"Unpacking" the Problem: The Need to Broaden the Scope of Vote Dilution Claims Under Section 2 of the VRA

PAUL A. RILEY, JR.*

There are two common types of gerrymandering: "cracking"—splitting a cohesive voting bloc across districts, and "packing"—over-consolidating a cohesive voting bloc into a single district. These types of gerrymandering can be partisan, but they can also be along racial lines. As this Note demonstrates, Section 2 of the Voting Rights Act (VRA) has a remedy for cracking, but not for packing.

Through statistical analyses, this Note demonstrates the statistically significant relationship between race and the Cook Political Report's "Partisan Voting Index," as well as between race and voter turnout in the 2020 general and 2018 midterm elections. In particular, the statistical analyses reveal how race and PVI can serve as the pillars of a novel, three-factor test that would make vote-packing claims cognizable under Section 2 of the VRA. Finally, this Note proposes a framework that would broaden the definition of "vote dilution" under Section 2 of the VRA and would provide a remedy for minority voters who are packed into districts.

---

* J.D. Candidate 2022, Columbia Law School. The author would like to thank Professor Richard Briffault for generously offering his time, expertise, and invaluable perspective, and the staff of the *Columbia Journal of Law & Social Problems* for their insights, thoughtful feedback, and editorial assistance.

INTRODUCTION

2022 marks both fifty-seven years since the passage of the Voting Rights Act of 1965 (VRA) and two years since civil rights icon John Lewis was laid to rest.[1] Many will never forget the footage of police officers brutalizing John Lewis and other non-violent protestors as they marched for their right to vote on March 7, 1965.[2] Often referred to as "Bloody Sunday," the events at the Edmund Pettus Bridge in Selma, Alabama rocked the nation.[3] Enacted into law on August 6, 1965 in response to the troubling events of Bloody Sunday, the VRA prohibits any measures that would prevent racial minorities from participating in the electoral process.[4] More specifically, Section 2 of the VRA prohibits, "any standards, practices, or procedures" that abridge racial or language minorities' voting rights.[5] As the Supreme Court noted in *Thornburg v. Gingles*, "[t]he essence of a § 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives."[6] The Supreme Court's consistent narrowing of the scope of Section 2 claims, however, has limited

1. Katharine Q. Seelye, *John Lewis, Towering Figure of Civil Rights Era, Dies at 80*, N.Y. TIMES (July 17, 2020), https://www.nytimes.com/2020/07/17/us/john-lewis-dead.html [https://perma.cc/8KRD-94A5].

2. *Id.*

3. *Id.*

4. 52 U.S.C. § 10101.

5. 52 U.S.C. § 10301 ("(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title, as provided in subsection (b). (b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided,* That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.").

6. Thornburg v. Gingles, 478 U.S. 30, 47 (1986).

the ability of minority groups to seek adequate relief under the VRA.[7]

Since its passage, the VRA featured repeatedly in the halls of Congress and in the courts. Congress has amended the VRA five times: in 1970, 1975, 1982, 1992, and 2006.[8] Despite Congress' continued reauthorization of the VRA, the Supreme Court has weakened and even dismantled key VRA provisions. For example, Section 4 of the VRA created a "coverage formula" which included "covered jurisdictions" that "maintained a test or device as a prerequisite to voting as of November 1, 1964, and had less than 50 percent voter registration or turnout in the 1964 Presidential election."[9] Section 5 of the VRA required these covered jurisdictions to go through federal "preclearance" before any change to their voting procedures could take effect.[10] In 2006, Congress renewed Sections 4 and 5 of the VRA until 2031; in 2013, however, the Supreme Court held that Section 4(b) was unconstitutional in *Shelby County v. Holder*.[11] The Court took issue with the soundness of Section 4(b)'s coverage formula, reasoning that it improperly relied on decades-old data that failed to account for present-day realities.[12]

The Supreme Court's jurisprudence regarding Section 2 violations appears to be inching closer and closer to making Section 2 obsolete as well.[13] This obsolescence is due, in part, to the Supreme Court's narrow interpretation of "vote dilution"—an

7. *See* Bartlett v. Strickland, 556 U.S. 1, 23 (2009) (plurality opinion) (foreclosing the mandated creation of "crossover districts" as a Section 2 remedy). *See also* League of United Latin Am. Citizens v. Perry, 548 U.S. 399, 446 (2006) (precluding the mandated creation of "influence districts" as a Section 2 remedy).

8. 52 U.S.C. § 10301. For example, the 1975 VRA Amendments primarily sought to expand protection for language minorities by prohibiting English-only ballots where a language minority constituted five percent of the voting age population. *See* Pub. L. No. 94–73, 89 Stat 400 (codified as amended at 52 U.S.C. § 10301). The 1982 VRA Amendments created a results or effects test for plaintiffs hoping to demonstrate vote dilution under Section 2. *See infra* note 44 and accompanying text.

9. Shelby County v. Holder, 570 U.S. 529, 537 (2013).

10. *Id.*

11. *Id.* at 556–57.

12. *Id.* at 553.

13. *See* Bartlett v. Strickland, 556 U.S. 1, 23 (2009) (plurality opinion) (foreclosing the mandated creation of "crossover districts" as a Section 2 remedy); League of United Latin Am. Citizens v. Perry, 548 U.S. 399, 446 (2006) (precluding the mandated creation of "influence districts" as a Section 2 remedy); *see also* Brnovich v. Democratic Nat'l Comm., 141 S. Ct. 2321, 2346–48 (2021) (holding that an Arizona law prohibiting out-of-precinct voting and an Arizona law allowing only postal workers, election officials, caregivers, and close relatives to collect early ballots do not violate Section 2 of the VRA, despite the "modest evidence of racially disparate burdens").

interpretation that severely limits the scope and reach of cognizable Section 2 claims.[14] As the Supreme Court has emphasized, "[u]nder § 2 . . . the injury is vote dilution."[15] The Supreme Court, however, has defined only two main types of vote dilution: (i) "the dispersal of blacks into districts in which they constitute an ineffective minority of voters" (referred to as "cracking"), and (ii) "the concentration of blacks into districts where they constitute an excessive majority" (referred to as "vote-packing claims" or "packing").[16] To evaluate vote fragmentation (cracking) claims, the Supreme Court created the so-called "*Gingles* test"—whereby the minority group must show that: (i) "it is sufficiently large and geographically compact to constitute a majority in a single-member district," (ii) "it is politically cohesive," and (iii) "the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate."[17] Once the plaintiff establishes these three preconditions, the court will then look to probative factors provided by the Senate Judiciary Committee in connection with the 1982 VRA amendments to conduct a "totality of the circumstances" analysis to assess a diminution in minority voting strength.[18] If successful across both steps, the court must mandate the creation of majority-minority districts (districts where the minority group constitutes a majority of the district's voting population) as a Section 2 remedy.[19] For vote-packing (packing) claims, however, the Supreme Court has yet to provide comparable relief under Section 2.[20]

---

14. *See infra* notes 15–20.

15. *League of United Latin Am. Citizens*, 548 U.S. at 402.

16. Thornburg v. Gingles, 478 U.S. 30, 46 n.11 (1986); Voinovich v. Quilter, 507 U.S. 146, 153–54 (1993).

17. *See Gingles*, 478 U.S. at 50–51.

18. *See infra* notes 49–50.

19. *Id.*

20. While the Supreme Court has not addressed vote-packing claims under Section 2, it did question the practice under Section 5 of the VRA (prior to the section becoming inoperative following *Shelby County, supra* note 9). More specifically, the Supreme Court did highlight how a covered jurisdiction's compliance with Section 5 of the VRA did not require maintaining such a high percentage of Black voters in a given district. *See* Alabama Legislative Black Caucus v. Alabama, 575 U.S. 254, 277 (2015) ("Imagine a majority-minority district with a 70% black population. Assume also that voting in that district, like that in the State itself, is racially polarized. And assume that the district has long elected to office black voters' preferred candidate. Other things being equal, it would seem highly unlikely that a redistricting plan that, while increasing the numerical size of the district, reduced the percentage of the black population from, say, 70% to 65% would have a significant impact on the black voters' ability to elect their preferred candidate. And, for

In 1980, the Supreme Court began limiting Section 2 in *City of Mobile v. Bolden* when it imposed an extratextual "purposeful intent" requirement.[21] Congress quickly repudiated *Bolden* with its 1982 VRA Amendments, requiring only that plaintiffs show a discriminatory effect, not discriminatory purpose.[22] The Supreme Court, nevertheless, continued to limit the scope of Section 2 by only providing relief for one type of vote dilution: "the dispersal of blacks into districts in which they constitute an ineffective minority" (i.e., cracking).[23] Guided by the three *Gingles* preconditions, the Supreme Court paved the way for one main remedy to combat cracking: the creation of majority-minority districts.[24] Though majority-minority districts have not been without controversy, and some have even been struck down as violative of the Fourteenth Amendment's Equal Protection Clause,[25] these districts have played a significant role in increasing Black representation in the House of Representatives.[26] Despite this modest indicium of progress, however, the Supreme Court has proactively pushed back against attempts by the Department of Justice, state legislatures, and courts to maximize the political success of minority voters through the creation of as many majority-minority districts as possible in redistricting plans.[27] Perhaps most ominously for the future of Section 2 claims, the Supreme Court determined in *Johnson v. De Grandy* that no violation of Section 2 had occurred even when the three *Gingles* preconditions had been satisfied and there was evidence of past and continued discrimination against the minority group.[28] The *De Grandy* Court reasoned that the redistricting plan's proportional representation mitigated concerns about vote dilution.[29]

---

that reason, it would be difficult to explain just why a plan that uses racial criteria predominately to maintain the black population at 70% is 'narrowly tailored' to achieve a 'compelling state interest,' namely the interest in preventing § 5 retrogression.").

21. City of Mobile v. Bolden, 446 U.S. 55, 60–61 (1980) (plurality opinion).

22. S. REP. NO. 97-417, at 36 (1982), *as reprinted in* 1982 U.S.C.C.A.N. 177, 214; *see also infra* note 44 and accompanying text.

23. *See* Thornburg v. Gingles, 478 U.S. 30, 46 n.11 (1986); Voinovich v. Quilter, 507 U.S. 146, 153–54 (1993).

24. *See, e.g., infra* note 52 (documenting the litigation surrounding the proliferation of these majority-minority districts following *Gingles* and the 1990 redistricting cycle).

25. *See infra* note 52 (describing irregularly-shaped districts).

26. *See infra* note 51.

27. Johnson v. De Grandy, 512 U.S. 997, 1016 (1994).

28. *Id.* at 1014–15.

29. *Id.* at 1015–16.

Given the Supreme Court's hostility towards majority-minority districts as a long-term solution to cracking, it is not surprising that the Court has been even more resistant to creating remedies for vote-packing claims under Section 2. In *Voinovich v. Quilter*, the Court addressed a vote-packing claim under Section 2.[30] There, the remedy sought was the creation of more "cross-over districts"—where the minority group could become influential and work with white cross-over voters to elect their desired candidate.[31] While the *Voinovich* Court questioned the viability of such claims under Section 2,[32] the *Bartlett* plurality delivered a crucial blow when it held that cross-over districts were not required under Section 2.[33] This inability to mandate the creation of cross-over districts essentially means that no remedy exists under Section 2 for packing claims, or claims alleging vote dilution because of "the concentration of blacks into districts where they constitute an excessive majority [i.e., packing]."[34] For these reasons, this Note advances an approach that specifically codifies a potential framework for plaintiffs to bring vote-packing claims under Section 2.[35] In adopting this Note's proposed legislative framework, Congress could equip courts with a clear and exacting standard to combat vote-packing, put state legislatures on notice as they craft future redistricting plans, and, perhaps most importantly, provide minorities—who are excessively packed into these districts—with some form of relief under Section 2 of the VRA.

Part I of this Note reviews the Section 2 jurisprudence as it relates to claims of cracking, the remedial creation of majority-minority districts, and the Supreme Court's unwillingness to find actual violations of the VRA when analyzing vote-packing claims. Part II employs three regressions to demonstrate the effect of race on the Cook Political Report's Partisan Voting Index (PVI)[36] of

30. *See* Voinovich v. Quilter, 507 U.S. 146, 149–50 (1993).

31. *Id.*

32. *See id.* at 154, 158.

33. *See* Bartlett v. Strickland, 556 U.S. 1, 23 (2009) (plurality opinion).

34. *See* Thornburg v. Gingles, 478 U.S. 30, 46 n.11 (1986); Voinovich v. Quilter, 507 U.S. 146, 153–54 (1993).

35. *See infra* Part III.

36. *See* David Wasserman & Ally Flinn, *Introducing the 2017 Cook Political Report Partisan Voter Index*, COOK POL. REP. (Apr. 7, 2017), https://cookpolitical.com/pvi-test [https://perma.cc/T6Y6-743P] ("In August of 1997, The Cook Political Report introduced the Partisan Voting Index (PVI) as a means

congressional districts represented by Black Members in the 116th Congress' House of Representatives, and on voter turnout in the 2020 general and 2018 midterm elections. The observed effect of race on PVI and voter turnout, respectively, reveals the ways that racial gerrymandering can be a proxy for partisan gerrymandering and the deleterious effects vote-packing can have on electoral participation. Part III calls on Congress to make three amendments to Section 2: (i) specifically define and codify "vote dilution" in the VRA as inclusive of cracking and packing; (ii) permit multiple minority groups to collectively assert cracking claims; and (iii) incorporate a new three-factor test to make vote-packing claims cognizable under Section 2. Finally, Part III also addresses some potential concerns and limitations of this Note's proposed solutions.

