preferred, this presumption is insufficient to establish the minority-preferred candidate alone. See *City of Minneapolis Litig.*, discussion at No. 02-1139(JRT/FLN), 2004 U.S. Dist. LEXIS 19708, at *28-32 (D. Minn. Sept. 30, 2004) (demanding evidence that the minority candidate is minority-preferred); Clay County Bd. of Educ. Litig. (MO), discussion at 90 F.3d 1357, 1362-64 (8th Cir. 1996) (refusing to presume minority candidate was minority-preferred absent independent evidence but acknowledging the candidate's race should be considered); Nash Litig., discussion at 797 F. Supp. 1488, 1503 (W.D. Mo. 1992) ("We have, for purposes of this opinion, arbitrarily deemed any candidate receiving more than 65% of the black vote 'minority-preferred.' There was some testimony to the effect that black voters, given a choice, would vote only for black candidates, and that a white candidate receiving a majority of the black vote was probably not a 'true' preference. There was also testimony indicating that if a white person received a majority of the black vote, any black candidates probably were not viable candidates. We refuse to impart these individual witnesses' views to black citizens as a whole. Absent some indication that a particular white candidate was truly not preferred despite receiving over 65% of the black vote, or that a particular black candidate was not viable, we will not assume that the voters in a particular political contest would have voted for someone other than the person they voted for, nor will we assume that a white candidate receiving over 65% of the black vote was not preferred by the minority voters."); *Ninth Circuit*: City of Santa Maria Litig. (CA), discussion at 160 F.3d 543, 549-50 (9th Cir. 1998) (rejecting that only minority candidates could be minority-preferred and adopting a "bright-line" test for determining the minority-preferred candidate); National City Litig., discussion at No. 88-301-R(M), 1991 WL 421115 (S.D. Cal. May 16, 1991) (looking at voting patterns and using regressions to determine the minority-preferred candidate); Watsonville Litig. (CA), 863 F.2d 1407 (9th Cir. 1988) (holding courts should not look beyond voting patterns to determine the minority-preferred candidate, but not differentiating between the race of the candidates).

141. Most circuits now hold that the minority-preferred candidate does not have to be a minority: *First Circuit*: Black Political Task Force Litig., discussion at 300 F. Supp. 2d 291, 304 (D. Mass. 2004) ("We understand that black voters sometimes may consider a white candidate their representative of choice and vice-versa."); *Second Circuit*: Niagara Falls Litig., discussion at 65 F.3d 1002, 1016 (2d Cir. 1995) (refusing to "adopt an approach precluding the possibility that a white candidate can be the actual and legitimate choice of minority voters."); *Third Circuit*: Jenkins v. Red Clay Sch. Dist. Litig. (DE), discussion in 4 F.3d 1103, 1126 (3d Cir. 1993) (allowing either minority candidates or white candidates to be minority-preferred but adopting different tests for each); *Fourth Circuit*: Alamance County Litig., discussion at 99 F.3d 600, 608 (4th Cir. 1996) (stating that the minority-preferred candidate may sometimes be a white candidate); *Fifth Circuit*: LULAC v. Clements Litig. (TX), discussion at 999 F.2d 831, 882-83 (5th Cir. 1993) ("The black-preferred candidate in Harris County, regardless of race, was always the Democratic candidate."); *Sixth Circuit*: Cincinnati Litig. (OH), discussion at 40 F.3d 807, 813 (6th Cir. 1994) (adopting a colorblind approach to determining the minority-preferred candidate); *Seventh Circuit*: Williams v. State Bd. of Elections Litig. (IL), 718 F. Supp. 1324, 1325-26 (7th Cir. 1989) (finding that white candidates who earned a majority of the minority vote were minority-preferred candidates in spite of evidence of discrimination in the candidate slating process); see also *City of Chicago Heights Litig. (IL)*, discussion at 824 F. Supp. 786, 791 (N.D. Ill. 1993) (finding, in multi-member districts, candidates who receive the majority of the vote are not minority-preferred where "other candidates, preferred by a significantly higher percentage of the minority community. . . . were defeated in the same election"); *Eighth Circuit*: Blytheville Sch.

- Dist. Litig. (AR), discussion at 71 F.3d 1382, 1387-88 (8th Cir. 1995) (adopting the *Jenkins v. Red Clay* methodology); *Ninth Circuit*: City of Santa Maria Litig. (CA), 160 F.3d 543, 549-50 (9th Cir. 1998) (rejecting that only minority candidates could be minority-preferred and adopting a “bright-line” test for determining the minority-preferred candidate); *Tenth Circuit*: Sanchez-Bond Litig., 875 F.2d 1488, 1495 (10th Cir. 1989) (holding the minority-preferred candidate does not have to be a minority); *Eleventh Circuit*: City of Rome Litig. (GA), 127 F.3d 1355 (11th Cir. 1997).
142. *Jenkins v. Red Clay Sch. Dist. Litig.* (DE), discussion at 4 F.3d 1103, 1129 (3d Cir. 1993).
143. *See, e.g., Third Circuit*: Red Clay Sch. Dist. Litig. (DE), discussion at 4 F.3d 1103, 1129 (3d Cir. 1993) (finding that evidence showing non-minority candidate to be minority-preferred includes minority “sponsorship” of the candidate, the level of attention the candidate pays to the minority community, the level of minority turnout for white-on-white elections compared to elections involving a minority candidate, the disincentives minority candidates confront and difficulties they face in qualifying for office, and the extent minority candidates have run in the past); *Eighth Circuit*: Bone Shirt Litig., discussion at 336 F. Supp. 2d 976, 997-1017 (D.S.D. 2004) (considering anecdotal evidence such as the formation of advocacy organizations, political parties targeting the minority group, get out the vote efforts, and politicians’ testimony as well as statistical evidence in determining cohesion and bloc voting); Blytheville Sch. Dist. Litig. (AR), discussion at 71 F.3d 1382, 1386 (8th Cir. 1995) (stating circuit will follow Third Circuit’s approach in *Jenkins v. Red Clay School District*); *Tenth Circuit*: Sanchez v. Colorado Litig. (CO), discussion at 97 F.3d 1303, 1321 (10th Cir. 1996) (adopting approach from *Jenkins*); *Eleventh Circuit*: Nipper Litig. (FL), discussion at 39 F.3d 1494, 1540 (11th Cir. 1994) (requiring evidence of “strong preference” before white candidate will be considered minority-preferred and permitting such evidence to include anecdotal evidence, polling and turnout data, and a review of appeals made during the campaign). *But see supra* note 134 (discussion of *City of Rome* litigation).
144. Sanchez-Bond Litig. (CO), discussion at 875 F.2d 1488, 1496 (10th Cir. 1989) (determining that white candidates are minority-preferred based on Hispanic influence over the candidate slating process); City of St. Louis Litig. (MO), discussion at 90 F.3d 1357, 1362 (8th Cir. 1996) (suggesting slating informs inquiry into minority-preferred candidates by stating: “Absent a showing that minority-preferred candidates are, for some reason, excluded from the ballot, it is a near tautological principle that the minority-preferred candidate ‘should generally be one able to receive [minority] votes.’ ”); *see also* Williams v. State Bd. of Elections Litig., discussion at 718 F. Supp. 1324, 1329-30 (N.D. Ill. 1989) (refusing to consider the slating process in *Gingles* inquiry as “turn[ing] the Court’s language on its head and would have it refer to circumstances explaining the defeat of the minority’s candidate, such as exclusionary slating”).
145. *See, e.g., City of Santa Maria Litig.* (CA), discussion at 160 F.3d 543, 549-50 (“[M]any of the extrinsic factors relied upon by the courts adopting the totality of the circumstances analysis do not necessarily bear a correlation with how all minority voters feel about a candidate, only how activist groups feel. Whether minority voters mobilized to support a white candidate, a factor considered relevant by the Third Circuit, only indicates how those minorities willing to become politically active feel about a candidate; not all minorities may have the time or inclination to take such steps, even though they support that candidate. A bright-line rule, on the other hand, is based on the premise ‘that the ballot box provides the best and most objective proxy for determining who constitutes a representative of choice.’ ” (citations omitted)); Niagara Falls Litig. (NY), discussion at 65 F.3d 1002, 1018 (2d Cir. 1995) (“We sympathize with these Circuits in their efforts to grapple with the often-conflicting requirements of the Voting Rights Act, but we believe that evaluating whether a person is, ‘as a realistic matter,’ minority-preferred—based on subjective indicators such as ‘anecdotal testimonial evidence’—is a dubious judicial task, and one that can degenerate into racial stereotyping of a high order. Questions such as whether a candidate, in a campaign, ‘addressed predominately minority crowds and interests’ suggest the existence of a racial political orthodoxy that courts should not legitimate, much less profess or promote.”).
146. *See, e.g., Second Circuit*: Niagara Falls Litig. (NY), discussion at 65 F.3d 1002, 1018-19 (2d Cir. 1995) (defining the minority-preferred candidate as the candidate who receives more than fifty percent of minority votes in the at-large, general election, while providing that courts need not consider such a candidate minority-preferred if either (1) another candidate received more than fifty percent of the minority vote in the primary and failed to reach the general election; or (2) another candidate received significantly higher support); *Sixth Circuit*: Cincinnati Litig. (OH), discussion at 40 F.3d 807, 810 n.1 (6th Cir. 1994) (stating “courts generally have understood blacks’ preferred candidates simply to be those candidates who receive the greatest support from black voters.”); *Ninth Circuit*: City of Santa Maria Litig. (CA), discussion at 160 F.3d 543, 552 (9th Cir. 1998) (adopting a rule that any candidate who received the largest plurality of minority votes was the minority-preferred candidate); Watsonville Litig. (CA), discussion at 863 F.2d 1407, 1416 (9th Cir. 1988) (“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.”).

147. Earlier cases in the Fourth Circuit allowed more room for subjective inquiries. *See City of Norfolk Litig.* (VA), discussion at 816 F.2d 932, 937 (4th Cir. 1987) (“The mere election of a candidate who appears to have received votes from more than fifty percent of minority ballots does not count as a minority electoral success, when each ballot may contain votes for more than one candidate... Each such situation must be reviewed individually to determine whether the elected candidates can be fairly considered as representatives of the minority community.”); *see also* 883 F.2d 1232, 1238 (4th Cir. 1989) (adding that in such a situation, “in addition to the bare statistics, it is appropriate to consider testimony revealing how political observers and the candidates themselves viewed the city’s claim that Howell and Staylor were the minority’s preferred candidates and representatives of choice”). More recently, however, the Fourth Circuit has moved closer to the Second Circuit’s approach. *See Alamance County Litig.* (NC), discussion at 99 F.3d 600, 615 (4th Cir. 1996) (“Where the first choice of black voters was successful, there is simply no reason to presume that the minority community has been unsuccessful in electing representatives of its choice. . . . we now hold that, in multi-seat elections in which voters are permitted to cast as many votes as there are seats, at the very least any candidate who receives a majority of the minority vote and who finishes behind a successful candidate who was the first choice among the minority voters is automatically to be deemed a black-preferred candidate, just like the successful first choice...Candidates who receive less than 50% of the minority vote, but who would have been elected had the election been held only among black voters, are presumed also to be minority-preferred candidates, although an individualized assessment should be made in order to confirm that such a candidate may appropriately be so considered.”); *see also* *Charleston County Litig.*, discussion at 316 F. Supp. 2d 268, 278 (D.S.C. 2003) (following Alamance County), and discussion at 318 F. Supp. 302, 310 (D.S.C. 2002) (focusing on the weight of the statistical data, rather than on defendants’ “anecdotal, deposition testimony of candidates who testify to being minority-preferred candidates”).
148. While courts in the Fifth and First Circuits do not expressly adhere to the *Jenkins v. Red Clay School District* approach, they consider some similar factors such as voting patterns, testimony from the community, and evidence of active minority support for a particular candidate. These courts do not state a presumption in favor of the minority being the preferred candidate, but they weigh elections with minority candidates more heavily. *See First Circuit: Black Political Task Force Litig.*, 300 F. Supp. 2d 291 (D. Mass. 2004) (relying on regression analyses of minority voting patterns to identify the minority-preferred candidate); *cf.* *City of Holyoke Litig.*, (MA), discussion at 72 F.3d 973, 988 (1st Cir. 1995) (considering only elections in which Hispanic candidates ran for office); *Fifth Circuit: LULAC v. Roscoe Indep. Sch. Dist. Litig.* (TX), discussion at 123 F.3d 843, 848 (5th Cir. 1997) (relying on testimony from minority residents); *LULAC v. Roscoe Indep. Sch. Dist. Litig.*, discussion at Civ. A. No. 1:94-CV-104-C, 1996 WL 453584, at *2 (N.D. Tex. May 14, 1996) (listing election results and political activism in favor of a particular candidate as potential indicators that the candidate was preferred by the minority community); *City of Dallas Litig.*, discussion at 734 F. Supp. 1317, 1393, 1395 (N.D. Tex. 1990) (suggesting that voting patterns and witness testimony can help identify the minority-preferred candidate); *Cf. LULAC-N.E. Indep. Sch. Dist. Litig.*, discussion at 903 F. Supp. 1071, 1092 (W.D. Tex. 1995) (explaining decision to discount results of Anglo v. Anglo races on the grounds that “such elections fail to provide minority voters with the choice of a minority candidate”).

The Seventh Circuit typically does not engage in any such inquiry analysis to identify the minority-preferred candidate. Rather Seventh Circuit courts typically assume that the minority candidate is the minority-preferred candidate. *See, e.g., Campuzano Litig.*, discussion at 200 F. Supp 2d 905, 914 (N.D. Ill. 2002) (finding that districts with between 50 and 60 percent minority voting age population are likely to perform for minorities in part because “evidence that African-American candidates enjoy greater support than white candidates within a district would suggest that the district provides African-Americans with effective opportunities to elect the candidate of their choice”); *City of Chicago Litig.* (IL), discussion at 141 F.3d 699, 702 (7th Cir. 1998) (dismissing arguments that white candidates in some areas with substantial minority populations are responsive to minority interests and explaining that “[i]t may be highly regrettable that a candidate’s race should matter to the electorate; but it does; and the cases interpreting the Voting Rights Act do not allow the courts to ignore that preference”); *Bradley v. Work Litig.* (IN), discussion at 154 F.3d 704, 710-11 (7th Cir. 1998) (finding that it is not clear that the third *Gingles* factor has been met because two black candidates won retention elections, without any discussion of whether those candidates were minority-preferred). Those cases that have considered the question, however, have relied on objective indicators of voting, even where there are other indicators of lack of access. *See, e.g., Williams v. State Bd. of Elections Litig.* (IL), discussion at 718 F. Supp. 1324, 1325-26 (7th Cir. 1989) (finding that white candidates that earned a majority of the minority vote were minority-preferred candidates in spite of evidence of discrimination in the candidate slating process); *see also, City of Chicago Heights Litig.*, discussion at 824 F. Supp. 786, 791 (N.D. Ill. 1993) (finding, in multi-member districts, candidates who receive

the majority of the vote are not minority-preferred where “other candidates, preferred by a significantly higher percentage of the minority community... were defeated in the same election”).

149. Blytheville Sch. Dist. Litig. (AR), 71 F.3d 1382 (8th Cir. 1995).
150. Clay County Bd. of Educ. Litig. (MO), discussion at 90 F.3d 1357, 1362 (8th Cir. 1996); *see also* City of Minneapolis Litig., discussion at No. 02-1139(JRT/FLN), 2004 U.S. Dist. LEXIS 19708, at *28-32 (D. Minn. Sept. 30, 2004) (noting the plaintiffs “did not otherwise explicitly identify candidates of choice or a methodology for making such a determination,” and therefore because plaintiffs failed to prove who the minority-preferred candidate was on an election-by-election basis, the court relied on the defendant’s statistical analysis which showed significant white cross-over votes.)
151. Hamrick Litig. (GA), 296 F.3d 1065 (11th Cir. 2002) (treating as minority-preferred candidate the candidate who received the majority of minority votes); *Davis v. Chiles Litig.* (FL), discussion at 139 F.3d 1414, 1417-18 (11th Cir. 1998) (considering white-on-white elections where blacks and whites supported different candidates rather than looking to subjective indications of minority support); *City of Rome Litig.* (GA), discussion at 127 F.3d 1355, 1377, 1379 n.9 (11th Cir. 1997) (holding that white candidates can be considered minority-preferred based on anecdotal evidence, turnout, polling data, and campaign appeals, but then assuming, in the absence of other information, that any white candidate receiving nearly as much of the vote as a black candidate is minority-preferred).
152. *Fourth Circuit*: *Alamance County Litig.* (SC), discussion at 99 F.3d 600, 614 (4th Cir. 1996) (presuming minorities to be minority-preferred candidates, looking only at election returns and requiring an “individualized assessment” of all candidates who “receive less than 50% of the minority vote, but who would have been elected had the election been held only among black voters.”); *Eleventh Circuit*: *City of Rome Litig.* (GA), discussion at 127 F.3d 1355, 1379 n.9 (11th Cir. 1997) (requiring typically a subjective assessment of the candidate’s support in the minority community, and holding that the Circuit will treat a white candidate as black-preferred if that candidate receives nearly as much support from the black community as does a black-preferred black candidate in that election, such that, in the absence of other information, support can be measured by the percentage of minority vote received).
153. *See First Circuit*: *City of Holyoke Litig.* (MA), discussion at 72 F.3d 973, 988 n. 8 (1st Cir. 1995) (“[E]lections in which minority candidates run are often especially probative on the issue of racial bloc voting.”); *Second Circuit*: The Second Circuit does not explicitly place more weight on elections with minority candidates. *See Niagara Falls Litig.* (NY), discussion at 65 F.3d 1002, 1018-19 (2d Cir. 1995) (holding that a white candidate may be minority-preferred and adopting a race-blind bright line rule for the Second Circuit); *Butts v. NYC Litig.*, discussion at 614 F. Supp. 1527, 1546-47 (S.D.N.Y. 1985), *rev’d on other grounds*, 779 F.2d 141 (2d Cir. 1985) (considering only black-white elections); *Third Circuit*: *Jenkins v. Red Clay Sch. Dist. Litig.* (DE), discussion at 4 F.3d 1103, 1128 (3d Cir. 1993) (noting that elections involving only white candidates are “much less probative of racially polarized voting” such that plaintiffs need not present evidence on these elections “if they do not believe those elections are probative.”); *Fourth Circuit*: In general, the Fourth Circuit does not place more weight on racially contested elections. *See, e.g., Alamance County Litig.* (NC), discussion at 99 F.3d 600, 608, 610 (4th Cir. 1996) (holding that because the minority-preferred candidate may sometimes be a white candidate, district courts in determining whether such candidates are “usually” defeated “must consider, at a minimum, a representative cross-section of elections, and not merely those in which a minority candidate appeared on the ballot, at least where elections in which minorities were on the ballot do not constitute a substantial majority of the total number of elections,” not deciding if or to what extent white-on-white elections were entitled to less weight: “[i]t seems to us, however, that if white-white elections are entitled to less weight, then they are so only on the question of whether racial polarization exists, not on the question of whether, because of that polarization, minority-preferred candidates are usually defeated.”); *Fifth Circuit*: *Gretna Litig.* (LA), discussion at 834 F.2d 496, 503-04 (5th Cir. 1987) (“*Gingles* is properly interpreted to hold that the race of the candidate is in general of less significance than the race of the voter—but only within the context of an election that offers voters the choice of supporting a viable minority candidate... [t]he various *Gingles* concurring and dissenting opinions do not consider evidence of elections in which only whites were candidates. Hence, neither do we.”). Although cases immediately following *Gretna* only considered elections in which a viable minority candidate ran, *see e.g., Baytown Litig.* (TX), discussion at 840 F.2d 1240, 1245 (5th Cir. 1988), later Fifth Circuit cases have considered white-on-white elections, though still viewing them as less probative. *See, e.g. Magnolia Bar Ass’n Litig.* (MS), discussion at 994 F.2d. 1143, 1149 (5th Cir. 1993) (stating that white-white elections will be considered if evidence is presented, but that black-white elections are more probative); *Sixth Circuit*: *Cincinnati Litig.* (OH), discussion at 40 F.3d 807, 813 (6th Cir. 1994) (holding the race of the candidate can matter); *City of Jackson Litig.*, discussion at 683 F. Supp. 1515, 1531 (W.D. Tenn. 1988) (giving more weight to elections involving black and white candidates); *cf. Cousin Litig.* (TN), discussion at 145 F.3d 818, 825 (6th Cir. 1998) (criticizing plaintiffs’ expert analysis because it excluded white-

- on-white elections); Seventh Circuit: *City of Indianapolis Litig.* (IN), 976 F.2d 357 (7th Cir. 1992) (finding no racial bloc voting where black Republicans are elected because it will not “disregard the race of the victors” but acknowledging that the minority community may prefer another candidate); *Eighth Circuit: Texarkana Litig.*, 861 F. Supp. 756 (W.D. Ark. 1992) (finding racially polarized voting without examining elections involving only white candidates because neither side presented this evidence); *Jeffers Litig.*, discussion at 730 F. Supp. 196, 209 (E.D. Ark. 1989) (“Where two white candidates are running, for example, black voters can hold the balance of power. We do not wish to minimize this aspect of political reality, but we do not believe it has sufficient weight to negate the clear proof of polarization... White voters, in short, can elect white candidates against black opposition, but black voters cannot elect black candidates against white opposition, with insignificant exceptions.”); *Smith-Crittenden County Litig.*, 687 F. Supp. 1310 (E.D. Ark. 1988) (considering that minority candidates lose even if white minority-preferred candidates win evidence of racially polarized voting); *Ninth Circuit: Old Person Litig.* (MT), discussion at 230 F.3d 1113, 1127 (9th Cir. 2000) (“contests between white and Indian candidates . . . are most probative of white bloc voting.”); *Santa Maria Litig.*, discussion at 160 F.3d 543, 553 (9th Cir. 1998) (“minority vs. non-minority election is more probative of racially polarized voting than a non-minority vs. non-minority election”); *Tenth Circuit: Sanchez-Colorado Litig.* (CO), discussion at 97 F.3d 1303, 1307-08 (10th Cir. 1996) (adopting *Jenkins v. Red Clay School District* methodology); *Sanchez-Bond Litig.* (CO), discussion at 875 F.2d 1488, 1495 (10th Cir. 1989) (holding the minority-preferred candidate does not have to be a minority and elections with only white candidates should be given “such weight as the circumstances warrant”); *Eleventh Circuit: Southern Christian Leadership Conference Litig.* (AL), discussion at 56 F.3d 1281, 1293 (11th Cir. 1995) (upholding district court decision to consider elections generally, but giving greater weight to white-on-black elections, as a “searching and meaningful evaluation of all the relevant evidence”); *see also Hamrick Litig.* (GA), discussion at 296 F.3d 1065, 1076, 1078 (11th Cir. 2002) (finding that district courts may, but are not required to, give additional weight to elections involving minority candidates and upholding the decision of a district court assigning equal weight to elections involving minority candidates where all such elections involved two minority candidates running against each other).
154. *See, e.g., Black Political Task Force Litig.*, discussion at 300 F. Supp. 2d 291, 304 (D. Mass. 2004) (“[T]he choice presented to minority voters in an election contested only by two white candidates is somewhat akin to offering ice cream to the public in any flavor, as long as it is pistachio.”); *City of Chicago Litig.* (IL), discussion at 141 F.3d 699, 703 (7th Cir. 1998) (recognizing that white aldermen may be responsive to blacks, but asserting that “blacks would prefer to elect black aldermen”); *Metro Dade County Litig.*, discussion at 805 F. Supp. 967, 984 (S.D. Fla. 1992) (finding that “when elections do not include minority candidates, some Non-Black candidates will receive more of the Black vote than other candidates, but this does not automatically make that candidate the minority-preferred candidate” and analogizing this “strained choice” to “Henry Ford’s statement that ‘any customer can have a car painted any color he wants so long as it is Black.’”); *City of Dallas Litig.*, discussion at 734 F. Supp. 1317, 1388 (N.D. Tex. 1990) (“[W]hen there are only white candidates to choose from, it is virtually unavoidable that certain white candidates would be supported by a large percentage of...black voters” (internal citations omitted)); *cf. Old Person Litig.* (MT), discussion at 230 F.3d 1113, 1126 (9th Cir. 2000) (in a claim brought by Native Americans, excluding evidence of white-on-white elections where the minority-preferred candidate was the same as the white preferred candidate because those elections did not “touch[] on issues of heightened concern to the [minority] community”).
155. *See LULAC-N.E. Indep. Sch. Dist. Litig.*, discussion at 903 F. Supp. 1071, 1092 (W.D. Tex. 1995) (noting that races that include a minority candidate “provide the most direct test of the hypothesis that race is a factor in the election system under scrutiny”); *City of Columbia Litig.*, discussion at 850 F. Supp. 404, 416 (D.S.C. 1993) (“If the whites who finished first among blacks are, however, considered the blacks’ candidates of choice, then blacks’ candidates of choice have not usually been defeated. Indeed, their choices in at-large contests have been elected three out of three times for mayor and four of eight times for the at-large seats. Thus, whether blacks’ candidates of choice have usually been defeated depends upon whether the white candidates count as ‘candidates of choice.’”); *Jeffers Litig.*, 730 F. Supp. 196 (E.D. Ark. 1989) (considering that in all white elections the African-American vote holds the balance of power, but finding polarization because minority candidates regularly lose); *Smith-Crittenden County Litig.*, 687 F. Supp. 1310 (E.D. Ark. 1988) (finding racially polarized voting because while the minority-preferred candidate sometimes won in all-white elections, s/he never won when the candidate was a minority).
156. *See Smith-Crittenden County Litig.*, discussion at 687 F. Supp. 1310, 1316, 1317 (E.D. Ark. 1988) (finding where no black candidate had ever been elected, in spite of nine recent candidacies supported by an average of 89% of the black vote, that “there is evidence that white candidates preferred by black voters sometimes win in elections involving only whites. The evidence of polarized voting in State Representative elections involving blacks and whites is so strong, however, that it cannot be overcome even when all reasonable inferences are accorded to the

- evidence of elections involving only white candidates.”); *City of LaGrange Litig.*, 969 F. Supp. 749 (N.D. Ga. 1997) (only one black has won a contested election when not running as an incumbent, but the candidate receiving the majority of the minority vote was elected in 6 of the last 10 elections.); *Southern Christian Leadership Conference Litig. (AL)*, 56 F.3d 1281 (11th Cir. 1995) (finding that most blacks vote for the winning candidate in over 75% of elections, but black candidates rarely win); *City of Starke Litig.*, discussion at 712 F. Supp. 1523, 1530 (M.D. Fla. 1989) (finding racial bloc voting in black-on-white elections even though the candidate receiving the majority of the black vote won 78% of the time); *City of Columbia Litig.*, discussion at 850 F. Supp. 404, 416 (D.S.C. 1993) (“If the whites who finished first among blacks are, however, considered the blacks’ candidates of choice, then blacks’ candidates of choice have not usually been defeated. Indeed, their choices in at-large contests have been elected three out of three times for mayor and four of eight times for the at-large seats. Thus, whether blacks’ candidates of choice have usually been defeated depends upon whether the white candidates count as ‘candidates of choice.’ ”); *Nipper Litig.*, discussion at 795 F. Supp. 1525, 1534, 1548 (M.D. Fla. 1992) (All six black candidates have lost, but blacks vote for the winner 68% of the time.); *Jeffers Litig.*, 730 F. Supp. 196 (E.D. Ark. 1989) (considering that in all white elections the African-American vote holds the balance of power, but finding polarization because minority candidates regularly lose).
157. *See, e.g., Perry Litig.*, discussion at 298 F. Supp. 2d 451, 478 (E.D. Tex. 2004) (highlighting evidence gleaned from primary elections where minority voters “allegiance is free of party affiliation”); *Black Political Task Force Litig.*, discussion at 300 F. Supp. 2d 291, 305-06 (D. Mass. 2004) (noting that general elections in Boston are not helpful to the racially polarized voting analysis because the vast majority of voters vote Democratic); *Anthony Litig.*, 35 F. Supp. 2d 989 (E.D. Mich. 1999); *Cousin Litig. (TN)*, 145 F.3d 818 (6th Cir. 1998); *LULAC v. Clements Litig. (TX)*, discussion at 999 F.2d 831, 884 (5th Cir. 1993) (relying on evidence from the Democratic primary, “where party affiliation plays no part,” to refute plaintiff’s claim that racially motivated voting accounted for black Democrats’ failure to achieve the electoral success of their white counterparts); *Chattanooga Litig.*, 722 F. Supp. 380 (E.D. Tenn. 1989); *City of Starke Litig.*, discussion at 712 F. Supp. 1523, 1534 (M.D. Fla. 1989) (discrediting testimony from defendant’s expert because he failed to consider a number of primary elections in a “heavily Democratic community” where “it would be expected that in general elections both white and black voters would register as Democrats and would generally vote for the same Democratic candidate”); *County of Big Horn Litig.*, discussion at 647 F. Supp. 1002 (D. Mont. 1986).
 158. *See, e.g., City of Starke Litig.*, 712 F. Supp. 1523 (M.D. Fla. 1989); *Black Political Task Force Litig.*, 300 F. Supp. 2d 291, 305-06 (D. Mass. 2004).
 159. *See Niagara Falls Litig. (NY)*, discussion at 65 F.3d 1002, 1019 (2d Cir. 1995) (“When a candidate receives support from 50% or more of minority voters in the general election, a court need not treat the candidate as minority-preferred when another candidate receiving greater support in the primary failed to reach the general election.”); *see also Nash Litig.*, 797 F. Supp. 1488 (W.D. Mo. 1992). *But see Alamance County Litig. (NC)*, discussion at 99 F.3d 600, 616 (4th Cir. 1996) (“The statute thus requires that minorities have an equal opportunity to participate not only in primary elections but also in general elections. From this, we believe it follows that the results in these two phases of the single election cycle must be separately considered and analyzed, and, in recognition of this statutory requirement, that *Gingles*’ third precondition can be satisfied by proof that, in either the primary or the general election, the minority-preferred candidate is usually defeated by white bloc voting. Not to separately consider primary and general elections risks masking regular defeat in one of these phases with repeated successes in the other, and thereby misperceiving a process that is palpably in violation of the Voting Rights Act, as not violative of the Act at all.”).
 160. *See, e.g., Black Political Task Force Litig.*, discussion at 300 F. Supp. 2d 291, 305-06 (D. Mass. 2004) (discounting evidence of white support for a minority candidate in the general election because the candidate represented the dominant political party in the area); *Garza v. Los Angeles Litig. (CA)*, 918 F.2d 763 (9th Cir. 1990) (excluding Republican Primary results because all Hispanic candidates who had won in the district did so running as Democrats). This approach attempts to address the same concerns that the courts address in limiting consideration of white-on-white elections in single party districts. *See supra* note 156 (discussing the impact of giving equal weight to white-on-white elections).
 161. *Black Political Task Force Litig.*, 300 F. Supp. 2d 291, 306 (D. Mass. 2004).
 162. *See supra* note 91; *see also City of Baytown Litig. (TX)*, discussion at 840 F.2d 1240, 1244-45 (5th Cir. 1988) (concluding that, where two minorities make up the minority group, “the proper standard is the same as *Gingles*: whether the minority group together votes in a cohesive manner for the minority candidate.”); *France Litig.*, discussion at 71 F. Supp. 2d 317, 327 (S.D.N.Y. 1999) (finding political cohesion among black and Latino voters despite testimony from plaintiffs’ expert witness that black and Latino voters were “more likely than not to support different candidates in primary elections”); *Hardee County Litig. (FL)*, discussion at 906 F.2d 524, 526-27 (11th Cir. 1990) (assuming a coalition claim could have passed *Gingles II* if the plaintiffs had proven that black and

- Hispanic voters in Hardee County were politically cohesive, but concluding that “[o]ur review of the record shows that the class offered little evidence that blacks and hispanics in Hardee County worked together and formed political coalitions”); Perry Litig., discussion at 298 F. Supp. 2d 451, 478 (E.D. Tex. 2004) (“Here, there is no serious dispute but that Blacks and Hispanics do not vote cohesively in primary elections, where their allegiance is free of party affiliation.”); Pomona Litig. (CA), discussion at 883 F.2d 1418, 1426 (9th Cir. 1989) (considering the Hispanics and blacks voted differently in the primaries and finding no political cohesion); *but see* Kent County Litig. (MI), discussion at 76 F.3d 1381, 1386 (6th Cir. 1996) (en banc).
163. *See* Rodriguez Litig., discussion at 308 F. Supp. 2d 379, 389, 421 (S.D.N.Y. 2004) (primaries more probative in determining black/Latino cohesiveness since members of both groups generally vote for Democrats); County of Big Horn Litig., 647 F. Supp. 1002 (D. Mont. 1986) (refusing to consider defendant’s argument that it was party, not race because defendant did not evaluate the primary elections where party would not be an issue); *see also* Perry Litig., discussion at 298 F. Supp. 2d 451, 478 (E.D. Tex. 2004); Page Litig., discussion at 144 F. Supp. 2d 346 (D.N.J. 2001) (considering only Democratic primaries in determining racial bloc voting).
164. City of Santa Maria Litig. (CA), discussion at 160 F.3d 543, 552 (9th Cir. 1998) (“[w]hether minority voters mobilized to support a white candidate, a factor considered relevant by the Third Circuit only indicates how those minorities willing to become politically active feel about a candidate; not all minorities may have the time or inclination to take such steps, even though they support that candidate. A bright-line rule, on the other hand, is based on the premise ‘that the ballot box provides the best and most objective proxy for determining who constitutes a representative of choice.’” (citations omitted)); Nash Litig., discussion at 797 F. Supp. 1488, 1503 n.29 (W.D. Mo. 1992) (considering primary elections but noting “[t]here was some testimony to the effect that black voters, given a choice, would vote only for black candidates, and that a white candidate receiving a majority of the black vote was probably not a ‘true’ preference. There was also testimony indicating that if a white person received a majority of the black vote, any black candidates probably were not viable candidates. We refuse to impart these individual witnesses’ views to black citizens as a whole. Absent some indication that a particular white candidate was truly not preferred despite receiving over 65% of the black vote, or that a particular black candidate was not viable, we will not assume that the voters in a particular political contest would have voted for someone other than the person they voted for, nor will we assume that a white candidate receiving over 65% of the black vote was not preferred by the minority voters.”).
165. City of Rome Litig. (GA), 127 F.3d 1355, 1378-79 (11th Cir. 1997) (following *De Grandy* reasoning that the Voting Rights Act does not exempt minority candidates from the requirement to “pull, haul, and trade” because if black preferred candidates must represent the needs of the black community “without regard for the white community, the white community is quite naturally going to vote against the black preferred candidates almost every time”); Alamance County Litig. (NC), discussion at 99 F.3d 600, 615, (4th Cir. 1996) (rejecting the proposition that the success of a minority-preferred candidate in a general election is entitled to less weight when a candidate with significantly more minority support was defeated in the primary, the court stated: “Such a view is grounded in the belief that minority voters essentially take their marbles and go home whenever the candidate whom they prefer most in the primary does not prevail, a belief about minority voters that we do not share. And such a view ignores altogether the possibility that primary election winners will become the minority’s preferred candidate during the general election campaign, or that where, as here, the overwhelming majority of blacks vote in the Democratic primary, that a Republican could in fact become the black-preferred candidate in the general election by addressing himself to issues of interest to the minority community in a way that appeals to them as participants in the political process.”).
166. 478 U.S. 30, 64 (1986).
167. *Id.* at 100 (“Evidence that a candidate preferred by the minority group . . . was rejected by white voters for reasons other than those which made the 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.”).
168. *See, e.g., First Circuit:* City of Holyoke Litig. (MA), discussion at 72 F.3d 973, 983 (1st Cir. 1995) (stating that satisfying the *Gingles* factors gives rise to inference of racial animus; if defendants present evidence that facts other than race caused the polarization, the court must still “determine whether, based on the totality of the circumstances (including the original inference and the factual predicate that undergirds it), the plaintiffs have proven that the minority group was denied meaningful access to the political system on account of race.”); *cf.* City of Holyoke Litig., discussion at 960 F. Supp. 515, 521-25 (D. Mass. 1997) (Upon remand, the district court pursued its causation inquiry under the third prong of *Gingles* rather than under the totality of the circumstances analysis.); *Second Circuit:* Town of Hempstead Litig. (NY), discussion at 180 F.3d 476, 493 (2d Cir. 1999) (“We think the best reading of the several opinions in *Gingles* . . . is one that treats causation as irrelevant in the inquiry into the three *Gingles* preconditions . . . but relevant in the totality of circumstances inquiry”); *see also* Rodriguez Litig., discussion at 308 F. Supp. 2d 346, 393 (S.D.N.Y. 2004) (acknowledging that *Town of Hempstead* controls

but warning that, in the context of such a rule, relaxing the first *Gingles* precondition may cause the third precondition to be “effectively eviscerated”); *Fourth Circuit*: Charleston County Litig. (SC), discussion at 365 F.3d 341, 348-49 (4th Cir. 2004) (“Legally significant” white bloc voting thus refers to the frequency with which, and not the reason why, whites vote cohesively for candidates who are not backed by minority voters,” but “the reason for polarized voting is a critical factor in the totality analysis”); Alamance County Litig. (NC), discussion at 99 F.3d 600, 604 (4th Cir. 1996) (“[T]he best reading of the several opinions in *Gingles*... is one that treats causation as irrelevant in the inquiry into the three *Gingles* preconditions...but relevant in the totality of the circumstances inquiry.”); *Fifth Circuit*: Perry Litig., discussion at 298 F. Supp. 2d 451, 478 (E.D. Tex. 2004) (requiring demonstration of causation in minority political cohesiveness inquiry); Attala County Litig. (MS), discussion at 92 F.3d 283, 290 (5th Cir. 1996) (considering causation as part of *Gingles*, but holding that the district court erred in placing the burden of disproving that factors other than race caused the polarization); LULAC v. Clements Litig. (TX), 999 F.2d 831 (5th Cir. 1993) (requiring consideration of causation under the third *Gingles* precondition); *Sixth Circuit*: The Sixth Circuit has never squarely addressed causation on the circuit level, but has affirmed a district court case that found a lack of racial bloc voting in part on causation grounds without addressing the causation argument. See Mallory-Hamilton County Litig., 38 F. Supp. 2d 525 (S.D. Ohio 1997) (“In this case, numerous factors, other than race, explain losses at the polls by particular minority candidates. . . Two factors in particular, “partisanship” and “incumbency,” accurately explain electoral outcomes in numerous judicial elections involving African-American candidates.”) *aff’d* at 173 F.3d 377 (6th Cir. 1999); see also Cincinnati Litig. (OH), discussion at 40 F.3d 807, 813 n2. (6th Cir. 1994) (“Given [the lack of white bloc voting in this case], we need not consider whether a showing that the minority-preferred candidates’ lack of success is “somehow tied to race,”...is a prerequisite to a finding of “legally significant white bloc voting.” (citations omitted to *LULAC v. Clements*, 999 F.2d 831, 850-63 (5th Cir. 1993) and *Gingles*, 478 U.S. at 56)); *Seventh Circuit*: Milwaukee NAACP Litig. (WI), discussion at 116 F.3d 1194, 1199 (7th Cir. 1997) (holding that “a district judge...should not assign to plaintiffs the burden of showing *why* the candidates preferred by black voters lost; it is enough to show *that* they lost, if white voters disapproved these candidates en masse” but that it was proper for the district court to consider non-racial explanations for election outcomes though “it would be best for district judges to postpone this kind of inquiry to their consideration of the totality of the circumstances”); City of Indianapolis Litig. (IL), discussion at 976 F.2d 357, 361 (7th Cir. 1992) (stating that the victory of black Republicans in “Marion County illustrates Justice White’s observation, 478 U.S. at 83, that losses by the candidates black voters prefer may have more to do with politics than with race.”); *Eighth Circuit*: While the Eighth Circuit has never held that causation should be a part of the analysis and even defined racially polarized voting in terms of correlation, see, e.g., Little Rock Litig. (AR), discussion at 56 F.3d 904, 910 (8th Cir. 1995) (rejecting Section 2 claim based on totality review while noting that “racially polarized voting is without doubt present to a degree,” that the presence of “a high *correlation* between the number of voters in a precinct and the number of votes cast for African-American candidates” while citing “some decisive cross-over voting of whites for African-American candidates”), district courts have considered causation. See, e.g., Bone Shirt Litig., discussion at 336 F. Supp. 2d 976, 1008 (D.S.D. 2004) (“While causation may be relevant to the totality-of-circumstances review, it is not relevant in the inquiry into the three *Gingles* factors”); Democratic Party of Arkansas Litig., discussion at 686 F. Supp. 1365 (considering whether low voter turnout is why the candidates lost); Smith-Crittenden County, 687 F. Supp. 1310 (E.D. Ark. 1988) (calling the materiality of evidence regarding other reasons voters may have voted as they did, specifically incumbency, “questionable”); cf. Texarkana Litig., 861 F. Supp. 756 (W.D. Ark. 1992) (refusing to consider defendant’s causation argument because no evidence was presented on point); *Tenth Circuit*: Sanchez-Colorado Litig. (CO), discussion at 97 F.3d 1303, 1307-08 (10th Cir. 1996) (“[A]t the threshold, we are simply looking for proof of the correlation between the race of the voter and the defeat of the minority’s preferred candidate. We do not, therefore, reject multivariate regression analysis but prefer to reserve its use, if at all, to the more global picture plaintiffs must establish.”); Sanchez-Bond Litig. (CO), discussion at 875 F.2d 1488, 1493 (10th Cir. 1989) (“we agree with appellants that a court may not explain away evidence of racial bloc voting by finding that such voting is caused by underlying differences between the minority and white population. The reasons why minority voters may vote alike is unimportant in determining whether in fact the minority group votes as a bloc. Racially polarized voting, which indicates political cohesion, exists when there is a consistent relationship between the race of the voter and the way in which the voter votes or, in other words, where minority voters and white voters vote differently”); see also Alamosa County Litig., discussion at 306 F. Supp. 2d 1016, 1039-40 (D. Colo. 2004) (noting in the totality of the circumstances review of racial polarization that “No witness testified as to how he or she voted or why, not a single witness testified that he or she did not participate in the electoral process due to a perception of futility based upon ethnic discrimination. To the contrary and without exception, Hispanic witnesses demonstrated their extensive knowledge about and active participation in the political process in Alamosa County. In discussing election outcomes, they assessed the effect

