

The Role of Race in Redistricting

Can race play a factor in redistricting?

YES – Race can play a factor in redistricting

- Race is required for compliance with the Voting Rights Act
 - Section 2 requires consideration of race to ensure minority voters have an equal opportunity to participate in the political process and elect candidates of their choice
- **HOWEVER** – race cannot be used as the sole or predominant basis for the drawing of any district without a compelling justification, such as protecting minority voting rights.
 - Violates the Equal Protection Clause if race is predominant factor and there is no compelling state interest
 - Compliance with the Voting Rights Act is a compelling state interest

How does this play out in practice?

- *Bethune-Hill v. Virginia State Board of Elections*
 - VA had set a minimum requirement that certain legislative districts have at least a 55% Black voting-age population without conducting any VRA analysis; this was challenged as a violation of the Voting Rights Act by packing Black voters into districts and, thus, minimizing the voting power of Black voters in the state overall
 - In 2017, the U.S. Supreme Court held that the state's defense was constitutionally insufficient and sent the case back to the federal trial court, which ultimately ruled that 11 of the 12 districts were inappropriate racially gerrymanders, ordering the drawing of a new map.
- *Abbott v. Perez*
 - A new Latino-majority congressional district in South/Central Texas was created to reflect the state's increase in Latino population and avoid a Section 2 violation after the 2010 Census. This district was challenged as being drawn based predominantly on race and not justified by the need to avoid vote dilution.
 - The U.S. Supreme Court in *Abbott v. Perez* upheld the new Latino-majority congressional district, ruling that Latino voters had satisfied all the criteria to justify creating a new Latino-majority district and Texas had acted properly in considering race to create the district.

Majority-Minority Districts + Role of Race

- Section 2 prohibits discrimination in voting and plays an important role in the redistricting process.
- Creation of Majority-minority Districts
 - Required when the preconditions for Section 2 of the Voting Rights Act are met.
 - Permitted when the state follows other traditional redistricting criteria, such as keeping together communities of interest or reflecting population growth in the region.
- Majority-minority districts continue to be one of the most effective methods of ensuring that communities of color have the ability to elect officials of choice.
 - Most of the 10,000 plus representatives of color for congressional, state, county, and municipal-level seats are elected from majority-minority districts.

Alternative Electoral Districts Used to Improve the Voting Rights of People of Color

- **Minority-coalition districts** (two or more different and cohesive minority populations form a majority of the relevant population) are protected by Section 2 of the Voting Rights Act if the coalition groups satisfy the *Gingles* factors as well as the totality of circumstances test.
- **Crossover districts** (a white-majority district in which some white voters “cross over” and vote with minorities to elect the minority-preferred candidate) is not protected or required by Section 2.
- **Influence districts** (loosely defined as a district in which minority voters are not populous enough to elect a candidate of their choice but are numerous enough to influence the election of a candidate who is responsive to the minority population) are not protected or required by Section 2.

Interplay between Partisanship & Race

- “**Partisan gerrymandering**” (when a political party manipulates the redistricting process for political advantage) can sometimes negatively affect communities of color.
- U.S. Supreme Court decision in *Rucho v. Common Cause* can enable map-drawers with racial motivations to some degree to claim that decisions were only made for partisan reasons and not for racial ones.
 - In many areas of the country, partisanship and race are closely intertwined (e.g., the South).
 - Thus, race can be used as a means for achieving a partisan outcome.
- One less tool to fight back against redistricting plans that manipulate voters based on their party affiliation