I. LEGAL BACKGROUND

This Part lays out the jurisprudence surrounding Section 2 of the VRA. First, attention is given to vote fragmentation (cracking) claims and the Section 2 remedy created by Congress and the Supreme Court—namely the mandated creation of majority-minority districts—and its efficacy in increasing Black representation in the House of Representatives. This Part then examines vote-packing claims and the Supreme Court's unwillingness to create a comparable form of relief under Section 2. By understanding the shortcomings of a Section 2 remedy for vote-packing claims, this Part seeks to illuminate the need for Congress to step in and adopt a legislative framework that fills the current gap.

A. THE SUPREME COURT'S TREATMENT OF "CRACKING" CLAIMS UNDER SECTION 2

This section reviews the Supreme Court's treatment of cracking claims brought under Section 2 of the VRA. As described in the Introduction, "vote fragmentation," or "cracking," is the practice of using redistricting plans to disperse minority voters across districts to diminish their voting strength.[37] A survey of the

of providing a more accurate picture of the competitiveness of each of the 435 congressional districts.").

37. *See Gingles*, 478 U.S. at 46 n. 11; *Voinovich*, 507 U.S. at 153–54.

Supreme Court's relevant jurisprudence reveals how the Court has limited the types of relief available to plaintiffs asserting cracking claims under Section 2 of the VRA. Put simply, the creation of majority-minority districts is the *only* form of relief for vote dilution claims under Section 2. And, in order to grant this relief, courts demand a high bar. For example, in *Shaw v. Hunt*, the Court declined to require that state redistricting plans create as many majority-minority districts as possible.[38] Section 2 of the VRA, therefore, effectively includes only cracking claims, and neither contemplates, nor provides any remedy for, packing claims.

The Supreme Court first narrowed the scope of Section 2 claims in *City of Mobile v. Bolden*, when the Court incorporated an extratextual "purposeful intent" requirement into Section 2 of the VRA.[39] In *Bolden*, Black citizens in Alabama brought a class action lawsuit against the city of Mobile alleging that the city's use of at-large elections for its three City Commissioner positions diluted their voting strength in violation of Section 2 of the VRA, the Equal Protection Clause of the Fourteenth Amendment, and the Voting Rights Clause of the Fifteenth Amendment.[40] The *Bolden* plurality concluded that Section 2 was simply a restatement of the Fifteenth Amendment's Voting Rights Clause.[41] Additionally, the Court determined that appellees' Fourteenth and Fifteenth Amendment claims required a showing of "purposeful discrimination," or a "racially discriminatory motivation."[42] Taken together, the Court held that Section 2 violations "require[ ] proof that the contested

38. Shaw v. Hunt, 517 U.S. 899, 913 (1996) [hereinafter *Shaw II*] ("'In utilizing § 5 to require States to create majority-minority districts wherever possible, the Department of Justice expanded its authority under the statute beyond what Congress intended and we have upheld.' We again reject the Department's expansive interpretation of § 5." (quoting Miller v. Johnson, 515 U.S. 900, 925 (1995)).

39. City of Mobile v. Bolden, 446 U.S. 55, 60–61 (1980) (plurality opinion).

40. *Id.* at 58.

41. *Id.* at 60–61 ("[I]t is apparent that the language of § 2 no more than elaborates upon that of the Fifteenth Amendment, and the sparse legislative history of § 2 makes clear that it was intended to have an effect no different from that of the Fifteenth Amendment itself."); *see* U.S. CONST. amend. XV, § 1 ("The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."); *see* Voting Rights Act of 1965 § 2, 52 U.S.C. § 10301 ("No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color.").

42. *Bolden,* 446 U.S. at 66 ("This burden of proof is simply one aspect of the basic principle that only if there is purposeful discrimination can there be a violation of the Equal Protection Clause of the Fourteenth Amendment."); *id.* at 62 ("The Court's more recent decisions confirm the principle that racially discriminatory motivation is a necessary ingredient of a Fifteenth Amendment violation.").

electoral practice or mechanism was adopted or maintained with the intent to discriminate against minority voters."[43]

Recognizing that intent is extremely difficult to prove, Congress repudiated *Bolden* in its 1982 VRA amendments which rejected the Court's judicially-created intent requirement.[44] Under the amended VRA, plaintiffs only have to show that an electoral practice has a discriminatory result or effect.[45] In *Thornburg v. Gingles*, the Supreme Court established three preconditions for plaintiffs to establish a successful cracking claim under the newly-amended Act.[46] Commonly referred to as the "*Gingles* test," the Court held that the minority group must demonstrate that: (i) "it is sufficiently large and geographically compact to constitute a majority in a single-member district," (ii) "it is politically cohesive," and (iii) "the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate."[47] Though *Gingles* involved a challenge to a redistricting plan of multi-member districts (i.e., where one district elects multiple representatives), the Supreme Court later clarified that these preconditions also apply to redistricting plans affecting single-member districts.[48] Once a court finds that these three preconditions are met, it must then conduct a totality of the circumstances analysis, including an assessment of the probative factors provided by the Senate Judiciary Committee in connection with the 1982 VRA amendments.[49] When assessing these

43. Thornburg v. Gingles, 478 U.S. 30, 44 (1986) (describing the plurality's opinion in *Bolden*).

44. *Id.* at 43–44 ("The intent test was repudiated for three principal reasons—it is 'unnecessarily divisive because it involves charges of racism on the part of individual officials or entire communities,' it places an 'inordinately difficult' burden of proof on plaintiffs, and it 'asks the wrong question.' The 'right' question, as the Report emphasizes repeatedly, is whether 'as a *result* of the challenged practice or structure plaintiffs do not have an equal opportunity to participate in the political processes and to elect candidates of their choice.'" (emphasis added) (citation omitted) (quoting S. REP. No. 97-417, at 36 (1982), *as reprinted in* 1982 U.S.C.C.A.N. 177, 214)).

45. S. REP. NO. 97-417, at 36 (1982), *as reprinted in* 1982 U.S.C.C.A.N. 177, 214.

46. *Gingles*, 478 U.S. at 50–51.

47. *Id.*

48. Voinovich v. Quilter, 507 U.S. 146, 157–58 (1993) (citing Growe v. Emison, 507 U.S. 25, 40 (1993)).

49. S. REP. NO. 97-417, at 28–29 (1982), *as reprinted in* 1982 U.S.C.C.A.N. 206–207; *Gingles*, 478 U.S. at 36–37 ("The Senate Judiciary Committee majority Report accompanying the bill that amended § 2, elaborates on the circumstances that might be probative of a § 2 violation, noting the following 'typical factors':

probative factors, courts heed the Committee's stipulation that there is no particular requirement for how many factors must be met.[50] Following Congress' 1982 VRA amendments and the Supreme Court's decision in *Gingles*, the 1990 redistricting cycle saw an increase in the creation of majority-minority districts.[51]

Despite the Supreme Court's endorsement of majority-minority districts as a Section 2 remedy, such districts were controversial throughout the 1990s. For example, the Supreme Court consistently struck down bizarrely-shaped, majority-minority districts as violative of the Fourteenth Amendment's Equal Protection Clause.[52] Before the Supreme Court deemed Section

---

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

50. S. REP. NO. 97-417, at 29 (1982), *as reprinted in* 1982 U.S.C.C.A.N. 207; *Gingles*, 478 U.S. at 45.

51. IDA A. BRUDNICK & JENNIFER E. MANNING, CONG. RSCH. SERV., AFRICAN AMERICAN MEMBERS OF THE UNITED STATES CONGRESS: 1870NNM2018, at 8 (2018), https://www.senate.gov/CRSpubs/617f17bb-61e9-40bb-b301-50f48fd239fc.pdf. [https://perma.cc/K4TL-C6VX].

52. *See* Bush v. Vera, 517 U.S. 952, 965 (1996) ("Fifty percent of the district's population is located in a compact, albeit irregularly shaped, core in south Dallas, which is 69% African-American. But the remainder of the district consists of narrow and bizarrely shaped tentacles."); *Shaw II*, 517 U.S. at 903 ("The first of the two majority-black districts . . . is somewhat hook shaped. Centered in the northeast portion of the State, it moves southward until it tapers to a narrow band; then, with finger-like extensions, it reaches far into the southern-most part of the State near the South Carolina border. . . . The second majority-black district, District 12, is even more unusually shaped. It is approximately 160 miles long and, for much of its length, no wider than the [Interstate]-85 corridor. It winds

4(b)'s coverage formula unconstitutional in 2013,[53] Sections 4(b) and 5 of the VRA required covered jurisdictions to obtain preclearance from the Attorney General of the United States or pre-approval from the United States District Court for the District of Columbia before implementing a new redistricting plan.[54] Throughout the 1990s, the Supreme Court curtailed the Department of Justice's expansive view of its Section 5 preclearance authority.[55] In fact, the Supreme Court repeatedly reminded the Department of Justice that Section 5 did not give it the power to force state legislatures to create as many majority-minority districts as possible during a redistricting cycle—which, at times, resulted in the drawing of bizarrely-shaped, majority-minority districts like the districts at issue in *Shaw v. Hunt* and *Miller v. Johnson*.[56] Instead, the Supreme Court concluded that the Department of Justice's Section 5 preclearance authority centered solely on ensuring that retrogressive voting practices (i.e.,

---

in snake-like fashion through tobacco country, financial centers, and manufacturing areas 'until it gobbles in enough enclaves of black neighborhoods.'" (quoting Shaw v. Reno, 509 U.S. 630, 635–636 (1993))); Miller v. Johnson, 515 U.S. 900, 908 (1995) ("The new plan also enacted the Macon/Savannah swap necessary to create a third majority-black district. The Eleventh District lost the black population of Macon, but picked up Savannah, thereby connecting the black neighborhoods of metropolitan Atlanta and the poor black populace of coastal Chatham County, though 260 miles apart in distance and worlds apart in culture."); *see also Shaw II*, 517 U.S. at 918; *Vera*, 517 U.S. at 985–986; *Miller*, 515 U.S. at 927–28 (all finding these bizarrely-shaped, majority minority districts violative of the Fourteenth Amendment).

53. Shelby County v. Holder, 570 U.S. 529, 557 (2013). Though *Shelby County* did not rule that Section 5 (the preclearance requirement) was unconstitutional, it essentially made preclearance inoperable as there were no "covered jurisdictions" under the purview of the United States District Court for the District of Columbia or the Department of Justice. *Id.*

54. *Miller*, 515 U.S. at 905–06 ("In consequence, § 5 of the Act requires [covered jurisdictions] to obtain either administrative preclearance by the Attorney General or approval by the United States District Court for the District of Columbia of any change in a 'standard, practice, or procedure with respect to voting' made after November 1, 1964. The preclearance mechanism applies to congressional redistricting plans and requires that the proposed change 'not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.'" (citations omitted)).

55. Though Section 4(b) provided the formula for determining which jurisdictions would be covered under the "preclearance" requirement, Section 5 actually spelled out the scope of the enforcement powers as it relates to those covered jurisdictions. *See* Voting Rights Act of 1965 §§ 4, 5, 52 U.S.C. §§ 10303, 10304.

56. *Shaw II* at 913 ("'In utilizing § 5 to require States to create majority-minority districts wherever possible, the Department of Justice expanded its authority under the statute beyond what Congress intended and we have upheld.' We again reject the Department's expansive interpretation of § 5." (quoting *Miller*, 515 U.S. at 925)).

practices that would result in diminished voter access) were not implemented in covered jurisdictions.[57]

Throughout the 1990s, the Supreme Court also instructed courts that Section 2 does not require the maximization of majority-minority districts in state redistricting plans. In *Johnson v. De Grandy*, the Supreme Court described the district court's misinterpretation of what constitutes a violation of Section 2.[58] In the prior proceeding, the district court determined that where the *Gingles* preconditions were met and there was evidence of past and continued discrimination against the minority group, a state's failure to maximize the number of majority-minority districts would violate Section 2.[59] The Supreme Court, however, rebutted this reasoning, noting that "[f]ailure to maximize [the creation of majority-minority districts in a redistricting plan] cannot be the measure of § 2."[60] In so finding, the Supreme Court also provided guidance regarding the use of majority-minority districts going forward. First, the Supreme Court ruled that a redistricting plan that results in proportional representation could preclude a Section 2 claim—even if the three *Gingles* preconditions are met and there is evidence of past and continued discrimination.[61] Indeed, the *De Grandy* Court emphasized that although the fact that the proposed redistricting plan would result in the minority group's proportional voting strength relative to its share in the population was not dispositive, it could still serve as a significant factor in determining whether a court is required to compel remedial action under Section 2.[62] Second, the Supreme Court appeared to express a desire to move past the use of majority-minority districts as the preferred remedy for cracking claims when it noted that "for all the virtues of majority-minority districts as remedial devices, they rely on a quintessentially race-conscious calculus aptly described as the 'politics of second best.'"[63] Further, the *De Grandy* Court noted that "minority voters are not immune from the obligation to pull, haul, and trade to find common political

57. *Miller*, 515 U.S. at 925–926 (quoting Beer v. United States, 425 U.S. 130, 141 (1976)).

58. Johnson v. De Grandy, 512 U.S. 997, 1016 (1994).

59. *Id.*

60. *Id.* at 1017.

61. *Id.* at 1013–14.

62. *Id.* at 1014–16.