- of incumbency, candidate qualifications and election strategy.”); *Eleventh Circuit*: Southern Christian Leadership Litig. (AL), discussion at 56 F.3d 1281, 1293-94 (11th Cir. 1995) (finding ample evidence “that factors other than race, such as party politics and availability of qualified candidates, were driving the election results and that racially polarized voting did not leave minorities with ‘less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.’”). *But cf.* City of Rome Litig. (GA), 127 F.3d 1355 (11th Cir. 1997) (adopting verbatim district court’s finding that (1) plaintiffs need not “prove racism determines the voting choices of the white electorate in order to succeed in a voting right cases” and that (2) it was nevertheless “necessary to evaluate the level of racism in the electorate in the instant case” to gauge the relevance of appointment and incumbency was to minority electoral success).
169. *Third Circuit*: Red Clay Sch. Dist. Litig. (DE), discussion at 4 F.3d 1103, 1124 n.19 (3d Cir 1993) (finding no need to reach the “difficult question of what evidentiary weight, if any, should be given the election of minority candidates who are not the minority voters’ candidate of choice” while noting division on this issue in *LULAC v. Clements*); *D.C. Circuit*: In the two published cases from the District of Columbia, the plaintiffs failed to allege racial bloc voting, and thus the court did not confront this issue. Kingman Park Litig., discussion at 348 F.3d 1033, 1042 (D.C. Cir. 2003); Howard Litig., Civ.A. No. 93-900 SSH, 1994 WL 118211 (D.D.C. Mar. 31, 1994).
 170. *See* Blaine County Litig. (MT), discussion at 363 F.3d 897, 912 (9th Cir. 2004) (rejecting the argument that plaintiffs must show racial bias among the white bloc suggesting such a requirement “would be divisive and would place an impossible burden on the plaintiffs”); *see also* City of Santa Maria Litig. (CA), discussion at 160 F.3d 543, 558 (9th Cir. 1998) (rejecting that plaintiffs must prove an intent to moot pending litigation when excluding a minority candidate victory under the “special circumstances” doctrine because of the pending litigation). *But see* Brief for the United States in Opposition to Cert., *Blaine County v. United States*, 125 S. Ct. 1824 (2005) No. 01-35611, 2005 WL 562201 (Feb. 9, 2005) (characterizing Ninth Circuit’s decision in *Blaine County* as applying well-established rule that Section 2 does not require a showing of racial animus, and arguing that *Blaine County* raises no conflict with either *LULAC v. Clements* or *Nipper*).
 171. *See* *LULAC v. Clements* Litig. (TX), 999 F.2d 831, 850 (5th Cir. 1993) (en banc) (“Unless the tendency among minorities and whites to support different candidates, and the accompanying losses by minority groups at the polls, are somehow tied to race... plaintiffs’ attempt to establish legally significant white bloc voting, and thus their vote dilution claim under § 2, must fail.”).
 172. *See, e.g.*, *Nipper* Litig. (FL), discussion at 39 F.3d 1494, 1525 (11th Cir. 1994); *City of Holyoke* Litig. (MA), discussion at 72 F.3d 973, 983 (1st Cir. 1995) (noting that *Gingles* preconditions “rise to an inference that racial bias is operating through the medium of the targeted electoral structure to impair minority political opportunities.”).
 173. *City of Holyoke* Litig. (MA), discussion at 72 F.3d 973, 983 (1st Cir. 1995). *See also* *Nipper* Litig. (FL), discussion at 39 F.3d 1494, 1514-15 (11th Cir. 1994) (noting that “the existence of [the *Gingles*] factors, and a feasible remedy, generally will be sufficient to warrant relief”).
 174. *Compare*, for example, *City of Holyoke* Litig. (MA), discussion at 72 F.3d 973, 983 (1st Cir. 1995) (examining causation in the totality of circumstances of review and stating that plaintiffs need not “affirmatively . . . disprove every other possible explanation for racially polarized voting”) with *Attala County* Litig., (MS) discussion at 92 F.3d 283, 290 (5th Cir. 1996) (considering causation as part of *Gingles*, but holding that the district court erred in placing the burden of disproving that factors other than race caused the polarization).
 175. *See, e.g.*, *Mallory-Ohio* Litig., discussion at 38 F. Supp. 2d 525, 539, 575-76 (S.D. Ohio 1997) (“In this case, numerous factors, other than race, explain losses at the polls by particular minority candidates... Two factors in particular, ‘partisanship’ and ‘incumbency,’ accurately explain electoral outcomes in numerous judicial elections involving African-American candidates.”); *City of Holyoke* Litig. (MA), discussion at 72 F.3d 973, 983 (1st Cir. 1995) (“[O]nce the defendant proffers enough evidence to raise a legitimate question in regard to whether nonracial factors adequately explain racial voting patterns, the ultimate burden of persuading the factfinder that the voting patterns were engendered by race rests with the plaintiffs.”). *But see* *Smith-Crittenden County* Litig., discussion at 687 F. Supp. 1310, 1317 (E.D. Ark. 1988) (“The defendants have offered evidence of other reasons, such as incumbency, for the choices made by voters in the district. The materiality of this evidence is questionable. In any event, we assume for present purposes that this evidence may have some bearing on whether the particular election results on which we focus stem from the multimember structure of the district. We find this evidence insufficient to compel a different result in this case, given the sharp polarization in races involving black candidates for State Representative.” (citation omitted)).
 176. *See e.g.*, *First Circuit*: *City of Holyoke* Litig., 960 F. Supp. 515 (D. Mass. 1997); *Second Circuit*: *Town of Hempstead* Litig. (NY), discussion at 180 F.3d 476, 493 (2d Cir. 1999) (holding that causation was appropriately considered in the totality of the circumstances); *Town of Babylon* Litig., discussion at 814 F. Supp. 843, 881-84 (E.D.N.Y. 1996) (considering causation as part of the third *Gingles* precondition and finding that party not race

- explained the voting polarization). Plaintiffs in the Second Circuit have not clearly lost on causation since the *Town of Hempstead* litigation. 180 F.3d 476 (2d Cir. 1999). *Fourth Circuit*: *City of Columbia Litig.*, discussion at 850 F. Supp. 404, 418, 420 (D.S.C. 1993) (not explicitly mentioning causation but concluding that plaintiffs' evidence was "simply not sufficient to overcome the evidence that the blacks who lost owe their losses as much to blacks' failure to vote more cohesively or to turn out at all as to failure to achieve white support"); *Fifth Circuit*: *Perry Litig.*, discussion at 298 F. Supp. 2d 451, 478 (E.D. Tex. 2004) (concluding that minority groups are not politically cohesive because they "do not vote cohesively in primary elections, where their allegiance is free of party affiliation"); *Bexar County Litig.*, 385 F.3d 853 (5th Cir. 2004) (requiring more than mere correlation between minority electoral success and a minimum threshold of minority voter registration); *City of Cleveland Litig.*, discussion at 297 F. Supp. 2d 901, 907 (N.D. Miss. 2004) (finding where plaintiffs relied on the defeat of three minority candidates that they were defeated "not only due to any white bloc voting that may have taken place, but also because they failed to receive sufficient support in the majority-minority wards" and concluding that they had failed to satisfy the third *Gingles* precondition); *NAACP v. Fordice Litig. (MS)*, discussion at 252 F.3d 361, 370-71 (5th Cir. 2001) (where plaintiffs established racial bloc voting and all three *Gingles* factors but lost on minority electoral success, finding that the case came down to whether the election of two African-American supreme court justices could be explained by special circumstances); *Sixth Circuit*: *Mallory-Ohio Litig.*, discussion at 38 F. Supp. 2d 525, 539 (S.D. Ohio 1997) ("The 'clear partisan patterns' reflected in Dr. King's Report suggest that party affiliation is a, if not *the*, predominant factor in Ohio judicial elections."); *Seventh Circuit*: *Bandemer Litig.*, discussion at 603 F. Supp. 1479, 1489-90 (S.D. Ind. 1984) (finding that minorities in Indiana vote as a bloc for the Democrat candidate and that therefore "the voting efficacy of [minorities] was impinged upon because of their politics and not because of their race."); *Tenth Circuit*: *Alamosa County Litig.*, discussion at 306 F. Supp. 2d 1016, 1039-40 (D. Colo. 2004) ("The anecdotal evidence does nothing to buttress the statistical conclusions as to polarization. No witness testified as to how he or she voted or why, not a single witness testified that he or she did not participate in the electoral process due to a perception of futility based upon ethnic discrimination."); *Eleventh Circuit*: *Hamrick Litig. (GA)*, discussion at 296 F.3d 1065, 1078 (11th Cir. 2002); *City of Rome Litig. (GA)*, discussion at 127 F.3d 1355, 1083 (11th Cir. 1997); *Southern Christian Leadership Litig. (AL)*, discussion at 56 F.3d 1281, 1293-94 (11th Cir. 1995); *Nipper Litig. (FL)*, 39 F.3d 1494 (11th Cir. 1994); *Liberty County Comm'rs Litig. (FL)*, discussion at 899 F.2d 1012 (11th Cir. 1990).
177. *But see* *Charleston County Litig.*, discussion at 365 F.3d 341, 353 (4th Cir. 2004) (holding that it was not clearly erroneous for the district court to conclude that "even controlling for partisanship in Council elections, race still appears to play a role in the voting patterns of white and minority voters in Charleston County."); *Town of Hempstead Litig. (NY)*, discussion at 180 F.3d 476, 495-96 (2d Cir. 1999) (rejecting defendants' argument that minority-preferred candidates were defeated because of party not race, and finding that, even if minorities were Republicans, they would not have been able to elect their candidates of choice because of the unique slating process of the town's Republican Party, which effectively excluded minorities).
178. *See, e.g., Cano Litig.*, discussion at 211 F. Supp. 2d 1208, 1235-42 (C.D. Cal. 2002); *Aldasoro v. Kennerson Litig.*, discussion at 922 F. Supp. 339, 343-63 (S.D. Cal. 1995). It remains possible to prove minorities can vote as part of the white bloc. *See e.g., Garza v. Los Angeles Litig. (CA)*, 918 F.2d 763 (9th Cir. 1990); *Watsonville Litig. (CA)*, 863 F.2d 1407 (9th Cir. 1988); *Gingles Litig. (NC)*, discussion at 478 U.S. 30, 57, n.26 (1986) (recognizing a list of potential special circumstances, "such as the absence of an opponent, incumbency, or the utilization of bullet voting...this list of special circumstances is illustrative, not exclusive"). Under the facts of the case, *Gingles* considered "an election that occurred after the instant lawsuit had been filed—and [held the district court] 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.'" *Gingles Litig.*, discussion at 478 U.S. at 76.
179. *See, e.g., Hamrick Litig. (GA)*, 296 F.3d 1065 (11th Cir. 2002) (using incumbency to dismiss the loss of the minority-preferred candidate); *Fort Bend Indep. Sch. Dist. (TX)*, discussion at 89 F.3d 1205, 1217 (5th Cir. 1996) (discounting a minority loss because the candidate lost to an incumbent).
180. *See, e.g., Rodriguez Litig.*, discussion at 308 F. Supp. 2d 346, 422 (S.D.N.Y. 2004) (noting that it would be possible to find anomalies in most elections and refusing to discount three elections because of low turnout, a little known candidate, and controversy); *cf. Cincinnati Litig. (OH)*, discussion at 40 F.3d 807, 814 (6th Cir. 2000) ("incumbency must play an unusually important role in the election at issue; a contrary rule would confuse the ordinary with the special, and thus 'make practically every American election a "special circumstance."'); *Alamance County Litig. (NC)*, discussion at 99 F.3d 600, 617 (4th Cir. 1996) (finding since incumbency is very common in U.S. elections that it alone cannot be a special circumstance, and if it were used to discount the success of minority candidates, it would also have to be used to discount the defeat of minority candidates).

181. *See, e.g.*, Gingles Litig. (NC), discussion at 478 U.S. 30, 76 (1996). *See also*, *First Circuit*: Black Political Task Force Litig., discussion at 300 F. Supp. 2d 291, 306 (D. Mass. 2004) (citations omitted) (“Incumbency is a special circumstance that must be weighed, sometimes heavily, in assaying the probative value of election results. Consequently, we decline the defendants’ invitation to treat this election as disproving the plaintiffs’ allegation that legally significant white bloc voting exists in Boston.”); *Second Circuit*: Town of Babylon Litig., discussion at 914 F. Supp. 843, 879, 881 (E.D.N.Y. 1996); Rodriguez Litig., discussion at 308 F. Supp. 346, 422 (S.D.N.Y. 2004); *Fourth Circuit*: City of Norfolk Litig. (VA), discussion at 883 F.2d 1232, 1342 (4th Cir. 1989); *Fifth Circuit*: Fort Bend Indep. Sch. Dist. Litig. (TX), discussion at 89 F.3d 1205, 1217 (5th Cir. 1996) (discounting a minority win because the minority ran against an incumbent and there was “anti-incumbent sentiment”); *cf.* Magnolia Bar Ass’n Litig. (MA), 994 F.2d 1143 (5th Cir. 1993) (rejecting plaintiffs’ argument that two elections in which black candidates were elected Supreme Court justices were attributable to special circumstances because both were incumbents: “both of the elections were high profile and involved well-known white candidates” and “neither of the two black candidates had been incumbents for very long”); *Sixth Circuit*: Chattanooga Litig., 722 F. Supp. 380 (E.D. Tenn. 1989); *Eighth Circuit*: Little Rock Litig. (AR), discussion at 56 F.3d 904, 911 (8th Cir. 1995); Texarkana Litig., 861 F. Supp. 756 (W.D. Ark. 1992); Jeffers Litig., 730 F. Supp. 196 (E.D. Ark. 1989); *Eleventh Circuit*: Metro Dade County Litig. (FL), discussion at 985 F.2d 1471, 1483-83 (11th Cir. 1993); City of LaGrange Litig., discussion at 969 F. Supp. 749, 775-76 (N.D. Ga. 1997).
182. Cincinnati Litig. (OH), discussion at 40 F.3d 807, 813, 814 (6th Cir. 2000) (finding no special circumstance where minority candidate who was appointed and subsequently won an election as an incumbent, noting “a contrary holding would punish the city for its commendable efforts to increase black representation on the city council by means of the appointment process”). *See also Second Circuit*: Rodriguez Litig., discussion at 308 F. Supp. 346, 422 (S.D.N.Y. 2004) (noting that it would be possible to find anomalies in most elections; refusing to discount three elections because of low turnout, little known candidate, controversy); *Fourth Circuit*: Alamance County Litig. (NC), discussion at 99 F.3d 600, 617 (4th Cir. 1996); *Seventh Circuit*: Milwaukee N.A.A.C.P. Litig. (WI), discussion at 116 F.3d 1194, 1198-99 (7th Cir. 1997) (rejecting incumbency as a special circumstance in judicial elections when minority judges ran unopposed because “these judges’ color did not lead the voters to turn them out”); *Eleventh Circuit*: City of Rome Litig. (GA), discussion at 127 F.3d 1355, 1382, 1384 n.18 (11th Cir. 1997) (finding that incumbency after appointment is relevant only where there is racism in the electorate, presumably overcome by the endorsement by white community leaders, because otherwise the advantages of incumbency can be overcome through “hard work,” at least in communities where it is possible to form biracial coalitions); *but see* Hamrick Litig. (GA), 296 F.3d 1065 (11th Cir. 2002) (allowing consideration of incumbency where the court “reflected on the substantial length of [the candidate’s] service”).
183. Old Person Litig. (MT), discussion at 230 F.3d 1113, 1122 (9th Cir. 2000).
184. Gingles Litig. (NC), discussion at 478 U.S. 30, 76 (1986). *See, e.g.*, City of Santa Maria (CA), discussion at 160 F.3d 543, 549-50 (9th Cir. 1998) (discounting the election because “Days before the election, Maldonado told a local newspaper that his victory would prove ‘Santa Maria is not racist.’ ”); Davis v. Chiles Litig. (FL), discussion at 139 F.3d 1414, 1417 n.2 (11th Cir. 1998); City of LaGrange Litig., discussion at 969 F. Supp. 749, 775-76 (N.D. Ga. 1997); City of Indianapolis Litig. (IN), 976 F.2d 357, 361 (7th Cir. 1992); City of Norfolk Litig. (VA), discussion at 816 F.2d 932, 938 (4th Cir. 1987) (discounting an election where the mayor had for the first time supported two black candidates for city council and had made a public statement suggesting their election could moot the pending litigation).
185. *See, e.g.*, Alamosa County Litig., discussion at 306 F. Supp. 2d 1016, 1033 (D. Colo. 2004); NAACP v. Fordice Litig. (MS), discussion at 252 F.3d 361, 370 (5th Cir. 2001).
186. *See, e.g.*, Aldasoro v. Kennerson Litig., discussion at 922 F. Supp. 339, 376 (S.D. Cal. 1995); National City Litig. (CA), discussion at 976 F.2d 1293, 1297-98 (9th Cir. 1992) (refusing to discount these elections because plaintiffs had not brought forth evidence regarding other elections); City of Norfolk Litig. (VA), discussion at 816 F.2d 932, 938 (4th Cir. 1987) (“If voting patterns show unusual white support for the black candidate...the legal significance of his success should be diminished.”).
187. Blytheville Sch. Dist. Litig. (AR), discussion at 71 F.3d 1382, 1387-88 (8th Cir. 1995) (excluding elections where the minority-preferred candidate won on a plurality because the challenge was to the imposition of a majority vote requirement); Little Rock Litig. (AR), discussion at 56 F.3d 904, 910 (8th Cir. 1995); Red Clay Sch. Dist. Litig. (DE), discussion at 4 F.3d 1103, 1126 (3d Cir. 1993) (reversing district court conclusion that special circumstances were not at work in the Roberts election because this election involved the largest field of candidates to ever win, and Roberts was the only candidate to ever win on a plurality); *see also* City of Jackson Litig., discussion at 683 F. Supp. 1515, 1522-31 (W.D. Tenn. 1988) (refusing to consider elections where minority-preferred candidate won a plurality when the candidate lost the run-off); Neal Litig., discussion at 689 F. Supp. 1426, 1431 (E.D. Va. 1988). *But see* National City Litig., discussion at No. 88-301-R(M), 1991 WL 421115 (S.D. Cal. May 16, 1991) (finding

- no special circumstances where there was a plurality victory because there were usually more than two candidates for city elections).
188. *Jordan Litig.*, discussion at 604 F. Supp. 807, 813 (N.D. Miss. 1984) (concluding that the primary was “atypical” because of “a variety of factors, including uncertainty about election dates, the recent realignment of the district...the lack of an incumbent” and “a court order allowing Republican voters to participate in the democratic primary”).
 189. *Blytheville Sch. Dist. Litig.* (AR), discussion at 71 F.3d 1382, 1387-88 (8th Cir. 1995); *cf.* *Clark Litig.*, discussion at 777 F. Supp. 445, 40 (M.D. La. 1990) (observing that a situation in which a black lawyer was appointed as a district judge, then elected without opposition and later reelected without opposition “do[es] not reveal very much about the electorate”). But other courts do consider these elections on the grounds that the candidate would not be unopposed if not supported by the white voters. *See, e.g., Milwaukee NAACP Litig.* (WI), discussion at 116 F. 3d 1194, 1199 (7th Cir. 1997) (“One good measure of white voters’ willingness to support black candidates is the failure of white candidates to present themselves for election even when a majority of the electorate is white. Potential opponents concede the election only when they face certain defeat. That 6 black candidates ran without opposition therefore is highly informative.”); *Al-Hakim Litig.*, discussion at 892 F. Supp. 1464, 1475 n.15 (M.D. Fla. 1995) (considering victories by minority-preferred candidates running unopposed, although recognizing that this is a special circumstance under *Gingles*); *Southern Christian Leadership Litig.*, discussion at 785 F. Supp. 1469, 1475 (M.D. Ala. 1992); *Sanchez-Bond Litig.* (CO), discussion at 875 F.2d 1488, 1490-91 (10th Cir. 1989) (finding it not clearly erroneous to consider unopposed candidacies).
 190. *Old Person Litig.* (MT), discussion at 312 F.3d 1036, 1048 n.13 (9th Cir. 2002) (discounting election where minority candidate won a bare majority against a third-party candidate).
 191. *Chattanooga Litig.*, 722 F. Supp. 380 (E.D. Tenn. 1989).
 192. *Kirksey v. Allain Litig.*, 658 F. Supp. 1183 (S.D. Miss. 1987).
 193. *Chickasaw County II Litig.*, No. CIV.A. 1:92CV142-JAD, 1997 Dist. LEXIS 22087, 1997 WL 33426761 (N.D. Miss. Oct. 28, 1997).
 194. *Town of Babylon Litig.*, discussion at 914 F. Supp. 843, 858 (E.D.N.Y. 1996) (“In 1987, Democrats gained a majority of the Town Board for the first time since at least 1967. Shaffer and Bachety testified to the causes leading to the defeat of the incumbent Republican Town Supervisor and his two incumbent Republican running mates competing for the Town Board seats. A private citizen unhappy with a Board decision affecting his business launched a well-financed campaign to defeat the incumbents. The personal popularity of the Democratic candidate for County Executive, who won a landslide victory in that election, further aided the Democratic Town Board candidates.”); *Fort Bend Indep. Sch. Dist. Litig.* (TX), 89 F.3d 1205 (5th Cir. 1996) (affirming the district court’s decision to discount evidence of a black candidate’s loss because he was an incumbent running during a year marked by anti-incumbent sentiment).
 195. *Attala County Litig.* (MS), 92 F.3d 283 (5th Cir. 1996) (criticizing the district court for looking at an election in which less than 10% of the total voting population voted for the black candidate as evidence of crossover); *Columbus County Litig.*, discussion at 782 F. Supp. 1097, 1101 (E.D.N.C. 1991) (“The failure of black voters to support the black candidate in the seventeenth election, that of Freeman running for the Board of Education for seat 5 in 1988, can be explained by the fact that Freeman was new to the county and not well known.”); *but see Rodriguez Litig.*, discussion at 308 F. Supp. 2d 346, 422 (S.D.N.Y. 2004) (noting that anomalies could be found in most elections and rejecting “the plaintiffs’ suggestion that we should exclude three of these elections either because the candidate was little known, or because there was low turnout, or because controversy touched the election”).
 196. *Carrollton NAACP Litig.* (GA), 829 F.2d 1547 (11th Cir. 1987); *but see Alamosa County Litig.*, 306 F. Supp. 2d 1016 (D. Colo. 2004).
 197. *See e.g., Anthony Litig.*, discussion at 35 F. Supp. 2d 989, 1006 (E.D. Mich. 1999) (“obtaining name recognition and professional success prior to a candidacy are not ‘special circumstances’; they are ordinary and necessary components of a successful candidacy”); *Niagara Falls Litig.* (NY), 65 F.3d 1002 (2d Cir. 1995) (finding plaintiffs’ attempt to characterize a minority candidate’s election due to the candidate’s outstanding credentials and popularity as special circumstances “absurd”).
 198. *See, e.g., Meza Litig.*, discussion at 322 F. Supp. 2d 52, 65 (D. Mass. 2004) (“These elections on their face provide evidence of ethnic voting polarization by both Hispanic and non-Hispanic voters in Chelsea. We note that the force of this evidence is diminished to some extent because the election results reveal low turnout rates for Hispanic voters in these elections.”). *But see Rodriguez Litig.*, 308 F. Supp. 2d 346 (S.D.N.Y. 2004).
 199. *See, e.g., City of Holyoke Litig.*, 960 F. Supp. 515 (D. Mass. 1997); *SW Texas Junior College District Litig.*, 964 F.2d 1542 (5th Cir. 1992); *City of Columbia Litig.*, discussion at 850 F. Supp. 404, 418, 420 (D.S.C. 1993) (observing that “the ultimate reason voter cohesion is significant is because it directly bears on the issue of

- causation” and concluding that plaintiffs’ evidence was “simply not sufficient to overcome the evidence that the blacks who lost owe their losses as much to blacks’ failure to vote more cohesively or to turn out at all as to failure to achieve white support”).
200. *See* Blaine County Litig. (MT), 363 F.3d 897 (9th Cir. 2004); Sanchez-Colorado Litig. (CO), 97 F.3d 1303 (10th Cir. 1996) (considering that low turnout may be probative of “disincentives” for minority candidates to run); Blytheville Sch. Dist. Litig. (AR), 71 F.3d 1382 (8th Cir. 1995) (suggesting lower turnout may follow from the moving of a polling place in a minority area, a sense of defeat, or the absence of ballot issues that may turnout the minority vote); City of Holyoke Litig. (MA), discussion at 72 F.3d 973, 986 (1st Cir. 1995) (noting that “low voter turnout in the minority community sometimes may result from the interaction of the electoral system with the effects of past discrimination, which together operate to discourage meaningful elector participation”); Watsonville Litig. (CA), 863 F.2d 1407 (9th Cir. 1988).
 201. SENATE REPORT *supra* note 15, at 27-30.
 202. *See* Master Lawsuit List (filter Column: 1f = I).
 203. *See id.* (filter Column: 1c = I).
 204. *See, e.g.*, Montero Litig. (CO), 861 F.2d 603 (10th Cir. 1988) (finding Section 2 inapplicable to challenge to collection of signatures on a petition to make English Colorado’s official language because state action was lacking); Democratic Party of Virginia, 323 F. Supp. 2d 696 (E.D. Va. 2004) (finding that an African-American candidate who failed to become party nominee did not have standing, as a candidate, to challenge party nomination process under Section 2); Guy Litig., No. Civ.A. 00-831-KAJ, 2003 WL 22005853 (D. Del. Aug. 20, 2003) (dismissing for failure to satisfy *Gingles* factors a claim by an African-American candidate, Samuel Guy, who had won an at-large city council seat in 1996, then lost in 2000, where another African-American candidate had won an at-large seat in 2000 and then gotten reelected).
 205. *See supra*, *Gingles Threshold* Section.
 206. *See* Master Lawsuit List (filter Column: 1f = I).
 207. In California: Pomona Litig., 883 F.2d 1418 (9th Cir. 1989) and Aldasoro v. Kennerson Litig., 922 F. Supp. 339 (S.D. Cal. 1995); in Colorado: Alamosa County Litig., 306 F. Supp. 2d 1016 (D. Colo. 2004); in Florida: Liberty County Comm’rs Litig., 221 F.3d 1218 (11th Cir. 2000); City of Fort Lauderdale Litig., 804 F.2d 611, 1986 U.S. App. LEXIS 37448 (11th Cir. 1986); Metro Dade County Litig., 985 F.2d 1471 (11th Cir. 1993); Nipper Litig., 39 F.3d 1494 (11th Cir. 1994); in Georgia: Carrollton NAACP Litig., 829 F.2d 1547 (11th Cir. 1987); in Illinois: Jones v. Edgar Litig., 3 F. Supp. 2d 979 (C.D. Ill. 1998); City of Chicago-Bonilla Litig., 141 F.3d 699 (7th Cir. 1998); City of Chicago Heights Litig., Nos. 87 C 5112, 88 C 9800, 1997 WL 102543 (N.D. Ill. Mar. 5, 1997); Rybicki Litig., 574 F. Supp. 1147 (N.D. Ill. 1983), in Massachusetts: Black Political Task Force Litig., 300 F. Supp. 2d 291 (D. Mass. 2004); City of Holyoke Litig., 960 F. Supp. 515 (D. Mass. 1997); City of Boston Litig., 784 F.2d 409 (1st Cir. 1986); Meza Litig., 322 F. Supp. 2d 52 (D. Mass. 2004); in Mississippi: Chickasaw County I Litig., 705 F. Supp. 315 (N.D. Miss. 1989) (though Chickasaw County II found this factor met in a later 1997 case); Monroe County Litig., 740 F. Supp. 417 (N.D. Miss. 1990); Armstrong v. Allain Litig., 893 F. Supp. 1320 (S.D. Miss. 1994); Calhoun County Litig., 88 F.3d 139 (5th Cir. 1996); Lafayette County Litig., 20 F. Supp. 2d 996 (N.D. Miss. 1998); NAACP v. Fordice Litig., 252 F.3d 361 (5th Cir. 2001); in New York: France Litig., 71 F. Supp. 2d 317 (S.D.N.Y. 1999); Niagara Falls Litig., 65 F.3d 1002 (2d Cir. 1995); in Ohio: Cincinnati Litig., 40 F.3d 807 (6th Cir. 1994); in Tennessee: Wesley Litig., 791 F.2d 1255 (6th Cir. 1986); in Texas: McCarty Litig., 749 F.2d 1134 (5th Cir. 1984); Southwest Tex. Jr. College Dist. Litig., 964 F.2d 1542 (5th Cir. 1992); LULAC v. Clements Litig., 999 F.2d 831 (5th Cir. 1993); LULAC - N.E. Indep. Sch. Dist. Litig., 903 F. Supp. 1071 (W.D. Tex. 1995).
 208. *See* Master Lawsuit List (filter Column: 1f = I, and also filter Column: Success = I).
 209. Jefferson Parish I Litig. (LA), 926 F.2d 487 (5th Cir. 1991) (not considering evidence of Factor 1 for unclear reasons, but finding the policy behind the practice was tenuous, that there had been racially polarized voting in 15 of 20 Parish elections from 1980-88, plaintiffs had shown a lack of candidate success and enhancing practices); Corbett Litig., 202 F. Supp. 2d 972 (E.D. Mo. 2002) (finding the plan in place violated 1-person, 1-vote and the VRA due to the significant census changes that had occurred, the opinion mainly dealt with the remedy); Garza v. Los Angeles Litig. (CA), 918 F.2d 763 (9th Cir. 1990) (finding that the county board of supervisors had intentionally drawn district lines to reduce minority voting power and protect white incumbents in violation of Section 2 and so not reaching any of the Senate Factors); Madison County Litig., 610 F. Supp. 240 (S.D. Miss. 1985) (not considering Senate Factors after finding that the county’s arbitrary invalidation of 200 ballots cast by African-American voters sufficed to establish a violation); Marks-Philadelphia Litig., No. CIV. A. 93-6157, 1994 WL 146113 (E.D. Pa. Apr. 26, 1994); Lawrence County Litig., 814 F. Supp. 1346 (S.D. Miss. 1993); Elections Board Litig., 793 F. Supp. 859 (W.D. Wis. 1992).

210. *Watsonville Litig.* (CA), 863 F.2d 1407 (9th Cir. 1988); *Metro Dade County Litig.* (FL), 985 F.2d 1471 (11th Cir. 1993); *Rybicki Litig.*, 574 F. Supp. 1147 (N.D. Ill. 1983); *City of Chicago Heights Litig.*, Nos. 87 C 5112, 88 C 9800, 1997 WL 102543 (N.D. Ill. Mar. 5, 1997); *Black Political Task Force Litig.*, 300 F. Supp. 2d 291 (D. Mass. 2004); *Chickasaw County I Litig.*, 705 F. Supp. 315 (N.D. Miss. 1989); *Monroe County Litig.*, 740 F. Supp. 417 (N.D. Miss. 1990); *Calhoun County Litig.* (MS), 88 F.3d 1393 (5th Cir. 1996); *Lafayette County Litig.*, 20 F. Supp. 2d 996 (N.D. Miss. 1998); *LULAC - N.E. Indep. Sch. Dist. Litig.*, 903 F. Supp. 1071 (W.D. Tex. 1995).
211. See Master Lawsuit List (filter Column: 1f = I and also filter other Senate Factor Columns at the same time).
212. See, e.g., *Bone Shirt Litig.*, discussion at 336 F. Supp. 2d 976, 1013-34 (D.S.D. 2004); *Emison Litig.*, discussion at 782 F. Supp. 427, 439 n.35 & 440 n.39 (D. Minn. 1992); *City of Dallas Litig.*, discussion at 734 F. Supp. 1317, 1320-21 (W.D. Tex. 1990); *Chattanooga Litig.*, discussion at 722 F. Supp. 380, 385-89 (E.D. Tenn. 1989); *Neal Litig.*, discussion at 689 F. Supp. 1426, 1428 (E.D. Va. 1988); *Dillard v. Crenshaw Litig.*, 640 F. Supp. 1347, 1356-60 (M.D. Ala. 1986); *Gretna Litig.*, discussion at 636 F. Supp. 1113, 1116-18 (E.D. La. 1986); *Edgefield County Litig.*, discussion at 650 F. Supp. 1176, 1180-87 (D.S.C. 1986); *Butts v. NYC Litig.*, discussion at 614 F. Supp. 1527, 1544-45 (S.D.N.Y. 1985), *overturned* 779 F.2d 141 (2d Cir. 1985) (also criticizing district court's Factor 1 finding); *DeSoto County Litig.*, discussion at 995 F. Supp. 1440, 1442-1450; *Major v. Treen*, 574 F. Supp. 325, 339-40 (E.D. La. 1983).
213. See, e.g., *Hamrick Litig.*, discussion at No. Civ. 2:91-CV-002-WCO, 1998 WL 476186 (N.D. Ga. June 10, 1998) ("The 1976 Georgia Constitution still required the completion of a literacy test and good character test as prerequisites to registering to vote, even though such barriers were nullified by the Voting Rights Act of 1965"), *overturned on other grounds* 296 F.3d 1065, 1224 (11th Cir. 2002) (overruling the district court due to lack of racially polarized voting and minimizing finding of Factor 1 below, since the history of official discrimination shown below "does little to distinguish Gainesville or Georgia from any other Southern state or city"); *Mehfoud Litig.*, discussion at 702 F. Supp. 588, 594 (E.D. Va. 1988) ("state constitutional requirement, in effect until 1974, that all persons registering to vote present proof of literacy"); *Gretna Litig.*, 636 F. Supp. 1113, 1116 (E.D. La. 1986) ("The historical record of discrimination in the State of Louisiana and the Parish of Jefferson is undeniably clear, and the record suggests it has not ended even now. The history of black citizens' attempts, in Louisiana since Reconstruction, to participate effectively in the political process and the white majority's resistance to those efforts is one characterized by both de jure and de facto discrimination. Indeed, it would take a multi-volumed treatise to properly describe the persistent, and often violent, intimidation visited by white citizens upon black efforts to participate in Louisiana's political process.") *Abilene Litig.*, 725 F.2d 1017, 1022 (5th Cir. 1984) (Latino city council candidate "encountered hostility and uncooperation from the County Clerk's office in Abilene when she attempted to file as a candidate for Justice of the Peace in 1976 and for County Clerk in 1978"); *Gingles Litig.*, 590 F. Supp. 345, 359 (D.N.C. 1984) ("Following the emancipation of blacks from slavery and the period of post-war Reconstruction, the State of North Carolina had officially and effectively discriminated against black citizens in matters touching their exercise of the voting franchise for a period of around seventy years, roughly two generations, from ca. 1900 to ca. 1970. The history of black citizens' attempts since the Reconstruction era to participate effectively in the political process and the white majority's resistance to those efforts is a bitter one, fraught with racial animosities that linger in diminished but still evident form to the present and that remain centered upon the voting strength of black citizens as an identified group.").
214. See, e.g., *City of LaGrange Litig.*, 969 F. Supp. 749, 757 (N.D. Ga. 1997) ("Vestiges of segregation remained into the 1970s. The black schools during the era of segregation were run down, overcrowded, and only went through the eleventh grade. Throughout this time period, the African-American schools enjoyed significantly less resources than the schools attended by white students."); *City of Springfield Litig.*, discussion at 658 F. Supp. 1015, 1023 (C.D. Ill. 1987) (finding city school district entered into a consent decree in 1974 to end school desegregation); *Marengo County Litig.*, discussion at 731 F.2d 1546 (11th Cir. 1984) ("in 1978, while this case was being tried, the district court characterized the Board of Education as 'obdurately obstinate' in its opposition to desegregation."); *Dillard v. Crenshaw Litig.*, 640 F. Supp. 1347, 1359-60 (M.D. Ala. 1986).
215. See, e.g., *City of Greenwood Litig.*, 599 F. Supp. 397, 400-01 (N.D. Miss. 1984) (Department of Justice objected to two annexations in 1984 as violating the Section 5 preclearance requirement); *Quilter Litig.*, discussion at 794 F. Supp. 695, 730 (N.D. Ohio 1992) ("evidence of a history of official discrimination in the State of Ohio and local political subdivisions....includes: a) The 1981 apportionment plan was held to unlawfully dilute minority voting strength in *Armour v. State of Ohio*, 775 F. Supp. 1090 (1991); b) In *Mallory v. Eyrich*, 922 F.2d 1273 (6th Cir. 1991), the Governor, Secretary of State, and Members of the Hamilton County Board of Elections conceded that the at-large election of Hamilton County Municipal Court Judges unlawfully diluted minority voting strength under S2 of the Voting Rights Act; The 1991 apportionment plan resulted in only four (4) majority-minority districts in Ohio, three (3) of which were in Cuyahoga County").

