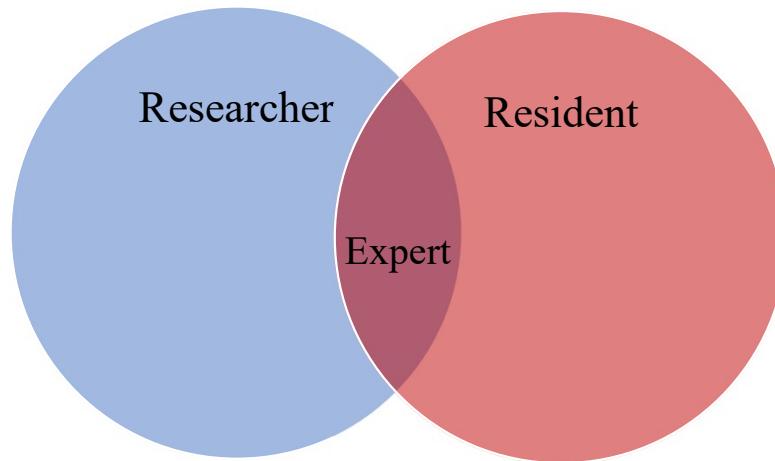




The Voting Rights Act and Racially Polarized Voting

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A little about me



I come to you both as a Penn State faculty member and as a resident of PA

Those 2 worlds (faculty & resident) come together in my work as an expert witness

Federal Voting Rights Acts

15th Amendment: "the right to vote shall not be denied or abridged on the basis of race, color or previous condition of servitude..."

*1964 Civil Rights Act (CRA): Title I calls for any qualifications for voter registration to be applied *equally to all*, prohibits a voter from being rejected for non-material errors on an application, and outlines specific requirements for literacy tests*

- It is difficult to enforce federal oversight over voting rights



Federal Voting Rights Acts

In *Allen v. State Board of Education* (1969), the Supreme Court held that vote dilution could occur as a result of electoral devices such as at-large electoral systems.

The court expanded the notion of vote dilution beyond previous reapportionment cases (e.g., the 1964 *Reynolds v. Sims*) on how an individual's vote was diluted by unequally populated voting districts to include the dilution of a group's voting strength

Federal Voting Rights Acts

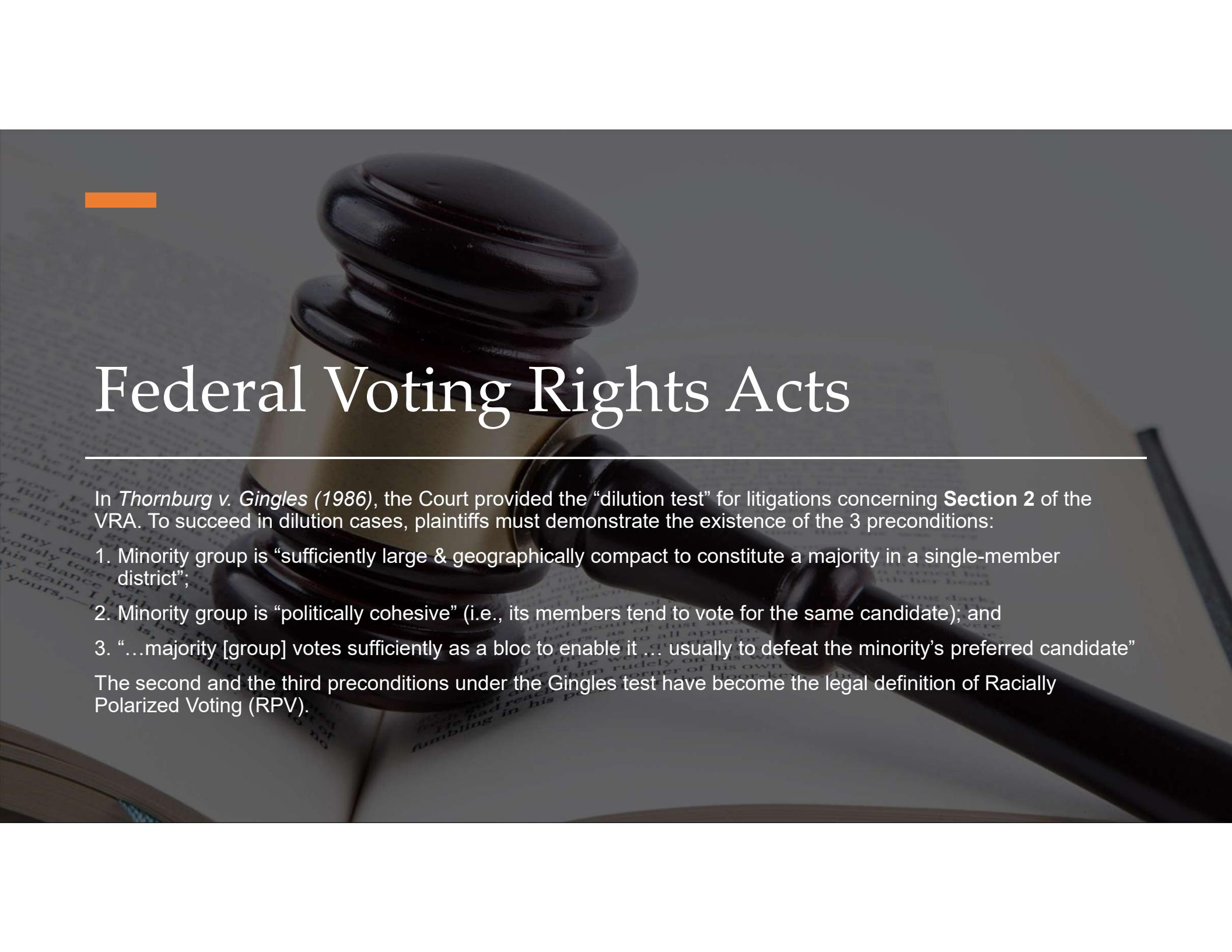
The 1965 Voting Rights Act (VRA)