63. *Id.* at 1020 (quoting BERNARD GROFMAN ET AL., MINORITY REPRESENTATION AND THE QUEST FOR VOTING EQUALITY 136 (1992)).

ground, the virtue of which is not to be slighted in applying a statute meant to hasten the waning of racism in American politics."[64] Though the 1982 VRA amendments and the *Gingles* decision were a high-water mark for Section 2 relief, the Supreme Court has since disavowed the remedy of majority-minority districts as a long-term solution.[65]

Despite the success of the aforementioned Equal Protection challenges to bizarrely-shaped, majority-minority districts, and the Supreme Court's questioning of these districts' viability as long-term remedies in *De Grandy*, the *Gingles* decision coincided with the largest ever increase in Black Members voted to the House of Representatives.[66] The creation of these majority-minority districts was largely due to the *Gingles* decision and, potentially, the unexpected alliance made by conservative Republicans and Black Democrats. As author and historian Mark Bernstein notes:

> The Bush [Sr.] administration decided to enforce the 1982 Voting Rights amendments aggressively, siding with those Republicans who had concluded that the creation of black-majority districts could actually benefit the [Republican] party by drawing black voters out of suburban districts whose white voters overwhelmingly voted Republican. As Benjamin Ginsburg, former chief counsel for the Republican National Committee, remarked after the 1994 elections, "Look at the results . . . . We'd be nuts to want to see these districts abolished." An alliance of sorts was created between black Democrats and white Republicans, usually only tacit but occasionally more open.[67]

Whether due to this unexpected alliance, or the Court's mandated creation of majority-minority districts in *Gingles*, the transition from the 102nd Congress (1991–1993) to the 103rd Congress (1993–1995) saw the largest-ever increase in the number of Black Representatives—from twenty-seven to forty-one.[68] In the 116th Congress (2019–2021), there were fifty-two Black

64. *De Grandy*, 512 U.S. at 1020.
65. *See supra* note 63.
66. BRUDNICK & MANNING, *supra* note 51.
67 Mark F. Bernstein, *Racial Gerrymandering*, PUB. INT., Winter 1996, at 59, 63.
68. BRUDNICK & MANNING, *supra* note 51.

Representatives.[69] Thirty-one (62%) represented majority-minority congressional districts.[70] Further, as recently as 2006 in *League of United Latin American Citizens v. Perry* (*LULAC*) the Supreme Court utilized the *Gingles* test and the totality of the circumstances analysis to find a Section 2 violation in Texas' 2003 congressional redistricting plan.[71] In *LULAC*, one of the congressional districts (District 23) had been redrawn, causing "the Latino share of the citizen voting-age population to drop from 57.5% to 46%";[72] thus, eliminating the opportunity for Latinos to elect their desired candidate.[73] Accordingly, majority-minority districts remain crucial today, both in the election of minority House Representatives and as a remedy for cracking claims under Section 2—like the one made in *LULAC*. The same cannot be said, however, for vote-packing claims, for which Section 2 currently provides no relief.

B. THE SUPREME COURT'S INTERPRETATION OF SECTION 2 DOES NOT PROVIDE RELIEF FOR "VOTE-PACKING" CLAIMS

Perhaps unsurprisingly and inevitably, plaintiffs sought ways to leverage Section 2 to obtain relief for the second main form of vote dilution: challenging the packing of minorities into a district in which they constitute an excessive majority, thus minimizing the total number of districts in which minority voters may select their candidate of choice (packing claims). For example, in *Voinovich v. Quilter*, plaintiffs argued on appeal that Ohio's redistricting of electoral districts for its state legislature packed Black voters into disproportionately large majority-minority districts.[74] Plaintiff-Appellees sought the creation of more "influence" districts (now commonly referred to as "cross-over" districts) as relief. In these "influence" districts, Black voters could elect their desired candidates with the help of white voters who

69. This Note focuses solely on Black voting members (and not delegates) of the House of Representatives in the 116th Congress.

70. *See infra* Appendix I. This Note focuses specifically on Black and Hispanic constituents in districts represented by a Black Member in the U.S. House of Representatives.

71. League of United Latin Am. Citizens v. Perry, 548 U.S. 399, 435, 442 (2006) (finding that all three *Gingles* preconditions had been met and that the totality of the circumstances demonstrated a Section 2 violation).

72. *Id.* at 427.

73. *Id.*

74. Voinovich v. Quilter, 507 U.S. 146, 149–50 (1993).

would provide predictable cross-over votes.[75] On review of the district court's invalidation of the plan, the *Voinovich* Court noted that while it had "not yet decided whether influence-dilution claims . . . are viable under § 2," it assumed "for the purpose of resolving this case[,] that appellees in fact have stated a cognizable § 2 claim."[76] The *Voinovich* Court went even further, noting that the *Gingles* preconditions "cannot be applied mechanically and without regard to the nature of the claim," and alluded to a need to potentially modify or even eliminate the first *Gingles* precondition (requiring that a minority group constitute a geographically compact majority with the ability to elect its desired candidate) when evaluating influence-dilution, or packing, claims under Section 2.[77] Despite discussing the ways in which the *Gingles* preconditions could be adjusted to address packing claims under Section 2, the *Voinovich* Court avoided the issue by concluding that any analysis of the first *Gingles* precondition was futile because the appellees did not satisfy the third *Gingles* precondition, requiring that a majority white voting bloc interfered with the minority group's ability to elect its desired candidate.[78]

In *Bartlett v. Strickland*, the Supreme Court went even further when it found that Section 2 does not require the mandated creation of cross-over districts.[79] During North Carolina's redistricting process, the minority population within what was once considered a majority-minority district had fallen below 50%.[80] Out of concern that it would dilute minority voting strength and violate Section 2, the North Carolina General Assembly created a cross-over district to give Black voters the opportunity to join white voters to elect the Black voters' desired candidate.[81] The controversy surrounding the creation of this cross-over district at issue in *Bartlett* stemmed from the need to create the district across multiple counties, which violated the North Carolina Constitution.[82] Because certain federal laws supersede state election laws, even state constitutions, North Carolina's state

75. *Id.*
76. *Voinovich*, 507 U.S at 154.
77. *Id.* at 158.
78. *Id.*
79. Bartlett v. Strickland, 556 U.S. 1, 23 (2009) (plurality opinion).
80. *Id.* at 8.
81. *Id.*
82. *Id.* at 7 ("The state laws are provisions of the North Carolina Constitution that prohibit the General Assembly from dividing counties when drawing legislative districts for the State House and Senate.").

officials argued that the cross-over district had to be divided across multiple counties, in violation of state law, in order to comply with Section 2.[83] Referencing the first *Gingles* precondition, the state trial court determined that the cross-over district gave Black voters (with the help of white cross-over voters) a "de facto" majority-minority district.[84] The Supreme Court of North Carolina, however, disagreed with the trial court's reasoning, noting that the creation of this cross-over district was not mandated by Section 2 because Black voters did not constitute a majority of the district's voting age population (i.e., the Black voters did not satisfy the first *Gingles* precondition).[85]

In affirming the North Carolina Supreme Court's interpretation that the minority group had to constitute a numerical majority, the *Bartlett* plurality relied on three main considerations. First, the plurality noted that allowing for cross-over districts under Section 2 would obliterate the first *Gingles* precondition by no longer requiring that the minority group constitute a geographically compact majority, and the third *Gingles* precondition because a portion of the white voting bloc would now *support* the minority group's desired candidate.[86] Second, the plurality expressed its concern that mandating the creation of cross-over districts under Section 2 would require race to play an even more prominent role in redistricting.[87] Lastly, the plurality worried about the practicality and sustainability of making judicial predictions about race and party over the long term, and how such predictions would interfere with a court's ability to rely on neutral, principled redistricting rationales going forward.[88] Given the importance of cross-over districts as a potential remedy for vote-packing claims, the Court's refusal to mandate their creation under Section 2 of the VRA effectively precludes plaintiffs, like those in *Voinovich,* relief.

II. "UNPACKING" THE PROBLEM

As discussed in Part I, the Supreme Court has limited the scope and reach of vote dilution claims under Section 2 and may be

83. *Id.*
84. *Id.* at 9.
85. *Bartlett*, 556 U.S. at 9.
86. *Id.* at 16.
87. *Id.* at 21.
88. *Id.* at 22–23.

nearing the total destruction of Section 2, just as the Court rendered Section 4 of the VRA effectively inoperable in *Shelby County*.[89] This Part focuses on the need for Congress to act swiftly by first highlighting recent developments that illustrate Section 2's precarity. In light of the enormous interests at stake, the remainder of this part lays out an empirical analysis, informed by three regression analyses, to further illustrate the need for a vote-packing cause of action under Section 2. Finally, the significant influence of race on both the partisan composition of congressional districts and minority voter turnout is key to informing the framework proposed in Part III.

A. THE URGENCY OF NOW

The Court's treatment of Section 4 of the VRA in *Shelby County v. Holder* portends a perilous fate for Section 2. In *Shelby County,* the Supreme Court invalidated Section 4(b) as unconstitutional—forty-eight years after it was passed and after decades of enforcement.[90] Section 4(b) created a formula to determine which jurisdictions—notably those with a history of discriminatory voting practices—would have to go through federal "preclearance" before changing their voting procedures.[91] In striking down Section 4(b), the Court noted how society and voting rights have drastically improved since 1965.[92] Further, in *De Grandy*, the Supreme Court disregarded the past and continued discrimination of Hispanic voters, noting instead how the redistricting plan's guarantee of proportionality (comparing the proportion of Hispanic voters to the share of the Hispanic voting-age population) negated any concerns of the plan's impact on diluting the voting strength of Hispanic voters.[93] The Court's opinion in *De Grandy* suggests that proportional representation can serve as an escape valve for state legislatures and districting commissions hoping to avoid Section 2 liability. The fact that evidence of continued

89. *See infra* notes 90–92.

90. Shelby County v. Holder, 570 U.S. 529, 557 (2013).

91. *Id.* at 537.

92. *Id.* at 547 ("Nearly 50 years later, things have changed dramatically . . . Those conclusions are not ours alone. Congress said the same when it reauthorized the Act in 2006, writing that '[s]ignificant progress has been made in eliminating first generation barriers experienced by minority voters, including increased numbers of registered minority voters, minority voter turnout, and minority representation in Congress, State legislatures, and local elected offices.'" (quoting Pub. L. No. 109-246, § 2(b)(1), 120 Stat. 577 (2006))).

93. Johnson v. De Grandy, 512 U.S. 997, 1013–16 (1994).

discrimination is not dispositive in Section 2 analyses could impact the relevance and viability of the probative factors outlined by the Senate in connection with the 1982 VRA amendments (including factors such as a history of official state discrimination in voting and the extent of racially polarized voting in the state, among others).[94] Accordingly, reimagining, revamping, and reworking Section 2 of the VRA is of the utmost importance—especially given the evidence of continued voting discrimination practices today.[95]

In fact, the House of Representatives recognized the persistence of discriminatory voting practices in 2019, and introduced a bill to update Section 4(b)'s coverage formula accordingly.[96] The bill, H.R. 4, would have reinstated federal government preclearance requirements for any voting law change in thirteen states: Alabama, Arizona, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, New York, North Carolina, South Carolina, Texas, and Virginia.[97] Figure 1 shows the current distribution of ethnic minority groups by county—the color orange represents the concentration of Black populations across the country.

94. *See supra* note 49 (describing factors that should guide a Section 2 analysis).

95. *See infra* note 97.

96. H.R. 4, 116th Cong. (2019).

97. Ella Nilsen, *The House Has Passed a Bill to Restore Key Parts of the Voting Rights Act*, VOX (Dec. 6, 2019), https://www.vox.com/2019/12/6/20998953/house-bill-voting-rights-advancement-act [https://perma.cc/3N79-6YUZ]. States like California, are included in this list because certain counties would be subject to preclearance requirements. *See* United States v. Alameda County, California, 2011 WL 9168598 (N.D. Cal.) (seeking to enforce Section 4 of the VRA, which required certain election-related materials and information to be translated for Spanish and Chinese-speaking voters with limited English proficiency).

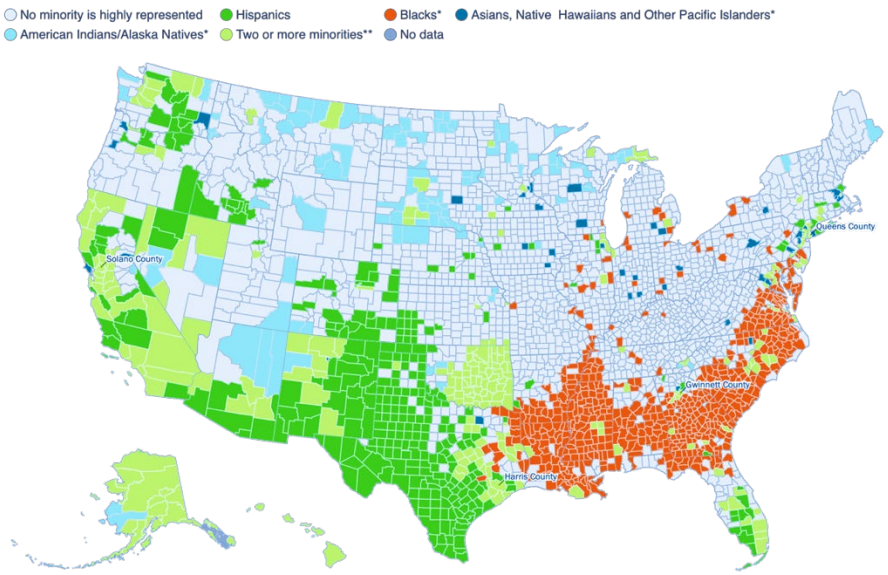


Figure 1. *Where Race-Ethnic Minority Groups Are Highly Represented (by County)*[98]

Perhaps most telling is that eight of the thirteen states identified have a relatively high percentage of Black people.[99] Additionally, thirty of the fifty-two (58%) congressional districts represented by Black Members in the House of Representative for the 116th Congress include eleven of these thirteen states.[100] The overlap between states with high concentrations of Black people and states with a noted persistence of discriminatory voting practices suggests that nefarious redistricting plans are not outside the realm of possibility. In fact, this overlap ultimately raises the stakes for the exploitation of the redistricting process through a variety of means—one of which could be vote-packing. Put simply, many of these states have a sordid track record when it comes to voting discrimination and voting rights. H.R. 4 passed in the House of Representatives on December 9, 2019; it was never considered by the Senate Judiciary Committee and was never

98. William H. Frey, *Six Maps That Reveal America's Expanding Racial Diversity*, BROOKINGS INST. (Sept. 5, 2019), https://www.brookings.edu/research/americas-racial-diversity-in-six-maps/ [https://perma.cc/7CGC-2KK8].