216. *See, e.g.*, Edgefield County, 650 F. Supp. 1176, 1182 (D.S.C. 1986) (first black poll officials not hired until 1970); Harris Litig., discussion at 601 F. Supp. 70, 72 (M.D. Ala. 1984) (“The basis for the motion [by Jefferson to make the PI not apply to its County] is apparent from the evidence: to avoid the appointment of black poll officials with supervisory authority at polling places where the majority of the voters are white. The Jefferson County appointing authority maintains that white voters at these polling places will not accept a black supervising poll official.”)
217. Columbus County Litig., 782 F. Supp. 1097, 1103 (E.D.N.C. 1991) (also noting that the county did not begin appointing African Americans as special registration commissioners until the 1980s).
218. City of Abilene Litig. (TX), 725 F.2d 1017, 1023 (5th Cir. 1984).
219. City of LaGrange Litig., 969 F. Supp. 749, 767 (N.D. Ga. 1997) (also noting school segregation until 1970).
220. City of Starke Litig., 712 F. Supp. 1523, 1537 (M.D. Fla. 1989).
221. *See text infra; see, e.g.*, Charleston County Litig., 365 F.3d 341 (4th Cir. 2004); Rural West II Litig. (TN), 209 F.3d 835 (6th Cir. 2000); Holder v. Hall Litig. (GA), 512 U.S. 874 (1994); Big Horn County Litig., 647 F. Supp. 1002 (D. Mont. 1986); Marengo County Litig., discussion at 731 F.2d 1546, 1567-68 (11th Cir. 1984) (“The historical record of discrimination in Marengo County is undisputed, and it has not ended even now. The county school system remains under judicial supervision...”); Montezuma-Cortez Sch. Dist. Litig., 7 F. Supp. 2d 1152 (D. Colo. 1998); Marylanders Litig., 849 F. Supp. 1022 (D. Md. 1994); City of Starke Litig., 712 F. Supp. 1523 (M.D. Fla. 1989).
222. Charleston County Litig., discussion at 316 F. Supp. 2d 268, 286 n.23 (D.S.C. 2003); *see also id.* discussion at 365 F.3d 341, 353 n.4 (4th Cir. 2004) (affirming district court’s fact findings and finding of a violation).
223. In Charleston County, the court noted: “[t]he Election Commission pays poll managers to setup the books, operate the voting machines and count the votes in polling places on election day.” In contrast with poll watchers, who are provided by the private political party on election day to observe elections, poll managers are paid county employees, assigned by the county to work at particular precincts, for whose actions the county itself has legal responsibility. *Id.* discussion at 316 F. Supp. 2d at 286 n.23.
224. *Id.*
225. *Id.*
226. *Id.*
227. *Id.*
228. *Id.*
229. *Id.*
230. *Id.*
231. *Id.*
232. *Id.*
233. *Id.*
234. Bone Shirt Litig., 336 F. Supp. 2d 976, 1025 (D.S.D. 2004).
235. *Id.*
236. *Id.*
237. *Id.*
238. *Id.* at 1024-25.
239. *Id.* at 1024.
240. *Id.*
241. *Id.* at 1026.
242. *Id.*
243. *Id.*
244. *Id.*
245. *Id.*
246. *Id.* at 1028.
247. *Id.* at 1024.
248. *Id.* at 1023-24.
249. Holder v. Hall Litig., discussion at 955 F.2d 1563, 1566 (11th Cir. 1992) (later overturned by the Supreme Court on the question of whether plaintiffs could challenge single commissioner form of government, but the fact-finding was not affected).
250. City of Dallas Litig., 734 F. Supp. 1317, 1324 (N.D. Tex. 1990).
251. Town of North Johns Litig., 717 F. Supp. 1471, 1477 (M.D. Ala. 1989).
252. *Id.*
253. Big Horn County Litig., 647 F. Supp. 1002, 1007 (D. Mont. 1986).
254. *Id.* at 1008.

255. *Id.*
256. *Id.*
257. *Id.*
258. *Id.* (“The court was not persuaded by defendants’ explanation that these acts were caused by a shortage of registration cards and an increased concern about voter fraud.”).
259. Harris Litig., discussion at 593 F. Supp. 128, 133 (M.D. Ala. 1984).
260. *Id.*
261. Harris Litig., discussion at 695 F. Supp. 517, 527 & n.8 (M.D. Ala. 1988) (“The defendants’ argument that they have abandoned their past discriminatory policies and that local rather than state government is responsible for any discrimination occurring today, misses the point. The critical question is whether the State of Alabama has redressed the present-day effects of its own past discrimination, and the answer is that it has not.”)
262. *Id.* at 524-25.
263. Buskey v. Oliver Litig., discussion at 565 F. Supp. 1473, 1483 (M.D. Ala. 1983).
264. *Id.*
265. Terrell Litig., 565 F. Supp. 338, 349 (N.D. Tex. 1983).
266. *Id.* at 341.
267. *Id.*
268. County of Thurston Litig., discussion at 129 F.3d 1015, 1022 (8th Cir. 1997).
269. Berks County Litig., discussion at 277 F. Supp. 2d 570, 580 (E.D. Pa. 2003).
270. *Id.*
271. Berks County Litig., discussion at 250 F. Supp. 2d 525, 529 (E.D. Pa. 2003).
272. *Id.* 277 F. Supp. 2d at 580.
273. *Id.* at 577.
274. 250 F. Supp. 2d at 529.
275. 277 F. Supp. 2d at 577.
276. *Id.* at 575-76.
277. Montezuma-Cortez Sch. Dist. Litig., discussion at 7 F. Supp. 2d 1152, 1162 (D. Colo. 1998).
278. *Id.*
279. Marks-Philadelphia Litig., No. CIV. A. 93-6157, 1994 WL 146113, at *11 (E.D. Pa. Apr. 26, 1994).
280. *Id.* at *12.
281. Marylanders Litig., 849 F. Supp. 1022, 1061 (D. Md. 1994).
282. *Id.*
283. *Id.*
284. Jeffers Litig., discussion at 730 F. Supp. 196, 210 (E.D. Ark. 1989).
285. *Id.*
286. *Id.* at 210 n.8.
287. *Id.* at 211 (finding that “[t]his kind of intimidation no doubt had a powerful chilling effect”).
288. *Id.* at 210.
289. Black Political Taskforce Litig., discussion at 300 F. Supp. 2d 291, 314 (D. Mass. 2004).
290. *Id.* at 315.
291. City of New Rochelle Litig., discussion at 308 F. Supp. 2d 152, 158 (S.D.N.Y. 2003).
292. Garza v. County of Los Angeles Litig. (CA), discussion at 918 F.2d 763, 766, 768, 772 (9th Cir. 1990) (affirming the district court’s finding of an intent-based Section 2 violation; also deciding that where intentional discrimination had occurred there was no need to meet the *Thornburg v. Gingles* test in the current challenge).
293. *Id.* at 769.
294. *Id.* at 778-779 (Kozinski, J., concurring on liability question).
295. Ketchum Litig. (IL), discussion at 740 F.2d 1398, 1408 (7th Cir. 1984).
296. Rybicki Litig., discussion at 574 F. Supp. 1147, 1151 (N.D. Ill. 1983).
297. *Id.* (citing pre-amendment district court opinion in 574 F. Supp. 1110, 1112 (N.D. Ill. 1983)).
298. Rural West II Litig., discussion at 29 F. Supp. 2d 448, 459 (W.D. Tenn. 1998).
299. Rural West I Litig., discussion at 835 F. Supp. 453, 460-61 (W.D. Tenn. 1993).
300. *See, e.g.,* Hudson County Board Litig., discussion at 714 F. Supp. 714, 715 (D.N.J. 1989). The *Hudson County Board* litigation eventually settled, 949 F.2d 665 (3d Cir. 1991), after the last published opinion to make Senate Factor findings decided that the county defendant’s insurer would have to pay if the plaintiffs succeeded in proving their intent-based Section 2 claim. 714 F. Supp. at 715. In this lawsuit, the court took notice of the alleged coordinated effort in 1985 by the chair of the Hudson County Democratic Party, a campaign consultant, and the city Director of Housing and Economic Development, “to undercut Cucci’s [the incumbent’s] strength that would

- impede or prevent voting in the election districts in neighborhoods that were heavily black or Hispanic.” *Id.* As part of this “strategy”: 1) letters were sent to residents of public housing projects with significant African-American and Latino populations informing them “that unless their names appeared on leases, they would be not be permitted to vote and would be prosecuted if they attempted to do so”; 2) the placement of five to six thousand voter names on the county’s official “challenge registry” without notification, and despite the fact that some of these people had known good addresses and the “color-coding” of the challenge list; 3) instructions were given to all district board members (who were running the poll operations for the county) to prevent any individual whose name was on a challenge list from voting unless the voter produced a current lease (if the voter was a resident in public housing), or a phone, gas or electric bill in the voter’s name; and 4) the county’s “failure to provide adequate bilingual assistance both at polling places and at the courthouse for those individuals that attempted to obtain court orders permitting them to vote.” *Id.* at 716. The plaintiff also alleged that the Democratic Party chair had appointed off-duty Jersey City police officers to serve as poll challengers in heavily minority districts. *Id.*
301. *Town of Cicero Litig.*, No. Civ.A. 00C 1530, 2000 WL 34342276 (N.D. Ill. Mar. 15, 2000) (granting preliminary injunction to stop the certification of the referendum results on this question, scheduled to take place 6 days after this decision, due to likelihood the United States could prove intent).
 302. *Dillard v. Crenshaw Litig.*, 640 F. Supp. 1347, 1356 & 1360-61 (M.D. Ala. 1986) (emphasis added) (granting preliminary injunction) (this finding was later cited in many other Alabama cases, including *Baldwin County Bd. of Educ. Litig.*, 686 F. Supp. 1459, 1466-67 (M.D. Ala. 1988) (finding that “this court demonstrated in *Crenshaw County* that from the late 1880’s to the present the State of Alabama and its political subdivisions have ‘openly and unabashedly’ discriminated against their black citizens by employing at different times such devices as the poll tax, racial gerrymandering, and at-large elections, and by enacting such laws as the anti-single-shot voting laws, numbered places laws, and the Sayre law”)).
 303. *Dillard v. Crenshaw Litig.*, 650 F. Supp. at 1357.
 304. *Haywood County Litig.*, discussion at 544 F. Supp. 1122, 1131 & 1135 (W.D. Tenn. 1982) (granting a preliminary injunction due to plaintiff’s likelihood of succeeding on the merits of Section 2).
 305. *City of Minneapolis Litig.*, No. 02-1139 (JRT/FLN), 2004 WL 2212044 (D. Minn. Sept. 30, 2004); *Perry Litig.*, 298 F. Supp. 2d 451 (E.D. Tex. 2004); *City of New Rochelle Litig.*, 308 F. Supp. 2d 152 (S.D.N.Y. 2003); *Albany County Litig.*, No. 03-CV-502, 2003 WL 21524820 (N.D.N.Y. July 7, 2003); *Hamrick Litig. (GA)*, 296 F.3d 1065 (11th Cir. 2002); *St. Bernard Parish School Board Litig.*, No. CIV.A. 02-2209, 2002 WL 2022589 (E.D. La. Aug. 26, 2002); *Old Person Litig. (MT)*, 312 F.3d 1036 (9th Cir. 2002); *Davis v. Chiles Litig. (FL)*, 139 F.3d 1414 (11th Cir. 1998); *City of Chicago-Barnett Litig.*, 17 F. Supp. 2d 753 (N.D. Ill. 1998); *Red Clay Sch. Dist. Litig.*, 116 F.3d 685 (D. Del. 1997); *African-American Voting Rights LDF Litig.*, 994 F. Supp. 1105 (E.D. Mo. 1997); *Chickasaw County II Litig.*, No. CIV.A. 1:92CV142-JAD, 1997 WL 33426761 (N.D. Miss. Oct. 28, 1997); *Attala County Litig.*, 92 F.3d 283 (5th Cir. 1996); *Fort Bend Indep. Sch. Dist. Litig. (TX)*, 89 F.3d 1205 (5th Cir. 1996); *U.S. v. Jones Litig. (AL)*, 57 F.3d 1020 (11th Cir. 1995); *Blytheville Sch. Dist. Litig. (AR)*, 71 F.3d 1382 (8th Cir. 1995); *Rural West I Litig.*, 877 F. Supp. 1096 (W.D. Tenn. 1995); *De Grandy Litig. (FL)*, 512 U.S. 997 (1994); *Texarkana Litig.*, 861 F. Supp. 756 (W.D. Ark. 1992); *Rockford Bd. of Educ. Litig.*, Civ.A. No. 89 C 20168, 1991 WL 299104 (N.D. Ill. Sept. 12, 1991); *Democratic Party of Arkansas Litig.*, 902 F.2d 15 (8th Cir. 1990); *Holbrook Unified Sch. Dist. Litig.*, 703 F. Supp. 56 (D. Ariz. 1989); *Baldwin County Bd. of Educ. Litig.*, 686 F. Supp. 1459 (M.D. Ala. 1988); *Smith-Crittenden County Litig.*, 687 F. Supp. 1310 (E.D. Ark. 1988); *Baytown Litig. (TX)*, 840 F.2d 1240 (5th Cir. 1988); *Dallas County Comm’n Litig.*, 636 F. Supp. 704 (S.D. Ala. 1986); *Marengo County Litig.*, 623 F. Supp. 33 (S.D. Ala. 1985); *Opelika Litig. (AL)*, 748 F. 2d 1473 (11th Cir. 1984); *Abilene Litig. (TX)*, 725 F.2d 1017 (5th Cir. 1984); *El Paso Indep. Sch. Dist. Litig.*, 591 F. Supp. 802 (W.D. Tex. 1984); *Lubbock Litig. (TX)*, 727 F.2d 364 (5th Cir. 1984); *Dean Litig.*, 555 F. Supp. 502 (D.R.I. 1982).
 306. 5 of these 7 were in Section 5-covered jurisdictions: *Edgefield County Litig.*, 650 F. Supp. 1176 (D.S.C. 1986); *Mehfoud Litig.*, 702 F. Supp. 588 (E.D. Va. 1988); *City of Woodville Litig. (MS)*, 881 F.2d 1327 (5th Cir. 1989); *Chisom Litig. (LA)*, 501 U.S. 380 (1991); *Westwego Litig. (LA)*, 946 F.2d 1109 (5th Cir. 1991). The other 2 were these: *Rockford Bd. of Educ. Litig.*, Civ.A. No. 89 C 20168, 1991 WL 299104 (N.D. Ill. Sept. 12, 1991); *Texarkana Litig.*, 861 F. Supp. 756 (W.D. Ark. 1992).
 307. *See, e.g., Dillard v. Crenshaw Litig.*, discussion at 640 F. Supp. 1347, 1356-60 (M.D. Ala. 1986).
 308. *See, e.g., Bone Shirt Litig.*, 336 F. Supp. 2d 976, 1026 (D.S.D. 2004); *Jefferis Litig.*, 730 F. Supp. 196, 210 (E.D. Ark. 1989) (criminal prosecution the sheriff instituted against a black lawyer when ran for office).
 309. Courts identified dozens of expert witnesses by name in their Factor 1 discussions, some of whom were repeat players on behalf of the plaintiff or defendant. Examples include: Chandler Davidson, Richard Engstrom, Morgan Kousser, Peyton McCrary, Raphael Cassimere, Jr., David Sansing, Allan Lichtman, Jerrell Shofner, Dr. Mormino, Dr. Hofeller, Philip Hauser, William Rogers, Stephan Thernstrom, Abigail Thernstrom, Dr. Mollenkopf, Lilian

- Williams. Most experts cited by courts in their Factor 1 discussion were trained historians, university professors with degrees in history or sociology.
310. Some books included: MORGAN J. KOUSSER, *THE SHAPING OF SOUTHERN POLITICS: SUFFRAGE RESTRICTION AND THE ESTABLISHMENT OF THE ONE-PARTY SOUTH, 1880-1910*, (1974) (cited in *Harris v. Graddick Litig.*, at 695 F. Supp. 517, 525 n.5 (M.D. Ala. 1988)), Chandler Davidson, *The Voting Rights Act: A Brief History*, in *CONTROVERSIES IN MINORITY VOTING* 7, 25 n.63 (Bernard Grofman & Chandler Davidson eds., 1992) (cited in *Marylanders Litig.*, 849 F. Supp. 1022, 1062 (D. Md. 1994)), ABIGAIL M. THERNSTROM, *WHOSE VOTES COUNT? AFFIRMATIVE ACTION AND MINORITY VOTING RIGHTS* (1987) (cited in *Town of Babylon Litig.*, at 914 F. Supp. 843, 885 n.36 (E.D.N.Y. 1996)). Some cases also cited newspaper documentation of discrimination. *See, e.g.*, *Berks County Litig.*, at 277 F. Supp. 2d 570, 577 (E.D. Pa. 2003) (“Numerous articles have appeared in local newspapers outlining Hispanic residents’ concerns about equal treatment at the polls.”).
 311. *See, e.g.*, *Charleston County Litig.*, 316 F. Supp. 2d 268, 286 n.23 (D.S.C. 2003) (“Nettles also provided additional uncontradicted testimony about intimidating and harassing conduct by other poll managers aimed at African-American voters seeking voting assistance....Conversely, Nettles testified that, based on his observations, white voters needing voting assistance at predominantly African-American polling sites were permitted their assistor of choice without challenge.”); *Harris Litig.*, 695 F. Supp. 517, 525 (M.D. Ala. 1988) (“Witnesses detailed numerous instances of where white poll officials refused to help illiterate black voters or refused to allow them to vote, where they refused to allow black voters to cast challenged ballots, and where they were simply rude and even intimidating toward black voters.”); *Terrazas Litig.*, 581 F. Supp. 1329, 1349-50 (N.D. Tex. 1984) (“Several witnesses, both for the MALDEF Intervenors and the State Defendants, testified that discrimination against hispanics has not only occurred in the past, but continues at least in parts of Texas....Still other witnesses testified about the feeling among hispanic candidates and voters in Dallas County that political action is futile.” (citation omitted)).
 312. *See, e.g.*, *City of Greenwood Litig.*, discussion at 599 F. Supp. 397, 401 (N.D. Miss. 1984) (mentioning non-compliance with the preclearance requirement of Section 5); *Town of Babylon Litig.*, discussion at 914 F. Supp. 843, 886 n.38 (E.D.N.Y. 1996) (noting that the Town of Babylon was not in a county targeted as a Section 5-covered jurisdiction, and minimizing the Section 5 coverage of the three New York counties (Bronx, New York and Kings) that are covered: defendants’ expert “testified that she found no indication that the New York counties were targets of the 1970 amendments. In fact, Dr. Thernstrom hypothesized that the extension of Section 5 coverage to these New York counties may have simply resulted from lack of voter interest in the 1968 presidential election.”).
 313. *See, e.g.*, *Marengo County Litig.*, discussion at 731 F.2d 1546, 1568 (11th Cir. 1984) (citing many recent lawsuits).
 314. *See, e.g.*, *City of Greenwood Litig.*, 599 F. Supp. 397, 401 (N.D. Miss. 1984) (“[T]he City of Greenwood acted contrary to Section 5 of the Voting Rights Act...by implementing two annexations (in 1967 and 1979) without obtaining preclearance”).
 315. *See, e.g.*, *Mallory-Ohio Litig.*, at 38 F. Supp. 2d 525, 541-42 (S.D. Ohio 1997) (recounting history of Section 2 lawsuits in the state of Ohio, as evidence of how much weight to give Factor 1).
 316. *See, e.g.*, *Clark Litig.*, discussion at 725 F. Supp. 285, 295 (M.D. La. 1988) (“[A]dopt[ing] by reference” the findings made in *Major v. Treen*, 574 F. Supp. 325 (E.D.La.1983)); *Jeffers Litig.*, discussion at 730 F. Supp. 196, 204 (E.D. Ark. 1989) (taking judicial notice of a 1982 Arkansas decision, and stating “[w]e do not believe that this history of discrimination, which affects the exercise of the right to vote in all elections under state law, must be proved anew in each case under the Voting Rights Act.”). *But compare* *Chickasaw County II*, No. CIV.A. 1:92CV142-JAD, 1997 WL 33426761, at *3 (N.D. Miss. Oct. 28, 1997) (finding Factor 1 and “tak[ing] judicial notice of Mississippi’s and Chickasaw County’s history of discrimination in the area of voting... through the use of poll takes, literacy tests, good moral tests, and other policies and laws,” without requiring plaintiffs to establish contemporary political effect) *with* *Chickasaw County I*, 705 F. Supp. 315, 320 (N.D. Miss. 1989) (finding Factor 1 not met because plaintiffs had not shown current “political detriment”).
 317. *See, e.g.*, *De Grandy Litig.*, discussion at 815 F. Supp. 1550, 1573-74 (N.D. Fla. Jul 17, 1992) (citing both English-only legal initiatives and “suspension of a supermarket clerk for speaking Spanish in front of customers and the refusal of a personnel agency to refer people with foreign accents to job openings at a Miami bank” as relevant to showing a history of official discrimination against Hispanics in Florida).
 318. *Armour Litig.*, discussion at 775 F. Supp. 1044, 1055 (N.D. Ohio 1991).
 319. *Id.*
 320. *Alamosa County Litig.*, discussion at 306 F. Supp. 2d 1016 (D. Colo. 2004); *Black Political Task Force Litig.*, discussion at 300 F. Supp. 2d 291 (D. Mass. 2004); *Meza Litig.*, discussion at 322 F. Supp. 2d 52 (D. Mass. 2004); *Rodriguez Litig.*, discussion at 308 F. Supp. 2d 346 (S.D.N.Y. 2004); *Suffolk County Litig.*, discussion at

- 268 F. Supp. 2d 243 (E.D.N.Y. 2003); NAACP v. Fordice Litig. (MS), discussion at 252 F.3d 361 (5th Cir. 2001); Liberty County Comm'rs Litig. (FL), discussion at 221 F.3d 1218 (11th Cir. 2000); France Litig., discussion at 71 F. Supp. 2d 317 (S.D.N.Y. 1999); Belle Glade Litig., discussion at 178 F.3d 1175 (11th Cir. 1999); City of Chicago-Bonilla Litig. (IL), discussion at 141 F.3d 699 (7th Cir. 1998); Jones v. Edgar Litig., discussion at 3 F. Supp. 2d 979 (C.D. Ill. 1998); Lafayette County Litig., discussion at 20 F. Supp. 2d 996 (N.D. Miss. 1998); City of Chicago Heights Litig., discussion at Nos. 87 C 5112, 88 C 9800, 1997 WL 102543 (N.D. Ill. Mar. 5, 1997); Milwaukee NAACP Litig. (WI), discussion at 116 F. 3d 1194 (7th Cir. 1997); City of Holyoke Litig., discussion at 960 F. Supp. 515 (D. Mass. 1997); Milwaukee NAACP Litig. (WI), discussion at 116 F. 3d 1194 (7th Cir. 1997); Kent County Litig. (MI), discussion at 76 F.3d 1381 (6th Cir. 1996); City of St. Louis Litig. (MO), discussion at 90 F.3d 1357 (8th Cir. 1996); Calhoun County Litig. (MS), discussion at 88 F.3d 1393 (5th Cir. 1996); Green Litig., discussion at 1996 WL 524395 (E.D.N.Y. 1996); Town of Babylon Litig., discussion at 914 F. Supp. 843 (E.D.N.Y. 1996); Aldasoro v. Kennerson Litig., discussion at 922 F. Supp. 339 (S.D. Cal. 1995); Niagara Falls Litig. (NY), discussion at 65 F.3d 1002 (2d Cir. 1995); LULAC - N.E. Indep. Sch. Dist. Litig., discussion at 903 F. Supp. 1071 (W.D. Tex. 1995); Nipper Litig. (FL), discussion at 39 F.3d 1494 (11th Cir. 1994); Armstrong v. Allain Litig., discussion at 893 F. Supp. 1320 (S.D. Miss. 1994); Cincinnati Litig. (OH), discussion at 40 F.3d 807(6th Cir. 1994); City of Philadelphia Litig. (PA), discussion at 28 F.3d 306 (3d Cir. 1994); Metro Dade County Litig. (FL), discussion at 985 F.2d 1471 (11th Cir. 1993); LULAC v. Clements Litig. (TX), discussion 999 F.2d 831 (5th Cir. 1993); SW Texas Junior College District Litig. (TX), discussion at 964 F.2d 1542 (5th Cir. 1992); Monroe County 740 F. Supp. 417 (N.D. Miss. 1990); Pomona Litig. (CA), discussion at 883 F.2d 1418 (9th Cir. 1989); Chickasaw County I Litig. (MS), discussion at 705 F. Supp. 315 (N.D. Miss. 1989); Watsonville Litig. (CA), discussion at 863 F.2d 1407 (9th Cir. 1988); Carrollton NAACP Litig. (GA), discussion at 829 F.2d 1547 (11th Cir. 1987); City of Fort Lauderdale Litig. (FL), discussion at 804 F.2d 611 (11th Cir. 1986); City of Boston Litig. (MA), discussion at 784 F.2d 409 (1st Cir. 1986); Wesley Litig. (TN), discussion at 791 F.2d 1255 (6th Cir. 1986); Chapman v. Nicholson Litig., discussion at 579 F. Supp. 1504 (N.D. Ala. 1984); McCarty Litig. (TX), discussion at 749 F.2d 1134 (5th Cir. 1984); Rybicki Litig., discussion at 574 F. Supp. 1147 (N.D. Ill. 1983).
321. Cousin Litig. (TN), discussion at 145 F.3d 818, 832 (6th Cir. 1998) (including in Factor 1 only examples occurring within the last thirty years); City of Chicago Litig., discussion at 969 F. Supp. 1359, 1446 (N.D. Ill. 1997) (considering evidence of discrimination dating back twenty-five years "too remote in time" for purposes of Factor 1).
322. Suffolk County Litig., 268 F. Supp. 2d 243 (E.D.N.Y. 2003); Belle Glade Litig., 178 F.3d 1175 (11th Cir. 1999); Salt River District Litig. (AZ), discussion at 109 F.3d 586, 596 (9th Cir. 1997) (finding no evidence presented that African- American landowners experienced discrimination, but suggesting that the case might have gone differently if the plaintiffs had alleged that non-landowners who were disproportionately African American had experienced discrimination based upon the landownership voting requirement); St. Louis Bd. of Educ. Litig., 90 F.3d 1357 (8th Cir. 1996); City of Watsonville Litig. (CA), discussion at 863 F.2d 1407, 1419 (9th Cir. 1988) (finding a violation without Factor 1 met; criticizing the district court for refusing to hear evidence outside of Watsonville and stating that it would have taken judicial notice of the "pervasive" discrimination against Hispanics in the State of California, if this were needed to find a violation); Chapman v. Nicholson Litig., 579 F. Supp. 1504 (N.D. Ala. 1984) (no evidence presented in county where lawsuit brought). Other courts considered evidence of official discrimination, but decided that not enough had been presented to show more than mere disparate impact on the basis of race— therefore, Factor 1 was not met. For example, in the *City of Philadelphia* Litigation challenging Pennsylvania's voter purge law, the court found that the removal of African-American and Latino voters from the voter registration rolls at higher rates than white voters combined with the "correlation between older machines being allocated to neighborhoods with significant minority populations" did not, without more, rise to the level of official discrimination. *City of Philadelphia Litig.*, 28 F.3d 306, 312 (3d Cir. 1994).
323. *See, e.g.*, Chapman v. Nicholson Litig., discussion at 579 F. Supp. 1504, 1510 (N.D. Ala. 1984) ("While the court might assume that, at some point in history, black citizens were discouraged by poll taxes and other means from registering, several of the black witnesses testified that they voted up to 30 years ago without difficulty. There was certainly no evidence that black citizens in Jasper have had as much difficulty in voting as has been experienced by black citizens in some Southern communities.").
324. *See, e.g.*, Rodriguez Litig., discussion at 308 F.Supp.2d 346, 435 (S.D.N.Y. 2004) ("while we find the history reflected in Yonkers troubling and recognize the need for continued vigilance and resolve to ensure equality of opportunity, we do not find in the record a 'history of voting-related discrimination in the State' ").
325. Chapman v. Nicholson Litig., 579 F. Supp. 1504, 1510 (N.D. Ala. 1984).
326. *See, e.g.*, Rodriguez Litig., 308 F. Supp. 2d 346 (S.D.N.Y. 2004).
327. *Id.* at 434-45.
328. Kent County Litig. (MI), discussion at 790 F. Supp. 738, 745 (W.D. Mich. 1992).

329. *See* cases cited *supra* note 207.
330. *Id.*; *see, e.g.*, *Monroe County Litig.*, discussion at 740 F. Supp. 417, 422 (N.D. Miss. 1990) (“no black person of voting age in Monroe County has been refused registration for any reason since 1964. The court finds no evidence that black voter registration is presently impeded by any historical official discrimination.”).
331. 957 F. Supp. 1522, 1557-59 (N.D. Fla. 1997) (findings upheld by 221 F.3d 1218 (11th Cir. 2000), also affirming the court’s finding of no violation).
332. *Id.* at 1557.
333. *Id.* at 1559 n.86.
334. *Aldasoro Litig.*, discussion at 922 F. Supp. 339, 363-64 (S.D. Cal. 1995) (citing “the numerous laws enacted by the California Legislature in the last 30 years to improve minority voting participation and to liberalize the political process. These laws included: County clerks could not refuse to deputize registrars because of race (1961); prohibition of election day challenges based on literacy (1961); requirement that a copy of the election ballot in Spanish be posted in each polling place where the language minority population was greater than 3% (1971); law allowing the use of languages besides English in polling places (1973); law requiring county clerks to recruit bilingual deputy registrars and precinct board members (1973); registration allowed by mail (1975); and the ability of voters in California to vote by absentee ballot for any reason” along with the state law requirement that “[w]here more than 3% of the voting age residents of a California county lack English skills, the County Clerk is required to recruit interested citizens and organizations to assist in the registration of individuals lacking such English skills”) (citations omitted); *see also* *Butts Litig.* (NY), discussion at 779 F.2d 141, 150 (2d Cir. 1985) (“[T]he City has taken affirmative steps since 1975 to encourage minority voting, including mail registration (N.Y. Election Law § 5-210(1)) and a Registration Task Force appointed by Governor Cuomo”).
335. *City of Woodville Litig.*, discussion at 688 F. Supp. 255, 260 (S.D. Miss. 1988).
336. *City of Holyoke Litig.*, discussion at 960 F. Supp. 515, 526 (D. Mass. 1997); *see also* *Tensas Parish Litig.*, discussion at 819 F.2d 609, 612 (5th Cir. 1987) (noting that “[t]he historical tensions between the races in Tensas Parish, albeit ameliorated, have not disappeared” and that it is “fervently hoped that District Six will provide the occasion for the final rejection of regrettable legacies of the past and the nurturing of more worthy legacies for the future.”); *City of Boston Litig.*, discussion at 609 F. Supp. 739, 745 (D. Mass. 1985) (finding some individual instances of intimidation while noting that “[t]here was, in fact, testimony that the theme of racial harmony played a major role in the campaigns of some candidates in the 1983 elections.”).
337. For a detailed description of the history of official discrimination in the Southern States, *see*: Alabama: *Dillard v. Crenshaw Litig.*, 640 F. Supp. 1347 (M.D. Ala. 1986); *Mobile School Board Litig.*, discussion at 706 F.2d 1103, 1104-07 (11th Cir. 1983) (not reaching amended Section 2 question, but finding an intent violation); Florida: *DeSoto County Board of Comm’rs Litig.*, 204 F.3d 1335 (11th Cir. 2000) (finding law enacted with discriminatory purpose and remanding for Section 2 results test hearing); Georgia: *Brooks Litig.*, discussion at 158 F.3d 1230, 1233-34 (11th Cir. 1988); *Ben Hill County Litig.*, discussion at 743 F. Supp. 864, 865-68 (M.D. Ga. 1990); Louisiana: *Gretna Litig.* (LA), 834 F.2d 496 (5th Cir. 1987); *Major Litig.*, 574 F. Supp. 325 (E.D. La. 1983); Mississippi: *Kirksey v. Allain Litig.*, discussion at 658 F. Supp. 1183, 1192-93 (S.D. Miss. 1987); Texas: *City of Dallas Litig.*, discussion at 734 F. Supp. 1317, 1320-33, 1401-03 (W.D. Tex. 1990); *LULAC-Midland Indep. Sch. Dist. Litig.*, 648 F. Supp. 596 (W.D. Tex. 1986).
338. *See, e.g.*, *NAACP v. Fordice Litig.*, 252 F.3d 361 (5th Cir. 2001); *Lafayette County Litig.*, 20 F. Supp. 2d 996 (N.D. Miss. 1998); *Calhoun County Litig.* (MS), 88 F.3d 1393 (5th Cir. 1996); *Fort Bend Indep. Sch. Dist. Litig.* (TX), 89 F.3d 1205 (5th Cir. 1996); *LULAC - N.E. Indep. Sch. Dist.* 903 F. Supp. 1071 (W.D. Tex. 1995); *Armstrong v. Allain Litig.*, 893 F. Supp. 1320 (S.D. Miss. 1994); *LULAC v. Clements: Litig.* (TX), 999 F.2d 831 (5th Cir. 1993); *Southwest Tex. Jr. College Dist.* 964 F.2d 1542 (5th Cir. 1992); *Tensas Parish School Board Litig.* (TX), discussion at 819 F.2d 609 (5th Cir. 1987) (referring to “historical tensions,” and seeming to blame both Blacks and Whites equally for these tensions); *U.S. v. Jones Litig.* (AL), 57 F.3d 1020 (11th Cir. 1995) (noting that one “cannot ignore” the history but finding that it does not weigh in favor of a violation); *Little Rock Litig.*, 56 F.3d 904 (8th Cir. 1995) (any history of discrimination is “remote in time” and so had minimal value in the results test).
339. *City of Woodville Litigation*, discussion at 688 F. Supp. 255, 260 (S.D. Miss. 1988); *see also* *Calhoun County Litig.*, discussion at 88 F.3d 1393, 1399 (5th Cir. 1996) (finding a violation but not relying on history of official discrimination affecting political participation); *Johnson v. Hamrick Litig.* (GA), discussion at 296 F.3d 1065, 1224 (11th Cir. 2002) (“The State of Georgia and Gainesville have a history of official discrimination against blacks. Of course, that does little to distinguish Gainesville or Georgia from any other Southern state or city.”).
340. *Butts v. NYC Litig.*, discussion at 614 F. Supp. 1527, 1544-45 (S.D.N.Y. 1985) (noting that “[c]ontrary to the popularly held belief that racial discrimination only takes place within the Fifth and Eleventh Circuits, plaintiffs’