Section 2 (sword)

- prohibits any voting standards, practices, or procedures that *dilute* minority voting strength

Section 5 (shield)

- requires covered jurisdictions to *pre-clear* any election changes to the DOJ

A dark wooden gavel with a curved handle lies across an open book. The book's pages are visible, showing dense, illegible text. A small orange horizontal bar is positioned in the upper left corner.

Federal Voting Rights Acts

In *Thornburg v. Gingles* (1986), the Court provided the “dilution test” for litigations concerning **Section 2** of the VRA. To succeed in dilution cases, plaintiffs must demonstrate the existence of the 3 preconditions:

1. Minority group is “sufficiently large & geographically compact to constitute a majority in a single-member district”;
2. Minority group is “politically cohesive” (i.e., its members tend to vote for the same candidate); and
3. “...majority [group] votes sufficiently as a bloc to enable it ... usually to defeat the minority’s preferred candidate”

The second and the third preconditions under the Gingles test have become the legal definition of Racially Polarized Voting (RPV).

What is Racially Polarized Voting?

Bernard Grofman, the expert who testified before the trial court in the *Gingles* case, defined RPV as

“when the voting patterns of minority voters (black/Hispanic/Asian) differ from those of the white/Anglo community.”

RPV becomes “substantively significant if it is of sufficient magnitude that the racial composition of the electorate can affect the candidate(s) chosen” (Grofman, Migalski, and Noviello, 1985: 203, 207).





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Why is RPV critical to the *dilution test*?

The courts demand statistical evidence of racially polarized voting under VRA or under the 14th Amendment.

Judge John Minor Wilson famously said that the statistical evidence of RPV is “*the keystone of a dilution case*” (*U.S. v. Marengo County Comm’n*, 11th Cir. 1984).

Why is RPV critical to the *dilution test*?

The three-prong dilution test have become the key to how federal courts decide in all Section 2 cases.

The establishment of RPV empirically is the linchpin of the dilution test.

- Note that an RPV test itself is not an “intent test” based on Section 2 of VRA and the *Gingles* decision.
- Rather, RPV analysis is a “**results test**,” along with “totality of circumstances”.

Why is RPV is critical to the *dilution test*?

Without RPV, minority plaintiffs can't prove that minority candidates lost elections due to vote dilution

minority plaintiffs can prove that minority candidates would be elected if minority voters had equal opportunity to elect preferred candidates

RPV analyses help determine whether a remedy of current electoral maps can lead to the election of minority candidates

RPV analyses help project whether redrawing district boundaries can lead to the election of minority candidates

RPV analyses help us consider whether changes to electoral systems can foster equal protection of minority voters

RPV analyses also help us understand the effect of using already-reformed electoral systems (e.g., ranked-choice voting)

What to do to avoid litigation



What the commission is required to do under the VRA

- It takes more than simply making (good) maps
- Proposals for redistricting should reflect “intensely local appraisals of circumstances”
- Minority groups in proposed district must have realistic opportunities to elect preferred candidates