99. These states are Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia.

100. *See infra* Appendix I.

enacted into law. In the drafting of H.R. 4, however, the House's recognition of continued discriminatory voting practices in at least thirteen states since *Shelby County* suggests that the Court's optimism about the improvement of both society's progress and voting rights is likely misplaced or, at the very least, not justified by the post-*Shelby County* realities.

Moreover, the Court's previous practice of reading vote dilution claims into Section 2 of the VRA is likely in jeopardy. Though the Court noted in *Shelby County* that "Section 2 is permanent, applies nationwide, and is not at issue in this case,"[101] Chief Justice Roberts also clarified that Section 4's practice of preclearance "is based on voting tests and access to the ballot, not vote dilution."[102] The Chief Justice's distinction warrants attention because Justices Thomas and Gorsuch, as well as late-Justice Scalia, applied similar logic to conclude that vote dilution is *not* contemplated by Section 2 of the VRA.[103] In his concurrence in *Bartlett*, Justice Thomas, joined by Justice Scalia, noted:

> The text of § 2 of the Voting Rights Act of 1965 does not authorize any vote dilution claim, regardless of the size of the minority population in a given district. I continue to disagree, therefore, with the framework set forth in *Thornburg v. Gingles* for analyzing vote dilution claims because it has no basis in the text of § 2. I would not evaluate any Voting Rights Act claim under a test that "has produced such a disastrous misadventure in judicial policymaking."[104]

The Supreme Court made a similar pronouncement in *Abbott v. Perez*, in which plaintiffs challenged Texas' 2011 redistricting plans following the 2010 census.[105] In a concurring opinion in *Perez*, Justice Thomas, joined by Justice Gorsuch, reiterated that Section 2 "does not apply to redistricting [and, therefore, it] cannot provide a basis for invalidating any district."[106] Justice Thomas'

---

101. Shelby County v. Holder, 570 U.S. 529, 537 (2013).
102. *Id.* at 554.
103. Bartlett v. Strickland, 556 U.S. 1, 26 (2009) (Thomas, J., concurring in judgment).
104. *Bartlett*, 556 U.S. at 26 (Thomas, J., concurring in judgment) (citing Holder v. Hall, 512 U.S. 874, 893 (1994) (Thomas, J., concurring in the judgment)) (internal citations omitted). In Justice Thomas' mind, "standard, practice, or procedure" only applies to "state enactments that limit citizens' access to the ballot." *Id.*
105. Abbott v. Perez, 138 S. Ct. 2305, 2315 (2018).
106. *Id.* at 2335 (Thomas, J., concurring).

Perez concurrence cited to his concurrence in *Holder v. Hall*, in which he suggested that the *Gingles* test and the 1982 VRA amendments provide only a "weak foundation" for reading vote dilution claims into Section 2 of the VRA.[107]

The current composition of the Supreme Court suggests that this trend of attempting to divorce vote dilution from Section 2 claims will continue. For example, the Court's plurality opinion in *Bartlett*, which rejected the mandated creation of cross-over districts under Section 2, still endorsed the *Gingles* test for the creation of majority-minority districts when a cracking claim is at issue.[108] This suggests that the Court, with Chief Justice Roberts and Justice Alito joining the three more liberal justices, namely, could have the necessary five votes to push back against the assertion advanced by both Justices Thomas and Gorsuch that no vote dilution claim is actionable under Section 2. With significant uncertainty over whether the Supreme Court will continue to treat vote dilution claims as actionable under Section 2, the need for Congress to step in and clarify the viability of vote dilution claims under Section 2 is of the utmost importance. In fact, late-Justice Ginsburg, in her dissenting opinion in *Bartlett,* said as much: "[t]he plurality's interpretation of § 2 . . . [that it does not apply to cross-over districts] is difficult to fathom and severely undermines the statute's estimable aim. Today's decision returns the ball to Congress' court. The Legislature has just cause to clarify beyond debate the appropriate reading of § 2."[109] Congress would be wise to heed these words.

The immediate need for Congressional action on vote dilution is further underscored by the fact that the current Supreme Court has expressed antipathy towards majority-minority districts, the only Supreme Court-endorsed remedy under Section 2. In *De Grandy*, the Supreme Court noted how the race conscious aspect of majority-minority districts makes this remedy "second best."[110] Moreover, in *Bartlett*, the plurality reiterated that its intent was not to "entrench majority-minority districts by statutory command, for that, too, could pose constitutional concerns."[111]

---

107. Holder v. Hall, 512 U.S. 874, 923 (1994) (Thomas, J., concurring in judgment).

108. *See Bartlett*, 556 U.S. at 11–26 (plurality opinion) (Roberts, C.J., joined by Justices Alito and Kennedy) (applying *Gingles* framework).

109. *Bartlett*, 556 U.S. at 44 (Ginsburg, J., dissenting).

110. Johnson v. De Grandy, 512 U.S. 997, 1020 (1994).

111. *Bartlett*, 556 U.S. at 23–24 (plurality opinion).

These constitutional concerns are comparable to those expressed in *Shaw v. Reno*: separating people by race goes against equality.[112] While much of the analysis in Part I.B focused on the tension with the first *Gingles* precondition and questions of whether cross-over voters could satisfy the geographically compact majority requirement, the *Bartlett* plurality also appears to place the third *Gingles* precondition further out of reach for future plaintiffs.[113] In *Bartlett,* the plurality noted how cross-over votes from the majority voting bloc would essentially make the third *Gingles* precondition impossible to satisfy as the majority white voting bloc would actually be supporting the minority group's preferred candidate.[114] This would eliminate the need for the creation of majority-minority districts altogether.[115] The *Bartlett* plurality then noted that if a state intentionally tried to destroy cross-over districts, there could be potential relief under the Fourteenth or Fifteenth Amendments.[116] Limiting relief to claims asserted under the Fourteenth and Fifteenth Amendments, which include a problematic intent requirement, however, would effectively restrict a court's Section 2 analysis to an interpretation and a framework Congress expressly repudiated in the 1982 VRA amendments.[117]

The Supreme Court's decision in *Brnovich v. Democratic National Committee* further demonstrates how the current Court remains hostile to Section 2 claims. Though much of the Section 2 jurisprudence following *Thornburg v. Gingles* has involved vote dilution claims, the *Brnovich* Court noted that the case marked the first time the Court was "called upon . . . to apply § 2 . . . to regulations that govern how ballots are collected and counted."[118] In *Brnovich*, the alleged Section 2 violations concerned Arizona laws, prohibiting out-of-precinct voting (and not counting these votes) and criminalizing the collection of mail-in ballots by individuals who are not postal workers, elections officials, or a voter's caregiver or close relative.[119] Specifically, the Democratic National Committee argued that the laws "adversely and

112. Shaw v. Reno, 509 U.S. 630, 643 (1993).
113. *Bartlett*, 556 U.S. at 24.
114. *Id.* at 16.
115. *Id.* at 24.
116. *Id.*
117. *See supra* note 44.
118. Brnovich v. Democratic Nat'l Comm., 141 S. Ct. 2321, 2330 (2021).
119. *Id.*

disparately affect[ed] Arizona's American Indian, Hispanic, and African American citizens" and that the ballot-collection restriction had been "enacted with discriminatory intent."[120] Despite conceding the "modest evidence of racially disparate burdens" imposed by the two laws, Arizona's justification of preventing voter fraud led the Supreme Court to conclude that Section 2 had not been violated.[121] Accordingly, the Court's decision not to afford a Section 2 remedy for ballot collection and counting measures that have racially disparate burdens is consistent with its continued narrowing of the scope of cracking claims, and its unwillingness to create a cognizable remedy for packing claims.

Finally, and most recently, the Supreme Court sent a another concerning signal when it agreed to hear, during the 2022-2023 term, a challenge to the scope of vote dilution claims under Section 2. In *Merrill v. Mulligan*, the Court granted two applications for stays, ultimately halting a district court order that required Alabama to redraw its congressional districts.[122] The United States District Court for the Northern District of Alabama leveraged the *Gingles* test and the probative Senate factors to assess a Section 2 claim alleging that a second majority-Black congressional district could have been created by the Alabama Legislature.[123] The district court did "not regard the question whether the . . . plaintiffs are substantially likely to prevail on the merits of their Section [2] claim as a close one," and noted that the redistricting plan likely violated Section 2.[124] Accordingly, the district court issued a preliminary injunction ordering the legislature to enact a new map.[125] The primary rationale for the stay of the district court's preliminary injunction centered on the chaos that would ensue with redrawing the map so close to the primary elections.[126] The challenge on the merits focuses on: "whether a second majority-minority congressional district (out of seven total districts in Alabama) is required by the Voting Rights Act and not prohibited by the Equal Protection Clause."[127] Justice

120. *Id.* at 2334.
121. *Id.* at 2348.
122. Merrill v. Milligan, 142 S. Ct. 879 (2022) (mem.).
123. Singleton v. Merrill, 2022 WL 265001 at *56–74 (N.D. Ala., Jan. 24, 2022).
124. *Id.* at *74.
125. *Id.* at *81.
126. Merrill v. Milligan, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring).
127. *Id*. at 881 (Kavanaugh, J., concurring).

Kavanaugh attempted to assuage concerns by reiterating that, "[t]he stay order does not make or signal any change to voting rights law. The stay order is not a ruling on the merits, but instead simply stays the District Court's injunction *pending a ruling on the merits*."[128] Justices Kagan, Breyer, and Sotomayor, however, illuminated the problematic implications of the Court's granting of the stay:

> Today's decision is one more in a disconcertingly long line of cases in which this Court uses its shadow docket to signal or make changes in the law, without anything approaching full briefing and argument. Here, the District Court applied established legal principles to an extensive evidentiary record. Its reasoning was careful—indeed, exhaustive—and justified in every respect. To reverse that decision requires upsetting the way Section 2 plaintiffs have for decades—and in line with our caselaw—proved vote-dilution claims.[129]

Taken together, the Supreme Court's current posture underscores the urgent need for immediate Congressional action to push back against the forces seeking not only to defang Section 2, but to render it completely toothless.

B. METHODOLOGY

1. *Hypotheses:*

In making the case for creating a cognizable vote-packing claim under Section 2, this Note tests the validity of two hypotheses. These hypotheses are centered on identifying and pinpointing the effects of concentrating minorities into congressional districts represented by Black Members of the House of Representatives in the 116th Congress.[130] In particular, the author tested two questions. First, does the percentage of minorities in a district increase the margin by which Democrats are expected to be elected? (Hypothesis 1). Second, does the percentage of minorities in the district negatively impact voter turnout? (Hypothesis 2).

---

128. *Id.* at 879 (Kavanaugh, J., concurring) (emphasis in original).

129. *Id.* at 889 (Kagan, J., dissenting).

130. This Note focuses specifically on Black Members of the House of Representatives because the intent of Section 2 centered on allowing minorities the opportunity to elect their preferred candidate—often times a member of their own race, who would otherwise lose due to racially polarized voting.

Confirmation of either hypothesis would demonstrate a harm caused by packing and, thus, the need for a remedy. As the remedy is unlikely to be available from the Supreme Court, the remedy needs to be supplied by Congress.

2. *Data Sources*

Black Members of the House of Representatives: There were fifty-two Black Representatives in the 116th Congress.[131]

Citizen Voting Age Population and Race: After identifying the Black Representatives in the 116th Congress and their respective congressional district, focus then shifted to the Census Bureau's 2018 *American Community Survey*. In this survey, the Bureau compiled data on the citizen voting-age population by race for each congressional district in 2018[132] and the number of votes cast in the 2020 general and 2018 midterm elections by congressional district.[133]

Partisan Voting Index (PVI): The Cook Political Report, founded in 1984 by Charlie Cook, is a "source of non-partisan political analysis that many rely on for accurate political forecasting."[134] Introduced in August 1997, the "Partisan Voting Index" (PVI)

131. *See* Appendix I. The total list of Black Representatives excludes Delegates (i.e., non-voting members): namely, Stacey Plaskett (Virgin Islands) and Eleanor Holmes Norton (District of Columbia). Further, this list does not include Members who replaced House Members who died during the 116th Congress: namely, Representatives Kwanza Hall (replacing Rep. John Lewis) and Kweisi Mfume (replacing Rep. Elijah Cummings). To determine the total number of Black Representatives in the 116th Congress, the author leveraged a table compiled by the U.S. House of Representatives' Office of the Historian. *Black-American Members by Congress, 1870–Present*, *OFF.* OF THE HISTORIAN, U.S. HOUSE OF REPRESENTATIVES, https://history.house.gov/Exhibitions-and-Publications/BAIC/Historical-Data/Black-American-Representatives-and-Senators-by-Congress [https://perma.cc/6SS2-2VH8]. To determine the districts represented by each Black Member, the author leveraged the Congressional Black Caucus' membership list and Google searches. *See Membership*, CONG. BLACK CAUCUS, https://cbc.house.gov/membership [https://perma.cc/4XDX-QQPU].

132. U.S. CENSUS BUREAU, AMERICAN COMMUNITY SURVEY tbls.S2901, B01001B, B01001C, & B01001G (2018), https://www.census.gov/acs/www/data/data-tables-and-tools/subject-tables/ [https://perma.cc/4X3A-UDQK].