- exhibits... support the finding that Black and Hispanic voters in New York City have been subject to various procedures ... which have had the effect of abridging their voting rights”).
341. *Butts v. NYC Litig.*, discussion at 779 F.2d 141, 150 (2d Cir. 1985) (overturning district court’s prior finding of a Section 2 violation); *see also* *France v. Pataki Litig.*, discussion at 71 F. Supp. 2d 317, 330 (S.D.N.Y. 1999) (finding no history of official discrimination, and noting that “[i]n fact, New York City has taken steps to encourage minority voting including mail registration and a Registration Task Force appointed by Governor Cuomo. Furthermore, defendants’ expert, Dr. Mollenkopf, acknowledged that the election practices in question were not adopted as a part of a racist historical tradition” (citation omitted)).
 342. *Town of Babylon Litig.*, discussion at 914 F. Supp. 843, 886 (E.D.N.Y. 1996); *see also* *City of Boston Litig.*, discussion at 784 F.2d 409, 412 (1st Cir. 1986) (finding “that Boston’s history of discrimination in the area of voting rights was less egregious than in certain other parts of the country”).
 343. *See* SENATE REPORT *supra* note 15, at 27-30. Single shot voting is a practice by which voters can direct their votes to a single candidate running in a multi-member district, and choose not to cast their remaining votes for other candidates running at the same time. Doing so increases the relative weight of their votes by reducing the number of votes other candidates receive. An anti-single shot provision may prevent voters from doing this, typically by disqualifying any ballot where a voter has not used all available votes. *See* QUIET REVOLUTION, *supra* note 6, at 46 (explaining the numbered place ballot system, a common type of anti-single shot provision: “[s]ingle shot voting is impossible if each candidate is required to qualify for a separate *place* or *post* (i.e., place no. 1, place no. 2, and so forth). Because every seat on the governing body is filled through a head-to-head contest in which only one vote can be cast, there is no way to increase the mathematical weight of one’s ballot by denying votes to other candidates.”) *See also* *Marengo County Litig.*, discussion at 731 F.2d 1546, 1570 n.45 (11th Cir. 1984) (“When voters can cast more than one vote in the same race, an anti-single-shot provision can force minority voters to vote for majority candidates.”)
 344. *See* Master Lawsuit List (filter Column: 3f=1). Of the 53 lawsuits finding Factor 3, 25 were decided in the 1980s (20 violations), 22 in the 1990s (12 violations), and 6 since 2000 (3 violations). *Id.* (sort Column: Year while filtering Column: WasSection2Violated=True). Note that where a practice enumerated in the Factor 3 list was directly challenged in the lawsuit, a court did not always consider or find Factor 3 independently of the express challenge to the practice.
 345. *City of Cleveland Litig.*, 297 F. Supp. 2d 901 (N.D. Miss. 2004); *Charleston County Litig.* (SC), 365 F.3d 341 (4th Cir. 2004); *Bone Shirt Litig.*, 336 F. Supp. 2d 976 (D.S.D. 2004); *NAACP v. Fordice Litig.* (MS), 252 F.3d 361 (5th Cir. 2001); *Brooks Litig.* (GA), 158 F.3d 1230 (11th Cir. 1998); *City of LaGrange Litig.* 969 F. Supp. 749 (N.D. Ga. 1997); *City of Rome Litig.* (GA), 127 F.3d 1355 (11th Cir. 1997); *Chickasaw County II Litig.*, No. CIV.A. 1:92CV142-JAD, 1997 U.S. Dist. LEXIS 22087, 1997 WL 33426761 (N.D. Miss. Oct. 28, 1997); *Calhoun County Litig.* (MS), 88 F.3d 1393 (5th Cir. 1996); *Southern Christian Leadership Litig.* (AL), 56 F.3d 1281 (11th Cir. 1995); *Blytheville Sch. Dist. Litig.* (AR), 71 F.3d 1382 (8th Cir. 1995); *Stockton Litig.* (CA), 956 F.2d 884 (9th Cir. 1992); *Jefferson Parish I Litig.* (LA), 926 F.2d 487 (5th Cir. 1991); *Columbus County Litig.*, 782 F. Supp. 1097 (E.D.N.C. 1991); *Monroe County Litig.*, 740 F. Supp. 417 (N.D. Miss. 1990); *City of Dallas Litig.*, 734 F. Supp. 1317 (W.D. Tex. 1990); *City of Starke Litig.*, 712 F. Supp. 1523 (M.D. Fla. 1989); *Baldwin Bd. of Educ. Litig.*, 686 F. Supp. 1459 (M.D. Ala. 1988); *City of Jackson Litig.*, 683 F. Supp. 1515 (W.D. Tenn. 1988); *Gretna Litig.* (LA), 834 F.2d 496 (5th Cir. 1987); *Kirksey v. Allain Litig.*, 658 F. Supp. 1183 (S.D. Miss. 1987); *Dallas County Comm’n Litig.*, 636 F. Supp. 704 (S.D. Ala. 1986); *Gingles Litig.* (NC), 478 U.S. 30 (1986); *Edgefield County Litig.*, 650 F. Supp. 1176 (D.S.C. 1986); *LULAC – Midland Indep. Sch. Dist. Litig.*, 648 F. Supp. 596 (W.D. Tex. 1986); *Chapman v. Nicholson Litig.*, 579 F. Supp. 1504 (N.D. Ala. 1984); *Escambia County Litig.* (FL), 748 F.2d 1037 (11th Cir. 1984); *City of Greenwood Litig.*, 599 F. Supp. 397 (N.D. Miss. 1984); *El Paso Indep. Sch. Dist. Litig.*, 591 F. Supp. 802 (W.D. Tex. 1984); *Abilene Litig.* (TX), 725 F.2d 1017 (5th Cir. 1984); *Major Litig.*, 574 F. Supp. 325 (E.D. La. 1983); *Terrell Litig.* 565 F. Supp. 338 (N.D. Tex. 1983).
 346. *Charleston County Litig.* (SC), 365 F.3d 341 (4th Cir. 2004); *Bone Shirt Litig.*, 336 F. Supp. 2d 976 (D.S.D. 2004); *Red Clay Sch. Dist. Litig.*, 116 F.3d 685 (D. Del. 1997); *City of LaGrange Litig.*, 969 F. Supp. 749 (N.D. Ga. 1997); *City of Rome Litig.* (GA), 127 F.3d 1355 (11th Cir. 1997); *Town of Babylon Litig.*, 914 F. Supp. 843 (E.D.N.Y. 1996); *Southern Christian Leadership Litig.* (AL), 56 F.3d 1281 (11th Cir. 1995); *Blytheville Sch. Dist. Litig.* (AR), 71 F.3d 1382 (8th Cir. 1995); *Niagara Falls Litig.* (NY), 65 F.3d 1002 (2d Cir. 1995); *Stockton Litig.* (CA), 956 F.2d 884 (9th Cir. 1992); *Columbus County Litig.*, 782 F. Supp. 1097 (E.D.N.C. 1991); *City of Dallas Litig.*, 734 F. Supp. 1317 (W.D. Tex. 1990); *City of Starke Litig.*, 712 F. Supp. 1523 (M.D. Fla. 1989); *Brewer Litig.* (TX), 876 F.2d 448 (5th Cir. 1989); *Baldwin Bd. of Educ. Litig.*, 686 F. Supp. 1459 (M.D. Ala. 1988); *City of Jackson Litig.*, 683 F. Supp. 1515 (W.D. Tenn. 1988); *City of Springfield Litig.*, 658 F. Supp. 1015 (C.D. Ill. 1987); *County of Big Horn Litig.*, 647 F. Supp. 1002 (D. Mont. 1986); *Gingles Litig.* (NC), 478 U.S. 30 (1986); *Edgefield County Litig.*, 650 F. Supp. 1176 (D.S.C. 1986); *Sisseton Indep. Sch. Dist. Litig.* (SD), 804 F.2d 469

- (8th Cir. 1986); Escambia County Litig. (FL), 748 F.2d 1037 (11th Cir. 1984); City of Greenwood Litig., 599 F. Supp. 397 (N.D. Miss. 1984); Lubbock Litig. (TX), 727 F.2d 364 (5th Cir. 1984); El Paso Indep. Sch. Dist. Litig., 591 F. Supp. 802 (W.D. Tex. 1984); Terrell Litig. 565 F. Supp. 338 (N.D. Tex. 1983).
347. Alamosa County Litig., 306 F. Supp. 2d 1016 (D. Colo. 2004); Bone Shirt Litig. (SD). 336 F. Supp. 2d 976 (D.S.D. 2004); City of Chicago Heights Litig., Nos. 87 C 5112, 88 C 9800, 1997 WL 102543 (N.D. Ill. Mar. 5, 1997); Southern Christian Leadership Litig. (AL), 56 F.3d 1281 (11th Cir. 1995); Blytheville School District (AR) Litig., 71 F.3d 1382 (8th Cir. 1995); LULAC - N.E. Indep. Sch. Dist. , 903 F. Supp. 1071 (W.D. Tex. 1995); Worcester County Litig. (MD), 35 F.3d 921 (4th Cir. 1994); Stockton Litig. (CA), 956 F.2d 884 (9th Cir. 1992); SW Texas Junior College Dist. Litig., 964 F.2d 1542 (5th Cir. 1992); Columbus County Litig., 782 F. Supp. 1097 (E.D.N.C. 1991); City of Dallas Litig., 734 F. Supp. 1317 (W.D. Tex. 1990); Jeffers Litig., 730 F. Supp. 196 (E.D. Ark. 1989); City of Starke Litig., 712 F. Supp. 1523 (M.D. Fla. 1989); Brewer Litig. (TX), 876 F.2d 448 (5th Cir. 1989); Harris v. Graddick Litig., 695 F. Supp. 517 (M.D. Ala. 1988); Gretna Litig. (LA), 834 F.2d 496 (5th Cir. 1987); Dallas County Comm'n Litig., 636 F. Supp. 704 (S.D. Ala. 1986); LULAC – Midland Indep. Sch. Dist. Litig., 648 F. Supp. 596 (W.D. Tex. 1986); Marengo County Litig., 623 F. Supp. 3s3 (S.D. Ala. 1985); Chapman v. Nicholson Litig., 579 F. Supp. 1504 (N.D. Ala. 1984); Abilene Litig. (TX), 725 F.2d 1017 (5th Cir. 1984); Lubbock Litig. (TX), 727 F.2d 364 (5th Cir. 1984); Mobile School Board Litig. (AL), 706 F.2d 1103 (11th Cir. 1983).
348. Blaine County Litig. (MT), 363 F.3d 897 (9th Cir. 2004); Charleston County Litig., 365 F.3d 341 (4th Cir. 2004); Town of Hempstead Litig. (NY), 180 F.3d 476 (2d Cir. 1999); Stockton Litig. (CA), 956 F.2d 884 (9th Cir. 1992); Jefferson Parish I Litig. (LA), 926 F.2d 487 (5th Cir. 1991); City of Jackson (TN), 683 F. Supp. 1515 (W.D. Tenn. 1988); City of Springfield Litig., 658 F. Supp. 1015 (C.D. Ill. 1987); LULAC – Midland Litig., 648 F. Supp. 596 (W.D. Tex. 1986); Chapman v. Nicholson Litig., 579 F. Supp. 1504 (N.D. Ala. 1984); Escambia County Litig. (FL), 748 F.2d 1037 (11th Cir. 1984); City of Greenwood, 599 F. Supp. 397 (N.D. Miss. 1984).
349. City of Dallas Litig., 734 F. Supp. 1317 (W.D. Tex. 1990) (negligible compensation for elected officials); City of Jackson Litig., 683 F. Supp. 1515 (W.D. Tenn. 1988) (short interval between election and runoff existed until 1979 favoring wealthy candidates); County of Big Horn Litig., 647 F. Supp. 1002 (D. Mont. 1986) (staggered terms, residential district); Sisseton Indep. Sch. Dist. Litig. (SD), 804 F.2d 469 (8th Cir. 1986) (apportionment based upon voter registration, not population); Escambia County (FL), 748 F.2d 1037 (11th Cir. 1984) (registration fee for candidates); Lubbock Litig. (TX), 727 F.2d 364 (5th Cir. 1984) (no residential requirement for candidacy); *see also* City of Philadelphia Litig. (PA), 28 F.3d 306 (3d Cir. 1994) (where voter purge law, such that voters automatically removed from the registration list, and required to re-register if they had not voted in 4 years, was both challenged and considered under Factor 3).
350. *See* Master Lawsuit List (filter Column: 3f=*I* while filtering Column: Jurisdiction = *True*).
351. *Id.*
352. *Id.*
353. *See, e.g.,* NAACP v. Fordice Litig. (MS), 252 F.3d 361(5th Cir. 2001) (finding that majority-vote requirement was not in itself discriminatory); Kirksey v. Allain Litig., 658 F. Supp. 1183, 1194 (S.D. Miss. 1987) (“Although it is obvious that abolition of the majority vote requirements and post system without adoption of anti-single-shot voting laws would make it easier in some situations for black candidates to be elected, this Court cannot hold that these provisions as they now exist discriminate against blacks per se.”); *see also* Alamosa County Litig., 306 F. Supp. 2d 1016 (D. Colo. 2004); City of Cleveland Litig., 297 F. Supp. 2d 901 (N.D. Miss. 2004); City of Rome Litig. (GA), 127 F.3d 1355 (11th Cir. 1997); Chickasaw County II Litig., No. CIV.A. 1:92CV142-JAD, 1997 U.S. Dist. LEXIS 22087, 1997 WL 33426761(N.D. Miss. Oct. 28, 1997); Town of Babylon Litig., 914 F. Supp. 843 (E.D.N.Y. 1996); Southern Christian Leadership Litig. (AL), 56 F.3d 1281(11th Cir. 1995); Niagara Falls Litig. (NY), 65 F.3d 1002, 1020 (2d Cir. 1995); SW Texas Junior College Dist. Litig., 964 F.2d 1542 (5th Cir. 1992); Jeffers Litig., 730 F. Supp. 196 (E.D. Ark. 1989); Terrell Litig., 565 F. Supp. 338 (N.D. Tex. 1983).
354. *See, e.g.,* Dillard v. Crenshaw County Litig., 650 F. Supp. 1347, 1357 (M.D. Ala. 1986) (ordering a preliminary injunction against the at-large election systems in the 5 counties, finding that “the Alabama legislature . . . has consistently enacted at-large systems for local governments during periods when there was a substantial threat of black participation in the political process . . . enactment[s] . . . [that were] not adventitious but rather racially inspired.”); Major Litig., 574 F. Supp. 325, 340 (E.D. La. 1983) (“As a further obstacle to minority access, the legislature established a majority-vote requirement for election to party committees in 1959.”); Mobile School Board Litig. (AL), 706 F.2d 1103, 1106-07 (11th Cir. 1983) (“The 1876 act which reenacted the 1852 Act of at-large voting procedures was a convenient method of making the election of a black board member unlikely. . . [and when] the Alabama legislature reinstated a law which suited the purpose of discrimination, the law may be said to have been a product of discriminatory intent.”). *See generally* QUIET REVOLUTION, *supra* note 6.

355. *See, e.g.*, *Hendrix v. McKinney*, 460 F. Supp. 626, 631-32 (M.D. Ala. 1978) (describing the slating inquiry as ascertaining “the ability of blacks to get on the ballot” and finding that slating existed where no blacks had run for county-wide office); *Turner v. McKeithen Litig.* (LA), discussion at 490 F.2d 191, 195 (5th Cir. 1973) (reasoning that slating is a particularly salient factor in situations where “the black vote has been solicited at a stage when the actual candidate selection has already occurred and the possibility for meaningful influence is significantly diminished”); *see also* *White v. Regester*, 412 U.S. 755, 766 (1973) (“[S]ince Reconstruction days, there have been only two Negroes in the Dallas County delegation to the Texas House of Representatives and that these two were the only two Negroes ever slated by the Dallas Committee for Responsible Government (DCRG), a white-dominated organization that is in effective control of Democratic Party candidate slating in Dallas County. That organization, the District Court found, did not need the support of the Negro community to win elections in the county, and it did not therefore exhibit good-faith concern for the political and other needs and aspirations of the Negro community.”).
356. *See* Master Lawsuit List (filter Column: WasSection2Violated = True and filter Column: 4f=0).
357. *See* Master Lawsuit List (filter Column: 4f=1 while filtering Column: RPV=1, then Column: 7f=1).
358. *Westwego Litig.* (LA), discussion at 946 F.2d 1109, 1116 n.5 (5th Cir. 1991).
359. *Town of Hempstead Litig.* (NY), discussion at 180 F.3d 476, 483-86 (2d Cir. 1999)
360. *Id.* at 486.
361. *Id.* at 496.
362. *City of New Rochelle Litig.*, 308 F. Supp. 2d 152, 161 (S.D.N.Y. 2003).
363. *Albany County Litig.*, No. 03-CV-502, 2003 WL 21524820, at * 44, 46 (N.D.N.Y. July 7, 2003) (concluding that the evidence “demonstrates that minorities have generally been excluded from candidacy for County offices except in majority/minority districts.”).
364. *Bone Shirt Litig.*, (SD), 336 F. Supp. 2d 976, 1036 (D.S.D. 2004); *City of Springfield Litig.*, 658 F. Supp. 1015, 1030 (C.D. Ill. 1987).
365. *City of Springfield*, 658 F. Supp. at 1030.
366. *Bone Shirt*, 336 F. Supp. 2d at 1036.
367. *See* *Armour Litig.*, discussion at 775 F. Supp. 1044, 1056 (N.D. Ohio 1991) (noting such rules and observing that “although each precinct had committeemen who were paid to campaign for the endorsed candidates, Starks received zero votes in four precincts, including one precinct where two party officials resided. No sanctions were taken by the party against the officials or the committeemen who refused to support Starks.”).
368. *City of Philadelphia Litig.*, discussion at 824 F. Supp. 514, 537 & n.22 (E.D. Pa. 1993).
369. *City of Chicago Heights Litig.*, Nos. 87 C 5112, 88 C 9800, 1997 WL 102543 (N.D. Ill. Mar. 5, 1997); *Pasadena Sch. Dist. Litig.*, discussion at 958 F. Supp. 1196 (S.D. Tex. 1997); *Gretna Litig.*, discussion at 636 F. Supp. 1113, 1118 (E.D. La. 1986); *see also* *Abilene Litig.* (TX), discussion at 725 F.2d 1017, 1022 (5th Cir. 1984) (remanding to district court for additional findings on whether private citizen group known as Citizens for Better Government denied black candidates access to slating; endorsement of this “white-dominated” organization was essential to win and three minority candidates endorsed by organization had not been shown to be “true representatives” of the minority population).
370. *City of Chicago Heights Litig.*, Nos. 87 C 5112, 88 C 9800, 1997 WL 102543 (N.D. Ill. Mar. 5, 1997).
371. *Gretna Litig.*, discussion at 636 F. Supp. at 1118 (E.D. La. 1986) (affirming district court and noting that “[a]n unofficial slating system excludes black candidates from Gretna city elections”).
372. *Pasadena Sch. Dist. Litig.*, discussion at 958 F. Supp. 1196 (S.D. Tex. 1997).
373. *City of Dallas Litig.*, 734 F. Supp. 1317 (W.D. Tex. 1990).
374. *City of LaGrange Litig.*, discussion at 969 F. Supp. 749, 777 (N.D. Ga. 1997) (describing the virtual absence of African-American candidates for city council as “striking” and observing that support received by the few black candidates to run suggested “a lack of opportunity, rather than a lack of inclination, to sponsor minority candidates.”); *see also* *U.S. v. Marengo County Comm’n* (AL), 731 F.2d 1546, 1569 (11th Cir. 1984) (stating that broadly understood, “the term ‘access to slating’—that is, the ability to run for office—there does not appear to have been any substantial formal or informal impediment to black candidacies.”); *Hendrix v. McKinney Litig.*, discussion at 460 F. Supp. 626, 631 (M.D. Ala. 1978) (“[t]he core of the inquiry as to slating is the ability of blacks to get on the ballot.”).
375. *City of Dallas Litig.*, 734 F. Supp. 1317 (W.D. Tex. 1990) (finding the factor not met as the organization that denied access to black and Latino candidates through 1977 no longer existed at the time of the opinion); *County of Big Horn Litig.*, discussion at, 647 F. Supp. 1002, 1016 (D. Mont. 1986) (assigning no weight to a now-defunct slating organization that was never successful in having endorsed candidates elected).
376. *City of Rome Litig.*, discussion at 127 F.3d 1355 (11th Cir. 1997) (holding that informal “tickets” were not a slating device given their infrequent use and non-official nature); *City of Norfolk Litig.*, discussion at 605 F. Supp.

- 377, 390-91 (E.D. Va. 1984) (concluding that the organization alleged to engage in discriminatory slating did not qualify for the factor because it did not run candidates for all open seats); *Westwego Litig.*, discussion at 946 F.2d 1109, 1115-16 (5th Cir. 1991) (finding that although there were local organizations which played a central role in political life from which African Americans were excluded but not finding slating because there was no official endorsing of candidates).
377. *Little Rock Litig.*, discussion at 831 F. Supp. 1453, 1460 (E.D. Ark. 1993) (dismissing plaintiffs' claim that the "white power structure" throws support behind particular candidates as both untrue and not pertaining to slating); *City of Philadelphia Litig.*, discussion at 824 F. Supp. 514, 533 (E.D. Pa. 1993).
378. *Alamosa County Litig.*, 306 F. Supp. 2d 1016 (D. Col. 2004).
379. *See, e.g., McCord v. City of Fort Lauderdale*, 617 F. Supp. 1093 (11th Cir. 1999) (no denied access to slating where citizens' committee exclusively endorsed Republican candidates and no African American ever ran as a Republican); *LULAC (CA5 87)* (slating not found where no evidence was presented suggesting that African Americans could not run as Republicans if they wanted to).
380. *See Master Lawsuit List* (filter Column: 5f=1, and Column: Success=1, or WasSection2Violated=True).
381. *See Blaine County Litig. (MT)*, discussion at 363 F.3d 897, 914 (9th Cir. 2004) (finding socioeconomic disparities as a result of a history of discrimination); *Albany County Litig.*, discussion at No. 03-CV-502, 2003 WL 21524820, at *12 (N.D.N.Y. July 7, 2003) (finding that minorities continue to bear the effects of discrimination in almost all aspects of life); *City of New Rochelle Litig.*, discussion at 308 F. Supp. 2d 152, 159-60 (S.D.N.Y. 2003) (finding the continuing socioeconomic effects of historical discrimination); *Montezuma Cortez Sch. Dist. Litig.*, discussion at 7 F. Supp. 2d 1152, 1169-1170 (D. Colo. 1998) ("There is no doubt that this depressed status was caused, at least in part, by the history of mistreatment alluded to in this order."); *Emison Litig.*, discussion at 782 F. Supp. 427, 438 (D. Minn. 1992) (finding the factor met based on extensive housing segregation in the city as well as educational performance differences arising from historical discrimination); *Westwego Litig. (LA)*, discussion at 946 F.2d 1109, 1115 (5th Cir. 1991) (noting that Westwego's black citizens continue to bear the effects of a history of discrimination—"[b]y almost any measure, the black families of Westwego are less well off than their white neighbors."); *Garza v. Los Angeles Litig.*, discussion at 756 F. Supp. 1298, 1339-1341 (C.D. Cal. 1990); *Houston v. Haley Litig.*, discussion at 663 F. Supp. 346, 352-54 (N.D. Miss. 1987) (finding past discrimination led to continuing socioeconomic disparities); *Wamser Litig.*, discussion at 679 F. Supp. 1513, 1531 (E.D. Mo. 1987) (finding present socioeconomic disparities as a result of past discrimination); *Baytown Litig.*, discussion at 696 F. Supp. 1128, 1132, 1136 (S.D. Tex. 1987) (finding that minorities lag significantly behind whites in education, income, occupational status, and employment, "the Court concludes that the minorities in Baytown carry with them the results of past discrimination to a substantial extent."); *City of Holyoke Litig.*, discussion at 880 F. Supp. 911, 917-19 (D. Mass. 1995); *Halifax County Litig.*, discussion at 94 F. Supp. 161, 166-71 (E.D.N.C. 1984).
382. *See Metts Litig. (RI)*, discussion at 347 F.3d 346, 2003 WL 22434637, at * 2 (1st Cir. 2003) ("The state's African-American citizens continue to suffer from past official discrimination in housing, education, health care, and employment. By common measure of socio-economic status, educational attainment, and access to political resources, they continue to lag behind the rest of the state."); *Berks County Litig.*, discussion at 277 F. Supp. 2d 570, 575, 581 (E.D. Pa. 2003) ("Hispanics in Reading suffer from significant socioeconomic inequality, which is ordinarily linked to lower literacy rates, unequal educational opportunities, and depressed participation in the political process."); *St. Bernard Parish School Board Litig.*, discussion at No. CIV.A. 02-2209, 2002 U.S. Dist. LEXIS 16540, at *31-32 (E.D. La. Aug. 26, 2002) (finding socioeconomic discrepancies and then quoting language from the *Senate Report* linking socioeconomic depression to lower political participation); *Old Person Litig. (MT)*, discussion at 230 F.3d 1113, 1129 (9th Cir. 2000) ("American Indians have a lower socioeconomic status than whites in Montana; these social and economic factors hinder the ability of American Indians in Montana to participate fully in the political process."); *Davis v. Chiles Litig. (FL)*, discussion at 139 F.3d 1414, 1419 & n.10 (11th Cir. 1998) ("Florida has had a history of racially discriminatory voting practices and . . . continuing socio-economic disparities are hindering blacks' participation in the political process in these districts."); *Rural West II Litig.*, discussion at 29 F. Supp. 2d 448, 459 (W.D. Tenn. 1998) (linking low socioeconomic status with inability to fundraise and fully participate in politics); *Chickasaw County II Litig.*, discussion at No. CIV.A. 1:92CV142-JAD, 1997 U.S. Dist. LEXIS 22087, at *10-11 (N.D. Miss. Oct. 28, 1997) (linking low socioeconomic status with lack of access to telephones and vehicles, which "translates into lower voter participation and heightens a finding of vote dilution"); *City of LaGrange Litig.*, discussion at 969 F. Supp. 749, 757, 776 (N.D. Ga. 1997) ("These lingering effects of Georgia's history of discrimination continue to translate into diminished political influence and opportunity for LaGrange's African-American citizens."); *City of Rome Litig. (GA)*, 127 F.3d 1355, 1370-71, 1385-86 (11th Cir. 1997) (linking low socioeconomic status with depressed political participation as shown by the positive statistical correlations between status and participation);

Sanchez-Colorado Litig. (CO), discussion at 97 F.3d 1303, 1322-24 (10th Cir. 1996) (deciding that the lower court's finding of roughly equivalent political participation was not enough to refute the massive quantity of evidence showing current socioeconomic depression that could not be explained other than by a history of discrimination); LULAC - N.E. Indep. Sch. Dist. Litig., discussion at 903 F. Supp. 1071, 1085-86 (W.D. Tex. 1995) ("Blacks and Hispanics still bear the effects of past discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process."); Cousin Litig., discussion at 904 F. Supp. 686, 708-10 (E.D. Tenn. 1995) (linking low socioeconomic status with isolation "from the economic and political main stream" and inability to "fund and mount political campaigns"); Marylanders Litig., discussion at 849 F. Supp. 1022, 1060-61 (D. Md. 1994) (finding depressed socioeconomic status and quoting the *Senate Report* for the proposition that depressed socioeconomic status tends to depress political participation); Rural West I Litig., discussion at 836 F. Supp. 453, 461-62 (W.D. Tenn. 1993) ("In west Tennessee, black citizens are more likely than white citizens to live in poverty, to be unemployed, and to live in substandard housing. Black citizens are less likely to have completed high school, to own their own homes, to have access to a car, or to have telephones in their homes. As the Senate Report recognizes, educational and economic disadvantages can translate into political disadvantage."); Brunswick County Litig., discussion at 801 F. Supp. 1513, 1518, 1524 (E.D. Va. 1992) ("[B]lack citizens in Brunswick County bear the lingering effects of this discrimination by experiencing lower education levels, poorer housing and lesser earning power. This Court finds that these conditions dramatically hinder the ability of African Americans to participate fully in the political process in Brunswick County."); Magnolia Bar Ass'n Litig., discussion at 793 F. Supp. 1386, 1409 (S.D. Miss. 1992) ("A person with less education is less likely to vote than one with more education. A person with less money is less likely to own an automobile and therefore less likely to make the effort to go to the polls to vote or to the courthouse to register."); De Grandy Litig., discussion at 794 F. Supp. 1076 (N.D. Fla. 1992) (linking low socioeconomic status to depressed political participation as shown by voting studies that consistently show a positive correlation between socioeconomic factors and voter participation); Hall Litig., discussion at 757 F. Supp. 1560, 1562-63 (M.D. Ga. 1991) ("The depressed socio-economic status of black residents, including particularly the lack of public or private transportation, telephones and self-employment, hinders the ability of and deters black residents of Bleckley County from running for public office, voting and otherwise participating in the political process."); City of Dallas Litig., discussion at 734 F. Supp. 1317, 1403-05 (N.D. Tex. 1990) (linking low socioeconomic status with an inability to fund an effective campaign as well as the inability to afford to hold office because of the small amount of financial compensation council members receive); White Litig., discussion at 1989 U.S. Dist. LEXIS 16117 at *9-11, 22-23 (E.D. Va. 1989) (finding that the lingering effects of past discrimination hinder the political process); Clark Litig., discussion at 725 F. Supp. 285, 290-91, 299 (M.D. La. 1988) ("The stipulated facts establish the substantial socio-economic disparities which exist in Louisiana today between blacks and whites. These disparities are a vesture of past discrimination and they do hinder the ability of blacks to effectively participate in the political process."); Smith-Crittenden County Litig., discussion at 687 F. Supp. 1310, 1317 (E.D. Ark. 1988) ("[T]he history of discrimination has adversely affected opportunities for black citizens in health, education, and employment. The hangover from this history necessarily inhibits full participation in the political process."); Baldwin Board Education Litig., discussion at 686 F. Supp. 1459, 1466-67 (M.D. Ala. 1988) ("The evidence . . . reflects that this discrimination has resulted in a lower socio-economic status for Alabama blacks as a group than for whites, and that this lower status has . . . depressed levels of black voter participation and has thereby hindered the ability of blacks to participate effectively in the political process."); Mehfoud Litig., discussion at 702 F. Supp. 588, 594-95 (E.D. Va. 1988) (linking low socioeconomic status to depressed political participation, which credits expert testimony that "participation in the political process is positively correlated with socioeconomic status," and also linking low socioeconomic status with the ability to raise enough funds to effectively run for political office); City of Jackson Litig., discussion at 683 F. Supp. 1515, 1533-1534 (W.D. Tenn. 1988) ("White collar workers can more easily register and vote than blue-collar workers since they have a greater ability to take time off from work. Since black citizens earn less money than white citizens, it is more difficult for a candidate favored by the black community to raise campaign funds. Due to their depressed socioeconomic status, it is more difficult for the black community to mobilize and get black voters to the polls than it is for the white community to do so with white voters."); Chisom Litig., discussion at CIV. A. No. 86-4057, 1989 WL 106485 at *8-9 (E.D. La. Sept. 19, 1989) (linking low socioeconomic status with the inability to finance effective campaigns.); Kirksey v. Alain Litig., discussion at 658 F. Supp. 1183, 1194-95 (S.D. Miss. 1987) (linking low socioeconomic status with depressed political participation and crediting expert testimony linking lower socioeconomic status with lower rates of registration and voting); Operation Push Litig., discussion at 674 F. Supp. 1245, 1253-54, 1264-65 (N.D. Miss. 1987) (linking low socioeconomic status with the lower availability of automobiles making it harder for poor blacks to register during working hours); Gretna Litig., discussion at 636 F. Supp. 1113, 1116-20 (E.D. La. 1986) ("[D]epressed levels of income, education and employment are a consequence of severe historical disadvantage.

- Depressed levels of participation in voting and candidacy are inextricably involved in the perception of futility and impotence such a history engenders. These historical disadvantages continue through the present day and undoubtedly hinder the ability of the black community to participate effectively in the political process within the City of Gretna.”); Lubbock Litig. (TX), discussion at 727 F.2d 364, 383 (5th Cir. 1984) (finding that a history of discrimination combined with socioeconomic depression led to a decreased ability of minorities to participate in the political process); Blytheville Sch. Dist. Litig. (AR), discussion at 71 F.3d 1382, 1390 (8th Cir. 1995) (holding that the district court did not give enough weight to the effect that socioeconomic depression caused by past discrimination has on current political participation).
383. See, e.g., Rural West II Litig., discussion at 29 F. Supp. 2d 448, 459 (W.D. Tenn. 1998) (“Money has a prominent role in American politics. Campaigning is expensive and all candidates are aware of the need to raise money. Financed electorate groups can exert influence by sponsoring their own candidate or gaining the ear of another through contributions. The economic and educational isolation of African-Americans described by the *Rural West I* court limits their ability to fund and mount political campaigns. In this sense therefore, blacks are not able to equally participate in the political process.”); Cousin Litig., discussion at 904 F. Supp. 686, 708-10 (E.D. Tenn. 1995) (finding less ability to fund a campaign); Mehfoud Litig., discussion at 702 F. Supp. 588, 594-95 (E.D. Va. 1988); Chisom Litig., discussion at CIV. A. No. 86-4057, 1989 WL 106485 at *8-9 (E.D. La. Sept. 19, 1989).
384. See, e.g., City of Rome Litig. (GA), discussion at 127 F.3d 1355, 1370-1371, 1385-1386 (11th Cir. 1997) (“Rome’s at-large electoral systems, moreover, have the effect of increasing the importance of money in the electoral process by enlarging the electoral district.”); Cousin Litig., discussion at 904 F. Supp. 686, 708-710 (E.D. Tenn. 1995); Columbus County Litig., discussion at 782 F. Supp. 1097, 1103-1105 (E.D.N.C. 1991) (finding a large district, an at-large challenge, and a large area in which to campaign disadvantages minority candidates who are likely to have less access to necessary resources for travel and advertising); City of Dallas Litig., discussion at 734 F. Supp. 1317, 1403-04 (N.D. Tex. 1990) (“[Socioeconomic]disparities provide a distinct advantage to white at-large candidates in terms of financial and other support.”).
385. See, e.g., Charleston County Litig., 316 F. Supp. 2d 268, 291 (D.S.C. 2003) (“The on-going racial separation that exists in Charleston County—socially, economically, religiously, in housing and business patterns—makes it especially difficult for African-American candidates seeking county-wide office to reach out to and communicate with the predominately white electorate from whom they must obtain substantial support to win an at-large elections [sic].”); Cousin Litig., discussion at 904 F. Supp. 686, 708-10 (E.D. Tenn. 1995) (noting isolation from economic and political main stream); Neal Litig., discussion at 689 F. Supp. 1426, 1430 (E.D. Va. 1988); cf. Terrell Litig., 565 F. Supp. 338, 342 (N.D. Tex. 1983) (“It is clear to the Court that a major reason for the white majority’s lack of familiarity with many black candidates is the severe de facto segregation of housing in Terrell.”).
386. City of Dallas Litig., discussion at 734 F. Supp. 1317, 1403-05 (N.D. Tex. 1990) (“The ridiculous pay for Council Members— \$50.00 for each meeting – further exacerbates the discriminatory effect of these disparities by limiting the pool of African-Americans and Hispanics who can financially afford to serve on the Council where they would, in effect, volunteer their full time service.”).
387. See Bone Shirt Litig., discussion at 336 F. Supp. 2d 976, 1037-41 (D.S.D. 2004) (finding Factor 5 met based on evidence of depressed socioeconomic status, differentials in voter turnout statistics as well as by expert testimony that “ ‘People living on a day-to-day basis wonder if they can heat their home. Those are not the kinds of people who are the most predisposed to go out and engage in a great deal of political campaigning or activity’ ” (citation omitted)); Jenkins v. Red Clay Sch. Dist. Litig., discussion at Civ. A. No. 89-230-LON, 1996 WL 172327, at *19-20 (D. Del. Apr. 10, 1996) (finding both depressed socioeconomic status and lower levels of political participation by African Americans and overturning the lower court’s determination that a 2% difference in voter turnout was insignificant); Attala County Litig. (MS), discussion at 92 F.3d 283, 293-95 (5th Cir. 1996) (finding depressed socioeconomic status and depressed political participation); Nipper Litig. (FL), discussion at 39 F.3d 1494, 1507-08 (11th Cir. 1994) (overturning the lower court’s finding that voter registration and turnout were equivalent and finding that while voter registration was roughly equivalent, black voter turnout still lagged); City of Philadelphia Litig., discussion at 824 F. Supp. 514, 533-35 (E.D. Pa. 1993) (finding depressed socioeconomic status and depressed voter registration and turnout rates); Little Rock Litig., discussion at 831 F. Supp. 1453, 1460 (E.D. Ark. 1993) (finding lower socioeconomic status as well as depressed levels of voter registration and turnout. Although in upholding the district court’s finding, the 8th Circuit held that less weight should be given to this factor because differences were not as great as in other areas.); Columbus County Litig., discussion at 782 F. Supp. 1097, 1103-05 (E.D.N.C. 1991) (finding depressed socioeconomic status and lower levels of voter turnout despite finding roughly equivalent voter registration numbers); Armour Litig., discussion at 775 F. Supp. 1044 (N.D. Ohio 1991) (finding depressed socioeconomic levels as well as lower rates of political participation); Democratic Party of Arkansas Litig. (AK), discussion at 890 F.2d 1423, 1431-33 (8th Cir. 1989) (finding lower voter turnout and

