Raising the Bar:
The Future of Voting Rights in New Jersey and Beyond

May 22, 2024
12:30pm
CLE Materials

TABLE OF CONTENTS

DECISIONS

Allen v. Milligan, 599 U.S. 1 (2023) 1

Brnovich v. Democratic National Committee, 594 U.S. 647 (2021) 113

Kim v. Hanlon, No. 24-1098, 2024 U.S. Dist. WL 1342568 (D.N.J. Mar. 29, 2024) 198

Kim v. Hanlon, 99 F.4th 140 (3d Cir. 2024) 247

Shelby County v. Holder, 570 U.S. 529 (2013) 282

LEGISLATIVE MATERIALS

Voting Rights Act, 52 U.S.C.A. § 10101 313

John R. Lewis Voter Empowerment Act of New Jersey (A4083) 672

ARTICLES

Ruth M. Greenwood & Nicholas O. Stephanopoulos, *Voting Rights Federalism*, 73 Emory L.J. 299 (2023) 701

PANELIST BIOGRAPHIES 765

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

ALLEN, ALABAMA SECRETARY OF STATE, ET AL. *v.* MILLIGAN ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

No. 21–1086. Argued October 4, 2022—Decided June 8, 2023*

The issue presented is whether the districting plan adopted by the State of Alabama for its 2022 congressional elections likely violated §2 of the Voting Rights Act, 52 U. S. C. §10301. As originally enacted in 1965, §2 of the Act tracked the language of the Fifteenth Amendment, providing that "[t]he right of citizens of the United States to vote shall not be denied or abridged . . . on account of race, color, or previous condition of servitude." In *City of Mobile* v. *Bolden*, 446 U. S. 55, this Court held that the Fifteenth Amendment—and thus §2—prohibits States from acting with a "racially discriminatory motivation" or an "invidious purpose" to discriminate, but it does not prohibit laws that are discriminatory only in effect. *Id.*, at 61–65 (plurality opinion). Criticism followed, with many viewing *Mobile*'s intent test as not sufficiently protective of voting rights. But others believed that adoption of an effects test would inevitably require a focus on proportionality, calling voting laws into question whenever a minority group won fewer seats in the legislature than its share of the population. Congress ultimately resolved this debate in 1982, reaching a bipartisan compromise that amended §2 to incorporate both an effects test and a robust disclaimer that "nothing" in §2 "establishes a right to have members of a protected class elected in numbers equal to their proportion in the population." §10301(b).

---

*Together with No. 21–1087, *Allen, Alabama Secretary of State, et al.* v. *Caster et al.*, on certiorari before judgment to the United States Court of Appeals for the Eleventh Circuit.

In 1992, §2 litigation challenging the State of Alabama's then-existing districting map resulted in the State's first majority-black district and, subsequently, the State's first black Representative since 1877. Alabama's congressional map has remained remarkably similar since that litigation. Following the 2020 decennial census, a group of plaintiffs led by Alabama legislator Bobby Singleton sued the State, arguing that the State's population growth rendered the existing congressional map malapportioned and racially gerrymandered in violation of the Equal Protection Clause. While litigation was proceeding, the Alabama Legislature's Committee on Reapportionment drew a new districting map that would reflect the distribution of the prior decade's population growth across the State. The resulting map largely resembled the 2011 map on which it was based and similarly produced only one district in which black voters constituted a majority. That new map was signed into law as HB1.

Three groups of Alabama citizens brought suit seeking to stop Alabama's Secretary of State from conducting congressional elections under HB1. One group (*Caster* plaintiffs) challenged HB1 as invalid under §2. Another group (*Milligan* plaintiffs) brought claims under §2 and the Equal Protection Clause of the Fourteenth Amendment. And a third group (the *Singleton* plaintiffs) amended the complaint in their ongoing litigation to challenge HB1 as a racial gerrymander under the Equal Protection Clause. A three-judge District Court was convened, and the *Singleton* and *Milligan* actions were consolidated before that District Court for purposes of preliminary injunction proceedings, while *Caster* proceeded before one of the judges on a parallel track. After an extensive hearing, the District Court concluded in a 227-page opinion that the question whether HB1 likely violated §2 was not "close." The Court preliminarily enjoined Alabama from using HB1 in forthcoming elections. The same relief was ordered in *Caster*.