133. *Statistics of the Congressional Election November 6, 2018*, OFF. OF THE CLERK, U.S. HOUSE OF REPRESENTATIVES, https://historycms2.house.gov/Institution/Election-Statistics/2018election/ [https://perma.cc/4LQA-D6YH]; *Statistics of the Congressional Election November 3, 2020*, OFF. OF THE CLERK, U.S. HOUSE OF REPRESENTATIVES, https://historycms2.house.gov/Institution/Election-Statistics/2020election/ [https://perma.cc/KD4R-B8ZB].

134. *History*, COOK POL. REP., https://cookpolitical.com/history [https://perma.cc/L6PP-2X92].

measures the competitiveness of each of the 435 congressional districts.[135] The PVI is generated by averaging the vote share of Democrats and Republicans during the two most recent presidential elections.[136] The average Democratic share across these two presidential elections was 51.5%, and the average Republican share across these two presidential elections was 48.5%.[137] For example, if Barack Obama won a congressional district with 58% of the vote in 2012 and Hillary Clinton won that same congressional district with 55% of the vote in 2016, the average across both presidential elections would be 56.5% and the congressional district's PVI score would be D+5 (56.5% minus 51.5%).[138]

3. Variables and Measures

This Note's analysis relies on three simple regressions to test the two aforementioned hypotheses.[139] To inform these simple regressions, this Note leverages one independent variable: "Percent Minority." This variable allows for examination of the effects of excessively packing minority voters into districts. For purposes of this Note, the "Percent Minority" variable captures the total percentage of Black and Hispanic voters in the congressional district.[140] Solely looking at a "Percent Black" variable overlooks

---

135. Wasserman & Flinn, *supra* note 36; *see also* League of Women Voters v. Commonwealth, 178 A.3d 737, 780 (Pa. 2018) ("The PVI is calculated by taking the presidential voting returns in a congressional district for the previous two elections, subtracting the national performance of each political party, and then calculating the average over those two elections.").

136. Wasserman & Flinn, *supra* note 36.

137. *Id.* For purposes of this Note, the two most recent presidential elections were in 2016 and 2012.

138. *Id.*

139. At a high level, simple linear regressions estimate the relationship between two quantitative variables–one of which is the independent or predictor variable and the other of which is the dependent or response variable. The assumption or "null hypothesis" of a simple linear regression is that no relationship exists between the independent and dependent variables. To assess whether to accept or reject this null hypothesis, attention turns to what is referred to as the "p-value." The p-value calculates the probability of seeing the observed effect between two variables when the null hypothesis is true (i.e., that no relationship exists between the variables). A p-value of less than 5% ($p < .05$) means that the null hypothesis is rejected, ultimately leading to the conclusion that there is a "statistically significant relationship" between the independent and dependent variable.

140. This Note cabins the data analysis to these two groups in particular because Black and Hispanic voters have been the subjects of some of the most prominent Section 2 litigation. *See, e.g.,* City of Mobile v. Bolden, 446 U.S. 55 (1980) (Black voters) *and* Johnson v. De Grandy, 512 U.S. 997 (1994) (Hispanic voters).

those Black House members who represent a coalition of Black and Hispanic voters, particularly in states like Florida, Texas, and California.

This Note also leverages three dependent variables: (i) PVI; (ii) Voter Turnout in the 2020 general election; and (iii) Voter Turnout in the 2018 midterm elections. Put another way, this Note's analysis gauges whether race has any observed impact on PVI and on Voter Turnout in both the 2020 general election and 2018 midterm elections. By examining the link between race, a district's competitiveness, and voter turnout, this Note's analysis lends more credence and credibility to the use of both race and PVI as factors when attempting to assess vote-packing claims.

4. *Why PVI?*

Through use of PVI, this Note seeks to pinpoint a variable that can create a benchmark for the competitiveness of a congressional district—which, in turn, will help to inform a vote-packing claim under Section 2. Though offered as an integral part of this Note's proposal for a vote-packing claim, it is worth noting that PVI has not been widely reviewed or considered by courts—with only two district courts providing some initial mixed reviews. In *Benisek v. Lamone*, the United States District Court for the District of Maryland noted:

> While Plaintiffs have adduced some persuasive predictive evidence through the Cook Partisan Voting Index and expert reports and testimony, the Court is unconvinced, certainly by the standard governing the issuance of a preliminary injunction, that such evidence is determinative of but-for causation. In particular, the Court is not convinced that such predictive evidence accurately accounts for subjective factors such as evolving political temperament and the personal strengths or weaknesses of individual candidates. The surprising results of various elections in 2016 illustrate the limitations of even the most sophisticated predictive measures. Experience teaches that voter preferences are

> mutable and that American democracy is characterized by a degree of volatility and unpredictability.[141]

So, while the district court was unconvinced that PVI demonstrated but-for causation in the *Benisek* political gerrymandering case, the district court still acknowledged that PVI could be persuasive. Further, the dissenting opinion gave credence to an expert's testimony that PVI is a good measurement of the partisan leaning of a congressional district or state in comparison to the rest of the nation. The dissent also alluded to academic analysis supporting the accuracy of PVI.[142]

Similarly, in *Committee for a Fair & Balanced Map v. Illinois State Board of Elections*, the United States District Court for the Northern District of Illinois utilized PVI in its analysis to find that it did not show excessive political gerrymandering.[143] The court ultimately concluded, however, that PVI is not a particularly reliable measure of partisan voting in congressional elections.[144] What differentiates this case, however, is the fact that the plaintiffs—who were concerned with Republican vote dilution—attempted to show that a marginal PVI (e.g., a district shifting from R+1 to D+1) demonstrated political gerrymandering in favor of Democrats.[145] The district court rebuffed this claim by noting that such a marginal PVI could not reliably predict who would actually win the election or show that the district truly favored Democrats.[146] The analysis in this Note's proposal is more nuanced: specifically, it does not focus on districts with marginal PVI values, but instead involves the analysis of districts that clearly favor Democrats. While the critiques of these judges may be warranted in a case involving marginal PVIs, they are likely inapplicable in the context of this Note, which grapples with

---

141. Benisek v. Lamone, 266 F. Supp. 3d 799, 813 (D. Md. 2017), *aff'd*, 138 S. Ct. 1942 (2018).

142. *Id.* at 826 (Niemeyer, J., dissenting). Because this case involved the constitutionality of apportionment, the district court convened three judges to preside over the case—thereby allowing for a dissenting opinion at the district court level. *See* 28 U.S.C. § 2284(a) ("A district court of three judges shall be convened when otherwise required by Act of Congress, or when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body.").

143. Comm. for a Fair & Balanced Map v. Ill. State Bd. of Elections, 835 F. Supp. 2d 563, 578 (N.D. Ill. 2011).

144. *Id.* at 579.

145. *Id.* at 578.

146. *Id.*

packing, hyper-partisanship, non-competitiveness, and relatively high PVI values.

These two district court decisions are outliers by the very fact of addressing PVI.[147] Furthermore, both cases focused on PVI in the context of political gerrymandering, and neither discussed its relation to or use in the racial gerrymandering context. The novelty of this metric can understandably bring about questions. There is, however, an opportunity for further exploration as a viable metric for districts—like the ones contemplated in this Note—that can have an over-concentration of politically-cohesive minority groups. Greater familiarity with the metric and additional opinions across the legislative and judiciary branches are needed before it is prematurely dismissed as a benchmark to assess vote-packing claims.

Despite the novelty of the use of PVI in the minority voting rights context and the judiciary's initial unwillingness to fully embrace the metric, scholarship has acknowledged the elephant in the room: that race and partisan makeup are inextricably linked.[148] Following *Rucho*, in which the Court held that partisan gerrymandering claims are non-justiciable, Sara Tofighbakhsh's concern is that legislatures will simply double down on "partisanship" as their justification for their redistricting plan to obfuscate a racially discriminatory intent.[149] Sara Tofighbakhsh highlights the connection between race and partisan makeup by urging courts to adopt a "race-as-proxy" approach to racial gerrymandering cases when both racially discriminatory and partisan interests can be served by similar or identical conduct.[150] Along a

147. In fact, a preliminary keyword search of "partisan vot! index" in Westlaw only reveals seven (7) cases that even speak to the PVI metric: Benisek v. Lamone, 266 F. Supp. 3d 799 (D. Md. 2017), *aff'd*, 138 S. Ct. 1942 (2018); Agre v. Wolf, 284 F. Supp. 3d 591 (E.D. Pa.), *appeal dismissed as moot,* 138 S. Ct. 2576 (2018), and *appeal dismissed sub nom.* Scarnati v. Agre, 138 S. Ct. 2602 (2018); Ohio A. Philip Randolph Inst. v. Householder, 373 F. Supp. 3d 978 (S.D. Ohio), *vacated and remanded,* 140 S. Ct. 101 (2019), and *vacated and remanded sub nom*. Chabot v. Ohio A. Philip Randolph Inst., 140 S. Ct. 102 (2019); Benisek v. Lamone, 348 F. Supp. 3d 493 (D. Md. 2018), *vacated and remanded sub nom*. Rucho v. Common Cause, 139 S. Ct. 2484 (2019); Ohio A. Philip Randolph Inst. v. Householder, 367 F. Supp. 3d 697 (S.D. Ohio 2019); Comm. for a Fair & Balanced Map v. Ill. State Bd. of Elections, 835 F. Supp. 2d 563 (N.D. Ill. 2011); League of Women Voters v. Commonwealth, 178 A.3d 737 (Pa. 2018).

148. *See infra* notes 149–153.

149. Sara Tofighbakhsh, Note, *Racial Gerrymandering After* Rucho v. Common Cause*: Untangling Race and Party*, 120 COLUM. L. REV. 1885, 1924 (2020) ("The incentive to obfuscate true objectives [of gerrymanders] in court will . . . be as high as ever for both legislatures and challengers.").

150. *Id.* at 1924–1927.

similar vein, Bruce E. Cain and Emily R. Zhang coined the term "conjoined polarization," which describes "[t]he more consistent alignment of race, party, and ideology since 1965."[151] Cain and Zhang document the historical inflection points and growing trend towards ideological consistency and racial distinctiveness across the Democratic and Republican parties.[152] Conjoined polarization ultimately creates a dynamic in which racially motivated redistricting can be obscured by partisan justifications—and thus not justiciable.[153] Taken together, recent scholarship suggests that any proposal to reform racial gerrymandering that does not at least contemplate or account for the interconnectedness of race and party is inadequate. For these reasons, this Note's empirical analysis incorporates PVI as a critical variable in understanding how to best combat subtle racial gerrymandering and minority vote dilution going forward.

C. RESULTS

This part focuses specifically on how race impacts (i) the partisan composition of the congressional district and (ii) minority voter turnout. These areas are most relevant and probative as Section 2 centers on the creation of a district that is comprised of politically cohesive minority constituents who are, ideally, able to elect their desired representative. These statistically significant relationships show that race impacts the competitiveness of congressional districts and that race impacted voter turnout in the 2020 general election and the 2018 midterm elections.

---

151. Bruce E. Cain & Emily R. Zhang, *Blurred Lines: Conjoined Polarization and Voting Rights*, 77 OHIO ST. L.J. 867, 869 (2016).

152. *Id.* at 876 ("Racial sorting and party sorting trends have been closely intertwined. Civil rights policies gave socially conservative white Democrats reason to defect to the Republican Party. Immigration policies also enabled the nonwhite and non-European population to grow and eventually enter a coalition with liberal whites. At the same time, both parties became more ideologically consistent, with more within-party conformity in social and economic policy. This undercut the ideological heterogeneity that in the immediate post World War II era had limited the polarization of activists, donors, and representatives in both parties. The Democratic and Republican parties became more ideologically consistent and racially distinctive.").

153. *Id.* at 887–88 ("Legislators may in the future achieve the same racial ends simply by looking at partisan data: African-Americans and Latinos are distinctively more Democratic than whites and Asian-Americans. The partisan cue effectively serves the purpose of the racial cue. In the context of conjoined polarization, race and politics are mirror images of each other and can be used interchangeably for redistricting."); *see infra* note 176.

1. *Race has a Statistically Significant Impact on the PVI of the Congressional District*

Post-*Gingles*, the creation of majority-minority districts—comprised of politically cohesive minorities—led to the largest increase ever in Black representation in the House of Representatives.[154] Additionally, thirty-two Black House members in the 116th Congress (or 62%) represent majority-minority districts, and fifty-one of the fifty-two Black House members (or 98%) are Democrats.[155] Taken together, the author's first hypothesis is that as the percentage of minorities increases in the congressional district with a Black House member, the congressional district's PVI increasingly favors the Democratic Party.

Figure 2 shows that there is a statistically significant relationship ($p < .01$) between the percentage of minorities (Black and Hispanic voters) in the congressional district with a Black House member in the 116th Congress and the PVI of the congressional district. Put another way, as the district becomes increasingly Black and Hispanic, the district becomes increasingly Democratic. Specifically, a 10% increase in minority voters is correlated with a 4.2–point increase in the PVI. This is important, as it reveals how PVI responds to the packing of racial minorities into congressional districts. It also provides for a quantitative measurement of the hyper-partisanship within congressional districts. The strong correlation illustrates how intertwined race and party can be and could help to illuminate how architects of redistricting plans exploit this phenomenon for nefarious ends.[156] The close connection between race and party, as illustrated in Figure 2, can be used to illegally gerrymander by race under the guise of a permissible partisan gerrymander. This risk only emphasizes the power and potential of PVI as an indication of non-competitiveness that gives rise to notions of an excessive racial gerrymander.