- socioeconomic disparities); *City of Springfield Litig.*, discussion at 658 F. Supp. 1015, 1024-27 (C.D. Ill. 1987) (“The lingering effects of segregation and racial isolation are seen in the statistics of black turnout at the polls. The voting participation of blacks continues to lag well behind that of whites. Blacks participate at a rate of one-third to one-half of white voters.”); *County of Big Horn Litig.*, discussion at 647 F. Supp. 1002, 1016-17 (D. Mont. 1986) (finding that although voter registration between Native Americans and whites was roughly equivalent, Native American voter turnout still lagged.); *Gretna Litig.*, discussion at 636 F. Supp. 1113, 1116-20 (E.D. La. 1986) (finding continued socioeconomic disparities, and noting that although blacks and whites register to vote in roughly equivalent numbers, black voter turnout still lagged behind that of whites.); *Edgefield County Litig.*, discussion at 650 F. Supp. 1176, 1180-89 (D.S.C. 1986) (finding socioeconomic disparities and lower voter turnout for blacks than for whites); *Dillard v. Crenshaw Litig.*, discussion at 649 F. Supp. 289, 295 (M.D. Ala. 1986) (finding both current and past depressed socioeconomic and political participation); *Jordan Litig.*, discussion at 604 F. Supp. 807, 812 (N.D. Miss. 1984) (finding depressed socioeconomic status and decreased voter registration rates); *Terrazas Litig.*, discussion at 581 F. Supp. 1329, 1348-51 (N.D. Tex. 1984) (finding depressed political participation due to low voter registration and turnout number); *Gingles Litig.*, discussion at 590 F. Supp. 345, 360, 363 (E.D.N.C. 1984); *Marengo County Litig. (AL)*, discussion at 731 F.2d 1546, 1551, 1567-70 (11th Cir. 1984) (“Past discrimination may cause blacks to register or vote in lower numbers than whites. Past discrimination may also lead to present socioeconomic disadvantages, which in turn can reduce participation and influence in political affairs.”); *Dallas County Comm’n Litig. (AL)*, discussion at 739 F.2d 1529, 1537-38 (11th Cir. 1984) (overturning the lower court’s finding that equivalent voter registration rates showed effective political participation despite persisting socioeconomic disparities because blacks continued to turn out at lower rates than whites); *City of Greenwood Litig.*, discussion at 599 F. Supp. 397, 400-01 (N.D. Miss. 1984) (finding that plaintiffs showed depressed socioeconomic status as well as depressed political participation as demonstrated by lower voter turnout rates); *Escambia County Litig. (FL)*, 748 F.2d 1037, 143-44 (5th Cir. 1984) (finding depressed socioeconomic status and political participation and expressly rejecting the proposition that plaintiffs must prove causation between the two); *Buskey v. Oliver Litig.*, discussion at 565 F. Supp. 1473, 1475-76 (M.D. Ala. 1983) (finding socioeconomic disparities and low voter registration); *Major Litig.*, discussion at 574 F. Supp. 325, 339-41 (E.D. La. 1983) (finding that a “legacy of historical discrimination” caused lower socioeconomic status of blacks, and finding lower registration and turnout in the black community); *Mobile School Board Litig.*, discussion at 542 F. Supp. 1078, 1093 (S.D. Ala. 1982) (finding socioeconomic disparities and depressed registration and turnout rates).
388. *See NAACP v. Fordice Litig. (MS)*, discussion at 252 F.3d 361, 367-368 (5th Cir. 2001) (refusing to find inequality of political access where evidence showed that registration and turnout rates were nearly equal); *Southern Christian Leadership Conference Litig.*, discussion at 785 F. Supp. 1469, 1473, 1486 (M.D. Ala. 1992) (finding that despite depressed socioeconomic status, blacks are registered to vote in approximately equal numbers to whites and in some areas black voter registration exceeds that of whites); *Monroe County Litig.*, discussion at 740 F. Supp. 417, 423-24 (N.D. Miss. 1990) (finding no evidence of a disproportionate level of black voter participation in Monroe County, and noting that “the black turnout in the 1989 alderman election in Aberdeen was higher in the 93% black ward than the white turnout in more affluent wards”); *City of Starke Litig.*, discussion at 712 F. Supp. 1523, 1529 (M.D. Fla. 1989) (finding that black and white voter registration and turnout numbers were nearly equivalent); *Liberty County Comm’rs Litig. (FL)*, discussion at 865 F.2d 1566, 1582 (11th Cir. 1988) (finding socioeconomic disparities, but that on the whole black voter registration was generally high and often even exceeded that of whites); *City of Boston Litig.*, discussion at 609 F. Supp. 739, 744-45 (D. Mass. 1985) (finding that blacks and whites register and vote at “basically similar” rates); *City of Fort Lauderdale Litig.*, discussion at 617 F. Supp. 1093, 1104-05 (D.C. Fla. 1985) (finding that despite depressed socioeconomic status, blacks still turned out to vote in equal or greater numbers than whites and therefore Factor 5 was not met); *City of Norfolk Litig.*, discussion at 605 F. Supp. 377, 391-92 (E.D. Va. 1984) (“Blacks are registering to vote and turning out to vote at rates equal to or greater than the rate for whites, based on a percentage of the voting age population.”); *Rocha Litig.*, discussion at No. V-79-26, 1982 U.S. Dist. LEXIS 15164 at *21-22 (S.D. Tex. Aug. 23, 1982) (“[T]he past discrimination does not appear to affect the political participation of minorities. They freely register to vote and do vote in the same ratio as do the Anglos.”); *France Litig.*, discussion at 71 F. Supp. 2d 317, 332 (S.D.N.Y. 1999) (“Minorities have not been excluded from participating in the political process as is evident by their climbing voter registration rates, turnout at the polls and their success in the electoral process.”); *Metro Dade County Litig.*, discussion at 805 F. Supp. 967, 981, 991-92 (S.D. Fla. 1992) (“[D]espite the depressed levels in [education, employment and health], Blacks are making great strides in overcoming these obstacles as evidenced by their high registered voter turnout levels.”).
389. *See, e.g., Nipper Litig. (FL)*, discussion at 39 F.3d 1494, 1507-08 (11th Cir. 1994) (overturning the lower court’s finding that voter registration and turnout were equivalent; finding that while voter registration was roughly

- equivalent, black voter turnout still lagged); Columbus County Litig., discussion at 782 F. Supp. 1097, 1103-05 (E.D.N.C. 1991) (finding depressed socioeconomic status and lower levels of voter turnout, despite roughly equivalent voter registration numbers); County of Big Horn Litig., discussion at 647 F. Supp. 1002, 1016-17 (D. Mont. 1986) (finding that although voter registration between Native Americans and whites was roughly equivalent, Native American voter turnout still lagged); Gretna Litig., discussion at 636 F. Supp. 1113, 1116-20 (E.D. La. 1986) (finding continued socioeconomic disparities, and noting that although blacks and whites register to vote in roughly equivalent numbers, black voter turnout still lagged behind that of whites); Dallas County Comm'n Litig. (AL), discussion at 739 F.2d 1529, 1537-38 (11th Cir. 1984) (overturning the lower court's finding that equivalent voter registration rates showed effective political participation despite persisting socioeconomic disparities because blacks continued to turn out at lower rates than whites).
390. *See* Town of Hempstead Litig., discussion at 956 F. Supp. 326, 342 (E.D.N.Y. 1997) (noting that in comparison to other parts of the country, socioeconomic differences in Hempstead, while present, were not as severe as in other parts of the country and that "differences in the socioeconomic status of blacks do not significantly impair their relative ability to participate in the political process"); Fort Bend Indep. Sch. Dist. Litig. (TX), discussion at 89 F.3d 1205, 1220 (5th Cir. 1996) (finding that socio-economic disparities "do not prevent meaningful participation in the political process").
391. *See* Rodriguez Litig., discussion at 308 F. Supp. 2d 346, 435 (S.D.N.Y. 2004) (finding that minorities in New York bear "to some extent" the effects of past discrimination, while finding no "substantial or adequate showing" that the "socioeconomic status of minorities significantly impairs their ability to participate in the political process in the relevant geographical areas"); Alamosa County Litig., discussion at 306 F. Supp. 2d 1016, 1035-38 (D. Colo. 2003) ("[T]he Court concludes that notwithstanding historical ethnicity-based discrimination, there is insufficient evidence to conclude that socioeconomic or educational conditions currently hinder Hispanic residents in Alamosa County from participating in the electoral process."); City of Chicago Heights Litig., discussion at Nos. 87 C 5112, 88 C 9800, 1997 WL 102543, at *10 (N.D. Ill. Mar. 5, 1997) ("This factor requires a showing that, as a result of past discrimination, African-Americans in Chicago Heights suffer from lower socioeconomic conditions than whites and that African-American political participation is depressed."); Mallory-Hamilton County Litig., discussion at 38 F. Supp. 2d 525, 542 (S.D. Ohio 1997) ("Plaintiffs have submitted no evidence which establishes that the effects of past discrimination deny African-Americans equal access to the political process or actually hamper the ability of African-Americans to participate in the political process. The Court hereby makes these same findings with respect to Summit County in general, and with respect to the Court of Common Pleas for Summit County, and the Akron Municipal Court in particular."); Town of Babylon Litig., discussion at 914 F. Supp. 843, 887-89 (E.D.N.Y. 1996) (noting absence of evidence on depressed socio-economic status and insufficient evidence of depressed political participation); Kent County Litig., discussion at 790 F. Supp 738, 744, 749 (S.D. Mich. 1992) (finding that notwithstanding socioeconomic disparities, there was no showing of less opportunity to participate in the electoral process in Kent County); Turner Litig., discussion at 784 F. Supp. 553, 576-77 (E.D. Ark. 1991) (finding that the factor was not met because there was no evidence that black voters had "less opportunity than other members of the electorate to participate in the political process"); McCarthy Litig. (TX), discussion at 749 F.2d 1134, 1135-37 (5th Cir. 1984) (holding that plaintiffs must present evidence to show that there are actual obstacles or hindrances to minority political participation); *see also* Suffolk County Litig., discussion at 268 F. Supp. 2d 243, 265 (E.D.N.Y. 2003) ("[T]he plaintiffs have not established, in any manner, that Hispanics' lower socioeconomic condition in Suffolk County, if such is the case, has deprived them of their right to participate in legislative elections."); *c.f.* Chickasaw County I Litig., discussion at 705 F. Supp. 315, 320-21 (N.D. Miss. 1989) (finding insufficient evidence showing actual depressed political participation and citing some testimony suggesting that registration and turnout may be higher among black voters than white.).
392. *See* Charleston County Litig., discussion at 316 F. Supp. 2d 268, 282-92 (D.S.C. 2003); LULAC v. Clements Litig. (TX), discussion at 986 F.2d 728, 782 & n.41, (5th Cir. 1993); Neal Litig., discussion at 689 F. Supp. 1426, 1428-31 (E.D. Va. 1988); Terrell Litig., 565 F. Supp. 338, 341-342 (N.D. Tex. 1983) (finding that although blacks are registered in equal or greater numbers than whites past discrimination lingers in housing segregation, which makes winning the white crossover vote nearly impossible because of the white majority's lack of familiarity with many black candidates.); Terrazas Litig., discussion at 581 F. Supp. 1329, 1348-51 (N.D. Tex. 1984) (crediting lay testimony concerning "the feeling among Hispanic candidates and voters in Dallas County that political action is futile").
393. Charleston County Litig., discussion at 316 F. Supp. 2d 268, 291 (D. S.C. 2003).
394. Neal Litig., discussion at 689 F. Supp. 1426, 1430 (E.D. Va. 1988); *see also* Terrell Litig., 565 F. Supp. 338, 342 (N.D. Tex. 1983) ("It is clear to the Court that a major reason for the white majority's lack of familiarity with many black candidates is the severe de facto segregation of housing in Terrell.").

395. *City of St. Louis Litig.*, discussion at 896 F. Supp. 929 (E.D. Mo. 1995) (finding depressed socioeconomic status and voter turnout is not sufficient to satisfy this factor when difference in turnout could be attributable to voter apathy); *Armstrong v. Allain Litig.*, discussion at 893 F. Supp. 1320, 1332-33 (S.D. Miss. 1994) (finding that although significant socioeconomic disparities between whites and blacks exist, that the lack of vote turnout could be attributable to voter apathy and noting that when a black candidate is up for election, “the turnout of black voters increases dramatically”); *City of Columbia Litig.*, discussion at 850 F. Supp 404 (D.S.C. 1993) (“Based on these registration and turnout statistics, the court rejects the notion that lower black turnout in city elections is attributable, to a significant degree, to the inability of blacks to learn of the election, to obtain transportation to the polls, or to mobilize in support of candidates and issues. A far more plausible explanation for low black turnout in city elections is the same as that for low turnout generally: voters are either satisfied that the City is working well, thus little interest is generated by the campaigns, or they are generally uninspired by some of the candidates.”); *SW Texas Junior College Dist. Litig.*, discussion at Civ. A. No. DR-88-CA-18, 1991 WL 367969, at *3-7 (W.D. Tex. Feb. 25, 1991) (“[T]his Court is hesitant to intervene when those same Hispanics could readily solve this problem by simply running candidates and turning out to vote.”); *Carrollton NAACP Litig. (GA)*, discussion at 829 F.2d 1547, 1561 (11th Cir. 1987) (upholding the District Court’s finding that the defendant had sufficiently carried its burden to disprove “any causal connection between economic disparities and reduced political participation by minorities” and finding that there had been significant efforts to ensure that voter registration facilities were equally dispersed and available to all without regard to race).
396. *See City of St. Louis Litig.*, discussion at 896 F. Supp. 929 (E.D. Mo. 1995) (finding evidence of depressed socioeconomic status and voter turnout was not sufficient to satisfy Factor 5 when difference in turnout could be attributable to voter apathy); *Armstrong v. Allain Litig.*, discussion at 893 F. Supp. 1320, 1332-33 (S.D. Miss. 1994) (finding that although significant socioeconomic disparities between whites and blacks exist that it could be attributable to voter apathy—when a black candidate is up for election, “the turnout of black voters increases dramatically.”); *City of Columbia Litig.*, discussion at 850 F. Supp 404 (D.S.C. 1993) (finding lower black voter turnout attributable to voter apathy as opposed to the “inability of blacks to learn of the election, to obtain transportation to the polls, or to mobilize in support of candidates and issues;” and concluding that black voters “are either satisfied that the City is working well, thus little interest is generated by the campaigns, or they are generally uninspired by some of the candidates”); *SW Texas Junior College Dist. Litig.*, discussion at Civ. A. No. DR-88-CA-18, 1991 WL 367969, at *6-*7 (W.D. Tex. Feb. 25, 1991) (blaming low voter turnout on voter apathy and suggesting that “those same Hispanics [who are currently underrepresented] could readily solve this problem by simply running candidates and turning out to vote”).
397. *See, e.g., Bone Shirt Litig.*, discussion at 336 F. Supp. 2d 976, 1040 (D.S.D. 2004) (“People living on a day-to-day basis wonder if they can heat their home. Those are not the kinds of people who are the most predisposed to go out and engage in a great deal of political campaigning or activity.”); *Attala County Litig. (MS)*, discussion at 92 F.3d 283, 293-95 (5th Cir. 1996) (overturning lower court’s attribution of lower black voter participation to voter apathy, which affected both blacks and whites because to “conclude that black voter apathy is the reason for the failure of blacks to elect the candidates of their choice when apathy affects all voters is counterintuitive The fact that blacks *and* whites in Attala County are going to the polls in decreasing proportions does not explain why blacks *alone* are essentially shut out of the political processes of the county.”); *Gretna Litig.*, discussion at 636 F. Supp. 1113, 1120 (E.D. La. 1986) (“Depressed levels of participation in voting and candidacy are inextricably involved in the perception of futility and impotence” engendered by “severe historical disadvantage.”); *Terrazas Litig.*, discussion at 581 F. Supp. 1329, 1348-51 (N.D. Tex. 1984) (finding Factor 5 based on depressed political participation as shown by low voter registration and turnout number, and “the feeling among Hispanic candidates and voters in Dallas County that political action is futile.”); *Major Litig.*, discussion at 574 F. Supp. 325, 339-41 (E.D. La. 1983) (finding both lower socioeconomic status of blacks and lower registration and turnout in the black community, and concluding that “[a] sense of futility engendered by the pervasiveness of prior discrimination, both public and private, is perceived as discouraging blacks from entering into the governmental process”).
398. *Gretna Litig.*, discussion at 636 F. Supp. 1113, 1120 (E.D. La. 1986).
399. *Id.*
400. *Cincinnati Litig.*, discussion at No. C-1-92-278, 1993 WL 761489, at *11 (S.D. Ohio July 8, 1993) (“While the effects of discrimination in such areas as education, employment and housing do hinder the ability of some African Americans personally to finance political campaigns, the defendants have neither created these conditions nor do they intentionally maintain them.”).
401. *Milwaukee NAACP Litig.*, discussion at 935 F. Supp. 1419, 1427, 1433 (E.D. Wis. 1996) (finding no evidence had traced the continuing socioeconomic disparities to discrimination in the challenged county or state of Wisconsin).

402. *See Pasadena Indep. Sch. Dist. Litig.*, discussion at 958 F. Supp. 1196, 1225 (S.D. Tex. 1997) (“The socioeconomic data does not distinguish between Hispanics who are recent immigrants and those who have been in this country for longer periods, particularly those who are citizens. This information is important to this analysis, but was not presented.”); *Aldasoro v. Kennerson Litig.*, discussion at 922 F. Supp. 339, 365 (S.D. Cal. 1995) (“Hispanics are characterized by lower socioeconomic status than Anglos, but many Hispanics in El Centro have immigrated recently from Mexico, a third world country, and naturally are characterized by lower socioeconomic status . . . Therefore, it is critical to distinguish between foreign born and native born Hispanics in addressing this Senate Factor. Plaintiffs’ evidence failed to make this distinction.”); *El Paso Indep. Sch. Dist. Litig.*, discussion at 591 F. Supp. 802, 807, 809-10 (W.D. Tex. 1984) (finding discrepancies in socioeconomic status between Hispanics and whites, but holding that the “record fails to show how many of those affected by unemployment are recent immigrants or resident aliens as opposed to citizens” as well as that “[t]he evidence . . . fails to show how many residents of South El Paso were educated (or not educated) in Mexico rather than in the United States”).
403. *See, e.g., Magnolia Bar Ass’n Litig.*, discussion at 793 F. Supp. 1386, 1409 (S.D. Miss. 1992) (“[B]lack in Mississippi continue to bear the effects of discrimination in critical areas of socioeconomic attainment and this continues in some ways to affect their opportunity to participate in the political process and to elect representatives of their choice.”). *see also Calhoun County Litig.*, discussion at 813 F. Supp. 1189 (N.D. Miss. 1993) (finding that repercussions of discrimination against African-Americans continue to affect political participation).
404. *See Magnolia Bar Ass’n Litig.*, discussion at 793 F. Supp. 1386, 1409 (S.D. Miss. 1992) (“[B]lack in Mississippi continue to bear the effects of discrimination in critical areas of socioeconomic attainment and this continues in some ways to affect their opportunity to participate in the political process and to elect representatives of their choice.”).
405. *Id.*
406. *See Master Lawsuit List* (filter Column: 6f=1, and filter Columns Jurisdiction, Success, accordingly).
407. *See, e.g., Columbus County Litig.*, discussion at 782 F. Supp. 1097, 1105 (E.D.N.C. 1991) (noting the long history and continuing practice of using racial appeals in campaigns in Columbus County and North Carolina generally).
408. Racial appeals found in 1950 (*Gingles Litig.*), 1954 (*Gingles Litig.*), 1960 (*Gingles Litig.*), 1968 (*Gingles Litig.*), 1970 (*City of Dallas Litig.*), 1971 (*Garza v. Los Angeles Litig.* and *City of Philadelphia Litig.*), 1972 (*City of Dallas Litig.* and *Gingles Litig.*), 1973 (*Charleston County Litig.* and *Butts v. NYC Litig.*), 1975 (*Jeffers Litig.* and *City of Dallas Litig.*), 1976 (*Jeffers Litig.* and *City of Dallas Litig.*), 1977 (*City of Greenwood Litig.*), 1979 (*Town of Babylon Litig.*), 1982 (*Southern Christian Leadership Litig.* and *Jordan Litig.*), 1983 (*Garza v. Los Angeles Litig.*, *Clark Litig.*, *Neal Litig.*, *Mehfoud Litig.*, and *City of Philadelphia Litig.*), 1984 (*County of Big Horn Litig.*, *Gingles Litig.*, *Town of Babylon Litig.*), 1985 (*Armour Litig.*), 1986 (*Armstrong v. Allain Litig.*), 1987 (*Clark Litig.*, *Mehfoud Litig.*, *City of Philadelphia Litig.*, *Town of Hempstead Litig.*, *Town of Holyoke Litig.*, and *Wamser Litig.*), 1988 (*City of Dallas Litig.* and *Charleston County Litig.*), 1989 (*Magnolia Bar Ass’n Litig.* and *City Dallas Litig.*), 1990 (*Southern Christian Leadership Litig.*, *Metro Dade County Litig.*, *Magnolia Bar Ass’n Litig.*, and *Charleston County Litig.*), 1991 (*Magnolia Bar Ass’n Litig.* and *City of Philadelphia Litig.*), 1992 (*Charleston County Litig.* and *Alamosa County Litig.*) 1995 (*City of LaGrange Litig.*), 2000 (*Charleston County Litig.*), 2002 (*Bone Shirt Litig.* and *St. Bernard Parish School Board Litig.*).
409. *See id.*; *see also Master Lawsuit List* (filter Column: 6f=1 for the lawsuits finding racial appeals, to see the lists of campaigns within those).
410. *See Southern Christian Leadership Litig.*, *Jordan Litig.*, *County of Big Horn Litig.*, *Gingles Litig.*, *Armstrong v. Allain Litig.*, *Clark Litig.*, *Mehfoud Litig.*, *Magnolia Bar Ass’n Litig.*, *City of LaGrange Litig.*, *Bone Shirt Litig.*, *St. Bernard Parish School Board Litig.*
411. *See, e.g., Crenshaw County Litig.*, discussion at 649 F. Supp. 289, 295 (M.D. Ala. 1986) (finding that “white candidates have encouraged voting along racial lines in Calhoun, Lawrence, and Pickens county by appealing to racial prejudice.”); *Clark Litig.*, discussion at 777 F. Supp. 471, 1991 U.S. Dist. LEXIS 14322, at *80 (M.D. La. 1991) (“She [an African American judicial candidate] also testified about the overt and covert racial appeals in both elections by candidates and the public [in 1983 and 1987 campaigns.]”); *Magnolia Bar Ass’n.*, 793 F. Supp. 1386, 1409-10 (S.D. Miss. 1992) (“Supreme court and other judicial campaigns in Mississippi have been characterized by overt and subtle racial appeals. For example, in the 1986 Supreme Court Central District, Place No. 2 election, avowed segregationist Barrett relied on overt racial appeals in his unsuccessful attempt to defeat black former Justice Anderson.”); *Martin v. Allain*, 658 F. Supp. 1183, 1195 (S.D. Miss. 1987) (“Plaintiffs, however, presented proof of racial appeals . . . by Richard Barrett in his 1986 challenge of Mississippi Supreme Court Justice Reuben Anderson.”).
412. *See LULAC v. Clements Litig.*, discussion at 999 F.2d 831, 879 (5th Cir. 1993) (finding that a judicial candidate had been labeled a “Black Muslim” by his opponent); *City of Dallas Litig.*, discussion at 734 F. Supp. 1317,

- 1339 (N.D. Tex. 1990) (finding in the 1972 Precinct 7 Constable's race, the incumbent used ads describing his African-American opponent in this manner: "A *black man* (no qualifications of any kind)").
413. *See* Alamosa County Litig., discussion at 306 F. Supp. 2d 1016, 1025-26 (D. Colo. 2004) (identifying as a "subtle ethnic appeal" Marguerite Salazar's 1992 campaign for county commission in which "she ran as a designated Hispanic role model immediately after joining the Hispanic Leadership Institute").
414. *See* Bone Shirt Litig., discussion at 336 F. Supp. 2d 976, 1041 (D.S.D. 2004) (characterizing as a racial appeal the headline in the state's largest newspaper, trumpeting "HUNHOFF PICKS INDIAN WOMAN AS RUNNING MATE"); Armour Litig., discussion at 775 F. Supp. 1044, 1056 (N.D. Ohio 1991) ("[T]hroughout the [1985] primary race, the media focused on Starks' race, consistently describing him as the black candidate for Mayor."); Neal Litig., discussion at 689 F. Supp. 1426, 1431-32 (E.D. Va. 1988) (identifying a racial appeal in an editorial that identified two candidates as black and "urged voters not to vote on account of race, but rather on merit. However, the editorial also said that the race from District 3, involving Jack Green, 'is of great concern to many county residents' because Green could earn 'solid black support' to defeat the veteran incumbent. The editorial clearly favored the re-election of the 'more experienced' incumbents."). *But see* City of Norfolk Litig., discussion at 605 F. Supp. 377, 392 (E.D. Va. 1984) (deciding that news accounts discussing the race of candidates and the issue of black representation in the 1982 campaign were not racial appeals where court found that black candidates had raised the issue and there was no evidence the issue was used to appeal to voters' prejudice).
415. *See* Charleston County Litig., discussion at 316 F. Supp. 2d 268, 294-97 (D.S.C. 2003); Southern Christian Leadership Litig., discussion at 56 F.3d 1281, 1290 (11th Cir. 1995) ("One . . . subtle racial appeal was in the Democratic Party primary in 1982 which involved a newspaper ad run by a white candidate contrasting the pictures of the white candidate and Justice Adams [who is African American]."); LULAC v. Clements Litig., discussion at 999 F.2d 831, 879 (5th Cir. 1993); Mehfood Litig., discussion at 702 F. Supp. 588, 595 (E.D. Va. 1988) (citing selective use by white candidate of flyer with black opponent's photograph, and failure to use similar photograph in campaign against a white candidate); Magnolia Bar Ass'n Litig., discussion at 793 F. Supp. 1386, 1410 (S.D. Miss. 1992) (citing the white candidate's campaign flyers with pictures of African-American candidates used in judicial elections in 1989, 1990, 1991). *But see* Charleston County Litig., discussion at 316 F. Supp. 2d 268, 295 (D.S.C. 2003) (classifying as a racial appeal a campaign flyer from a race involving two white candidates that featured the photograph of an African-American elected official unassociated with either of the white candidates).
416. *See, e.g.* Red Clay Sch. Dist. Litig., discussion at 780 F. Supp. 221, 237 (D. Del. 1991) (concluding that a newspaper article with accompanying photographs of black and white candidates was not a racial appeal because the "candidates [were] not referred to in any disparaging manner"); City of Jackson Litig., discussion at 683 F. Supp. 1515, 1534-35 (W.D. Tenn. 1988) (rejecting the argument that a newspaper's publishing of candidate photographs was a racial appeal).
417. City of Jackson Litig., discussion at 683 F. Supp. 1515, 1534-35 (W.D. Tenn. 1988); *see also* Red Clay Sch. Dist. Litig., discussion at 780 F. Supp. 221, 237 (D. Del. 1991) (finding no racial appeal where newspaper published pictures of the candidates, stating that race may be an issue in the 1985 election, and noting concerns expressed by sole black board member that the black vote might be split).
418. Charleston County Litig., discussion at 316 F. Supp. 2d 268, 294-97 (D.S.C. 2003) (finding that darkened photographs of African-American opponents were run by white candidates in their campaign materials in 1988, 1990, 1992); City of Philadelphia Litig., discussion at 824 F. Supp. 514, 537 (E.D. Pa. 1993) (finding that a white candidate's photograph had been darkened by her opponent and used in the opponent's campaign literature).
419. Charleston County Litig., discussion at 316 F. Supp. 2d 268, 294-97 (D.S.C. 2003).
420. City of Philadelphia Litig., discussion at 824 F. Supp. 514, 537 (E.D. Pa. 1993).
421. *Id.*
422. *See, e.g.,* City of Dallas Litig., 734 F. Supp. 1317, 1348 (N.D. Tex. 1990) (noting that a white slating group warned of the "Mass Block Voting Tactics" in the black areas of South Dallas in 1970 and noting that "Folsom also distributed a leaflet charging that Weber was attempting to win the election with a 'massive black turnout,' and threatening that 'Garry Weber's South Dallas Machine is going to elect the next mayor' thanks to the efforts of 'professional black campaigners who will turn out unprecedented numbers of blacks voting for Weber.'"); Neal Litig., discussion at 689 F. Supp. 1426, 1431-32 (E.D. Va. 1988) (identifying a racial appeal in an editorial stating that the race from District 3, involving Jack Green, 'is of great concern to many county residents' because Green could earn 'solid black support' to defeat the veteran incumbent.").
423. *See, e.g.,* Jeffers Litig., discussion at 730 F. Supp. 196, 212 (E.D. Ark. 1989) ("In the Mayor's race in Pine Bluff in 1975, for example, a supporter of a white candidate publicly warned that if white voters didn't turn out, there would be a black mayor.")

424. *See, e.g.*, *Armour Litig.*, discussion at 775 F. Supp. 1044, 1056 (N.D. Ohio 1991) (finding that a black mayoral candidate’s opponents emphasized that if the black candidate was elected, he would have a black cabinet, and that the police chief and fire chief would also be black).
425. *See, e.g.*, *Bone Shirt Litig.*, discussion at 336 F. Supp. 2d 976, 1041 (D.S.D. 2004) (“During the 2002 primary election for Bennett County offices, Indians were accused of ‘trying to take over the county politically, . . . [and] trying to take land back and put it in trust.’”); *City of Philadelphia Litig.*, discussion at 824 F. Supp. 514, n.19 (E.D. Pa. 1993) (“In the 1983 mayoral election, Mayor Goode testified that his opponent, former Mayor Frank Rizzo, attempted to associate Mayor Goode with Jesse Jackson and Harold Washington, implying that Mayor Goode’s candidacy was part of ‘a movement by blacks to take over all across the country.’”).
426. *Armour Litig.*, discussion at 775 F. Supp. 1044, 1056 (N.D. Ohio 1991).
427. *Bone Shirt Litig.*, discussion at 336 F. Supp. 2d 976, 1041 (D.S.D. 2004).
428. *Jordan Litig.*, discussion at 604 F. Supp. 807, 814 (N.D. Miss. 1984) (“One campaign television commercial sponsored by the white candidate whose slogan was ‘He’s one of us’ opened and closed with a view of Confederate monuments accompanied by this audio message: You know, there’s something about Mississippi that outsiders will never, ever understand. The way we feel about our family and God, and the traditions that we have. There is a new Mississippi, a Mississippi of new jobs and new opportunity for all our citizens. [video pan of black factory workers] We welcome the new, but we must never, ever forget what has gone before. [video pan of Confederate monuments] We cannot forget a heritage that has been sacred through our generations.”).
429. *City of Holyoke Litig.*, discussion at 880 F. Supp. 911, 922 (D. Mass. 1995).
430. *Id.*
431. *Id.*
432. *Charleston County Litig.*, discussion at 316 F. Supp. 2d 268, 296 (D.S.C. 2003).
433. *Id.*
434. *Id.*
435. *See, e.g.*, *City of Dallas Litig.*, discussion at 734 F. Supp. 1317, 1368 (W.D. Tex. 1990) (counting as a racial appeal a 1989 newspaper column indicating that “a ‘protest vote’ for lawyer and ‘civic gadfly,’ Peter Lesser . . . could lead to racial violence and white flight;” citing leaflet that accused opponent’s campaign of “planting lies and rekindling old fires that could set Black/White relations back 20 years,” and told black voters “No one, Black or White, will benefit from the hostilities between the Races [that] Garry Weber’s hate-campaign is trying to force.”).
436. *See, e.g.*, *Metro Dade County Litig.*, discussion at 805 F. Supp. 967, 981-82 (S.D. Fla. 1992) (“Recent elections demonstrate how successfully candidates and their supporters have engaged in a tactic of ‘guilt by association’ to defeat Black opponents. This tactic is utilized at the end of the campaign period, immediately prior to election day. For example, voters have been told that Black candidates share common goals with Jesse Jackson or Nelson Mandela, two political figures strongly supported in the Black community, but opposed in some Cuban and Jewish communities.”).
437. *See, e.g.*, *City of Philadelphia Litig.*, discussion at 824 F. Supp. 514, 537 n.19 (E.D. Pa. 1993) (“Mayor Goode testified that in the 1987 mayoral primary election, Ed Rendell, Goode’s opponent, attempted to associate Mayor Goode with Louis Farrakhan, a controversial Muslim leader.”); *City of Dallas Litig.*, 734 F. Supp. 1317, 1365 (W.D. Tex. 1990) (“On March 4, 1988, a Dallas Morning News article reported that a candidate for Criminal District Court No. 2, who was running against the African-American incumbent, mailed 77,000 fliers criticizing her opponent because he had changed his name to ‘Baraka’ after converting to Islam and becoming ‘a follower of Malcolm X, the slain Islamic leader and black nationalist.’”).
438. *Wamser Litig.*, discussion at 679 F. Supp. 1513, 1527 (E.D. Mo. 1987) (“In his 1987 primary campaign, Roberts [an African American] made overt racial appeals to black voters. Roberts accused a white opponent—Osborn—of being backed by ‘the Klan.’”).
439. *See* *Charleston County Litig.*, discussion at 316 F. Supp. 2d 268, 295 (D.S.C. 2003) (noting a campaign flyer from a 2000 race involving two white candidates that featured the darkened photograph of an African-American school board member from a separate district whose permission to use the picture had neither been sought nor granted); *City of Philadelphia Litig.*, discussion at 824 F. Supp. 514, 537 n.20 (E.D. Pa. 1993) (noting campaign material distributed in an early 1990s state senate race between two white candidates where one candidate published a darkened picture of his white opponent side-by-side with the picture of Philadelphia’s black mayor).
440. *City of Dallas Litig.*, discussion at 734 F. Supp. 1317, 1339 n.34 (W.D. Tex. 1990) (“During the run-off election for two State Representative districts in June of 1970, the ‘Democratic Committee for Responsible Government’ attacked a white candidate . . . because he was ‘running in South Dallas . . . as a team’ with a black candidate—and because he had raised money for voter registration activities, mostly in predominately Black or Latin-American neighborhoods.”); *see also* *Gingles Litig.*, discussion at 590 F. Supp. 345, 364 (E.D.N.C. 1984) (noting crude

- cartoons and pamphlets of the campaigns marked by outright white supremacy in the 1890's which featured white political opponents in the company of black political leaders and later appeals with the same theme).
441. *Garza v. Los Angeles Litig.*, 756 F. Supp. 1298, 1341 (C.D. Cal. 1990) (“In the 1971 runoff for the 49th Assembly District, Richard Alatorre ran against William Brophy. Mr. Brophy distributed mailers which included Mr. Alatorre’s photograph and alluded that Alatorre was sympathetic to undocumented aliens.”).
 442. *City of Holyoke Litig.*, discussion at 880 F. Supp. 911, 922 (D. Mass. 1995) (“Proulx, for his part, attacked Dunn for not calling for a moratorium on all subsidized housing programs in Holyoke. Proulx explained that he supported such a moratorium with one important exception—subsidized elderly housing. The vast majority of government subsidized elderly housing in Holyoke was occupied by white non-Hispanic senior citizens.”); *Butts v. NYC Litig.*, 614 F. Supp. 1527, 1531 (S.D.N.Y. 1985) (“Badillo’s opponents distributed literature misrepresenting or emphasizing Badillo’s position on issues said to have racial connotations, such as scatter site subsidized housing.”).
 443. *Town of Hempstead Litig.*, discussion at 956 F. Supp. 326, 342-43 (E.D.N.Y. 1997) (“In a late 1970s campaign for a State Senate seat from an Assembly District within the Town, the incumbent Republican appealed to the fears of Town residents that black students from Queens would be bused to schools in the Town. The campaign literature used pictures of black children in school buses to convey the message that voting for the Democratic opponent would result in such busing.”); *City of Dallas Litig.*, discussion at 734 F. Supp. 1317, 1317 n.64 (W.D. Tex. 1990) (“In Place 9 [city council elections in 1976], Jesse Price campaigned against Bill Blackburn on a platform that included opposition to busing for school desegregation—and opposition to any court order requiring busing—saying he intended to ‘hang Blackburn’s stand on busing around his neck.’”).
 444. *Town of Hempstead Litig.*, discussion at 956 F. Supp. 326, 342-43 (E.D.N.Y. 1997); *City of Holyoke Litig.*, discussion at 880 F. Supp. 911, 922 (D. Mass. 1995) (“Dunn’s campaign literature featured the slogan ‘It takes guts,’ coupled with a teach the ‘Spanish’ English theme as an answer to increasing crime and vandalism”).
 445. *Town of Hempstead Litig.*, discussion at 956 F. Supp. 326, 342-43 (E.D.N.Y. 1997).
 446. *City of LaGrange Litig.*, discussion at 969 F. Supp. 749, 777 (N.D. Ga. 1997) (“[P]ublic debate about the consolidation of the local schools was marked by racial appeals and arguments.”).
 447. *City of Greenwood Litig.*, discussion at 599 F. Supp. 397, 403 (N.D. Miss. 1984).
 448. *City of Norfolk Litig.*, discussion at 605 F. Supp. 377, 392 (E.D. Va. 1984); *City of St. Louis Litig.*, discussion at 896 F. Supp. 929, 943 (E.D. Mo. 1995); *Red Clay Sch. Dist. Litig.*, discussion at 780 F. Supp. 221, 237-38 (D. Del. 1991).
 449. *City of Norfolk Litig.*, discussion at 605 F. Supp. 377, 392 (E.D. Va. 1984).
 450. *City of St. Louis Litig.*, discussion at 896 F. Supp. 929, 943 (E.D. Mo. 1995).
 451. *Red Clay Sch. Dist. Litig.*, discussion at 780 F. Supp. 221, 237-38 (D. Del. 1991).
 452. *City of Austin Litig.*, discussion at 871 F.2d 529, 534 (5th Cir. 1989) (noting the lower court’s dismissal of “appellants’ contention that subliminal racial appeals accompanied the voters’ rejection in 1985 of an amendment proposing single-member districts.”).
 453. *County of Big Horn Litig.*, discussion at 647 F. Supp. 1002, 1017-18 (D. Mont. 1986) (“Unlike plaintiffs, this court does not consider every discussion of or question about the taxation issue to be a racial campaign appeal.”).
 454. *Bone Shirt Litig.*, discussion at 336 F. Supp. 2d 976, 1041 (D.S.D. 2004) (“Media outlets across the state ran numerous articles about alleged voter fraud prior to the general election. None of the allegations were actually proved to be true. Bennett County’s local newspaper ran a large, front page headline announcing, ‘LOCAL VOTER FRAUD LOOKED AT BY FBI,’ despite the fact that no fraudulent activity was alleged to have occurred in Bennett County. Similar voter fraud allegations made the headlines in 1978.” (internal citations omitted)).
 455. *City of Dallas Litig.*, 734 F. Supp. 1317, 1368 (W.D. Tex. 1990)
 456. *Jeffers Litig.*, discussion at 730 F. Supp. 196, 212-13 (E.D. Ark. 1989).
 457. *Id.*
 458. *Garza v. Los Angeles Litig.*, discussion at 756 F. Supp. 1298, 1341 (C.D. Ca. 1990).
 459. *Jeffers Litig.*, discussion at 730 F. Supp. 196, 212 (E.D. Ark. 1989) (“[A]t a public rally [a white candidate running against a black candidate] used profanity and a racial epithet—not in his actual speech, to be sure, but in open conversation”).
 460. *St. Bernard Parish School Board Litig.*, discussion at No. CIV.A. 02-2209, 2002 U.S. Dist. LEXIS 16540, *33-34 (E.D. La. Aug. 26, 2002).
 461. *City of Dallas Litig.*, discussion at 734 F. Supp. 1317, 1339 (W.D. Tex. 1990).
 462. *Id.*
 463. *Neal Litig.*, discussion at 689 F. Supp. 1426, 1432-33 (E.D. Va. 1988).
 464. *Wamser Litig.*, discussion at 679 F. Supp. 1513, 1527 (E.D. Mo. 1987).