Held: The Court affirms the District Court's determination that plaintiffs demonstrated a reasonable likelihood of success on their claim that HB1 violates §2. Pp. 9–22, 25–34.

(a) The District Court faithfully applied this Court's precedents in concluding that HB1 likely violates §2. Pp. 9–15.

(1) This Court first addressed the 1982 amendments to §2 in *Thornburg* v. *Gingles*, 478 U. S. 30, and has for the last 37 years evaluated §2 claims using the *Gingles* framework. *Gingles* described the "essence of a §2 claim" as when "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." *Id.*, at 47. That occurs where an "electoral structure operates to minimize or cancel out" minority voters' "ability to elect their preferred candidates." *Id.*, at 48. Such a risk is greatest "where minority and majority

voters consistently prefer different candidates" and where minority voters are submerged in a majority voting population that "regularly defeat[s]" their choices. *Ibid.*

To prove a §2 violation under *Gingles*, plaintiffs must satisfy three "preconditions." *Id.*, at 50. First, the "minority group must be sufficiently large and [geographically] compact to constitute a majority in a reasonably configured district." *Wisconsin Legislature* v. *Wisconsin Elections Comm'n*, 595 U. S. ___, ___ (*per curiam*). "Second, the minority group must be able to show that it is politically cohesive." *Gingles*, 478 U. S., at 51. And third, "the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it . . . to defeat the minority's preferred candidate." *Ibid.* A plaintiff who demonstrates the three preconditions must then show, under the "totality of circumstances," that the challenged political process is not "equally open" to minority voters. *Id.*, at 45–46. The totality of circumstances inquiry recognizes that application of the *Gingles* factors is fact dependent and requires courts to conduct "an intensely local appraisal" of the electoral mechanism at issue, as well as a "searching practical evaluation of the past and present reality." *Id.*, at 79. Congress has not disturbed the Court's understanding of §2 as *Gingles* construed it nearly 40 years ago. Pp. 9–11.

(2) The extensive record in these cases supports the District Court's conclusion that plaintiffs' §2 claim was likely to succeed under *Gingles*. As to the first *Gingles* precondition, the District Court correctly found that black voters could constitute a majority in a second district that was "reasonably configured." The plaintiffs adduced eleven illustrative districting maps that Alabama could enact, at least one of which contained two majority-black districts that comported with traditional districting criteria. With respect to the compactness criteria, for example, the District Court explained that the maps submitted by one expert "perform[ed] generally better on average than" did HB1, and contained no "bizarre shapes, or any other obvious irregularities." Plaintiffs' maps contained equal populations, were contiguous, and respected existing political subdivisions. Indeed, some of plaintiffs' proposed maps split the same (or even fewer) county lines than the State's.

The Court finds unpersuasive the State's argument that plaintiffs' maps were not reasonably configured because they failed to keep together the Gulf Coast region. Even if that region is a traditional community of interest, the District Court found the evidence insufficient to sustain Alabama's argument that no legitimate reason could exist to split it. Moreover, the District Court found that plaintiffs' maps were reasonably configured because they joined together a different community of interest called the Black Belt—a community with a high

proportion of similarly situated black voters who share a lineal connection to "the many enslaved people brought there to work in the antebellum period."