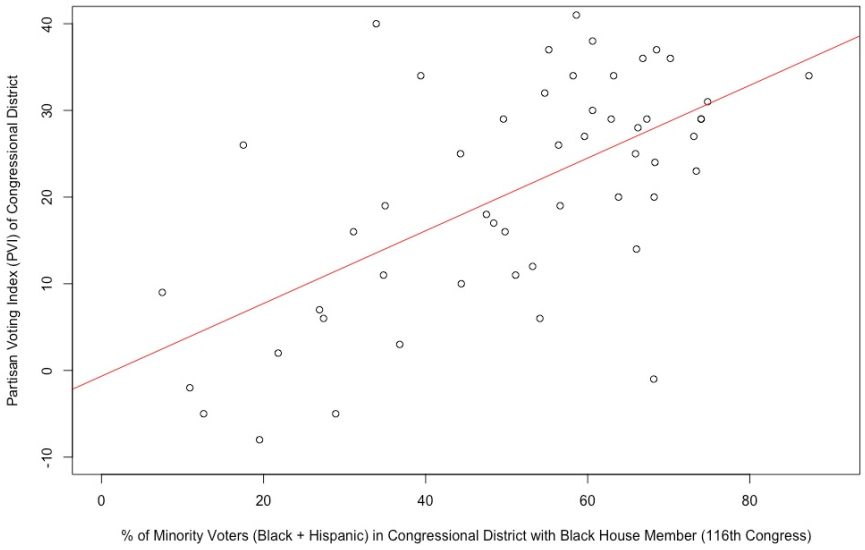
---

154. BRUDNICK & MANNING, *supra* note 51.

155. *See* Appendix I.

156. *See* Bernstein, *supra* note 67 (describing the George H. W. Bush Administration's desire to hyper-concentrate minorities in majority-minority districts); *see also* Cain & Zhang, *supra* note 152, at 876, 887–88; Tofighbakhsh, *supra* note 150.

Figure 2:
PVI by % of Minority Voters in Congressional District with Black House Member (116th Congress)



Summary Results for Figure 2

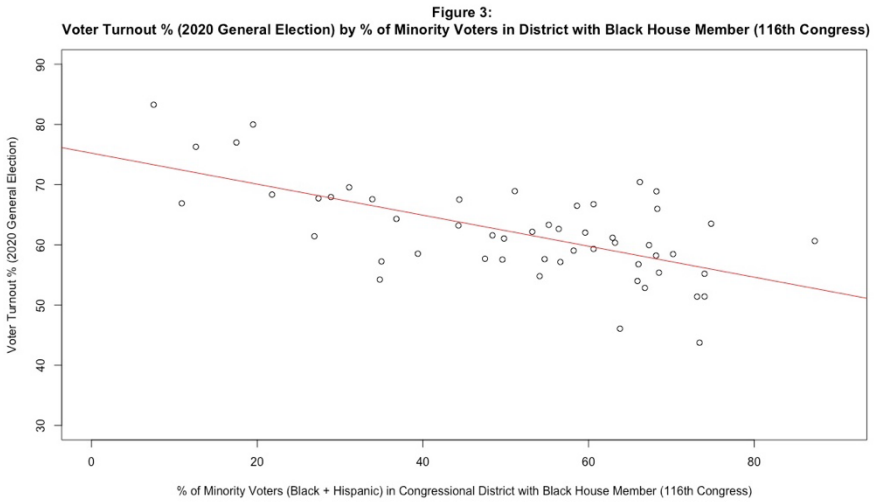
Dependent variable:	Partisan Voting Index
Percent Minority	0.419***
	(0.076)
Constant	-0.661
	(4.156)
Observations	52
R^2	0.379
Adjusted R^2	0.367
Residual Std. Error	10.420 (df = 50)
F Statistic	30.515*** (df = 1; 50)
Note:	*p<0.1; **p<0.05; ***p<0.01

2. Race has a Statistically Significant Impact on Voter Turnout in Districts With a Black House Member in the 116th Congress

In advocating for a remedy for vote-packing claims, it is imperative to not only highlight potential vote dilution, but also

the impact on minorities' participation in the electoral process. One of the main ways to assess electoral participation is through voter turnout. The need to mitigate hyper-concentration is rooted in the belief that it disincentivizes the minorities subjected to such redistricting. For this reason, the second hypothesis offered in this Note is that as the percentage of minorities increases in a congressional district with a Black House member in the 116th Congress, the congressional district's voter turnout rate decreases.

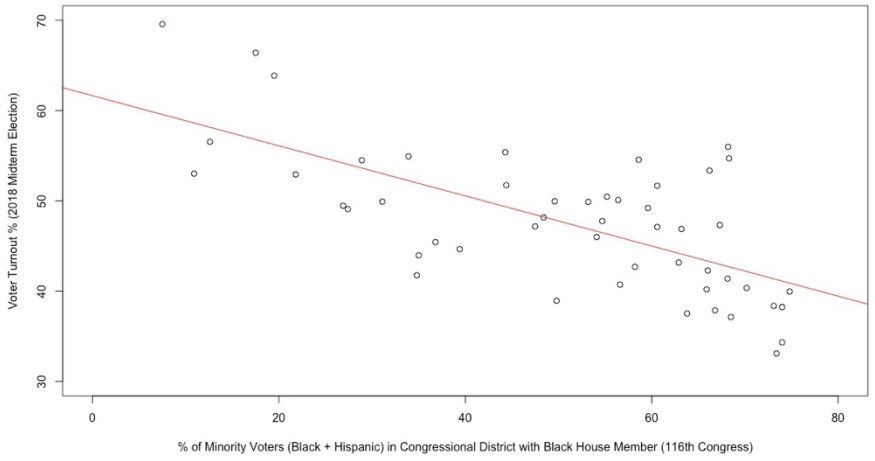
Figures 3 and 4 show that there is a statistically significant relationship ($p < .01$) between the percentage of Black and Hispanic voters in the district with a Black House member in the 116th Congress and the voter turnout rate in the 2020 general election and 2018 midterm elections, respectively. That is, as the percentage of minority voters increases, the voter turnout rate in the 2020 general election and 2018 midterm elections decreases. More specifically, a 10% increase in minority voters is correlated with a 2.58% decrease in voter turnout in the 2020 general election, and with a 2.78% decrease in the 2018 midterm elections. These findings are important because they reveal one of the main disincentivizing effects of excessively packing minorities into a district. While the architect of the redistricting plan is further diluting the minority group's voting strength in other districts, Figures 3 and 4 also demonstrate the potential for the excessive packing to dampen people's desire to vote and to participate in the electoral process.



Summary Results for Figure 3

Dependent variable:	Voter Turnout % (2020 General Election)
Percent Minority	-0.258***
	(0.044)
Constant	75.226***
	(2.392)
Observations	52
R^2	0.411
Adjusted R^2	0.399
Residual Std. Error	5.996 (df = 50)
F Statistic	34.828*** (df = 1; 50)
Note:	*p<0.1; **p<0.05; ***p<0.01

Figure 4:
Voter Turnout % (2018 Midterm Election) by % of Minority Voters in District with Black House Member (116th Congress)



*Summary Results for Figure 4**

Dependent variable:	Voter Turnout % (2018 Midterm Elections)
Percent Minority	-0.278***
	(0.044)
Constant	61.639***

	(2.392)
Observations	50
R^2	0.450
Adjusted R^2	0.438
Residual Std. Error	5.866 (df = 48)
F Statistic	39.220^{***} (df = 1; 48)
Note:	$^{*}p<0.1$; $^{**}p<0.05$; $^{***}p<0.01$

**Note: Reps. Val Demings (FL-10) and Frederica Wilson (FL-24) were excluded. See Appendix I.*

3. Summary of Results

Through three simple regressions, this Note finds the two following statistically significant relationships: (i) that as the percentage of Black and Hispanic voters in the district increases, the PVI of the congressional district with a Black House member in the 116th Congress leans more and more in favor of the Democratic Party; and (ii) that as the percentage of Black and Hispanic voters in the district increases, voter turnout in both the 2020 general election and the 2018 midterm elections decreases in districts with a Black House member in the 116th Congress. The interconnectedness of race and PVI illustrates how a high PVI can not only indicate hyper-concentration and non-competitiveness, but also how an excessive racial gerrymander could be argued to be a purely partisan gerrymander outside of the purview of the courts.[157] Further, the impact of race on voter turnout in 2020 and 2018 demonstrates how excessive packing not only dilutes voting strength, but also potentially decreases willingness to participate in the electoral process. With this understanding of these different statistically significant relationships, the focus now shifts to the work of proposing potential solutions to broaden the scope of vote dilution claims under Section 2.

III. PROPOSED SOLUTIONS

This Note centers on broadening the scope of vote dilution claims under Section 2 of the VRA. As described in the

157. *See infra* note 176.

Introduction, the Supreme Court has identified vote dilution as the primary harm Section 2 seeks to rectify.[158] The Supreme Court has outlined two main types of vote dilution: (i) "the dispersal of blacks into districts in which they constitute an ineffective minority of voters," (i.e., vote fragmentation or cracking); and (ii) "the concentration of blacks into districts where they constitute an excessive majority" (i.e., vote-packing or packing).[159] This Note suggests reinvention of Section 2 along both sets of claims: cracking and vote-packing. Given these two definitions, the proposed solutions seek to expand claims for plaintiffs in three ways: (i) codifying vote dilution claims under Section 2 of the VRA as inclusive of cracking and packing; (ii) bolstering cracking claims; and (iii) proposing a judicial framework for vote-packing claims.

A. CONGRESS SHOULD SPECIFICALLY CODIFY "VOTE DILUTION" CLAIMS UNDER SECTION 2 AS INCLUSIVE OF "CRACKING" AND "PACKING"

As described in Part II, the very notion that Section 2 covers vote dilution claims cannot be taken for granted—the idea has been contested by at least two sitting members of the Supreme Court.[160] As it stands, Chief Justice Roberts and Justice Alito joined the *Bartlett* plurality decision affirming the use of the *Gingles* test for vote dilution claims under Section 2 and likely could, with the support of the Court's three liberal justices, secure five votes to maintain this interpretation. But the precariousness of such a narrow majority and a dismal status quo for Section 2 claims more broadly should compel Congress to act now.

To resolve these competing interpretations of the scope of the statute, Congress should codify vote dilution claims under Section 2 as inclusive of cracking and packing. More specifically, Congress should amend 52 U.S.C. § 10301(a) to state the following:

---

158. League of United Latin Am. Citizens v. Perry, 548 U.S. 399, 402 (2006).

159. *See* Thornburg v. Gingles, 478 U.S. 30, 46 n.11 (1986); Voinovich v. Quilter, 507 U.S. 146, 153–54 (1993).

160. *See supra* notes 104, 107–108 and accompanying text (highlighting Justice Thomas' desire to preclude any vote dilution claims under Section 2); *see also supra* text accompanying note 107 (noting that Justice Gorsuch joined Justice Thomas' concurrence arguing that Section 2 does not apply to redistricting and that Section 2 cannot invalidate a district).

> Standard, practice, or procedure shall include claims of vote dilution either: (i) through the dispersal of members of a class of citizens protected by this subsection into districts in which they constitute an ineffective minority of voters ("vote fragmentation claim" or "cracking claim"); or (ii) through the concentration of members of a class of citizens protected by this subsection into districts where they constitute an excessive majority ("vote-packing claim").[161]

New legislation that codifies vote dilution claims would significantly mitigate the threat of having such claims read out of the statute entirely, which is not a far-fetched possibility given textualism's reign and the current conservative majority of the Supreme Court. Additionally, this Note's proposed solutions would be futile without stronger language protecting not only the Court's *Gingles* framework for cracking claims, but also the underlying presumption that vote dilution is contemplated and protected under Section 2. After all, this presumption is a prerequisite to adopting the broadened scope of vote dilution suggested in the remainder of this Part.

B. UNDER THE CURRENT FIRST *GINGLES* PRECONDITION, CONGRESS SHOULD ALLOW A COALITION OF MORE THAN ONE MINORITY GROUP TO SATISFY THE "NUMERICAL MAJORITY" REQUIREMENT

Though this Note focuses extensively on the need for Section 2 to create a vote-packing claim, Part II reveals the need to reconsider the first *Gingles* precondition: that the minority group "is sufficiently large and geographically compact to constitute a majority in a single-member district."[162] As Figure 2 in Part II illustrates, as the percentage of Black and Hispanic voters increases in a congressional district with a Black House member in the 116th Congress, the PVI of the congressional district leans more and more in favor of the Democratic Party. This correlation suggests that a coalition of more than one minority group could constitute a politically cohesive "numerical majority" as required by the first and second *Gingles* preconditions. Even more telling, twelve Black House members in the 116th Congress, or 20%,

161. *See Gingles*, 478 U.S. at 46 n.11; *Voinovich*, 507 U.S. at 153–54. This language is essentially codifying the Court's definitions of vote dilution.

162. *See Gingles*, 478 U.S. at 50.

represented districts where Black and Hispanic voters collectively constituted a majority.[163]

The Supreme Court has not yet addressed the question of whether a coalition of multiple minority groups can constitute a numerical majority under the first *Gingles* precondition. It is true that the Court assumed, without deciding, that multiple minority groups satisfy this element in *Growe v. Emison*.[164] But as demonstrated in Part I with the eventual preclusion of packing claims under Section 2, the Supreme Court's initial willingness to assume without deciding tells us little to nothing about how it will ultimately decide the issue. Rather, the history of Section 2 jurisprudence suggests that the Supreme Court may opt to continue narrowing the scope of the *Gingles* test by prohibiting the aggregation of distinct minority groups hoping to mount a Section 2 claim. Further, the circuit courts have been split on whether aggregation is permitted under the first *Gingles* precondition.[165]

Despite the Supreme Court's indecision, Congress has begun to recognize the importance of statutorily codifying a cracking claim within Section 2 of the VRA. In fact, on August 24, 2021, the House passed the John R. Lewis Voting Rights Advancement Act of 2021 (VRAA).[166] Most immediately, the bill responds to *Shelby County* by creating a new Section 4 coverage formula and rebukes *Brnovich* by providing additional pathways for plaintiffs to mount a Section 2 vote denial claim.[167] Perhaps most relevant to this Note, the VRAA also codifies the *Gingles* test, incorporates the totality of circumstances analysis first introduced in the Senate Report accompanying the 1982 VRA amendments, and clarifies

---

163. *See* Appendix I.