465. *LULAC v. Clements Litig.*, discussion at 999 F.2d 831, 879 (5th Cir. 1993) (en banc) (“Nothing in the district court’s opinion indicates that these racial appeals were anything more than isolated incidents.”); *City of Springfield Litig.*, 658 F. Supp. 1015, 1032 (C.D. Ill. 1987) (noting racial slur directed at black candidate at luncheon meeting in 1982 and stating that this “single occurrence cannot support a claim that political campaigns in Springfield are carried out through subtle or overt racial appeals.”); *Milwaukee NAACP Litig.*, discussion at 935 F. Supp. 1419, 1433 (E.D. Wis. 1996) (“While the plaintiffs insist that this factor supports the inference of vote dilution, they are able to point to only one judicial election which appears to have involved racial appeals: the 1996 general election between Judge Stamper and Robert Crawford. Assuming that the Stamper/Crawford election did, in fact, involve hostile racial conduct, one election in the past 25 years is hardly enough to prove a pattern.”).
466. *Alamosa County Litig.*, discussion at 306 F. Supp. 2d 1016, 1025-26 (D. Colo. 2004) (noting ethnic appeals only by minority candidates who subsequently lost their elections); *Southern Christian Leadership Litig.*, discussion at 56 F.3d 1281, 1290 (11th Cir. 1995) (finding that appeals were “ineffective” as targeted black candidates won their races); *LULAC v. Clements Litig.*, discussion at 999 F.2d 831, 879 (5th Cir. 1993) (en banc) (“In the only judicial election affected by a racial appeal, Judge Baraka, the black candidate, won both the Republican primary and the general election, winning a majority of the white vote in both elections.”).
467. *Alamosa County Litig.*, discussion at 306 F. Supp. 2d 1016, 1025-26 (D. Colo. 2004).
468. *Liberty County Litig.*, discussion at 957 F. Supp. 1522, 1565 (N.D. Fla. 1997); *City of Chicago Litig.*, discussion at 969 F. Supp. 1359, 1449 (N.D. Ill. 1997); *Town of Babylon Litig.*, 914 F. Supp. 843, 889 (E.D.N.Y. 1996); *Sanchez-Colorado Litig.*, discussion at 861 F. Supp. 1516, 1529 (D. Colo. 1994); *El Paso Indep. Sch. Dist.*, discussion at 591 F. Supp. 802, 810 (W.D. Tex. 1984); *City of Columbia Litig.*, 850 F. Supp. 404, 424 (D.S.C. 1993); *Chattanooga Litig.*, discussion at 722 F. Supp. 380, 396 (E.D. Tenn. 1989); *City of Boston Litig.*, discussion at 609 F. Supp. 739, 744-45 (D. Mass. 1985).
469. *El Paso Indep. Sch. Dist.*, 591 F. Supp. 802, 810 (W.D. Tex. 1984) (“The next factor to be considered is whether political campaigns for the office of trustee have been characterized by overt or subtle racial appeals. Mrs. Maxine Silva, a candidate for trustee in the 1948 school board election, testified that during her campaign she received telephone calls in which she was accused of being a ‘wet-back,’ and subjected to other ethnic slurs. The Court accepts the testimony of Mrs. Silva, and finds it to be quite credible. It was her further testimony, however, that times have changed, and that the same atmosphere does not exist today. In fact, Mrs. Silva is again a candidate for trustee in the 1984 school board election.”).
470. *Town of Babylon Litig.*, discussion at 914 F. Supp. 843, 889 (E.D.N.Y. 1996) (“The African-American candidates that were the targets of these racial appeals lost. While deplorable, these racial appeals occurred ten years ago, and plaintiffs presented no evidence as to more recent racial appeals.”).
471. *City of Columbia Litig.*, discussion at 850 F. Supp. 404, 424 (D.S.C. 1993) (“the court finds that the racial harmony exhibited in the more recent campaigns is more indicative of the present-day political climate within the City. Accordingly, these two instances in which racial appeals were made are, by modern standards, rather isolated incidents and are not indicative of current attitudes.”); *see also* *City of Boston Litig.*, discussion at 609 F. Supp. 739, 745 (D. Mass. 1985) (“Other than an incident of verbal intimidation directed at a campaign worker in 1983, the record in this case contains no indication that the use of racial tactics has been a part of the City’s elections since 1977. There was, in fact, testimony that the theme of racial harmony played a major role in the campaigns of some candidates in the 1983 elections.”).
472. *Charleston County Litig.*, discussion at 316 F. Supp. 2d 268, 304 (D.S.C. 2004).
473. *Magnolia Bar Ass’n Litig.*, discussion at 793 F. Supp. 1386, 1410 (S.D. Miss. 1992).
474. SENATE REPORT *supra* note 15, at 27-30.
475. *See* Master Lawsuit List (filter Column 7f = 1).
476. *See id.* (filter Column 7f = 1 while filtering Column Jurisdiction = *True* or *False*).
477. *See, e.g.,* *Sanchez-Colorado Litig. (CO)*, discussion at 97 F.3d 1303, 1319 (10th Cir. 1996) (noting that no Hispanic candidate had won election to state legislature from the district since 1940); *Jefferson Parish I Litig. (LA)*, 926 F.2d 487 (5th Cir. 1991) (discussing expert’s analysis of the 20 elections in which blacks have sought office in Jefferson Parish since 1980).
478. *See, e.g.,* *City of Santa Maria Litig. (CA)*, discussion at 160 F.3d 543, 548 (9th Cir. 1998) (noting that “[i]t was well-known throughout Santa Maria that the district court was awaiting the results of that election. Days before the election, Maldonado told a local newspaper that his victory would prove ‘Santa Maria is not racist,’ ” and concluding that “[p]laintiffs have raised a triable issue of fact in whether the 1994 city council election was representative of typical voting behavior in Santa Maria”); *Chickasaw County II Litig.*, discussion at No. CIV.A. 1:92CV142-JAD, 1997 WL 33426761, at *4 (N.D. Miss. Oct. 28, 1997) (finding the election of black candidate to constable an anomaly where he “won the election by only 8 votes and his prestige was heightened by the fact that he is an ex-pro athlete. Moreover, this election occurred during the pendency of this lawsuit”); *Clark Litig.*,

- discussion at 725 F. Supp. 285, 299 (M.D. La. 1988) (discussing Judge Pitcher, who “was elected in East Baton Rouge where this litigation is pending and after this litigation commenced. While the term ‘aberration,’ used by one witness to describe Judge Pitcher’s victory, is too strong, it is clear that the election must be considered as one under unusual circumstances”); *City of Springfield Litig.*, discussion at 658 F. Supp. 1015, 1031 (C.D. Ill. 1987) (noting that “[s]ince this suit was filed, Candice Trees, a black woman, was elected Clerk of the Circuit Court of Sangamon County in a county-wide general election in November of 1986,” and “find[ing] that the majority citizens in power sought to evade Section 2 ‘by manipulating the election of a “safe” minority candidate’ to an office that has no policymaking power” because the “result is sudden and aberrant and logically can be attributed primarily to the concern generated by this litigation within the power centers of the City of Springfield”) (citation omitted).
479. *See, e.g., Albany County Litig.*, discussion at No. 03-CV-502, 2003 WL 21524820, at *11 (N.D.N.Y. July 7, 2003) (noting that “[s]ince the County was incorporated in 1788, no minority has ever been elected to a County-wide office”); *Mehfoud Litig.*, discussion at 702 F. Supp. 588, 590 (E.D. Va. 1988) (noting that “[n]o black has ever been elected to the Henrico Board of Supervisors. Prior to 1979 no black had ever run for the position, and since that date there have been three black candidates . . . All three were defeated. In addition, as of the date of the trial in this case, no black had ever been appointed to the Henrico County School Board”); *Seastrunk Litig.*, discussion at 772 F.2d 143, 153 (5th Cir. 1985) (observing that “no black had ever held office of any sort in the Parish”); *City of Jackson Litig.*, discussion at 683 F. Supp. 1515, 1535 (W.D. Tenn. 1988) (stating that of the Senate Factors, “perhaps the most significant in Jackson is the fact that no black candidate has ever been elected to, or served on, the City Commission” and pointing out that “[a] politically cohesive, geographically compact minority which exceeds 30% of the population of the City has been unable for over seventy years to have a member of the minority serve upon the governing authority of Jackson”).
480. *See, e.g., African-American Voting Rights LDF Litig.*, discussion at 994 F. Supp. 1105, 1125 (E.D. Mo. 1997) (finding that “[t]he seventh factor also weighs in defendants’ favor because African-Americans have been generally successful in reaching the bench in the jurisdictions in question; and, to whatever extent it is relevant, African-Americans have also been successful in reaching nonjudicial public office in Missouri of late”); *Little Rock Litig.*, discussion at 831 F. Supp. 1453, 1460 (E.D. Ark. 1993) (noting that “[b]lack candidates won ten of the twenty-five races in which one or more blacks participated” for “the position of Little Rock City Board of Directors from 1962 to 1992”); *Magnolia Bar Ass’n Litig.*, discussion at 793 F. Supp. 1386, 1410 (S.D. Miss. 1992) (finding that “blacks have enjoyed considerable electoral success in Mississippi” from facts that “two blacks . . . have been elected to the Mississippi Supreme Court,” that “United States Congressman Mike Espy . . . is black [and that] numerous blacks have been elected to judicial offices and non-judicial offices throughout” the state).
481. *See* 42 U.S.C. § 1973(b) (2005) (providing 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”).
482. *See, e.g., Old Person Litig. (MT)*, discussion at 312 F.3d 1036, 1048 (9th Cir. 2002) (finding that the Voting Rights Act does not “require any precise mathematical calculation of percentages of success in election,” suggesting that “[s]uch calculations may be misleading or give undue weight to what is only one of many factors” and that “[w]hat is important is that the district court consider the success in elections of the protected class,” and concluding that “neither the statute, nor the Senate report pertinent to its interpretation, nor the Supreme Court’s teachings in *Gingles* or *De Grandy* require any particular form for the district court’s assessment of election success”); *Cincinnati Litig.*, discussion at No. C-1-92-278, 1993 WL 761489, at *24 (S.D. Ohio July 8, 1993) (noting minority successes fall short of proportional representation and finding “there is no constitutional or statutory right to proportional representation”); *Terrazas Litig.*, discussion at 581 F. Supp. 1329, 1355-56 (N.D. Tex. 1984) (observing that “[o]ne would expect greater hispanic representation for a population group of its size,” but concluding that there are “limits . . . to the probative value of this inference. A lack of proportional representation has no independent constitutional or statutory significance.”).
483. *See, e.g., Bridgeport Litig.*, discussion at Civ. No. 3:93CV1476(PCD), 1993 WL 742750, at *3 (D. Conn. Oct. 27, 1993) (noting discrepancy between percentages of voting-age populations of blacks and Hispanics, roughly 22% for each, and election to 13 and 16%, respectively, of city-wide offices, lowered if ceremonial and uncontested offices are removed); *Operation Push Litig.*, discussion at 674 F. Supp. 1245, 1265 (N.D. Miss. 1987) (observing that “Mississippi has some 521 black elected officials, including one State Supreme Court Justice, one U.S. Congressman, and two State Senators. On the whole, these 521 black officials as of January 1986 represented approximately 9.9 percent of the total number of elected officials—approximately 5,278 in all. The black population of Mississippi is approximately 35 percent of the total population. Most of these black officials were elected from black majority districts”); *Jordan Litig.*, discussion at 604 F. Supp. 807, 812 (N.D. Miss. 1984) (noting that “[b]lacks hold less than ten percent of all elective offices in Mississippi, though they constitute 35% of

- the state's population and a majority of the population of 22 counties); Major Litig., discussion at 574 F. Supp. 325, 351, 341 (E.D. La. 1983) (describing a fifteen percent success rate for black candidates at the polls as "substantially lower than might be anticipated" given the parish's fifty-five percent black population, and also noting that "[n]otwithstanding a black population of 29.4%, only 7% of Louisiana's elected officials are black") (citations omitted).
484. See, e.g., Suffolk County Litig., discussion at 268 F. Supp. 2d 243, 266 (E.D.N.Y. 2003) (finding that Factor 7 "favors the defendants" where "there is one Hispanic legislator in Suffolk County which is 6% of the legislators" and "the percentage of Hispanic voting age citizens in Suffolk County is 6.67%"); City of Rome Litig. (GA), discussion at 127 F.3d 1355, 1381 (11th Cir. 1997) (noting that "[b]lack preferred candidates . . . filled 45% (22/49) of the positions available in the races in which they ran [which] is a higher percentage of positions filled than the percentage of Rome's population which is black").
485. See Southern Christian Leadership Litig., discussion at 785 F. Supp. 1469, 1477 (M.D. Ala. 1992) (stating that "strict proportionality between blacks and whites eligible for election does not preclude a finding that blacks have not been able substantially to influence elections," noting that Justice Brennan's direction in *Gingles* to "look beyond the single question of the degree of success of black candidates is particularly required where the minority candidate pool is so small").
486. See, e.g., City of Bridgeport Litig., Civ. No. 3:93CV1476(PCD), 1993 WL 742750, at *3 (D. Conn. Oct. 27, 1993) (stating that "[u]nderticket offices are often filled on the coattails of the mayoral candidate and election of minorities so such offices do not clearly reflect the ability of minorities to elect their choices").
487. See, e.g., Butts v. NYC Litig. (NY), 779 F.2d 141, 150 (2d Cir. 1985) (disapproving district court's "decision to disvalue the electoral success that minorities have had in New York City simply because these victories did not involve the City's three top offices").
488. See, e.g., Meza Litig., discussion at 322 F. Supp. 2d 52, 72 (D. Mass. 2004) (acknowledging "a number of unsuccessful campaigns by Latino candidates in [the] Chelsea" portion of the 2d Suffolk District in a lawsuit challenging the redistricting of State House districts, but finding that "the success of the Barrios 2002 senate campaign in the relevant portions of the 2d Suffolk District suggests that attractive Hispanic candidates with well-run campaigns are currently quite competitive within the Enacted Plan's configuration of the 2d Suffolk District") (emphasis added).
489. See, e.g., NAACP v. Fordice Litig. (MS), 252 F.3d 361, 370 (5th Cir. 2001) (noting that "exogenous elections are less probative than elections for the particular office at issue," but also asserting a "critical evidentiary reality that the exogenous character of . . . elections does not render them nonprobative") (citation omitted); Lafayette County Litig., 20 F. Supp. 2d 996 (N.D. Miss. 1998) (finding that "[w]hile blacks have enjoyed somewhat better success running for other county offices such as constable and board of education members, those exogenous elections are not as probative as the supervisory elections at issue here").
490. See, e.g., Smith-Crittenden County Litig., discussion at 687 F. Supp. 1310, 1317 (E.D. Ark. 1988) (finding non-persuasive "evidence of some success by black candidates in school-board elections or other local races, because the electoral structure at issue here has no effect on these candidates"); City of Jackson Litig., discussion at 683 F. Supp. 1515, 1535 (W.D. Tenn. 1988) (declining "to consider the election of a black candidate to the Madison County Commission as being relevant to an inquiry of whether black candidates have been elected to the Jackson City Commission, the only political subdivision which is the subject of this litigation" and noting that county commission "a different governing body, with many more commissioners than the City, elected from a different group of voters, and having different duties and responsibilities.").
491. See, e.g., Sanchez-Colorado Litig. (CO), discussion at 97 F.3d 1303, 1324 (10th Cir. 1996) (finding that "the record does not justify the district court's credit of the extent to which minorities have been elected to public office in HD 60" and stating that "exogenous elections-- those not involving the particular office at issue--are less probative than elections involving the specific office that is the subject of the litigation") (quotation omitted); City of Carrollton NAACP Litig. (GA), discussion at 829 F.2d 1547, 1560 (11th Cir. 1987) (holding that "[t]he district court's reliance on municipal elections in Carroll County as proof of minority electoral success of a county electoral scheme is obviously misplaced. The political jurisdiction in question here is the county, not the cities of Villa Rica, Whitesburg, or Carrollton. The record plainly demonstrates the clear lack of minority electoral success in Carroll County.").
492. See, e.g., Bone Shirt Litig., discussion at 336 F. Supp. 2d 976, 1042-43 (D.S.D. 2004) (finding that "electing fewer than thirty Indians in nearly 100 years in a majority-Indian county does not demonstrate a long history of Indians being elected to office. Several positions listed, moreover, were appointed, which detracts from their probative value"); Town of Hempstead Litig. (NY), discussion at 180 F.3d 476, 495 (2d Cir. 1999) (noting that "[a]lthough black Republicans have been appointed or elected to other offices in the surrounding area, and blacks have been appointed to a number of positions in the Town, the fact remains that until the election of Curtis Fisher in 1993, no

- African-American was ever elected to the legislative body at issue in this case.”) (quotation omitted); *Texarkana Litig.*, discussion at 861 F. Supp. 756, 764 (W.D. Ark. 1992) (discounting as evidence of minority electoral success experience of plaintiff Londell Williams, who was appointed to the city board of directors in 1978, has never had a white opponent, and when he was opposed by a black candidate, was an incumbent.”); *Metro Dade County Litig.*, discussion at 805 F. Supp. 967, 982 (S.D. Fla. 1992) (commenting that since 1968 “no Black candidate preferred by Black voters has ever been elected to the County Commission without first being appointed to the Commission. Therefore, although Blacks have been elected to the County Commission, this seeming electoral success does not demonstrate that Blacks are able to elect their preferred representatives in the absence of special circumstances”).
493. *See Niagara Falls Litig.* (NY), discussion at 65 F.3d 1002, 1021 (2d Cir. 1995) (finding Factor 7 unsatisfied, citing evidence that “blacks have held several elected positions on the Board of Education, they have been appointed to other local boards and commissions, and they have held positions on the Niagara Falls Democratic Committee”); *City of Rome Litig.* (GA), discussion at 127 F.3d 1355, 1384 n.18 (11th Cir. 1997) (finding subsequent electoral success of minority candidates first appointed to office probative of minority electoral success where evidence indicated that the appointed candidates had been able to develop sustained biracial coalitions” and have not simply maintained “their elected positions because of the sheer power of incumbency”).
494. *Town of Hempstead Litig.* (NY), 180 F.3d 476, 495 (2d Cir. 1999).
495. *See, e.g., Red Clay Sch. Dist. Litig.*, discussion at 780 F. Supp. 221, 226 (D. Del. 1991) (noting that “[s]pecifically, in 1986, 1987 and 1989, no black candidates ran for a seat on the Red Clay Board and, as indicated *supra*, there are virtually no procedural restrictions in the system which would chill or frustrate black candidacy... The Court finds, therefore, that on the whole this Senate Factor does not weigh heavily in favor of the Plaintiffs.”); *McCarty Litig.* (TX), discussion at 749 F.2d 1134, 1135 (5th Cir. 1984) (noting that “[o]nly two black candidates sought election to the Board of Trustees” and that “Black voters register and vote in Lamar County without hindrance, as each plaintiff testified, and there is no hindrance or obstacle to the candidacy of black persons for the Board”).
496. *See Red Clay Sch. Dist. Litig.*, discussion at 780 F. Supp. 221, 226 & n.2 (D. Del. 1991).
497. *See, e.g., Calhoun County Litig.* (MS), discussion at 88 F.3d 1393, 1397-98 (5th Cir. 1996) (noting “[t]hat few or no black citizens have sought public office in the challenged electoral system does not preclude a claim of vote dilution . . . To hold otherwise would allow voting rights cases to be defeated at the outset by the very barriers to political participation that Congress has sought to remove.”) (quoting *Westwego Citizens For Better Government v. City of Westwego*, 872 F.2d 1201, 1208 n. 9 (5th Cir. 1989)); *see also City of LaGrange Litig.*, discussion at 969 F. Supp. 749, 776 (N.D. Ga. 1997) (noting testimony from African-American candidates that they “would not even run for at-large City-Council seats because of the perception that such campaigns would not succeed” and finding that this “testimony comports with the strikingly low number of African-American candidates for the LaGrange City Council over the last one hundred years.”); *LULAC – Midland Litig.*, discussion at 648 F. Supp. 596, 604 (W.D. Tex. 1986) (noting that “only three minority candidates have been elected” since formation of the school board, that “[f]ew minority members have dared to try to be elected,” and that “no minority member has been elected” since the adoption of majority vote requirement); *cf. Cousin Litig.* (TN), discussion at 145 F.3d 818, 833 (6th Cir. 1998) (acknowledging that “no black has ever *run* for a county judgeship, a phenomenon surely attributable at least in part to the perception that it is very difficult for a black candidate to win a countywide election,” but ultimately concluding that Factor 7 did not clearly weigh in plaintiffs’ favor; finding the fact that “political success is difficult . . . does not mean it is unmanageable” and observing that three of the 27 black lawyers in the county already held “lawyer-qualified” offices).
498. *Fort Bend Indep. Sch. Dist. Litig.* (TX), discussion at 89 F.3d 1205, 1215 (5th Cir. 1996) (crediting defendants’ expert testimony that “a serious candidate must raise and expend considerable sums of money for his campaign” and that “the failure to do so renders the candidate non-serious and non-viable” and noting that plaintiffs’ concession that “several minority candidates who lost were not ‘serious’ candidates either because they spent little money or were not supported by the minority community”).
499. *Blaine County Litig.* (MT), discussion at 363 F.3d 897, 900, 914 (9th Cir. 2004) (noting that “no American Indian was ever elected to the Blaine County Commission under the at-large voting system” and also noting evidence “demonstrat[ing] that there is a pool of qualified American Indian candidates [who] also testified that they were currently unwilling to run for County Commissioner because white bloc voting made it impossible for an American Indian to succeed in an at-large election”); *Gretna Litig.*, discussion at 636 F. Supp. 1113, 1122 (E.D. La. 1986) (commenting that “despite the strong candidacies of two qualified blacks on three separate occasions, no black has ever won an aldermanic election” and concluding that “[t]his evidence can be interpreted only as strong evidence of dilution”).

500. *See* Bridgeport Litig., Civ. No. 3:93CV1476(PCD), 1993 U.S. Dist. LEXIS 19741, 1993 WL 742750 (D. Conn. Oct. 27, 1993) and discussion at 26 F.3d 271 (2d Cir. 1994) (noting that a black candidate won the mayoral primary, that an “influential” group called the Democratic Town Committee failed to endorse him, and that the candidate lost the general election in an overwhelmingly Democratic city).
501. Bone Shirt Litig., 336 F. Supp. 2d 976 (D.S.D. 2004), Charleston County, 365 F.3d 341 (4th Cir. 2004); National City Litig. (CA), 976 F.2d 1293 (9th Cir. 1992); Romero Litig. (CA), 883 F.2d 1418 (9th Cir. 1989), Sanchez Bond Litig. (CO), 875 F.2d 1488 (10th Cir. 1989), Red Clay Sch. Dist. Litig. (DE), 116 F.3d 685 (3d Cir. 1997), County of Big Horn Litig., 647 F. Supp. 1002 (D. Mont. 1986).
502. Town of Hempstead Litig. (NY), 180 F.3d 476 (2d Cir. 1999); Cincinnati Litig., 40 F.3d 807 (6th Cir. 1994); City of Norfolk Litig. (VA), 883 F.3d 1232 (4th Cir. 1989); Baytown Litig. (TX), 840 F.2d 1540 (5th Cir. 1988); Rocha Litig., No. V-79-26, 1982 U.S. Dist. LEXIS 15164 (S.D. Tex. Aug. 23, 1982).
503. Cincinnati Litig. (OH), discussion at 40 F.3d 807, 812 (6th Cir. 1994) (quoting *Smith v. Clinton*).
504. *Id.*
505. *See, e.g.*, Niagara Falls Litig. (NY), discussion at 65 F.3d 1002, 1022 (2d Cir. 1995) (describing Kimble, a candidate who “failed by only six votes to win one of the available nominations in the 1987 Democratic Party primary for the City Council. To be sure, Kimble only placed sixth in a contest of nine, and she received the least white-voter support of all the candidates. Nevertheless, she received more white-voter support than any other black candidate had before, and the crossover vote was nearly enough to secure a seat.”); Bond Litig. (CO), discussion at 875 F.2d 1488, 1492-93 (10th Cir. 1989) (basing the conclusion that “Hispanics have the ability to elect commissioners under the at-large system currently in use in the county” in part on finding that “in two recent elections in which Hispanics had run for the county commission, the Hispanic candidate had lost by only 53 votes in one race and by 22 votes in the other.”); City of Pomona Litig., discussion at 665 F. Supp. 853, 861 (C.D. Cal. 1987) (noting that although “no black has been elected to the Pomona City Council, in 1983 black candidate Willie White, despite the small size and dispersion of the black community in Pomona, lost by only 71 votes. His near miss, which could not have been achieved without substantial white cross-over support, demonstrates the potential electability of black candidates”).
506. Charleston County Litig., discussion at 316 F. Supp. 2d 268, 278-79 & n 14 (noting that in the 1997 and 2000 elections, the minority candidates at issue received only 7% and 2.8% of the non-white vote).
507. *See* Johnson v. De Grandy, 512 U.S. 997, 1020 (1994) (internal citation omitted).
508. *See, e.g.*, City of Cleveland Litig., 297 F. Supp. 2d 901, 908 (N.D. Miss. 2004) (finding no violation of Section 2 where, “while the three minority candidates in the above-denoted races lost, the record demonstrates that African-American candidates in many other City and county wide elections have prevailed. Three of the City’s current aldermen, two of the at-large members on the City School Board, the Superintendent of the School Board, the Circuit Clerk, a Circuit Court Judge, a County Court Judge, and a majority of the County Election Commission are African-American, thus demonstrating that minority candidates are fully capable of winning City and county-wide elections, and that the City’s minority citizens can fully participate in the political process”); NAACP v. Fordice Litig. (MS), discussion at 252 F.3d 361, 371 (5th Cir. 2001) (noting that minority candidate “Antwinette McCrary (‘McCrary’) won an at-large council position in the City of Quitman, a town with a 26.88% black voting age population” and concluding that “absent any other countervailing evidence in the record, we cannot say that [the court below] erred by relying on these elections to ultimately conclude that the electoral success of African-Americans in Mississippi militates against a finding of vote dilution”); Niagara Falls Litig., discussion at 913 F. Supp. 722, 748-49 (W.D.N.Y. 1994) (noting, in lawsuit finding neither Factor 7 met nor a violation of Section 2, that “African Americans have been elected to the Niagara Falls Board of Education in significant numbers . . . Elections to the Board are at-large and are non-partisan”); Stockton Litig. (CA), discussion at 956 F.2d 884, 891 (9th Cir. 1992) (noting that “[t]he statistical data before the district court reflected that while in past elections minorities had been elected, those elected were for the most part not elected by minorities. Of the three black representatives in office at the time Measure C was adopted, two were elected from districts that were overwhelmingly (more than 70 percent) white. Prior to 1971, when an at-large system was in effect, [H]ispanics had been elected by white majorities, further indicating that the minority representation before Measure C existed because whites voted for minorities”); City of Boston Litig. (MA), discussion at 784 F.2d 409 (1st Cir. 1986) (finding that “the success of minority candidates and the influence of minority voters were not confined to the two districts having Black majorities,” noting that “[t]wo Blacks were chosen by the City as a whole to be at-large members of the School Committee”).
509. *See, e.g.*, Texarkana Litig., discussion at 861 F. Supp. 756, 764 (W.D. Ark. 1992) (concluding that the successful black candidate’s “experiences do not support the notion that minority voters have the ability to elect representatives of their choice in at-large elections in Texarkana” where “[h]e has had the advantages of appointment and incumbency and the lack of a white opponent”); Columbus County Litig., 782 F. Supp. 1097,

- 1102 (E.D.N.C. 1991) (noting that in “three of the four elections in which the black candidate won, he was an incumbent, and in two of the four elections the black candidate had no white opponent” and that “[o]nly once, in 1980, has a non-incumbent black beaten a white opponent”); Clark Litig., discussion at 725 F. Supp. 285, 299 (M.D. La. 1988) (finding factor met and noting that “[i]n the case of Judge Collins, there were special circumstances because he was first appointed to a vacancy and then elected as an incumbent in 1978 in an election in which he had no opposition”); Terrell Litig., discussion at 565 F. Supp. 338, 347-48 (N.D. Tex. 1983) (finding that “a disproportionately low number of blacks have been elected as Terrell officials,” that a black official first appointed to the city council “now runs from an essentially all black residency district, and has never had a white opponent,” and that “[t]here has never been more than one black representative on the five member city council”).
510. *See, e.g.*, City of Rome Litig. (GA), discussion at 127 F.3d 1355, 1384 n.18 (11th Cir. 1997).
511. SENATE REPORT, *supra* note 15, at 29.
512. *See* Master Lawsuit List (filter Column: 8c=1, then filter Column: 8f=1).
513. *See id.* (filter Column: 8f=1 while filtering Column: Success=1).
514. *See id.* (filter Column 8c=1, while filtering Column 8f=0, while filtering Column: WasSection2Violated=1).
515. Charleston County Litig., discussion at 316 F. Supp. 2d 268, 297 (D.S.C. 2003) (“Although the Court received evidence on both factors, the United States has not put them at issue....The Court has considered all of the evidence related to the factors of tenuousness and responsiveness and finds that they do not materially contribute to the Court’s conclusion.”); Suffolk County Litig., discussion at 268 F. Supp. 2d 243, 266 (E.D.N.Y. 2003) (“The plaintiffs’ only evidence is that the Committee of Reapportionment for the Suffolk County Legislature and the Legislature did not respond to the PRLDEF’s letters and proposed Latino redistricting plan. This alone, does not show a significant lack of responsiveness. As such, this factor is neutral at best.”); Montezuma-Cortez Sch. Dist. Litig., discussion at 7 F. Supp. 2d 1152, 1170 (D. Colo. 1998) (discussing evidence including the use of federal funds to implement programs that will be responsive to Indian student needs, though noting these programs have not been wholly successful, and considering the school board’s negative response to an Indian community attempt to get bilingual and Native American education programs but not concluding whether the body was responsive); City of Holyoke Litig., discussion at 960 F. Supp. 515, 526 (D. Mass. 1997) (“The significant lack of responsiveness of Holyoke officials to the needs of the Hispanic community, the eighth factor, was evidenced in the 1980’s and is significantly diminishing in the 1990’s, if not disappearing.”); Rural West I Litig., discussion at 836 F. Supp. 453, 463 (W.D. Tenn. 1993) (characterizing evidence as “equivocal. We do not, therefore, place much weight upon this factor.”); Kent County Litig., discussion at 790 F. Supp. 738, 749 (W.D. Mich. 1992) (noting evidence “raises serious concerns” about responsiveness but making no finding); City of Springfield, discussion at 658 F. Supp. 1015, 1032 (C.D. Ill. 1987) (considering testimony of county board member that he has difficulty getting city officials to listen to him regarding minority needs but making no finding because responsiveness is a “peripheral issue”); Chickasaw County I Litig., discussion at 705 F. Supp. 315, 321 (N.D. Miss. 1989) (“The only area in which plaintiffs have demonstrated a lack of responsiveness is in the employment of blacks in non-elected official positions in county and municipal government. The parties could point to only one black person employed in the government in Chickasaw County, outside of an elected or appointed public office; one black person was hired in 1988 in the tax assessor’s office....Of those factors which plaintiffs have failed to prove, none weighs strongly against the plaintiffs’ case....A general history of responsiveness, if established, would fail to rebut the evidence of a Section 2 violation....A benevolent monarchy would be nonetheless non-democratic.”); Carrollton NAACP Litig. (GA), discussion at 829 F.2d 1547 (11th Cir. 1987) (remanding to the district court noting that “the lack of black teachers in the Carroll County school system was a factor bearing on unresponsiveness, and that this had caused the court deep concern, but, the court nonetheless ruled that the plaintiffs did not prove what steps defendants should have undertaken to increase the number of qualified black teachers. We do not understand that the plaintiffs must carry as part of their burden, establishing what measures the county should have taken to correct alleged unresponsiveness by school administrators.”); County of Big Horn Litig., discussion at 647 F. Supp. 1002, 1020 (D. Mont. 1986) (finding officials were “without a doubt” more responsive to the Indian community than before the institution of the lawsuit, but noting that courts were often skeptical of steps taken during litigation); City of Boston Litig., discussion at 609 F. Supp. 739, 748 (D. Mass. 1985) (noting “the parties offered conflicting evidence concerning the extent to which Boston’s government has attempted to alleviate minority problems” but also noting the factor only has “marginal significance”); Escambia County Litig. (FL), discussion at 748 F.2d 1037, 1045 (5th Cir. 1984) (Circuit noted that responsiveness was less important under Section 2 and stated “Although the court found that the commissioners had generally been responsive to the interests of black citizens, it noted two areas in which they had not: appointments of blacks to committees or boards and housing policy.”); Haywood County Litig., discussion at 544 F. Supp. 1122 (W.D. Tenn. 1982) (crediting expert testimony which noted that racial bloc voting may create a less responsive governing body without making a finding).

516. See Master Lawsuit List (filter Column: 8f=1, then filter Column: Jurisdiction=True or False).
517. See *id.* (filter Column 8f=1 while filtering 1f=1, RPV=1, 7f=1, noting as discussed *supra* in Factor 1 Section that not all lawsuits finding a history of discrimination also found Factor 1 was met).
518. *But see* Holder v. Hall Litig. (GA), discussion at 117 F.3d 1222, 1227 (11th Cir. 1997) (“An official is responsive if he/she ensures that minorities are not excluded from municipal posts, evenhandedly allocates municipal services, and addresses minority complaints.”); Niagara Falls Litig. (NY), discussion at 65 F.3d 1002, 1023 (2d Cir. 1995) (“The “responsiveness” inquiry here involves review of tangible efforts of elected officials and the impact of these efforts on particular members of the community.”).
519. Red Clay Sch. Dist. Litig. (DE), discussion at 116 F.3d 685, 698 (3d Cir. 1997); Town of Hempstead Litig. (AL), discussion at 956 F. Supp. 326, 344 (E.D.N.Y. 1997); City of Philadelphia Litig., discussion at 824 F. Supp. 514, 538 (E.D. Penn. 1993); Bridgeport Litig., discussion at Civ. No. 3:93CV1476(PCD), 1993 U.S. Dist. LEXIS 19741 (D. Conn. Oct. 27, 1993); City of Jackson Litig., discussion at 683 F. Supp. 1515, 1535 (W.D. Tenn. 1988); Baldwin Bd. of Educ. Litig., discussion at 686 F. Supp. 1459, 1467 (M.D. Ala. 1988); Marengo County Litig. (AL), discussion at 731 F.2d 1546, 1572 (11th Cir. 1984); Terrell Litig., discussion at 565 F. Supp. 338, 343 (N.D. Tex. 1983); Mobile School Board Litig., discussion at 542 F. Supp. 1078 (S.D. Ala. 1982); *Cf.* City of Holyoke Litig., discussion at 960 F. Supp. 515, 523-24 (D. Mass. 1997); Kent County Litig., discussion at 790 F. Supp. 738, 749 (W.D. Mich. 1992) (noting that “serious concerns about responsiveness” were raised by districting plan that heavily concentrated minority population into a single district and left them with little voice in others but making no express finding on Factor 8); Carrollton NAACP Litig. (GA), discussion at 829 F.2d 1547, 1561 (11th Cir. 1987) (“[T]he lack of black teachers in the Carroll County school system was a factor bearing on unresponsiveness.”); *but see* Fort Bend Indep. Sch. Dist. Litig. (TX), discussion at 89 F.3d 1205 (5th Cir. 1996) (achieving unitary status weighs in favor of responsiveness); LULAC – N.E. Indep. Sch. Dist. Litig., discussion at 903 F. Supp. 1071, 1087 (W.D. Tex. 1995) (flying a confederate flag and naming a school after an alleged racist does not prove lack of responsiveness); Monroe County Litig., discussion at 740 F. Supp. 417 (N.D. Miss. 1990) (switching voluntarily to randomized jury roles evidences responsiveness); Dallas County Comm’n Litig., discussion at 548 F. Supp. 794 (S.D. Ala. 1982) (considering improvements made after judgment against the town in segregation lawsuit to be evidence of responsiveness); *see also infra* note 531 (consent decrees do not establish a significant lack of responsiveness).
520. *See, e.g.*, Town of Hempstead Litig. (NY), discussion at 180 F.3d 476, 487 (2d Cir. 1999) (considering employment discrimination judgment entered against the town); Red Clay Sch. Dist. Litig. (DE), discussion at 116 F.3d 685, 698 (3d Cir. 1997) (noting that it took seven years to comply with desegregation order); Bridgeport Litig., discussion at Civ. No. 3:93CV1476(PCD), 1993 U.S. Dist. LEXIS 19741, at * 16-17 (D. Conn. Oct. 27, 1993) (citing judgments in school desegregation and fire department employment lawsuits as showing a “disservice to minority interests”); City of Philadelphia Litig., discussion at 824 F. Supp. 514, 538 (E.D. Pa. 1993) (taking judicial notice of a judgment for Latino plaintiffs in an unlawful arrest lawsuit); Baldwin Bd. of Educ. Litig., 686 F. Supp. 1459, 1467 (M.D. Ala. 1988) (finding “[T]he Baldwin County Board of Education has been particularly unresponsive to the black citizens’ concern about race relations in the county’s schools, in particular concerns arising out of school desegregation and the apparent resulting displacement of black administrators.”); Mobile School Board Litig., discussion at 542 F. Supp. 1078, 1095 (S.D. Ala. 1982) (readopting earlier findings that “as recently as 1970, another judge of this court was forced to threaten members of the Board of School Commissioners of Mobile County with \$ 1,000 per day contempt fines for their refusal to comply with orders to desegregate the public schools.”). *But cf.* Dallas County Bd. of Educ. Litig. (AL), discussion at 739 F.2d 1529, 1540 (11th Cir. 1984) (holding evidence of both a desegregation and a faculty hiring lawsuit not sufficient on record before appellate court to render district court’s finding of responsiveness clearly erroneous); City of Greenwood Litig., discussion at 599 F. Supp. 397, 403 (N.D. Miss. 1984) (considering a violation of Section 5 of the VRA to weigh against finding responsiveness, but did not suffice to establish Factor 8).
521. *See, e.g.*, Red Clay Sch. Dist. Litig. (DE), discussion at 116 F.3d 685, 698 (3d Cir. 1997) (noting that despite a school desegregation plan one year after an adverse judgment, the town board took seven years to desegregate its schools, and then desegregated in the same year the state board of education insisted that the racial composition to be corrected); Mobile School Board Litig., discussion at 542 F. Supp. 1078 (S.D. Ala. 1982) (considering that the school board had only acted in response to numerous restraining and injunctive orders throughout more than a decade).
522. *See, e.g.*, City of Philadelphia Litig., discussion at 824 F. Supp. 514, 538 (E.D. Penn. 1993) (considering testimony of a former mayor and a city councilman that the police and fire department discriminated against minorities); City of Jackson Litig., discussion at 683 F. Supp. 1515, 1535 (W.D. Tenn. 1988) (“The fact that ninety-one of 103 inadequate streets in 1978 were located in black neighborhoods, the fact that in 1955 and prior thereto the City of Jackson employed no black supervisors, black policemen, or black firemen, and the fact that no black has ever

