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Section 2 of the Voting Rights Act

Some General Observations

- ***“Totality of Circumstances”***
- ***Results Test***
- ***Prohibits Minority Vote Dilution***
- **Now applied most frequently in redistricting cases where issue is when and how must a state or local government draw districts to enhance minority voting strength**

Section 2 of the Voting Rights Act

Some General Observations

- *Ask 3 Questions (under Gingles) to see if a minority opportunity district is required under Section 2. If the answer to any of these is “no”, then a minority opportunity district is not required by Section 2:*
- *These are known as the three prongs of Gingles:*
 - **Is the minority group sufficiently large and geographically compact to form a majority in an alternative district**
 - **is minority group politically cohesive**
 - **does majority vote sufficiently as a bloc to enable it to usually defeat the minority preferred candidate**

Section 2 of the Voting Rights Act

Some General Observations

- *The first prong: if whites and blacks are residentially integrated, then Section 2 would not require a minority opportunity district because the first Gingles prong would not be satisfied*
- *Prongs 2 and 3: If minority voters and Anglo voters prefer the same candidates, Section 2 would not require a minority opportunity district because the third Gingles prong would not be satisfied*

Section 2 of the Voting Rights Act

Johnson v. DeGrandy

- Even if the answer to all 3 Gingles questions is “yes”, Section 2 still may not require the creation of a minority opportunity district.***
- Only if, “under the totality of circumstances”, the minority group has less opportunity than Anglos to participate in the political process and elect candidates of choice, must such a district be created.***
- While the Senate factors guide this “totality of circumstances” determination, one factor, lack of proportionality, is particularly important.***

Section 2 of the Voting Rights Act

- **The Four Prongs:**

1. Numerosity & Compactness

2. Minority Political Cohesion

3. Anglo bloc voting

4. Lack of proportionality

Issues That Remain Open Despite the Gingles-DeGrandy Framework

First Prong of Gingles:

- **Population Base--of population, vap, cvap, registered voters, turnout? (Denominator)**
- **Sufficiently Large: +50% (Numerator)**

Bartlett v. Strickland Will Obviate The Need to Decide The **Denominator** Issue Left Open by the Gingles- DeGrandy Framework

•First Prong of Gingles: Population Base--of population, vap, cvap, registered voters, turnout? (Denominator): Which one of these population bases makes the most sense?

•Think of what the first Gingles prong is supposed to measure: the potential of minority voters to elect a candidate of choice in an illustrative district.

Does VAP therefore make the most sense or is it arguably the most relevant? Oftentimes, there is a wide variance between VAP and CVAP, and lower courts have used CVAP.

The Numerator Issue in the Gingles-DeGrandy Framework

• Consider an area where on average 90% of the blacks and 30% of the whites vote for the same candidate. Opposing candidates are supported by 10% of the black voters and 70% of the white voters. In such a district, the candidates preferred by black voters will usually succeed so long as the electorate is more than $1/3$ black; it is unnecessary for the electorate to be fully $1/2$ black in order for the black community to elect its preferred candidate.

Conversely, if white voters are more cohesive than black voters, the threshold for an effective district for black voters could likely be higher than 50%

Bartlett v. Strickland Will Also Obviate The Need To Decide The Numerator Issue Left Open In The Gingles-DeGrandy Framework

- **When is the minority group “sufficiently large” to constitute a majority in a district?**
- **The Gingles Court repeatedly referred to “effective voting majorities” as distinct from arithmetic majorities (>50%).**
- **As a result, there has been some disagreement among lower courts as to the proper definition of majority for establishing the first prong of Gingles.**
- **The Supreme Court will finally resolve this issue in *Bartlett v. Strickland*.**

Bartlett v. Strickland Is Not About “Influence Districts”

• **Influence Districts: what are they?** A district where minority voters can play a substantial, influential role in elections but cannot reliably form winning coalitions with other voters and thus lack any realistic opportunity to elect representatives of their choice. *GA v. Ashcroft*

Bartlett v. Strickland Is About
Whether “Coalition Districts” Are
Cognizable under Section 2

Coalition Districts: what are they? Districts in which a minority group constituting less than half a district’s population nonetheless can elect its candidates of choice when joined by predictably supportive non-minority voters

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