164. Growe v. Emison, 507 U.S. 25, 41 (1993) ("Assuming (without deciding) that it was permissible for the District Court to combine distinct ethnic and language minority groups for purposes of assessing compliance with § 2, when dilution of the power of such an agglomerated political bloc is the basis for an alleged violation, proof of minority political cohesion is all the more essential.").

165. *See* Pope v. County of Albany, 687 F.3d 565, 572 n.5 (2d Cir. 2012) ("The Circuits are split as to whether different minority groups may be aggregated to establish a Section 2 claim."); *compare* Nixon v. Kent County., 76 F.3d 1381, 1392 (6th Cir. 1996) (prohibiting coalition suits and aggregation), with Concerned Citizens of Hardee Cnty. v. Hardee Cnty. Bd. of Comm'rs, 906 F.2d 524, 526 (11th Cir. 1990) ("Two minority groups (in this case blacks and hispanics) may be a single section 2 minority if they can establish that they behave in a politically cohesive manner.") *and* Campos v. City of Baytown, 840 F.2d 1240, 1244 (5th Cir. 1988) ("There is nothing in the law that prevents the plaintiffs from identifying the protected aggrieved minority to include both blacks and Hispanics.").

166. H.R. 4, 117th Cong. (2021).

167. *Id.*

that a coalition of voters (e.g., Black and Hispanic voters) can satisfy this first *Gingles* precondition of what can constitute a "numerical majority."[168] Though the VRAA moves in the right direction by specifically placing vote dilution squarely within the purview of Section 2 of the VRA, it still, like the Supreme Court, only contemplates the *Gingles* vote fragmentation (cracking) framework and disregards the other form of vote dilution: vote-packing.

Though the House has identified the need to allow for a coalition of minority groups to satisfy the first *Gingles* precondition, the proposal is not without objection or controversy. As Justice Thomas has argued, "[w]e have involved the federal courts, and indeed the Nation, in the enterprise of . . . segregating the races into political homelands that amounts, in truth, to nothing short of a system of 'political apartheid.'"[169] Justice Thomas then described how the drive to create more majority-minority districts has left states in the precarious position of adhering to racial gerrymandering in order to avoid costly VRA litigation.[170] Justice Thomas, however, seems to suggest that minorities should bear the burden of helping our nation overcome its discriminatory approaches to suppressing minorities' right to vote and their ability to participate in the electoral process. Justice Thomas would seek to eradicate an inquiry into vote dilution under Section 2 in hopes that it will put us on a path to this aspirational ideal of a colorblind society. In working towards this goal, it is also imperative that policymakers not overlook the very real ways that past political leaders have sought to concentrate minority voters into districts to give Republicans an electoral advantage.[171] More recently, it is also important not to overlook members of the House of Representatives of the 116th Congress' identification of retrogressive voting practices that have been implemented in at least thirteen states since *Shelby County* invalidated Section 4(b) of the VRA's coverage formula in 2013.[172]

---

168. *Id.*

169. Holder v. Hall, 512 U.S. 874, 905 (1994) (Thomas, J., concurring in the judgment) (citing Shaw v. Reno, 509 U.S. 630, 647 (1993)).

170. *Id.*

171. *See* Bernstein, *supra* note 67 (describing the George H. W. Bush Administration's desire to hyper-concentrate minorities in majority-minority districts).

172. *See supra* note 97.

The biggest elephant in the room seems to be the unwillingness to acknowledge, as was illustrated in Figure 2,[173] that as the percentage of Black and Hispanic voters increases in districts with Black House members in the 116th Congress, the districts lean more and more in favor of Democrats. This finding suggests a confirmation of a commonly-held belief: minority voters are more likely to vote blue. Instead of ignoring this reality, Congress and the courts should acknowledge how redistricting plans can manipulate correlations between race and party to dilute the voting strength of minorities by packing them into districts. For far too long—and even continuing today in the VRAA—the focus of vote dilution has, unfortunately, been confined to cracking claims. This focus is not surprising given the success of the *Gingles* test in bringing about very real and tangible relief to minority voters through the creation of majority-minority districts. While Congress builds on this progress by codifying a Section 2 cracking claim in the VRAA, now is the time to imagine how Section 2 relief can be expanded to codify a vote-packing claim as well.

C. CONGRESS SHOULD CREATE A STANDALONE TEST FOR VOTE-PACKING CLAIMS TO COMPLEMENT THE CURRENT *GINGLES* FRAMEWORK FOR VOTE FRAGMENTATION CLAIMS UNDER SECTION 2

In addition to codifying vote dilution claims and expanding the scope of the first *Gingles* precondition to allow multiple minority groups to satisfy the numerical majority requirement, Congress should also develop a stand-alone test for vote-packing claims. As shown in Part I, the *Gingles* preconditions do not effectively address claims of vote-packing. In fact, in *Voinovich*, the Supreme Court acknowledged the need to either modify or even eliminate the first *Gingles* precondition when assessing vote-packing claims.[174] The unworkable nature of such a standard for vote-packing claims has created a dynamic where the only type of vote dilution contemplated under Section 2 involves cracking claims and the only remedy is the creation of a majority-minority district. Such a narrow remedy essentially leaves the other form of vote dilution (excessively packing minorities into districts) outside of the scope of Section 2 of the VRA. This limited scope would force plaintiffs to seek relief for vote-packing claims under either the

173. *See supra* Part II.
174. *See* Voinovich v. Quilter, 507 U.S. 146, 158 (1993).

Fourteenth or Fifteenth Amendments—meaning they could only likely mount a cognizable claim by doing the near-impossible: demonstrating purposeful and discriminatory intent.[175]

Unfortunately, the Fourteenth and Fifteenth Amendments do not provide a promising path to relief. The Supreme Court has reiterated, on multiple occasions, that partisan gerrymandering is a political, non-justiciable question that is outside of the realm of the judiciary's Article III powers.[176] The Court does concede that there is a role for judicial review with respect to racial gerrymandering claims; the Court references *Shaw v. Reno* as an example, a case involving bizarrely and irregularly-shaped majority-minority districts.[177] However, the Court's reference to the most extreme instance of redistricting supports the notion that future judicial interventions with respect to racial gerrymandering will be similarly confined to egregious and unconscionable redistricting practices. Thus, it does not seem likely that judicial interventions for racial gerrymandering claims under the Fourteenth and Fifteenth Amendments will include relief for instances of vote-packing. Indeed, the Supreme Court has even conceded that claims of unconstitutional racial gerrymanders are hard to prove.[178] Additionally, the architects of redistricting plans can likely conflate political party with race to rebut claims that

175. *See supra* notes 41–43. This is the same intent requirement (embedded in the Fourteenth and Fifteenth Amendments) that Congress felt was too onerous for vote dilution claims in its 1982 VRA Amendments, which now only required plaintiffs to show a discriminatory result or outcome.

176. *See* Rucho v. Common Cause, 139 S. Ct. 2484, 2506–07 (2019) ("We conclude that partisan gerrymandering claims present political questions beyond the reach of the federal courts. Federal judges have no license to reallocate political power between the two major political parties, with no plausible grant of authority in the Constitution, and no legal standards to limit and direct their decisions. '[J]udicial action must be governed by *standard*, by *rule*,' and must be 'principled, rational, and based upon reasoned distinctions' found in the Constitution or laws. Judicial review of partisan gerrymandering does not meet those basic requirements." (citing Vieth v. Jubelirer, 541 U.S. 267, 278–79 (2004) (plurality opinion))).

177. *Id.* at 2495–96; *see also* cases cited *supra* note 52.

178. *See* Bethune-Hill v. Va. State Bd. of Elections, 137 S. Ct. 788, 799 (2017) ("As a practical matter, in many cases, perhaps most cases, challengers will be unable to prove an unconstitutional racial gerrymander without evidence that the enacted plan conflicts with traditional redistricting criteria. In general, legislatures that engage in impermissible race-based redistricting will find it necessary to depart from traditional principles in order to do so. And, in the absence of a conflict with traditional principles, it may be difficult for challengers to find other evidence sufficient to show that race was the overriding factor causing neutral considerations to be cast aside. In fact, this Court to date has not affirmed a predominance finding, or remanded a case for a determination of predominance, without evidence that some district lines deviated from traditional principles.").

race was the motivating or predominant factor in a given redistricting plan.[179]

Faced with these constraints, it has become even more apparent that Congress, not the courts, will need to spell out relief for vote-packing claims. The Supreme Court acknowledged the role of the legislature in this area, writing: "The Framers were aware of electoral districting problems and considered what to do about them. They settled on a characteristic approach, assigning the issue to the state legislatures, expressly checked and balanced by the Federal Congress."[180] Further, Section 2 of the VRA, anchored by the Fourteenth and Fifteenth Amendments, affords Congress the power to protect racial minorities' ability to participate in the electoral process, which, by the Court's own interpretation of Section 2, includes the right to prohibit vote dilution.

Guided by these truths, the final proposed solution of this Note centers on creating a vote-packing claim within Section 2. Congress should amend 52 U.S.C. § 10301(b) to state the following:

> For a vote-packing claim, distinct members of a class of citizens protected by this subsection or a coalition of members of a class of citizens protected under this subsection must demonstrate: (i) that they constitute a considerable majority in a single-member district; (ii) that they are politically aligned; and (iii) that the district is not competitive. The extent to which geographic constraints, due in part to residential housing segregation, impacts the ability to satisfy this subsection may be considered as well.

This proposed language seeks to create a test for vote-packing claims comparable to the *Gingles* preconditions for vote fragmentation claims. The test aims to be open and flexible enough to allow for changing circumstances, while also nearing a standard on which courts can rely. More specifically, it requires a minority group to show that it is a "considerable," politically

---

179. *See* Wright v. Rockefeller, 376 U.S. 52, 56–57 (1964) ("It may be true . . . that there was evidence which could have supported inferences that racial considerations might have moved the state legislature, but, even if so, we agree that there also was evidence to support his finding that the contrary inference was 'equally, or more, persuasive.' Where there are such conflicting inferences one group of them cannot, because labeled as 'prima facie proof,' be treated as conclusive on the fact finder so as to deprive him of his responsibility to choose among disputed inferences.").

180. *Rucho*, 139 S. Ct. at 2496; *see* U.S. CONST. art. I, § 2.

aligned majority in a district that is not competitive. In determining what constitutes a "considerable majority," a starting point could be 55%, reflecting the percentage of minorities in the *median* Black House member's congressional district in the 116th Congress.[181] Similarly, in establishing what constitutes an uncompetitive district, a starting point could be a PVI that hovers around +25 in favor a given political party—which represents the PVI of the *median* Black House member's congressional district in the 116th Congress.[182]

This approach and these potential benchmarks overcome the hurdles that have previously precluded vote-packing claims from being successfully mounted under Section 2. First, Section 2 jurisprudence reveals a Supreme Court that has narrowed the scope of Section 2 claims to the point that the only viable claim is one of cracking and the only real remedy is the creation of majority-minority districts. Therefore, amending the statute with vague vote-packing language (comparable to the vague "results" requirement in the 1982 VRA amendments) would risk the Court resorting back to the narrowest of interpretations of what could constitute a vote-packing claim, or, worse, rejecting any action due to the lack of a clear standard or rule. Second, though admittedly based solely off of Black House members in the 116th Congress, the thresholds for a "considerable majority" (55%) and non-competitiveness of the district (PVI approaching or greater than +25)[183] are designed to fulfill the Court's preference to have an exacting standard and "clear lines for courts and legislatures alike."[184] Finally, these threshold figures could lay the foundation for a framework for Congress to further determine and define how to assess and evaluate vote dilution in the vote-packing context.

181. *See* Appendix I.

182. *Id.*

183. *See* Appendix I. In the 116th Congress, 22 of the 52 Black Members of the U.S. House of Representatives (or 42%) represent districts that would satisfy these thresholds.

184. Bartlett v. Strickland, 556 U.S. 1, 17 (2009) (plurality opinion) ("We find support for the majority-minority requirement [i.e., requiring a numerical majority under the first *Gingles* precondition] in the need for workable standards and sound judicial and legislative administration. The rule draws clear lines for courts and legislatures alike. The same cannot be said of a less exacting standard that would mandate crossover districts under § 2. Determining whether a § 2 claim would lie—i.e., determining whether potential districts could function as crossover districts—would place courts in the untenable position of predicting many political variables and tying them to race-based assumptions. The Judiciary would be directed to make predictions or adopt premises that even experienced polling analysts and political experts could not assess with certainty, particularly over the long term.").

After all, the Supreme Court noted, "where there is no objective and workable standard for choosing a reasonable benchmark by which to evaluate a challenged voting practice, it follows that the voting practice cannot be challenged as dilutive under § 2."[185] With this Note's proposal, anchoring a showing of the competitiveness of a given district around the *median* Black House member's congressional district could provide this required benchmark upon which courts could rely.