- been appointed as head of any department make it painfully obvious that the City Commission has not always been responsive to the needs of black citizens.”); *Terrell Litig.*, discussion at 565 F. Supp. 338, 343 (N. D. Tex. 1983) (finding a law that disproportionately affected African-American neighborhoods in street paving decisions established a significant lack of responsiveness); *cf.* *Sisseton Indep. Sch. Dist. Litig. (SD)*, discussion at 804 F.2d 469, 477 (8th Cir. 1986) (remanding to district court for particularized findings on evidence of disproportionately low employment of minority teachers, and the failure to appoint minority voting registrars or establish polling places despite minority requests). *But see* *Fort Bend Indep. Sch. Dist. Litig. (TX)*, discussion at 89 F.3d 1205, 1209 (5th Cir. 1996) (citing anecdotal testimony of disparate treatment insufficient to show unresponsiveness).
523. *See, e.g.,* *Town of Hempstead Litig. (NY)*, discussion at 180 F.3d 476, 487 (2d Cir. 1999) (noting placement of Ku Klux Klan insignia in town’s fire department); *but see* *LULAC - N.E. Indep. Sch. Dist. Litig.*, discussion at 903 F. Supp. 1071, 1087 (W.D. Tex. 1995) (discounting plaintiff’s assertions that a school athletic center had been named after a racist and that the Confederate flag was flown at the high school until 1993 because the minority community did not bring these complaints to the attention of the board).
524. *See, e.g.,* *Montezuma-Cortez Sch. Dist. Litig.*, discussion at 7 F. Supp. 2d 1152, 1170 (D. Colo. 1998) (discussing evidence only in terms of the School Board and efforts made by it in evaluating whether there was a significant lack of responsiveness); *Aldasoro v. Kennerson Litig.*, discussion at 922 F. Supp. 339, 366 (S.D. Cal. 1995) (considering evidence regarding school policies in evaluating the responsiveness of defendant school district); *Sisseton Indep. Sch. Dist. Litig. (SD)*, discussion at 804 F.2d 469, 477 (8th Cir. 1986) (considering only evidence about the school system and school board in responsiveness inquiry); *Dallas County Comm’n Litig. (AL)*, discussion at 739 F.2d 1529 (5th Cir. 1984) (noting the responsiveness inquiry rests on different evidence for the County Commission and for the School Board); *see also* *Liberty County Comm’rs Litig.*, discussion at 957 F. Supp. 1522, 1566 (N.D. Fla. 1997) (considering evidence of school board and county commission separately).
525. *See, e.g.,* *Bone Shirt Litig.*, discussion at 336 F. Supp. 2d 976, 1043 (D.S.D. 2004) (looking at a wide range of issues in considering whether the state legislature was responsive including legislation about gaming, racial profiling, and legislation regarding negotiations between the state and the reservations); *Niagara Falls Litig. (NY)*, discussion at 65 F.3d 1002, 1023 (2d Cir. 1995) (discussing a wide range of evidence in determining responsiveness including hiring practices by the city, a school integration program, seeking grants for increased community policing in the city, and the adoption of a fair housing law in determining whether the city was responsive.); *City of Austin Litig. (TX)*, discussion at 871 F.2d 529, 534 (5th Cir. 1989) (discussing evidence regarding the number of parks in minority areas, mortgage loans to low-income families, shelter operations, job training, and medical services in making a responsiveness determination.); *Baytown Litig.*, discussion at 696 F. Supp. 1128 (S.D. Tex. 1987) (considering evidence in the areas of employment, appointments to boards and commissions, housing rehabilitation, streets and drainage improvements).
526. *See e.g.,* *Hamrick Litig.*, discussion at 155 F. Supp. 2d 1355, 1378 (N.D. Ga. 2001) (“Significantly, the city manager also testified that Gainesville’s attorneys had advised the city that it lacked the power to issue a moratorium on new industry which may contribute to the environmental concerns of Ward 3 residents, and that certain of these areas were both geographically and legally beyond the scope of city control.”); *Jeffers Litig.*, discussion at 730 F. Supp. 196, 213 (E.D. Ark. 1989) (discounting evidence regarding poor quality roads in minority areas because the state legislature did not have jurisdiction over this issue).
527. *Alamosa County Litig.*, discussion at 306 F. Supp. 2d 1016 (D. Colo. 2004); *NAACP v. Fordice Litig. (MS)*, discussion at 252 F.3d 361 (5th Cir. 2001); *Hamrick Litig.*, discussion at 155 F. Supp. 2d 1355, 1378 (N.D. Ga. 2001); *City of LaGrange Litig.*, discussion at 969 F. Supp. 749, 770 (N.D. Ga. 1997); *Holder v. Hall Litig. (GA)*, discussion at 117 F.3d 1222, 1227 (11th Cir. 1997); *Harris v. Houston Litig.*, discussion at 10 F. Supp. 2d 721, 726 (S.D. Tex. 1997); *Texarkana Litig.*, discussion at 861 F. Supp. 756, 765 (W.D. Ark. 1992); *Westwego Litig.*, discussion at 1989 U.S. Dist. LEXIS 7298, at *14 (E.D. La. 1989); *City of Woodville Litig. (MS)*, discussion at 881 F.2d 1327, 1335 (5th Cir. 1989); *Chickasaw County I Litig.*, discussion at 705 F. Supp. 315, 321 (N.D. Miss. 1989); *City of Starke Litig.*, discussion at 712 F. Supp. 1523, 1538 (M.D. Fla. 1989); *Jeffers Litig.*, discussion at 730 F. Supp. 196, 213 (E.D. Ark. 1989); *City of Norfolk Litig.*, discussion at 679 F. Supp. 557, 585 (E.D. Va. 1988); *City of Woodville Litig.*, discussion at 688 F. Supp. 255, 257 (S.D. Miss. 1988); *Houston v. Haley Litig. (MS)*, discussion at 859 F.2d 341, 347 (5th Cir. 1988); *Baytown Litig. (TX)*, discussion at 840 F.2d 1240, 1250-51 (5th Cir. 1988); *Pomona Litig.*, discussion at 665 F. Supp. 853, 862 (C.D. Cal. 1987); *City of Fort Lauderdale Litig.*, discussion at 617 F. Supp. 1093, 1107 (S.D. Fla. 1985); *City of Austin Litig.*, discussion at CIV. No. A-84-CA-189, 1985 WL 19986, at *12 (W.D. Tex. Mar. 12, 1985); *Escambia County Litig. (FL)*, discussion at 748 F.2d 1037, 1045 (5th Cir. 1984); *Dallas County Bd. of Educ. Litig. (AL)*, 739 F.2d 1529, 1540 (11th Cir. 1984); *Opelika Litig. (AL)*, discussion at 748 F.2d 1473, 1476 (11th Cir. 1984); *Terrell Litig.*, discussion at 565 F. Supp. 338, 343 (N. D. Tex. 1983); *City of Greenwood Litig.*, discussion at 534 F. Supp. 1351 (N.D. Miss. 1982); *see also* *Calhoun County Litig.*, discussion at 813 F. Supp. 1189, 1201 (N.D. Miss. 1993) (criticizing district court on

- this point but letting finding stand as not clearly erroneous); *infra* note 537 (nondiscrimination in the context of judicial elections); *cf.* Chapman v. Nicholson Litig., discussion at 579 F. Supp. 1504, 1512 (N.D. Ala. 1984) (“Evidence shows that the city had spent an appropriate amount of resources on the African American neighborhoods in Jasper.”).
528. *See, e.g.*, Holder v. Hall Litig. (GA), discussion at 117 F.3d 1222, 1227 (11th Cir. 1997) (stating “municipal services are not allocated in a race based fashion”); Houston v. Haley Litig. (MS), discussion at 859 F.2d 341, 347 (5th Cir. 1988) (noting city services are available to everyone regardless of race); City of Woodville Litig., discussion at 688 F. Supp. 255, 257 (S.D. Miss. 1988) (considering services “are provided equally”); Pomona Litig., discussion at 665 F. Supp. 853, 862, 868 (C.D. Cal. 1987) (citing testimony that city “makes every effort to provide services equally to all citizens, regardless of race, color or creed”).
529. *See, e.g.*, Chapman v. Nicholson Litig., discussion at 579 F. Supp. 1504, 1512 (N.D. Ala. 1984) (“Evidence shows that the city had spent an appropriate amount of resources on the African American neighborhoods in Jasper”); Chickasaw County II Litig., No. CIV.A. 1:92CV142-JAD, 1997 U.S. Dist. LEXIS 22087 (N.D. Miss. Oct. 28, 1997) (finding responsiveness in part based on testimony of Supervisor John Moore that at least half of the roads paved in the last five years have been in predominantly black areas); Dallas County Bd. of Educ. Litig. (AL), discussion at 739 F.2d 1529, 1540 (11th Cir. 1984) (finding responsiveness in part because the “roads have been maintained on a non-discriminatory basis”); Hamrick Litig., discussion at 155 F. Supp. 2d 1355, 1378 (N.D. GA. 2001) (finding responsiveness based on city manager’s testimony that numerous programs which the city had adopted directly benefited the black community, including a road repaving project); *see also* Calhoun County Litig. (MS), discussion at 88 F.3d 1393, 1400 (5th Cir. 1996) (discussing equality in road paving but noting that current equality may not be afforded much weight under totality of the circumstances when there is a history of discrimination in road paving).
530. *See, e.g.*, Fort Bend Indep. Sch. Dist. Litig. (TX), discussion at 89 F.3d 1205 (5th Cir. 1996) (finding that evidence defendant had achieved unitary status showed responsiveness); *cf.* Dallas County Bd. of Educ. Litig. (AL), discussion at 739 F.2d 1529, 1540 (11th Cir. 1984) (declining to review district court’s finding of responsiveness based on improvements made in a lawsuit involving school desegregation and faculty hiring because record not included on appeal); *see also* cases considering consent decree, *infra* note 531.
531. *See, e.g.*, Cincinnati Litig., discussion at No. C-1-92-278, 1993 U.S. Dist LEXIS 21009, at *36 (S.D. Ohio July 8, 1993) (taking notice of four consent decrees the Cincinnati Metropolitan Housing, Police Division and Fire Department had entered into, but not faulting the city “for resorting to the Courts to settle disputes. This pattern of behavior on the part of the City to settle these lawsuits constitutes significant responsiveness to the issues of concern to the African American community.”); Houston v. Haley Litig., discussion at 663 F. Supp. 346, 355 (N.D. Miss. 1987) (finding responsiveness in part on the provision of city services even where the city was under a consent decree to pave certain roads, provide parks in black areas, and construct a swimming pool after noting that the city manager had testified the projects “were not entirely the result of the lawsuit”); City of Fort Lauderdale Litig., discussion at 617 F. Supp. 1093, 1107 (S.D. Fla. 1985) (considering the city responsive in part due to recruitment efforts for minority police and fire departments, despite the fact that its efforts resulted in part from a consent decree mandating the city try to hire 11.25% minorities); City of Norfolk Litig., discussion at 605 F. Supp. 377, 394 (E.D. Va. 1984) (although city’s hiring of police and firefighters was controlled by a consent decree, the city’s hiring efforts weighed in favor of responsiveness); Dallas County Bd. of Educ. Litig., discussion at 548 F. Supp. 794, 821 (S.D. Ala. 1982) (finding that, where the county entered into a school desegregation consent decree and then a second decree, after the Department of Justice sought to have the first decree judicially enforced, that the evidence “affirmatively shows, and the Court therefore finds, that the School Board’s operation of the transportation system has been fair, without discrimination, and responsive to the needs of all students, both black and white.”).
532. Monroe County Litig., 740 F. Supp. 417 (N.D. Miss. 1990).
533. Operation Push Litig., discussion at 674 F. Supp. 1245, 1265 (N.D. Miss. 1987) (finding unresponsiveness where officials did not conduct precinct registration, or appoint deputy registrars because it demonstrated a failure by the state to act to overcome past discrimination); Citizen Action Litig., discussion at Civ. No. N 84-431, 1984 U.S. Dist. LEXIS 24869 (D. Conn. Sept. 27, 1984) (finding unresponsiveness because officials “have failed to utilize any of the available tools to increase registration.”); Terrell Litig., discussion at 565 F. Supp. 338 (N. D. Tex. 1983) (finding unresponsiveness based partially on evidence of a history of unequal funding of white and black cemeteries, despite current equality of funding); *see also* Calhoun County Litig. (MS), 88 F.3d 1393, 1400 (5th Cir. 1996) (criticizing district court finding that current non-discrimination in road pavement shows responsiveness when there is a past history of discrimination, but still affirming as not clearly erroneous).
534. *See e.g.*, Red Clay Sch. Dist. Litig., Civ. A. No. 89-230-LON, 1996 U.S. Dist. LEXIS 4747 (D. Del. Apr. 10, 1996) (finding that a school board taking more than seven years to desegregate showed unresponsiveness);

- Bridgeport Litig., Civ. No. 3:93CV1476(PCD), 1993 U.S. Dist. LEXIS 19741 (D. Conn. Oct. 27, 1993) (finding evidence of lawsuits against the town established lack of responsiveness); Mobile School Board Litig., 542 F. Supp. 1078, 1106 (S.D. Ala. 1982) (readopting earlier findings that school board only reacted to numerous restraining and injunctive orders by the court in a desegregation lawsuit); *Cf.* Baldwin Bd. of Educ. Litig., discussion at 686 F. Supp. 1459, 1467 (M.D. Ala. 1988) (“The Baldwin County Board of Education has been particularly unresponsive to the black citizens’ concern about race relations in the county’s schools, in particular concerns arising out of school desegregation and the apparent resulting displacement of black administrators.”); *see also supra* note 531 (discussing evidence of consent decrees). Courts also generally discount evidence of responsiveness that occurs under either the threat of withdrawal of funds or legal compulsion. *See infra* note 556.
535. Red Clay Sch. Dist. Litig., Civ. A. No. 89-230-LON, 1996 U.S. Dist. LEXIS 4747 (D. Del. Apr. 10, 1996); Monroe County Litig., discussion at 740 F. Supp. 417 (N.D. Miss. 1990).
536. *See infra* notes 537-538 and accompanying text and Chisom Litig., discussion at CIV. A. No. 86-4057, 1989 WL 106485, at *11 (E.D. La. Sept. 19, 1989), which did not find Factor 8 met where no evidence was presented. Note also that some jurisdictions claimed to have crafted their systems for electing judges expressly to prevent judicial bias, and they cited this goal as a non-tenuous underlying policy to defend these systems from challenge under Section 2. *See infra* note 593 and accompanying text.
537. Cousin Litig., discussion at 145 F.3d 818, 833 (6th Cir. 1998); Mallory-Ohio Litig., discussion at 38 F. Supp. 2d 525, 543 (S. Ohio 1997); Bradley v. Work Litig., discussion at 916 F. Supp. 1446, 1467 (S.D. Ind. 1996); Milwaukee NAACP Litig., discussion at 935 F. Supp. 1419, 1433 (E.D. Wis. 1996); *see also* Nipper Litig. (FL), discussion at 39 F.3d 1494 (11th Cir. 1994) (en banc) (holding that responsiveness is less important in the context of judicial elections but not resolving whether Factor 8 was met).
538. Mallory-Ohio Litig., discussion at 38 F. Supp. 2d 525, 543-44 (S.D. Ohio 1997); Milwaukee NAACP Litig., discussion at 935 F. Supp. 1419, 1433 (E.D. Wis. 1996); Southern Christian Leadership Litig. (AL), discussion at 56 F.3d 1281, 1295 (11th Cir. 1995) (en banc); *see also* Kirksey v. Allain Litig., discussion at 658 F. Supp. 1183, 1195 (S.D. Miss. 1987) (discounting idea that more minority judges would improve the minority community’s perception of the judicial system).
539. Bone Shirt Litig., discussion at 336 F. Supp. 2d 976, 1043 (D.S.D. 2004); France Litig., discussion at 71 F. Supp. 2d 317, 333 (S.D.N.Y. 1999); Montezuma-Cortez Sch. Dist. Litig., discussion at 7 F. Supp. 2d 1152, 1170 (D. Colo. 1998); Rural West II Litig., discussion at 29 F. Supp. 2d 448, 459-60 (W.D. Tenn. 1998); Chickasaw County II Litig., discussion at No. CIV.A. 1:92CV142-JAD, 1997 U.S. Dist. LEXIS 22087 (N.D. Miss. Oct. 28, 1997); Town of Babylon Litig., discussion at 914 F. Supp. 843, 890 (E.D.N.Y. 1996); Sanchez-Colorado Litig. (CO), discussion at 97 F.3d 1303, 1325 (10th Cir. 1996); Calhoun County Litig. (MS), discussion at 88 F.3d 1393, 1400 (5th Cir. 1996); Niagara Falls Litig. (NY), discussion at 65 F.3d 1002, 1023 (2d Cir. 1995); Aldasoro v. Kennerson Litig., discussion at 922 F. Supp. 339, 366 (S.D. Cal. 1995); Rural West I Litig., discussion at 877 F. Supp. 1096 (W.D. Tenn. 1995); City of Columbia Litig., discussion at 850 F. Supp. 404, 425 (D.S.C. 1993); Cincinnati Litig., discussion at No. C-1-92-278, 1993 U.S. Dist. LEXIS 21009, at *36 (S.D. Ohio July 8, 1993); Columbus County Litig., discussion at 782 F. Supp. 1097, 1105 (E.D.N.C. 1991); City of Dallas Litig., discussion at 734 F. Supp. 1317, 1406 (N.D. Tex. 1990); City of Austin Litig. (NY), discussion at 871 F.2d 529, 534 (5th Cir. 1989); Monroe County Litig., discussion at 740 F. Supp. 417 (N.D. Miss. 1990); City of Starke Litig., discussion at 712 F. Supp. 1523, 1538 (M.D. Fla. 1989); Operation Push Litig., discussion at 674 F. Supp. 1245, 1265 (N.D. Miss. 1987); Baytown Litig., discussion at 696 F. Supp. 1128 (S.D. Tex. 1987); Edgefield County Litig., discussion at 650 F. Supp. 1176, 1204 (D.S.C. 1986); County of Big Horn Litig., discussion at 647 F. Supp. 1002, 1020 (D. Mont. 1986); Lubbock Litig. (TX), discussion at 727 F.2d 364, 381 (5th Cir. 1984); McCarty Litig. (FL), discussion at 749 F.2d 1134, 1137 (5th Cir. 1984); Dallas County Bd. of Educ. Litig. (AL), 739 F.2d 1529, 1540 (11th Cir. 1984); El Paso Indep. Sch. Dist. Litig., discussion at 591 F. Supp. 802, 811 (W.D. Tex. 1984); Citizen Action Litig., discussion at Civ. No. N 84-431, 1984 U.S. Dist. LEXIS 24869 (D. Conn. Sept. 27, 1984); Terrell Litig., discussion at 565 F. Supp. 338, 343 (N. D. Tex. 1983); Rocha Litig., discussion at No. V-79-26, 1982 U.S. Dist. LEXIS 15164, at *18 (S.D. Tex. Aug. 23, 1982); *see also* City of Norfolk Litig., discussion at 679 F. Supp. 557, 585 (E.D. Va. 1988) (finding on remand that a housing policy that displaced a disproportionate number of African-American families was “aimed at ensuring that public services were adequately provided” and “encouraging a higher quality of life, re-integrating the inner city area and providing more job opportunities”; that the new development was racially inclusive, and thus that the policy was responsive).
540. *See, e.g.,* Calhoun County Litig. (MS), discussion at 88 F.3d 1393, 1400 (5th Cir. 1996) (“[W]e offer no bright line here. We are content to note that paving roads left unpaved by years of discrimination and appointing a biracial redistricting commission do not reflect the comprehensive and systematic responsiveness to minority needs that is entitled to substantial weight in the totality of the circumstances”); City of Norfolk Litig. (VA), discussion at 816 F.2d 932, 939 (4th Cir. 1987) (remanding district court finding the East Ghent Housing policy was

- nondiscriminatory asking whether the policy was not responsive). Courts have also credited as responsive efforts to increase minority political participation. *See infra* note 577.
541. *See, e.g.*, Town of Hempstead Litig. (NY), discussion at 180 F.3d 476, 487 (2d Cir. 1999); Bridgeport Litig., discussion at Civ. No. 3:93CV1476(PCD), 1993 U.S. Dist. LEXIS 19741 (D. Conn. Oct. 27, 1993).
542. *See, e.g.*, Niagara Falls Litig. (NY), discussion at 65 F.3d 1002, 1023 (2d Cir. 1995); El Paso Indep. Sch. Dist. Litig., discussion at 591 F. Supp. 802, 811 (W.D. Tex. 1984); *Cf.* Lubbock Litig. (TX), discussion at 727 F.2d 364, 381 (5th Cir. 1984) (criticizing the district court’s finding of responsiveness and noting the affirmative action policy has “increased the number of minorities in public employment, but not necessarily in the best positions.”).
543. Town of Hempstead Litig. (NY), discussion at 180 F.3d 476, 487 (2d Cir. 1999); City of Philadelphia Litig., discussion at 824 F. Supp. 514, 538 (E.D. Penn. 1993); Columbus County Litig., discussion at 782 F. Supp. 1097, 1105 (E.D.N.C. 1991); City of Dallas Litig., discussion at 734 F. Supp. 1317, 1406 (N.D. Tex. 1990); City of Starke Litig., discussion at 712 F. Supp. 1523, 1538 (M.D. Fla. 1989); Chickasaw County I Litig., discussion at 705 F. Supp. 315, 321 (N.D. Miss. 1989) (considering only one black person employed in government, outside of an elected or appointed public office); City of Jackson Litig., discussion at 683 F. Supp. 1515, 1535 (W.D. Tenn. 1988); Operation Push Litig., discussion at 674 F. Supp. 1245, 1265 (N.D. Miss. 1987); Carrollton NAACP Litig. (GA), discussion at 829 F.2d 1547 (11th Cir. 1987); Terrell Litig., discussion at 565 F. Supp. 338, 343 (N. D. Tex. 1983); Mobile School Board Litig., discussion at 542 F. Supp. 1078 (S.D. Ala. 1982); *Cf.* Escambia County Litig. (FL), discussion at 748 F.2d 1037, 1045 (11th Cir. 1984) (noting that “[A]lthough the court found that the commissioners had generally been responsive to the interests of black citizens, it noted two areas in which they had not: appointments of blacks to committees or boards and housing policy” but not resolving the question of responsiveness); *but see* LULAC-N.E. Indep. Sch. Dist. Litig., discussion at 903 F. Supp. 1071, 1087 (W.D. Tex. 1995) (considering failure to recruit minority teachers insufficient to show non-responsiveness); NAACP v. Fordice Litig. (MS), discussion at 252 F.3d 361 (5th Cir. 2001) (finding minorities making up less than 15% of entire Department of Transportation does not show unresponsiveness); City of Greenwood Litig., discussion at 599 F. Supp. 397 (N.D. Miss. 1984) (stating low percentage of minorities appointed to boards does not establish unresponsiveness).
544. *See, e.g.*, Holder v. Hall Litig. (GA), discussion at 117 F.3d 1222, 1227 (11th Cir. 1997) (minorities hired); City of Chicago-Barnett Litig., discussion at 969 F. Supp. 1359, 1450 (N.D. Ill. 1997) (minorities “hold important and influential positions of power within the City’s government,” including appointive positions); Niagara Falls Litig., discussion at 913 F. Supp. 722, 749 (W.D.N.Y. 1994) (established affirmative action task force); City of Columbia Litig., discussion at 850 F. Supp. 404, 425 (D.S.C. 1993) (minorities “well represented” on boards); Calhoun County Litig., discussion at 813 F. Supp. 1189, 1201 (N.D. Miss. 1993) (minorities appointed); City of Austin Litig. (TX), discussion at 871 F.2d 529, 534 (5th Cir. 1989) (minorities hired and appointed); Houston v. Haley Litig. (MS), discussion at 859 F.2d 341, 347 (5th Cir. 1988) (minorities appointed); McCarty Litig. (TX), discussion at 749 F.2d 1134, 1137 (5th Cir. 1984) (recruitment attempts, minority appointments); City of Woodville Litig., discussion at 688 F. Supp. 255, 257 (S.D. Miss. 1988) (minorities appointed to commissions and hired as police officers); Houston v. Haley Litig., discussion at 663 F. Supp. 346 (N.D. Miss. 1987) (minority leadership on appointive boards); Baytown Litig., discussion at 696 F. Supp. 1128 (S.D. Tex. 1987) (minorities participate on boards and hired as city workers); Edgefield County Litig., discussion at 650 F. Supp. 1176, 1204 (D.S.C. 1986) (minority teachers hired); County of Big Horn Litig., discussion at 647 F. Supp. 1002, 1020 (D. Mont. 1986) (minorities appointed); City of Fort Lauderdale Litig., discussion at 617 F. Supp. 1093, 1107 (S.D. Fla. 1985) (“intensive efforts” to hire minority police officers, even though under a consent decree); City of Norfolk Litig., discussion at 605 F. Supp. 377, 394 (E.D. Va. 1984) (minorities hired and appointed); City of Greenwood Litig., discussion at 534 F. Supp. 1351 (N.D. Miss. 1982) (minority appointments).
545. Aldasoro v. Kennerson Litig., discussion at 922 F. Supp. 339, 366 (S.D. Cal. 1995) (“Despite some deficiencies in the District’s bilingual program in 1990-91, it is responsive today because it recruits teachers and while it has no bilingual stipend, it pays more than adjacent school districts that have a bilingual stipend); El Paso Indep. Sch. Dist. Litig., discussion at 591 F. Supp. 802, 811 (W.D. Tex. 1984) (considering that El Paso County was a pioneer in bilingual education); Rybicki Litig., discussion at 574 F. Supp. 1082, 1122 (C.D. Ill. 1982) (noting the democratic party in Illinois “supported bilingual education, an issue of particular importance to Hispanics.”) *Cf.* Montezuma-Cortez Sch. Dist. Litig., discussion at 7 F. Supp. 2d 1152, 1170 (D. Colo. 1998) (considering the absence of a bilingual education program as evidence of unresponsiveness but making no finding).
546. *See e.g.*, Black Political Task Force Litig., discussion at 300 F. Supp. 2d 291, 313 (D. Mass. 2004); Hamrick Litig., discussion at 155 F. Supp. 2d 1355, 1378 (N.D. GA. 2001); Town of Hempstead Litig. (NY), discussion at 180 F.3d 476, 487 (2d Cir. 1999); Montezuma-Cortez Sch. Dist. Litig., discussion at 7 F. Supp. 2d 1152, 1170 (D. Colo. 1998); Rural West II Litig., discussion at 29 F. Supp. 2d 448, 459-60 (W.D. Tenn. 1998); Chickasaw County II Litig., discussion at No. CIV.A. 1:92CV142-JAD, 1997 U.S. Dist. LEXIS 22087 (N.D. Miss. Oct. 28, 1997);

City of LaGrange Litig., discussion at 969 F. Supp. 749, 770 (N.D. Ga. 1997); Liberty County Comm'rs Litig., discussion at 957 F. Supp. 1522, 1566 (N.D. Fla. 1997); Holder v. Hall Litig. (Ga.), discussion at 117 F.3d 1222, 1227 (11th Cir. 1997); Calhoun County Litig. (MS), discussion at 88 F.3d 1393, 1400 (5th Cir. 1996); Town of Babylon Litig., discussion at 914 F. Supp. 843, 890 (E.D.N.Y. 1996); Aldasoro v. Kennerson Litig., discussion at 922 F. Supp. 339, 366 (S.D. Cal. 1995); Niagara Falls Litig. (NY), discussion at 65 F.3d 1002, 1023 (2d Cir. 1995); City of Columbia Litig., discussion at 850 F. Supp. 404, 425 (D.S.C. 1993); City of Philadelphia Litig., discussion at 824 F. Supp. 514, 538 (E.D. Penn. 1993); Texarkana Litig., discussion at 861 F. Supp. 756, 765 (W.D. Ark. 1992); Monroe County Litig., discussion at 740 F. Supp. 417 (N.D. Miss. 1990); City of Dallas Litig., discussion at 734 F. Supp. 1317, 1406 (N.D. Tex. 1990); City of Starke Litig., discussion at 712 F. Supp. 1523, 1538 (M.D. Fla. 1989); Jeffers Litig., discussion at 730 F. Supp. 196, 213 (E.D. Ark. 1989); Westwego Litig., discussion at CIV. A. NO. 84-5599, 1989 U.S. Dist. LEXIS 7298, at *14 (E.D. La. June 28, 1989); City of Austin Litig. (TX), discussion at 871 F.2d 529, 534 (5th Cir. 1989); City of Woodville Litig. (MS), discussion at 881 F.2d 1327, 1335 (5th Cir. 1989); City of Norfolk Litig., discussion at 679 F. Supp. 557, 585 (E.D. Va. 1988); City of Jackson Litig., discussion at 683 F. Supp. 1515, 1535 (W.D. Tenn. 1988); Springfield Park District Litig., discussion at 658 F. Supp. 1015, 1032 (C.D. Ill. 1987); Baytown Litig., discussion at 696 F. Supp. 1128 (S.D. Tex. 1987); Pomona Litig., discussion at 665 F. Supp. 853, 862 (C.D. Cal. 1987); Houston v. Haley Litig. (MS), discussion at 859 F.2d 341, 347 (5th Cir. 1988); City of Fort Lauderdale Litig. (FL), discussion at 787 F.2d 1528, 1533 (11th Cir. 1986); Dallas County Bd. of Educ. Litig. (AL), discussion at 739 F.2d 1529, 1540 (11th Cir. 1984); Lubbock Litig. (TX), discussion at 727 F.2d 364, 381 (5th Cir. 1984); McCarty Litig. (TX), discussion at 749 F.2d 1134, 1137 (5th Cir. 1984); Escambia County Litig. (FL), discussion at 748 F.2d 1037, 1045 (11th Cir. 1984); Opelika Litig. (AL), discussion at 748 F.2d 1473, 1476 (11th Cir. 1984); Chapman v. Nicholson Litig., discussion at 579 F. Supp. 1504, 1512 (N.D. Ala. 1984); City of Greenwood Litig., discussion at 599 F. Supp. 397 (N.D. Miss. 1984); El Paso Indep. Sch. Dist. Litig., discussion at 591 F. Supp. 802, 811 (W.D. Tex. 1984); Terrell Litig., discussion at 565 F. Supp. 338, 343 (N. D. Tex. 1983); Rocha Litig., discussion at No. V-79-26, 1982 U.S. Dist. LEXIS 15164, at *18 (S.D. Tex. Aug. 23, 1982).

547. *See supra* note 522.

548. *See supra* note 528.

549. *See, e.g.*, Calhoun County Litig. (MS), discussion at 88 F.3d 1393, 1400 (5th Cir. 1996) (“We offer no bright line here. We are content to note that paving roads left unpaved by years of discrimination and appointing a biracial redistricting commission do not reflect the comprehensive and systematic responsiveness to minority needs that is entitled to substantial weight in the totality-of-circumstances inquiry.”); City of Dallas Litig., discussion at 734 F. Supp. 1317, 1406 (N.D. Tex. 1990) (finding while city’s spending of equal resources “may be enough to defeat a claim of current racial discrimination in the allocation of resources, it certainly does not show responsiveness to the particularized needs of the minority community—which would often require unequal and higher expenditures of City resources in minority areas to remedy the effects of past discrimination.); *see also supra* note 529 (discussing road paving policies).

550. *See, e.g.*, Town of Hempstead Litig., discussion at 956 F. Supp. 326, 344 (E.D.N.Y. 1997); Columbus County Litig., discussion at 782 F. Supp. 1097, 1105 (E.D.N.C. 1991); *but see* City of LaGrange Litig., discussion at 969 F. Supp. 749, 770 (N.D. Ga. 1997) (“Several of Plaintiff’s witnesses testified that the council had failed to address certain problems within the African-American community. However, these examples seemed to reflect the typical shortcomings of government entities rather than an institutional unresponsiveness to the minority community.”); Texarkana Litig., discussion at 861 F. Supp. 756, 765 (W.D. Ark. 1992) (“In all of these issues...the Court believes the essential culprit is the same encountered by most cities in this country—lack of sufficient money to address all of the city’s problems.”); Chapman v. Nicholson Litig., discussion at 579 F. Supp. 1504, 1512 (N.D. Ala. 1984) (“While there may be evidence of isolated incidents of specific requests not receiving immediate attention, said inattention appears more typical of a municipality being financially unable to immediately react to all its citizens’ perceived needs, rather than being based on race.”).

551. *See, e.g.*, City of Philadelphia Litig., discussion at 824 F. Supp. 514, 538 (E.D. Penn. 1993); *see also* City of Jackson Litig., discussion at 683 F. Supp. 1515, 1535 (W.D. Tenn. 1988) (historical evidence).

552. *See, e.g.*, Terrell Litig., discussion at 565 F. Supp. 338, 343 (N. D. Tex. 1983); Rocha Litig., discussion at No. V-79-26, 1982 U.S. Dist. LEXIS 15164, at *18 (S.D. Tex. Aug. 23, 1982).

553. *See, e.g.*, Rural West II Litig., discussion at 29 F. Supp. 2d 448, 459-60 (W.D. Tenn. 1998) (considering representatives seeking appropriations for black constituents to illustrate, in part, their responsiveness); Chickasaw County II Litig., discussion at No. CIV.A. 1:92CV142-JAD, 1997 U.S. Dist. LEXIS 22087 (N.D. Miss. Oct. 28, 1997) (asserting responsiveness to be shown when at least half of the roads paved in the past five years were in predominately minority areas); Town of Babylon Litig., discussion at 914 F. Supp. 843, 890 (E.D.N.Y. 1996) (considering responsiveness shown in part by the fact that development funds are directed toward the minority

- community); *Sanchez-Colorado Litig.*, discussion at 861 F. Supp. 1516 (D. Colo. 1994) (noting Representative Entz working in the state legislature to obtain funding for minority constituents); *City of Columbia Litig.*, discussion at 850 F. Supp. 404, 425 (D.S.C. 1993) (stating a disproportionate amount of city budget spent in minority communities demonstrates responsiveness); *Monroe County Litig.*, discussion at 740 F. Supp. 417, 424 (N.D. Miss. 1990) (observing a disproportionate amount of funds directed toward paving minority roads demonstrated responsiveness); *City of Austin Litig. (TX)*, discussion at 871 F.2d 529, 534-35 (5th Cir. 1989) (considering as evidence of responsiveness that, “Sixty percent of the city’s \$ 273,000,000.00 in community development bloc grant funds between 1979 and 1984 was related to housing. The city also funds a corporation to make mortgage loans to low-income persons, provides essential medical services for the poor, operates a shelter for transients and constructed a job training center. Forty-two percent of the city’s parks and recreation facilities and forty-five percent of all city facilities are located in the three of Austin’s eight fiscal districts having the highest minority populations.”).
554. *See, e.g., Hamrick Litig.*, discussion at 155 F. Supp. 2d 1355, 1378 (N.D. Ga. 2001) (surface pavement improvement, community policing and the development of a community service center); *Liberty County Comm’rs Litig.*, discussion at 957 F. Supp. 1522, 1566 (N.D. Fla. 1997) (bulk of grant money for water project and housing upgrades in African-American areas); *Houston v. Haley Litig.*, discussion at 663 F. Supp. 346 (N.D. Miss. 1987) (city provided a swimming pool, baseball fields, a gym, tennis courts, and a recreation center in an area that is predominately black); *Baytown Litig.*, discussion at 696 F. Supp. 1128 (S.D. Tex. 1987) (street and housing improvements, though this was criticized in the circuit opinion, it was affirmed as not clearly erroneous); *City of Springfield Litig.*, discussion at 658 F. Supp. 1015, 1032 (C.D. Ill. 1987) (Fair Housing Board work and neighborhood renewal attempts through the Pioneer Park Project); *Opelika Litig. (AL)*, discussion at 748 F.2d 1473, 1476 (11th Cir. 1984) (development funds, such as matching city water board funds directed at minority community); *McCarty Litig. (TX)*, discussion at 749 F.2d 1134, 1137 (5th Cir. 1984) (“participation in funding programs for disadvantage students”).
555. *See e.g., Hamrick Litig.*, discussion at 155 F. Supp. 2d 1355, 1378 (N.D. GA. 2001) (finding that efforts in applying federal, state and local funds to improve housing conditions for certain lower income residents weighed in favor of responsiveness); *Houston v. Haley Litig. (MS)*, discussion at 859 F.2d 341, 347 (5th Cir. 1988) (City has used federal grants to upgrade housing in minority neighborhoods); *Dallas County Comm’n Litig. (AL)*, discussion at 739 F.2d 1529, 1540 (11th Cir. 1984) (“The Commission has funded or sought federal funding for a variety of projects that have benefited the black community, including drainage projects, water service, site preparation for industry, a regional comprehensive mental health center, the county health department, and recreational facilities.”); *El Paso Indep. Sch. Dist. Litig.*, discussion at 591 F. Supp. 802, 810 (W.D. Tex. 1984) (federally funded programs illustrate responsiveness because the school “must administer them for the benefit of the students.”).
556. *City of Dallas Litig.*, discussion at 734 F. Supp. 1317, 1406 (N.D. Tex 1990) (discounting evidence of capital expenditure project because there was no showing of how much money came from the federal government); *Lubbock Litig. (TX)*, discussion at 727 F.2d 364, 382 (5th Cir. 1984) (“The City cannot take credit entirely for the equal provision of City services; the funds for these derived largely from federal programs aimed at economically depressed areas.”); *see also Montezuma-Cortez Sch. Dist. Litig.*, discussion at 7 F. Supp. 2d 1152, 1170 (D. Colo. 1998) (noting some of the attempts to implement changes to help meet the needs of minority community were federally funded but making no finding).
557. *See, e.g., Sisseton Indep. Sch. Dist. Litig. (SD)*, discussion at 804 F.2d 469, 477 (8th Cir. 1986) (considering the low number of Indians on boards or commissions was due to federal mandates).
558. *Hall Litig. (GA)*, discussion at 117 F.3d 1222, 1227 (11th Cir. 1997).
559. *See Red Clay Sch. Dist. Litig. (DE)*, 116 F.3d 685, 698 (3d Cir. 1997).
560. *Bone Shirt Litig.*, discussion at 336 F. Supp. 2d 976, 1044 (D.S.D. 2004) (discussing numerous legislative bills that affect the Indian community and the consistent opposition of certain members of the legislature to any legislation that the Indian community lobbied for including voting against bills with overwhelming support and no organized opposition and keeping bills that affect only the minority community from reaching a floor vote).
561. *See e.g., Town of Hempstead Litig. (NY)*, discussion at 180 F.3d 476, 487 (2d Cir. 1999) (considering whether the denial or disregard of requests to fund minority community centers shows lack of responsiveness); *Holder v. Hall Litig. (GA)*, 117 F.3d 1222, 1227 (11th Cir. 1997) (finding that nondiscrimination in road work where official campaigned on that issue established responsiveness); *Ward v. Columbus County*, 782 F. Supp. 1097, 1105 (E.D.N.C. 1991) (considering that minorities “particular requests have gone unmet.”); *Sisseton Indep. Sch. Dist. Litig. (SD)*, discussion at 804 F.2d 469, 477 (8th Cir. 1986) (considering refusal to establish polling places despite Indian requests); *see also Montezuma-Cortez Sch. Dist. Litig.*, 7 F. Supp. 2d 1152, 1170 (D. Colo. 1998) (noting “Parent Advisory Committee request for development of a mission statement for bilingual education and Native

