

Redistricting and the VRA in 2020

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Current State of Affairs

- Section 5
 - Retrogression Standard currently unenforceable
- Section 2
 - The *Gingles* Standard
 - Prongs
 - Minority Opportunity-to-Elect District
 - Majority-Minority (50.1%)
 - Single Race/Ethnicity
 - [*Bartlett v. Strickland* (2009)]

Key Terms

- **Legally** Significant Racially Polarized Voting
 - Evidence of both Prongs 2 and 3 of *Gingles*
- The Double-Bind for States
 - Ignore Section 2 and risk a vote dilution suit
 - Creating VRA minority opportunity-to-elect districts (50%) could invite a *Shaw* racial predominance suit (14th Amendment)

Recent Case Law

- **Bethune-Hill v. Va. State Bd. of Elections**

[326 F. Supp. 3d 128 (E.D. Va. 2018)]

Virginia Legislative Districts

- **Covington v. North Carolina**

[270 F. Supp.3d 881 (M.D.N.C. 2017)]

North Carolina Legislative Districts

- **Cooper v. Harris**

[159 F. Supp. 3d 600 (M.D.N.C. 2016)]

North Carolina Congressional Districts

Section 2 in 2020 Redistricting

- *Gingles* used to evaluate a claim against an existing map.
- In redistricting, *Gingles* must be applied prospectively.
- Use of race in redistricting in 2020 is a real tightrope—must be narrowly applied and employed with caution.
- Section 2 Analysis for Redistricting must...
 1. make comparisons to the benchmark map.
 2. be demonstrated to have occurred with forethought.
 3. be conducted on a district-by-district basis [no application of a mechanical formula].
 4. demonstrate legally significant racially polarized voting.

Legally Significant Racially Polarized Voting

Demonstrate:

1. Minority group vote cohesion
 - Clear candidate of choice
 - Note: This could include primary as well as general elections
2. White vote cohesion
 - Majority has a different candidate of choice
3. Minority candidate of choice is defeated
 - Must be the typical pattern (more often than not)
 - In a prospective redistricting context, one could employ a district functionality analysis to demonstrate this requirement.

Statistical Analysis

- Use aggregate (precinct) data to create statistical estimates of individual-level behavior
 - Voting patterns for various racial/ethnic groups
- Statistical Techniques
 - Ecological Regression or Ecological Inference

Data Required for Analysis

- Precinct-Level Election Returns
 - Both general election and (D) Primary Data
 - Spanning multiple general election cycles
- Racial (Ethnic) Data by Precinct
 - Pennsylvania: VAP from Census
- Prospective Districts
 - Accurate precinct composition of proposed districts
- Precinct Alignment Information
 - How do historic voting precincts comport with current precincts being used for redistricting?