Taken together, a potential amendment of Section 2 of the VRA would read as follows:

> (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title, as provided in subsection (b). *Standard, practice, or procedure shall include claims of vote dilution either: (i) through the dispersal of members of a class of citizens protected by this subsection into districts in which they constitute an ineffective minority of voters ("vote fragmentation claim" or "cracking claim"); or (ii) through the concentration of members of a class of citizens protected by this subsection into districts where they constitute an excessive majority ("vote-packing claim").*
>
> (b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. *For a vote-packing claim, distinct members of a class of citizens protected by this subsection or a coalition of members of a class of citizens protected under this subsection must demonstrate: (i) that they constitute a considerable majority in a single-member district; (ii) that they are politically aligned; and (iii) that the*

185. Holder v. Hall, 512 U.S. 874, 881 (1994) (plurality opinion).

> *district is not competitive. The extent to which geographic constraints, due in part to residential housing segregation, impacts the ability to satisfy this subsection may be considered as well.* The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided,* That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

In considering this proposal, it is important, as the saying goes, not to let the perfect be the enemy of the good. This proposal can deter courts from reading into Section 2 a narrow interpretation of vote dilution in the way that was done with the vague "results" language of the 1982 VRA amendments and the Court's subsequent remedy only applying to cracking claims that satisfied the *Gingles* test and the totality of the circumstances analysis as defined by Congress. Additionally, this proposal gets closer to a clear and exacting standard for courts and legislatures to leverage, while simultaneously providing a benchmark upon which dilution can be assessed in the vote-packing context.

D. LIMITATIONS

In reviewing this Note's proposal for assessing vote-packing claims, it is important to flag some limitations of this Note's analysis. This Note attempts to create a three-factor test for vote-packing claims that relies on thresholds that are anchored by data retrieved from fifty-two Black House members and only captures a singular point in time (i.e., the 116th Congress from 2019 to 2021). As has been done in the past, however, Congress could solve for the limited time interval of this research by requiring renewals and reauthorizations of this novel, three-factor under Section 2 after each decennial census.[186] Additionally, Section 2 is a remedy available to other racial and language minority groups as well; thus, these thresholds may not be as applicable or relevant to claims of vote-packing in, for example, a majority-Hispanic district. With that being said, the insight around PVI's impact with respect to districts represented by Black House members in

186. *See supra* note 8 (describing the interval renewals and reauthorizations of the VRA).

the 116th Congress is still telling and informative, especially given the fact that the *Gingles* test was created after a suit alleged that Black citizens were unable to elect their desired representative.[187] The interconnectedness of Section 2 and Black representation can also be seen by the fact that the *Gingles* decision led to the largest ever increase in Black Members of the House of Representatives.[188] So, while these initial thresholds are derived from analysis of Black House members and are limited in their scope, they most certainly do not deviate from the framework that has led to increased protection for vote dilution under Section 2 for all minority groups. That is, it is often the lens and frame of Black voting experiences (whether it be the challenge by Black citizens of the at-large elections in *Bolden* or the challenge by Black citizens of multi-member districts in *Gingles*) that usher in new ways of conceptualizing the protection of the voting rights and voting strength of *all* minority groups.

Finally, it is worth noting that this Note focuses specifically on codifying a new vote-packing claim under Section 2 of the VRA. It does not provide a framework for assessing the potential mandated creation of "cross-over" districts.[189] Instead, the only "cross-over" that is contemplated in this Note is the aggregation of multiple politically cohesive minority groups that are aiming to satisfy the first *Gingles* precondition's numerical majority requirement for cracking claims or to satisfy this Note's proposed 55% threshold for vote-packing claims.

CONCLUSION

The Supreme Court has been clear that, "[u]nder § 2 . . . the injury is vote dilution."[190] The Supreme Court has outlined two main types of vote dilution: cracking—"the dispersal of blacks into districts in which they constitute an ineffective minority of voters"; and packing—"the concentration of blacks into districts where they constitute an excessive majority."[191] Despite these two definitions

187. Thornburg v. Gingles, 478 U.S. 30, 35 (1986).

188. *See* BRUDNICK & MANNING, *supra* note 51, at 5.

189. For more on potential tests for "influence" or "cross-over" district claims under Section 2 of the VRA, see Stanley Pierre-Louis, *The Politics of Influence: Recognizing Influence Dilution Claims Under § 2 of the Voting Rights Act*, 62 U. CHI. L. REV. 1215, 1234 (1995).

190. League of United Latin Am. Citizens v. Perry, 548 U.S. 399, 402 (2006).

191. *Gingles*, 478 U.S. at 46 n.11; Voinovich v. Quilter, 507 U.S. 146, 153–54 (1993).

of "vote dilution," the Supreme Court has precluded plaintiffs from advancing packing claims under Section 2.

Congress should close this gap by specifically creating a vote-packing claim under Section 2. With this goal in mind, this Note finds statistically significant relationships between race and the Partisan Voting Index (PVI) of a congressional district and between race and voter turnout in the 2020 general election and 2018 midterm elections. These relationships help to inform a novel, three-factor test for vote-packing claims under Section 2 of the VRA. Under the test, the minority group (or groups) must show: (i) that they constitute a considerable majority in a single-member district; (ii) that they are politically aligned; and (iii) that the district is not electorally competitive. In further refining and applying this test, this Note encourages the use of the demographics and the PVI of the *median* Black House member's district in the 116th Congress to start (i.e., a "considerable majority" would constitute a district that is more than 55% minority and non-competitiveness of the district would constitute a PVI approaching or greater than +25). By adopting this three-factor test, Congress could equip courts with a clear and exacting standard to prevent this other form of vote dilution (i.e., the excessive packing of minorities into a district), put state legislatures on notice as they craft future redistricting plans, and, perhaps most importantly, provide minorities—who have been excessively-packed into these districts—with relief under Section 2 of the VRA.

APPENDIX I

District	Incumbent	PVI	PVI	Citizen Voting Age Population	Black Citizen Voting Age Population	Percent Black	Hispanic Citizen Voting Age Population	Percent Hispanic	Percent Minority	Voter Turnout Population (2020)	Voter Turnout (2020)	Voter Turnout Population (2018)	Voter Turnout (2018)
AL-07	Terri Sewell (D)	D+20	20	504,177	313,943	62.3	7,621	1.5	63.8	232,331	46	189,163	37.5
CA-13	Barbara Lee (D)	D+40	40	536,892	98,151	18.3	83,915	15.6	33.9	362,818	68	294,837	54.9
CA-37	Karen Bass (D)	D+37	37	468,463	123,198	26.3	135,466	28.9	55.2	296,621	63	236,378	50.5
CA-43	Maxine Waters (D)	D+29	29	454,185	119,732	26.4	165,629	36.5	62.9	277,898	61	196,052	43.2
CO-02	Joe Neguse (D)	D+9	9	619,285	-	-	46,193	7.5	7.5	515,663	83	430,765	69.6
CT-05	Jahana Hayes (D)	D+2	2	511,395	37,035	7.2	74,862	14.6	21.8	349,524	68	270,664	52.9
DE-AL	Lisa Blunt Rochester (D)	D+6	6	720,867	158,901	22.0	38,834	5.4	27.4	488,270	68	353,814	49.1
FL-05	Al Lawson (D)	D+12	12	541,992	253,971	46.9	33,932	6.3	53.2	336,973	62	270,326	49.9
FL-10	Val Demings (D)	D+11	11	546,157	149,037	27.3	130,233	23.8	51.1	376,397	69	-	-
FL-20	Alcee Hastings (D)	D+31	31	507,613	267,487	52.7	112,325	22.1	74.8	322,409	64	202,824	40.0
FL-24	Frederica Wilson (D)	D+34	34	477,697	237,909	49.8	178,950	37.5	87.3	289,638	61	-	-
GA-02	Sanford Bishop (D)	D+6	6	498,322	254,868	51.1	15,046	3.0	54.1	273,034	55	229,171	46.0
GA-04	Hank Johnson (D)	D+24	24	527,938	337,809	64.0	22,637	4.3	68.3	348,299	66	288,809	54.7
GA-05	John Lewis (D)	D+34	34	587,385	348,231	59.3	22,830	3.9	63.2	354,503	60	275,406	46.9
GA-06	Lucy McBath (D)	R+8	-8	496,468	68,087	13.7	28,564	5.8	19.5	397,104	80	317,032	63.9
GA-13	David Scott (D)	D+20	20	523,476	323,677	61.8	33,506	6.4	68.2	360,582	69	293,010	56.0
IL-01	Bobby Rush (D)	D+27	27	524,114	274,362	52.3	38,099	7.3	59.6	325,123	62	257,885	49.2
IL-02	Robin Kelly (D)	D+29	29	497,132	286,699	57.7	47,560	9.6	67.3	298,038	60	235,251	47.3
IL-07	Danny Davis (D)	D+38	38	522,767	255,621	48.9	61,198	11.7	60.6	310,128	59	246,243	47.1
IL-14	Lauren Underwood (D)	R+5	-5	525,729	19,037	3.6	47,421	9.0	12.6	401,052	76	297,199	56.5
IN-07	Andre Carson (D)	D+11	11	521,076	153,947	29.5	27,661	5.3	34.8	282,568	54	217,596	41.8
LA-02	Cedric Richmond (D)	D+25	25	587,115	365,548	62.3	20,855	3.6	65.9	316,982	54	235,982	40.2

District	Incumbent	PVI	PVI	Citizen Voting Age Population	Black Citizen Voting Age Population	Percent Black	Hispanic Citizen Voting Age Population	Percent Hispanic	Percent Minority	Voter Turnout Population (2020)	Voter Turnout (2020)	Voter Turnout Population (2018)	Voter Turnout (2018)
MD-04	Anthony Brown (D)	D+28	28	503,398	294,846	58.6	38,317	7.6	66.2	354,529	70	268,583	53.4
MD-07	Elijah Cummings/Kwiesi Mfume	D+26	26	528,398	283,515	53.7	14,254	2.7	56.4	330,998	63	264,710	50.1
MA-07	Ayanna Pressley (D)	D+34	34	558,430	133,572	23.9	86,346	15.5	39.4	326,837	59	249,375	44.7
MI-14	Brenda Lawrence (D)	D+30	30	512,851	296,868	57.9	14,057	2.7	60.6	342,303	67	264,994	51.7
MN-05	Ilhan Omar (D)	D+26	26	517,155	68,758	13.3	21,973	4.2	17.5	398,229	77	343,358	66.4
MS-02	Bennie Thompson (D)	D+14	14	523,479	340,371	65.0	5,263	1.0	66.0	297,234	57	221,379	42.3
MO-01	Lacy Clay (D)/Cori Bush (D)	D+29	29	549,361	261,201	47.5	11,442	2.1	49.6	316,171	58	274,375	49.9
MO-05	Emanuel Cleaver (D)	D+7	7	573,775	120,397	21.0	33,905	5.9	26.9	352,430	61	283,785	49.5
NV-04	Steven Horsford (D)	D+3	3	516,951	78,071	15.1	112,161	21.7	36.8	332,469	64	234,868	45.4
NJ-10	Donald Payne Jr. (D)	D+36	36	496,051	265,501	53.5	82,975	16.7	70.2	290,009	58	200,159	40.4
NJ-12	Bonnie Watson Coleman (D)	D+16	16	505,683	97,561	19.3	59,774	11.8	31.1	351,725	70	252,375	49.9
NY-05	Gregory Meeks (D)	D+37	37	501,784	269,186	53.6	74,850	14.9	68.5	277,909	55	186,325	37.1
NY-08	Hakeem Jeffries (D)	D+36	36	540,660	277,437	51.3	83,725	15.5	66.8	285,735	53	204,768	37.9
NY-09	Yvette Clarke (D)	D+34	34	486,880	233,493	48.0	49,463	10.2	58.2	287,412	59	207,844	42.7
NY-19	Antonio Delgado (D)	R+2	-2	553,713	28,573	5.2	31,643	5.7	10.9	370,433	67	293,570	53.0
NC-01	G.K. Butterfield (D)	D+17	17	566,173	254,956	45.0	19,273	3.4	48.4	348,618	62	272,675	48.2
NC-12	Alma Adams (D)	D+18	18	591,843	241,622	40.8	39,878	6.7	47.5	341,457	58	279,138	47.2
OH-03	Joyce Beatty (D)	D+19	19	560,963	176,124	31.4	20,280	3.6	35.0	321,092	57	246,677	44.0
OH-11	Marcia Fudge (D)	D+32	32	524,803	269,913	51.4	17,237	3.3	54.7	302,421	58	250,660	47.8
PA-03	Dwight Evans (D)	D+41	41	564,612	307,689	54.5	23,412	4.1	58.6	375,379	66	307,997	54.6
SC-06	Jim Clyburn (D)	D+19	19	506,843	276,661	54.6	10,092	2.0	56.6	289,653	57	206,433	40.7
TX-09	Al Green (D)	D+29	29	445,634	208,780	46.9	120,680	27.1	74.0	229,107	51	153,001	34.3
TX-18	Sheila Jackson Lee (D)	D+27	27	480,387	215,580	44.9	135,295	28.2	73.1	246,895	51	184,332	38.4

District	Incumbent	PVI	PVI	Citizen Voting Age Population	Black Citizen Voting Age Population	Percent Black	Hispanic Citizen Voting Age Population	Percent Hispanic	Percent Minority	Voter Turnout Population (2020)	Voter Turnout (2020)	Voter Turnout Population (2018)	Voter Turnout (2018)
TX-23	Will Hurd (R)	R+1	-1	507,547	22,598	4.5	323,467	63.7	68.2	295,457	58	210,069	41.4
TX-30	Eddie Bernice Johnson (D)	D+29	29	479,082	246,174	51.4	108,419	22.6	74.0	264,464	55	183,174	38.2
TX-32	Colin Allred (D)	R+5	-5	505,867	64,757	12.8	81,663	16.1	28.9	343,687	68	275,620	54.5
TX-33	Marc Veasey (D)	D+23	23	360,226	87,623	24.3	177,006	49.1	73.4	157,606	44	119,224	33.1
VA-03	Bobby Scott (D)	D+16	16	559,137	255,075	45.6	23,364	4.2	49.8	341,361	61	217,722	38.9
VA-04	Don McEachin (D)	D+10	10	579,606	238,077	41.1	19,287	3.3	44.4	391,345	68	299,854	51.7
WI-04	Gwen Moore (D)	D+25	25	493,143	159,622	32.4	58,795	11.9	44.3	311,697	63	273,087	55.4