- American education programs,” and school board’s response that its “District mission statements must be ‘ethnically clean,’” but making no finding on responsiveness either way). Other courts not following this model have simply considered services in terms of what was provided to the minority community. *See e.g.*, *City of Austin Litig.* (TX), 871 F.2d 529, 534 (5th Cir. 1989) (considering the fact that the city had constructed a job training center but not discussing minority input); *Dallas County Comm’n Litig.* (AL), 739 F.2d 1529, 1540 (11th Cir. 1984) (finding that roads had been maintained on a non-discriminatory basis).
562. *Jeffers Litig.*, 730 F. Supp. 196, 214 (E.D. Ark. 1989).
563. *Id.*; *see also Sanchez-Colorado Litig.*, 861 F. Supp. 1516, 1530 (D. Colo. 1994) (after plaintiffs argued Representative Entz did not “speak out in favor of bilingual education for non-English speaking children” but noting that “Representative Entz has worked on education issues, housing issues, and economic development issues. He worked against the English Only Amendment, has worked to obtain funding through grants for local governments within H.D. 60, has worked on a 1994 school financing act to obtain equality in school financing, and has helped constituents obtain jobs.”).
564. *See e.g.*, *Black Political Task Force Litig.*, discussion at 300 F. Supp. 2d 291, 313 (D. Mass. 2004) (finding evidence that officials sought out minority groups and implemented policies to address their concerns); *Rural West II Litig.*, discussion at 29 F. Supp. 2d 448, 459-60 (W.D. Tenn. 1998) (considering representatives seeking appropriations for black constituents to illustrate, in part, their responsiveness); *Rural West I Litig.*, discussion at 877 F. Supp. 1096 (W.D. Tenn. 1995) (finding that legislators’ support of Martin Luther King holiday showed responsiveness); *Cincinnati Litig.*, discussion at No. C-1-92-278, 1993 U.S. Dist. LEXIS 21009, at *37 (S.D. Ohio July 8, 1993) (debating changing to a district-by district plan evidenced responsiveness); *Monroe County Litig.*, discussion at 740 F. Supp. 417 (N.D. Miss. 1990) (plaintiff testified board of supervisors has “always been responsive to his requests.”); *Jeffers Litig.*, discussion at 730 F. Supp. 196, 213 (E.D. Ark. 1989) (noting that while the minority voters feelings of unresponsive were “not without basis...Members of the House like Representatives Cunningham, McGinnis, Flanagan, and Dawson are anything but unresponsive. They are well aware that a large proportion of their constituency is black, and they make assiduous and sincere efforts to represent these voters.”).
565. *Cincinnati Litig.*, 1993 U.S. Dist. LEXIS 21009, at *37-38.
566. *See e.g.*, *Bridgeport Litig.*, discussion at Civ. No. 3:93CV1476(PCD), 1993 U.S. Dist. LEXIS 19741 (D. Conn. Oct. 27, 1993) (no action taken on repeated minority community requests for a community center); *Sisseton Indep. Sch. Dist. Litig.* (SD), discussion at 804 F.2d 469, 477 (8th Cir.1986) (“Appellants offered substantial evidence that the District was unresponsive to the Indian community...the District failed to establish additional polling places despite the request of appellants. The district court may not ignore this evidence.”); *see also LULAC – N.E. Indep. Sch. Dist. Litig.*, discussion at 903 F. Supp. 1071, 1087 (W.D. Tex. 1995) (finding that a school district flying a confederate flag did not show a lack of responsiveness where the minority community had failed to request the flag to come down); *Little Rock Litig.*, discussion at 831 F. Supp. 1453, 1461 (E.D. Ark. 1993) (noting the President of Local NAACP brought up issues to the School District in a letter but received no response).
567. *See e.g.*, *Jeffers Litig.*, discussion at 730 F. Supp. 196, 214 (E.D. Ark. 1989) (“Some white members, on being approached by black citizens in their own districts for help, referred these constituents to black legislators representing other areas.”); *City of Springfield Litig.*, discussion at 658 F. Supp. 1015, 1032 (C.D. Ill. 1987) (“County Board member testified that he has had no success having city officials listen to him when he brings complaints from Springfield’s black citizens about housing, employment and other government matters.”); *see also Suffolk County Litig.*, discussion at 268 F. Supp. 2d 243, 266 (E.D.N.Y. 2003) (considering a failure to respond to plaintiff’s letter regarding redistricting plan “neutral at best”).
568. *Jeffers Litig.*, 730 F. Supp. 196, 214 (E.D. Ark. 1989).
569. *See e.g.*, *Mehfoud Litig.*, discussion at 702 F. Supp. 588, 595 (E.D. Va. 1988) (“[N]one of the five sitting members of the Henrico Board of Supervisors could identify a single issue of unique concern to the black community— despite notable publicity of, among other things, black efforts to have a black appointed to the school board. In fact, two of the five Supervisors had no idea what percentage of their constituencies are black.”); *see also Black Political Task Force Litig.*, discussion at 300 F. Supp. 2d 291, 313 (D. Mass. 2004) (plaintiffs provided testimony that officials were unaware of their concerns); *Cf. LULAC - N.E. Indep. Sch. Dist. Litig.*, 903 F. Supp. 1071, 1087 (W.D. Tex. 1995) (finding no lack of responsiveness because the minority community had not brought their concerns to the attention of the school board).
570. *See e.g.*, *Holder v. Hall Litig.* (GA), discussion at 117 F.3d 1222, 1227 (11th Cir. 1997) (county board advertises monthly public meetings); *Liberty County Comm’rs Litig.*, discussion at 957 F. Supp. 1522, 1567 (N.D. Fla. 1997) (“Blacks have no problem approaching county commissioners, and even those commissioners elected from other residential districts (outside of residential district 1, where most blacks are concentrated) listen to their complaints and are responsive to their needs.”); *City of Holyoke Litig.*, discussion at 960 F. Supp. 515, 524 (D. Mass. 1997) (“The administration of the new Mayor has witnessed a greatly increased effort to recruit Hispanic officials,

- include Hispanic viewpoints, and address the interests of all the citizens of Holyoke, Hispanic and non-Hispanic.”); Niagara Falls Litig., discussion at 913 F. Supp. 722, 749 (W.D.N.Y. 1994) (city officials have an “open door” policy).
571. *See e.g.*, Black Political Task Force Litig., discussion at 300 F. Supp. 2d 291, 313 (D. Mass. 2004) (considering “evidence of instances in which legislators sought out minority groups and instituted programs designed to address the groups’ requests.”); Calhoun County Litig., discussion at 813 F. Supp. 1189, 1201 (N.D. Miss. 1993) (noting county made efforts to include black participation in the redistricting process through its biracial commission); Terrazas Litig., discussion at 581 F. Supp. 1329, 1350 (N.D. Tex. 1984) (considering the inclusion of minorities process of redistricting).
572. Terrazas Litig., discussion at 581 F. Supp. 1329, 1350 (N.D. Tex. 1984)
573. City of Rome Litig. (GA), discussion at 127 F.3d 1355, 1386-87 (11th Cir. 1997) (“Both voting statistics and testimonial evidence conclusively reveal that Rome’s black community has political influence. This political influence naturally translates into political responsiveness.”) (footnote omitted); Hamrick Litig., discussion at 155 F. Supp. 2d 1355, 1378 (N.D. Ga. 2001) (finding “there is evidence of record that the city council members are responsive to the black community and that many of them have been supported by the black community.”); City of Chicago –Bonilla Litig., discussion at 969 F. Supp. 1359, 1450 (N.D. Ill. 1997) (noting African Americans and Latinos were holding many positions within Cook County government, and that Latino and African-American aldermen testified that they found other white officials to be responsive.); Town of Babylon Litig., discussion at 914 F. Supp. 843, 890 (E.D.N.Y. 1996) (finding town board “very responsive” to minority concerns, partially because the two Democratic members of the board “owe their election to the African-American vote.”); Attala County Litig., discussion at No. 1:91CV209-D-D, 1995 U.S. Dist. LEXIS 21569, at *19 (N.D. Miss. Mar. 20, 1995) (weighing the testimony of “political veterans” about the importance of the need for to get black support in favor of responsiveness); Rural West I Litig., discussion at 877 F. Supp. 1096, 1106 (W.D. Tenn. 1995) (“A serious political candidate cannot ignore such a sizeable portion of the electorate.”); Cincinnati Litig., discussion at No. C-1-92-278, 1993 U.S. Dist LEXIS 21009, at *36 (S.D. Ohio July 8, 1993) (considering evidence that officials need support of black community on a variety of issues, including any time they want to pass a tax levy, and many need it to get elected); Armour Litig., 775 F. Supp. 1044, 1058 (N.D. Ohio 1991) (considering that black voters always vote for the Democrat and the white voters swing between the two parties, so no candidate needs to be responsive to their concerns); Calhoun County Litig., discussion at 813 F. Supp. 1189, 1201 (N.D. Miss. 1993) (officials need minority vote to win elections); Ketchum Litig. (IL), discussion at 740 F.2d 1398, 1405 (7th Cir. 1984) (finding elected officials and the Democratic Party responsive to black and Hispanic concerns because of the number of minority candidates elected); Rybicki Litig., discussion at 574 F. Supp. 1147, 1151 (N.D. Ill. 1983) (considering many officials in the Chicago area are minorities, and the Democratic Party needs their votes to get elected); City of Greenwood Litig., 534 F. Supp. 1351 (N.D. Miss. 1982) (finding candidates must actively seek and gain the support of blacks to be elected); *cf.* Kent County Litig., discussion at 790 F. Supp. 738, 749 (W.D. Mich. 1992) (evidence of racial appeals in campaigns “raises serious concerns about responsiveness.”).
574. *See, e.g.*, Brewer Litig. (TX), discussion at 876 F.2d 448, 454 (5th Cir. 1989) (“A plurality feature is of course more responsive to minority voter groups.”).
575. City of Chicago-Barnett Litig. (IL), discussion at 141 F.3d 699, 703 (7th Cir. 1998) (remanding and criticizing the responsiveness finding as “flawed methodology of relying on its own estimation of the responsiveness of particular incumbents to particular groups” because of the extent of racial bloc voting); Metro Dade County Litig., discussion at 805 F. Supp. 967, 987 (S.D. Fla. 1992) (finding lack of responsiveness on remand because “there is severe racially polarized voting in Dade County Commission elections.”); Haywood County Litig., discussion at 544 F. Supp. 1122 (W.D. Tenn. 1982) (not making a finding on responsiveness but crediting expert testimony that officials would not have to be responsive because of the polarization in voting).
576. Rural West II, discussion at 29 F. Supp. 2d 448, 459-60 (W.D. Tenn. 1998); Rural West I, discussion at 836 F. Supp. 453, 463 (W.D. Tenn. 1993); City of Jackson Litig., discussion at 683 F. Supp. 1515, 1535 (W.D. Tenn. 1988); Houston v. Haley Litig., discussion at 663 F. Supp. 346, 354 (N.D. Miss. 1987).
577. *See* France Litig., discussion at 71 F. Supp. 2d 317, 333 (S.D.N.Y. 1999) (substantial responsiveness demonstrated by congressman’s testimony about voter registration drives, efforts to establish local political clubs, and initiatives to add minorities to the Democratic party’s county executive committees); Chickasaw County II Litig., discussion at No. CIV.A. 1:92CV142-JAD, 1997 U.S. Dist. LEXIS 22087 (N.D. Miss. Oct. 28, 1997) (lack of responsiveness not found because of efforts to facilitate black voter registration through home visits and special assistants available at voting precincts); City of LaGrange Litig., discussion at 969 F. Supp. 749, 770 (N.D. GA 1997) (formation of biracial committee to study redistricting process weighs in favor of responsiveness); Calhoun County Litig., discussion at 813 F. Supp. 1189, 1201 (N.D. Miss. 1993) (finding that the appointment of biracial redistricting committee was partial evidence of responsiveness); El Paso Indep. Sch. Dist. Litig., discussion at 591

- F. Supp. 802, 811 (W.D. Tex. 1984) (deputizing high school principals as voting registrars so that they could register students upon turning 18 was evidence of responsiveness); Terrazas Litig., discussion at 581 F. Supp. 1329, 1350 (N.D. Tex. 1984) (“The process by which, following the 1980 census, the State of Texas drafted and adopted redistricting plans, culminating in the 1983 House plan, far from evidencing official discrimination, convincingly evidences full minority access to the redistricting process and a willingness on the part of almost all involved in that process to consider and effectuate minority proposals.”).
578. Chickasaw County II Litig., discussion at No. CIV.A. 1:92CV142-JAD, 1997 U.S. Dist. LEXIS 22087, at *8 (N.D. Miss. Oct. 28, 1997).
579. Operation Push Litig., discussion at 674 F. Supp. 1245, 1265 (N.D. Miss. 1987) (unresponsiveness found based upon failure to appoint deputy registrar/white officials hinder black registration); Marengo County Litig., discussion at 731 F.2d 1546, 1572 (11th Cir. 1984) (failure to appoint minority registrars weighs in favor of finding lack of responsiveness); Citizen Action Litig., discussion at Civ. No. N 84-431, 1984 U.S. Dist. LEXIS 24869 at *12-13 (D. Conn. Sept. 27, 1984) (responsiveness lacking based on jurisdiction’s failure to use available resources to increase voter registration, the absence of door-to-door canvassing, the scarcity of outreach, the decision to ban volunteer registrars, and the registrar’s failure to provide bilingual ballots available at no cost from the state); Terrell Litig., discussion at 565 F. Supp. 338, 343 (N. D. Tex. 1983) (refusal to open second more accessible polling station supports finding of lack of responsiveness); see also Sisseton Indep. Sch. Dist. Litig., discussion at 804 F.2d 469, 477 (8th Cir. 1986) (remanding for more findings on failure to hire Native American teachers or appoint a Native American deputy registrar). But *cf.* Suffolk County Litig., discussion at 268 F. Supp. 2d 243, 266 (E.D.N.Y. 2003) (failure to respond to plaintiff’s letters regarding redistricting made Factor 8 “neutral at best”).
580. SENATE REPORT *supra* note 15, at 27-30.
581. Marengo County Litig. (AL), 731 F.2d 1546, 1571 (11th Cir. 1984).
582. See Master Lawsuit List (filter Column 9f=1, and Success, Jurisdiction). The lawsuits that held otherwise were: Southern Christian Leadership Litig. (AL), 56 F.3d 1281 (11th Cir. 1995) (finding the policy tenuous but no Section 2 violation where racial bloc voting was not established and no viable alternative to challenged plan was presented); Wamser Litig. (MO), 883 F.2d 617 (8th Cir. 1989) (lower court found policy tenuous, but plaintiff involved lacked standing to bring challenge);
583. See Master Lawsuit List (filter Column 9f=0, and Success, WasSection2Violated).
584. Armour Litig., 775 F. Supp. 1044 (N.D. Ohio 1991); Monroe County Litig., 740 F. Supp. 417 (N.D. Miss. 1990); Wamser Litig. (MO), 883 F.2d 617 (8th Cir. 1989); Smith-Crittenden County Litig., 687 F. Supp. 1310 (E.D. Ark. 1988); Baldwin Bd. of Educ. Litig., 686 F. Supp. 1459 (M.D. Ala. 1988); City of Jackson Litig., 683 F. Supp. 1515 (W.D. Tenn. 1988); Marengo County Litig., 623 F. Supp. 33 (S.D. Ala. 1985); City of Greenwood Litig., 599 F. Supp. 397 (N.D. Miss. 1984); El Paso Indep. Sch. Dist. Litig., 591 F. Supp. 802 (W.D. Tex. 1984); Lubbock Litig. (TX), 727 F.2d 364 (5th Cir. 1984); McCarty Litig. (TX), 749 F.2d 1134 (5th Cir. 1984); Major Litig., 574 F. Supp. 325 (E.D. La. 1983).
585. See, e.g., Armour Litig., 775 F. Supp. 1044 (N.D. Ohio 1991) (finding “simply no defensible basis” for the current boundaries because they are in clear violation of the state constitutional requirement “that the integrity of political subdivisions be respected whenever possible.”); Monroe County Litig., 740 F. Supp. 417 (N.D. Miss. 1990) (holding the policy was tenuous where county gave no justification for districting plan, the population was 30% African American, no district was majority African American, and “[t]here is no state or county policy requiring majority white voting age populations in all supervisory and justice court judge districts”); Baldwin County Bd. of Education Litig., 686 F. Supp. 1459 (M.D. Ala. 1988) (finding the policy tenuous where board of education gave no justification for at-large election system, the policy was tenuous because the board had a “pattern or practice” of shifting between at-large and single-member voting systems, which was motivated by a desire to prevent African-American candidates from winning school board seats); Wamser Litig., 679 F. Supp. 1513 (E.D. Mo. 1987) (finding tenuous city election board’s lack of a justification for not reviewing ballots uncounted by ballot machine on the ground that some justification was necessary), *overruled and dismissed for lack of standing*, 883 F.2d 617 (8th Cir. 1989); City of Greenwood Litig., 599 F. Supp. 397 (N.D. Miss. 1984) (finding the policy tenuous where city gave no justification for at-large election system because there was no state policy favoring at-large elections, and there was a tendency in Mississippi cities with a population of 10,000 or more to elect their city councils by multiple districts.); Marengo County Litig. (AL), discussion at 731 F.2d 1546 (11th Cir. 1984) (finding policy tenuous where county gave no justification for at-large commissioner and school board elections, because there was no strong state policy for or against at-large elections, and because this system was adopted in 1955 that the goal of the plan was to prevent an increase in African-American political participation); El Paso Ind. Sch. Dist., 591 F. Supp. 802 (W.D. Tex. 1984) (finding the policy behind an at-large system was tenuous when the school district gave no justification and where the combination of a 1977 referendum and subsequent legislative

- approval of single-member districts led the court to infer the only real reason for the system could be to discriminate); *Major v. Treen Litig.*, 574 F. Supp. 325 (E.D. La. 1983) (finding policy tenuous where the reapportionment plan was passed without the input of African-American groups after Governor's veto threat).
586. *Smith-Crittenden County Litig.*, 687 F. Supp. 1310 (E.D. Ark. 1988) (no evidence presented); *City of Jackson Litig.*, 683 F. Supp. 1515 (W.D. Tenn. 1988) (finding at-large elections "for all practical purposes, a requirement for the commission form of government"); *Lubbock Litig. (TX)*, 727 F.2d 364, 383 (5th Cir. 1984) ("the record does not elucidate the precise policies underlying the Lubbock at-large system"); *McCarty Litig. (TX)*, 749 F.2d 1134 (5th Cir. 1984) (no evidence presented).
587. *See, e.g., Rural West I Litig.*, 836 F. Supp. 453 (W.D. Tenn. 1993) (finding justification of respect for traditional political boundaries not tenuous); *Forest County Litig.*, 194 F. Supp. 2d 867 (E.D. Wis. 2002) (finding policy of respecting traditional political boundaries nontenuous); *Chattanooga Board of Comm'rs Litig.*, 722 F. Supp. 380 (E.D. Tenn. 1989) (considering at-large policy was necessary to keep the commission form of government); *City of Jackson Litig.*, 683 F. Supp. 1515 (W.D. Tenn. 1988) (finding at-large policy was a "logical feature" of commission form of government).
588. *Rural West II Litig.*, 209 F.3d 835 (6th Cir. 2000) (rejecting as tenuous state's claim that it sought to maintain political boundaries and thus not fracture the City of Jackson where challenged districting plan fractured cities in other parts of the state).
589. *Liberty County Comm'rs Litig. (FL)*, 221 F.3d 1218 (11th Cir. 2000); *Niagara Falls Litig.*, 913 F. Supp. 722 (W.D.N.Y. 1994); *Town of Babylon Litig.*, 914 F. Supp. 843 (E.D.N.Y. 1996); *City of Austin Litig.*, discussion at CIV. No. A-84-CA-189, 1985 WL 19986 (W.D. Tex. Mar. 12, 1985).
590. *See, e.g., Bone Shirt Litig.*, 336 F. Supp. 2d 976, 1048 (D.S.D. 2004) (finding that the policy was not supported by the idea that the people were happy with their districts because the only input the legislature had sought from the people was far away from the Indian Reservation, and the legislature did not make the plans accessible to the public); *Terrell Litig.*, 565 F. Supp. 338, 341 (N.D. Tex. 1983) (finding the policy not supported because the people of Terrell had voted to change to single member districts in a referendum).
591. *City of Holyoke Litig.*, 960 F. Supp. 515 (D. Mass. 1997); *Red Clay School Dist. Litig. (DE)*, 116 F.3d 685 (3d Cir. 1997); *City of Rome Litig. (GA)*, 127 F.3d 1355 (11th Cir. 1997); *Hall v. Holder Litig.*, 757 F. Supp. 1560 (M.D. Ga. 1991) (finding a single-member commission may be more responsive in a small county); *City of Dallas Litig.*, 734 F. Supp. 1317 (W.D. Tex. 1990); *City of Norfolk Litig.*, 679 F. Supp. 557 (E.D. Va. 1988); *Pasadena Indep. Sch. Dist. Litig.*, 958 F. Supp. 1196 (S.D. Tex. 1997).
592. *Blaine County Litig. (MT)*, 363 F.3d 897 (9th Cir. 2004); *Town of Hempstead Litig.*, 956 F. Supp. 326 (E.D.N.Y. 1997) (discounting the responsiveness argument after finding Senate Factor 8 (a significant lack of responsiveness) met); *Escambia County Litig.*, 748 F.2d 1037 (5th Cir. 1984) (affirming district court finding that the responsiveness explanation was inconsistent with the current operation of the Commission); *City of Springfield Litig.*, 658 F. Supp. 1015, 1033 (C.D. Ill. 1987) ("The claim of responsiveness of the officials to the electorate is tenuous in a community where racially polarized voting exists. The responsiveness of the elected official is, of course, to the white majority that elected him and not to the black minority which is without the ability to elect candidates of their choice to seats of power."); *see also City of Columbia Litig.*, 850 F. Supp. 404, 425 (D.S.C. 1993) ("Mixed systems provide neighborhood, and therefore often minority, representatives, but nevertheless avoid the factionalism and 'turfism' often associated with all single-member districts. Mixed systems provide the advantage of a city-wide perspective, but nevertheless avoid the problems often associated with at-large systems of lack of diversity on the council and neglect of neighborhoods... The overwhelming weight of the evidence offered in this case suggests that Columbia's mixed system functions exactly as designed, in terms of attention to neighborhood concerns, but without resulting in factionalism or turfism.")
593. *See, e.g., Cousin Litig. (TN)*, 145 F.3d 818 (6th Cir. 1998); *Prejean Litig. (LA)*, 227 F.3d 504, 516 (5th Cir. 2000); *France v. Pataki*, 71 F. Supp. 2d 317 (S.D.N.Y. 1999); *Davis v. Chiles Litig. (FL)*, 139 F.3d 1414, 1421 (11th Cir. 1998); *Southern Christian Leadership Conference Litig. (AL)*, 56 F.3d 1281, 1295 (11th Cir. 1995) (en banc); *Nipper Litig. (FL)*, 39 F.3d 1494, 1534 (11th Cir. 1994) (en banc); *LULAC v. Clements Litig. (TX)*, 999 F.2d 831, 857-58 (5th Cir. 1993); *Magnolia Bar Ass'n Litig.*, 793 F. Supp. 1386 (S.D. Miss. 1992).
594. *See, e.g., Prejean Litig. (LA)*, 83 Fed. App'x 5, 11 (5th Cir. 2003) (finding that drawing district lines to protect incumbent judges who happened to be white was not tenuous and did not violate Section 2 or the Constitution, as politics not race was the primary motivation); *Fund for Accurate & Informed Representation Litig.*, 796 F. Supp. 662, 672 (N.D.N.Y. 1992) ("plaintiffs failed to demonstrate any linkage between the alleged fragmentation of minority communities in Monroe, Nassau, Erie or Westchester Counties, and an alleged intent to preserve the incumbency of 'certain white incumbents,' " so not only could no intentional discrimination be shown, but also: "Plaintiffs have not convinced us that the state legislature's decision to heighten the minority population in certain Assembly districts is a pretext for an unworthy goal. Moreover, under some circumstances, the use of a lower

- population threshold for minority districts may lead to ineffective minority control districts. This choice is a matter of judgment, and we cannot say on this record that the legislature exercised its judgment unlawfully.”).
595. *See, e.g.*, *Gingles Litig.*, 590 F. Supp. 345 (E.D.N.C. 1984) (protecting incumbents was “obviously” not enough to justify racial vote dilution).
 596. *See, e.g.*, *Black Political Taskforce Litig.*, 300 F. Supp. 2d 291 (D. Mass. 2004) (finding that “race [was] used as a tool to achieve incumbency protection” in the drawing of Massachusetts state legislative district lines after the 2000 census); *Ketchum Litig. (IL)*, 740 F.2d 1398, 1408 (7th Cir. 1984) (“We think there is little point for present purposes in distinguishing discrimination based on an ultimate objective of keeping certain incumbent whites in office from discrimination borne of pure racial animus.”); *Buskey v. Oliver Litig.*, 565 F. Supp. 1473 (M.D. Ala. 1983) (drawing district to ensure defeat of political rival is tenuous where jurisdiction knew effect would be to dilute black voting power). *But see Escambia County Litig. (FL)*, 638 F.2d 1239, 1245 (5th Cir.) (“the desire to retain one’s incumbency unaccompanied by other evidence ought not to be equated with an intent to discriminate against blacks qua blacks”).
 597. *Westwego Litig.*, discussion at CIV. A. NO. 84-5599, 1989 U.S. Dist. LEXIS 7298, at *16, 1989 WL 73332, at *7 (E.D. La. June 28, 1989) (“The undisputed evidence at trial revealed that Westwego’s five aldermen head the city’s five departments. Thus, the board of aldermen is functionally better suited to at-large election than election by single-member district.”); *Armstrong v. Allain Litig.*, 893 F. Supp. 1320 (S.D. Miss. 1994) (finding a 60% requirement for school bond referenda was justified by the fact that school districts had a number of alternative sources of revenue for capital expenditures.); *Calhoun County Litig.*, 813 F. Supp. 1189 (N.D. Miss. 1993) (policy of keeping districts with equal road mileage nontenuous); *Aldasoro v. Kennerson Litig.*, 922 F. Supp. 339 (S.D. Cal. 1995) (noting the reasons for keeping an at-large system were El Centro was too small for single districts and finding the at-large system allowed minorities to elect); *Lafayette County Litig.*, 841 F. Supp. 751 (N.D. Miss. 1993) (equal road mileage); *Chattanooga Board of Comm’rs Litig.*, 722 F. Supp. 380 (E.D. Tenn. 1989) (finding it was necessary to keep the commission form of government); *Buchanan v. City of Jackson Litig.*, 683 F. Supp. 1515 (W.D. Tenn. 1988) (logical feature of commission form of government); *Operation Push Litig.*, 674 F. Supp. 1245, 1268 (N.D. Miss. 1987) (“The clerks are responsible for registering all voters and must have some discretion in selecting those agents and employees who will assist the circuit clerks in accomplishing their objective. The court concludes that some measure of discretion and flexibility is needed for the registration process to work smoothly and efficiently.” (citation omitted)); *Smith-Crittenden County Litig.*, 687 F. Supp. 1310 (E.D. Ark. 1988) (finding a state policy supporting multi-member districts is neither tenuous nor particularly strong); *NAACP v. Fordice Litig. (MS)*, 252 F.3d 361 (5th Cir. 2001) (finding requested reorganization would cost the state millions of dollars and finding cost efficiency reasons not tenuous); *Cincinnati Litig. (OH)*, 40 F.3d 807, 814 (6th Cir. 1994) (“Moreover, given the difficulties experienced in the administration of PR, we cannot say that the policy underlying 9X is ‘tenuous.’ ”); *City of Philadelphia Litig. (PA)*, 28 F.3d 306 (3d Cir. 1994) (accepting a voter purge law as not tenuous because the policy was deemed to prevent voter fraud).
 598. *Operation Push Litig.*, 674 F. Supp. 1245, 1266 (N.D. Miss. 1987).
 599. *Holder v. Hall Litig.*, 757 F. Supp. 1560 (M.D. Ga. 1991) (finding use of single person commissioner historically fostered responsiveness); *Dallas County Comm’n Litig.*, 636 F. Supp. 704 (S.D. Ala. 1986) (considering a long-standing statewide policy in favor of at-large elections without regard to race, dating back to the first Alabama school board in 1854); *City of Fort Lauderdale Litig.*, 617 F. Supp. 1093 (S.D. Fla. 1985) (noting the at-large system had been in place since 1911 and there was no evidence of invidious intent); *Houston v. Haley Litig.*, 663 F. Supp. 346 (N.D. Miss. 1987) (“Oxford held aldermen elections through single-member districts for as long as anyone could remember, except after the 1970 census when because of state statute and growth in population the city was required to hold at-large elections for a brief period.”); *Milwaukee NAACP Litig.*, 935 F. Supp. 1419 (E.D. Wis. 1996) (noting Wisconsin had history of using at-large elections for judges dating back to its 1848 constitution.).
 600. *Milwaukee NAACP Litig. (WI)*, 116 F. 3d 1194 (7th Cir. 1997).
 601. *Kirksey v. Allain Litig.*, 658 F. Supp. 1183 (S.D. Miss. 1987).
 602. *Terrazas Litig.*, 581 F. Supp. 1329 (N.D. Tex. 1984) (Even though incumbency was a factor in the reapportionment, the other factors were present as well such as the need to comply with one person one vote and Section 5 of the Voting Rights Act, and plaintiff failed to show that the policy behind it was tenuous.); *Sanchez-Colorado Litig.*, 97 F.3d 1303, 1325 (10th Cir. 1996) (criticizing but not finding clearly erroneous the district courts finding that the underlying policy was VRA compliance, noting “[t]he record casts doubt on the court’s finding that the Commission from beginning to end observed the tenets of § 2.”).
 603. *Bone Shirt Litig.*, discussion at 336 F. Supp. 2d 976, 1048 (D.S.D. 2004).

604. As explained by the Court, proportionality is distinct from proportional representation, which links the proportion of minority officeholders to the minority group's share of the relevant population. See *De Grandy* Litig., discussion at 512 U.S. 997, 1014 n.11 (1994).
605. *Id.* at 1020-21.
606. Black Political Task Force Litig., 300 F. Supp. 2d 291 (D. Mass. 2004); Rodriguez Litig., 308 F. Supp. 2d 346 (S.D.N.Y. 2004); Perry Litig., 298 F. Supp. 2d 451 (E.D. Tex. 2004); Bone Shirt Litig., 336 F. Supp. 2d 976 (D.S.D. 2004); Old Person Litig. (CA), 312 F.3d 1036 (9th Cir. 2002); Campuzano Litig., 200 F. Supp. 2d 905 (N.D. Ill. 2002); Rural West II Litig., 209 F.3d 835 (6th Cir. 2000); Liberty County Comm'rs Litig. (FL), 221 F.3d 1218 (11th Cir. 2000); City of Chicago-Bonilla Litig. (IL), 141 F.3d 699 (7th Cir. 1998); County of Thurston Litig. (NE), 129 F.3d 1015 (8th Cir. 1997); African American Voting Rights LDF Litig., 994 F. Supp. 1105 (E.D. Mo. 1997); City of Holyoke Litig., 960 F. Supp. 515 (D. Mass. 1997); Rural West I Litig., 877 F. Supp. 1096 (W.D. Tenn. 1995); St. Louis Bd. of Educ. Litig., 90 F.3d 1357 (8th Cir. 1996); Little Rock Litig. (AR), 56 F.3d 904 (8th Cir. 1995); City of Columbia Litig. (SC), 33 F.3d 52 (4th Cir. 1994); Austin Litig., 857 F. Supp. 560 (E.D. Mich. 1994); see also Rural West I Litig., discussion at 877 F. Supp. 1096, 1109-11 (W.D. Tenn. 1995) (addressing proportionality but not ultimately making a definitive finding on it); City of Chicago Litig. (IL), discussion at 141 F.3d 699, 705 (7th Cir. 1998) (finding proportionality absent and remanding for additional findings to determine whether the deviation from proportionality can be justified by reference to other appropriate districting factors because "[d]eviations from proportionality, especially small ones, can be justified by reference to other factors, such as the compactness of districts and the desirability of preserving continuity and recognizing topographical, cultural, and economic factors that may make one ward mapping preserve communities of political interest better than another.").
607. Rodriguez Litig., 308 F. Supp. 2d 346 (S.D.N.Y. 2004); Perry Litig., 298 F. Supp. 2d 451 (E.D. Tex. 2004); Campuzano Litig., 200 F. Supp. 2d 905 (N.D. Ill. 2002); Liberty County Comm'rs Litig., 221 F.3d 1218 (11th Cir. 2000); African American Voting Rights LDF Litig., 994 F. Supp. 1105 (E.D. Mo. 1997); City of Holyoke Litig., 960 F. Supp. 515 (D. Mass. 1997); St. Louis Bd. of Educ. Litig., 90 F.3d 1357 (8th Cir. 1996); City of St. Louis Litig., 54 F.3d 1345 (8th Cir. 1995); Little Rock Litig., 56 F.3d 904 (8th Cir. 1995); City of Columbia Litig., 33 F.3d 52 (4th Cir. 1994); Austin Litig., 857 F. Supp. 560 (E.D. Mich. 1994).
608. Bone Shirt Litig., 336 F. Supp. 2d 976 (D.S.D. 2004); Black Political Task Force Litig., 300 F. Supp. 2d 291 (D. Mass. 2004); Rural West II Litig., 209 F.3d 835 (6th Cir. 2000); Old Person Litig., 312 F.3d 1036 (9th Cir. 2002); County of Thurston Litig., 129 F.3d 1015 (8th Cir. 1997).
609. Bone Shirt Litig., 336 F. Supp. 2d 976 (D.S.D. 2004); Black Political Task Force Litig., 300 F. Supp. 2d 291 (D. Mass. 2004); Rural West II Litig. (TN), 209 F.3d 835 (6th Cir. 2000); County of Thurston Litig. (NE), 129 F.3d 1015 (8th Cir. 1997).
610. Old Person Litig. (MT), discussion at 312 F.3d 1036, 1050 (9th Cir. 2002). In ultimately affirming the judgment of the district court finding a lack of vote dilution, though, the Ninth Circuit panel made clear that its decision to affirm the ultimate conclusions of the lower court had more to do with the standard of review than the weight which the panel would have accorded to some pieces of evidence. See *id.*
611. City of St. Louis Litig., 54 F.3d 1345, 1357 (8th Cir. 1995) ("We also hold that the district court properly granted summary judgment where the record before it demonstrated that sustained and substantial proportionality existed between the percentage of blacks in the citywide voting age population and the number of safe black wards.").
612. *De Grandy*, 512 U.S. 997, 1023 (1994).
613. Black Political Task Force Litig., discussion at 300 F. Supp. 2d 291, 312 (D. Mass. 2004).
614. Perry Litig., discussion at 298 F. Supp. 2d 451, 494-95 & n. 134 (E.D. Tex. 2004) ("Plaintiffs' own experts and argument reminded this court that because of the lower turnout of Latino voters, a low majority of the Hispanic citizen voting age population does not produce an *effective* Latino opportunity district.").
615. The Court explained that it examined allegations of dilution in the geographic terms stated by plaintiffs themselves who had specifically alleged dilution only in particular regions of the state rather than the plan as a whole. As such the Court "had no occasion to decide which frame of reference should have been used" had the matter not already been agreed upon by the parties in the district court. See *De Grandy*, 512 U.S. at 1022.
616. Rural West I Litig., discussion at 877 F. Supp. 1096, 1109-10 (W.D. Tenn. 1995); Rural West II Litig. (TN), discussion at 209 F.3d 835, 843-44 (6th Cir. 2000); Austin Litig., discussion at 857 F. Supp. 560, 569 (E.D. Mich. 1994); Bone Shirt Litig., discussion at 336 F. Supp. 2d 976, 1048-49 (D.S.D. 2004).
617. Rural West I Litig., discussion at 877 F. Supp. 1096, 1109 (W.D. Tenn. 1995).
618. Rural West II Litig. (TN), discussion at 209 F.3d 835, 843 (6th Cir. 2000).
619. Austin Litig., discussion at 857 F. Supp. 560, 569 (E.D. Mich. 1994).

620. Perry Litig., discussion at 298 F. Supp. 2d 451, 494 (“Because the Supreme Court has not yet provided precise guidance on the proper standard for assessing proportionality, however, we also examine proportionality on a statewide basis.”)
621. Old Person Litig. (MT), discussion at 230 F.3d 1113, 1129-30 (9th Cir. 2000).
622. Blytheville Sch. Dist. Litig., discussion at 71 F.3d 1382, 1382 n.6 (8th Cir. 1995) (“De Grandy resolved a claim involving ‘proportionality,’ which ‘links the number of majority-minority voting districts to minority members’ share of the relevant population.’ Here, because we address a claim involving a single at-large district, the analyses between proportionality and proportional representation are essentially the same.”); City of St. Louis Litig., 896 F. Supp. 929, 943 (E.D. Mo. 1995) (“In *Johnson v. De Grandy*, the Supreme Court indicated that even if a plaintiff succeeds in establishing the *Gingles* preconditions, a defendant may be able to defeat a § 2 claim by showing that the minority group in question has achieved, or will achieve, substantially proportional representation under the challenged districting plan.”)
623. Liberty County Comm’rs Litig., discussion at 957 F. Supp. 1522, 1570 (N.D. Fla. 1997) (“Proportionality, while not dispositive of a section 2 claim, is a relevant factor which should be examined under the totality of the circumstances. The proportionality inquiry is very straight forward in this case. Blacks have not achieved proportional representation on the Liberty County School Board. Not only is there no black currently serving on the school board, no black has ever served on the school board. The opposite is true with the Liberty County Commission. Since 1990, Earl Jennings, a black, has served as one of the five county commissioners. As stated earlier, blacks make up 17.63 percent of the total population and 25.03 of the voting age population of Liberty County. Thus, with blacks comprising twenty percent of the county commission’s membership, blacks have clearly achieved proportional representation on the county commission. Such proportional representation does not automatically preclude a finding of section 2 liability, although it is obviously some evidence that blacks have equal access to the political process in Liberty County.”) (internal citations omitted).
624. Liberty County Comm’rs Litig., discussion at 221 F.3d 1218, 1225 (11th Cir. 2000) (en banc) (quoting 42 U.S.C. § 1973(b)).