As to the second and third *Gingles* preconditions, the District Court determined that there was "no serious dispute that Black voters are politically cohesive, nor that the challenged districts' white majority votes sufficiently as a bloc to usually defeat Black voters' preferred candidate." The court noted that, "on average, Black voters supported their candidates of choice with 92.3% of the vote" while "white voters supported Black-preferred candidates with 15.4% of the vote." Even Alabama's expert conceded "that the candidates preferred by white voters in the areas that he looked at regularly defeat the candidates preferred by Black voters." Finally, the District Court concluded that plaintiffs had carried their burden at the totality of circumstances stage given the racial polarization of elections in Alabama, where "Black Alabamians enjoy virtually zero success in statewide elections" and where "Alabama's extensive history of repugnant racial and voting-related discrimination is undeniable and well documented." The Court sees no reason to disturb the District Court's careful factual findings, which are subject to clear error review and have gone unchallenged by Alabama in any event. Pp. 11–15.

(b) The Court declines to remake its §2 jurisprudence in line with Alabama's "race-neutral benchmark" theory.

(1) The Court rejects the State's contention that adopting the race-neutral benchmark as the point of comparison in §2 cases would best match the text of the VRA. Section 2 requires political processes in a State to be "equally open" such that minority voters do not "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." §10301(b). Under the Court's precedents, a district is not equally open when minority voters face—unlike their majority peers—bloc voting along racial lines, arising against the backdrop of substantial racial discrimination within the State, that renders a minority vote unequal to a vote by a nonminority voter. Alabama would ignore this precedent in favor of a rationale that a State's map cannot "abridge[]" a person's right to vote "on account of race" if the map resembles a sufficient number of race-neutral alternatives. But this Court's cases have consistently focused, for purposes of litigation, on the specific illustrative maps that a plaintiff adduces. Deviation from that map shows it is *possible* that the State's map has a disparate effect on account of race. The remainder of the *Gingles* test helps determine whether that possibility is reality by looking to polarized voting preferences and the frequency of racially discriminatory actions taken by the State.

The Court declines to adopt Alabama's interpretation of §2, which

would "revise and reformulate the *Gingles* threshold inquiry that has been the baseline of [the Court's] §2 jurisprudence" for decades. *Bartlett* v. *Strickland*, 556 U. S. 1, 16 (plurality opinion). Pp. 15–18.

(2) Alabama argues that absent a benchmark, the *Gingles* framework ends up requiring the racial proportionality in districting that §2(b) forbids. The Court's decisions implementing §2 demonstrate, however, that when properly applied, the *Gingles* framework itself imposes meaningful constraints on proportionality. See *Shaw* v. *Reno*, 509 U. S. 630, 633–634; *Miller* v. *Johnson*, 515 U. S. 900, 906; *Bush* v. *Vera,* 517 U. S. 952, 957 (plurality opinion). In *Shaw* v. *Reno*, for example, the Court considered the permissibility of a second majority-minority district in North Carolina, which at the time had 12 seats in the U. S. House of Representatives and a 20% black voting age population. 509 U. S., at 633–634. Though North Carolina believed §2 required a second majority-minority district, the Court found North Carolina's approach an impermissible racial gerrymander because the State had "concentrated a dispersed minority population in a single district by disregarding traditional districting principles such as compactness, contiguity, and respect for political subdivisions." *Id.*, at 647.

The Court's decisions in *Bush* and *Shaw* similarly declined to require additional majority-minority districts under §2 where those districts did not satisfy traditional districting principles.

The Court recognizes that reapportionment remains primarily the duty and responsibility of the States, not the federal courts. Section 2 thus never requires adoption of districts that violate traditional redistricting principles and instead limits judicial intervention to "those instances of intensive racial politics" where the "excessive role [of race] in the electoral process . . . den[ies] minority voters equal opportunity to participate." S. Rep. No. 97–417, pp. 33–34. Pp. 18–22.

(c) To apply its race-neutral benchmark in practice, Alabama would require plaintiffs to make at least three showings. First, Alabama would require §2 plaintiffs to show that the illustrative maps adduced for the first *Gingles* precondition are not based on race. Alabama would next graft onto §2 a requirement that plaintiffs demonstrate, at the totality of circumstances stage, that the State's enacted plan contains fewer majority-minority districts than what an "average" race-neutral plan would contain. And finally, Alabama would have plaintiffs prove that any deviation between the State's plan and a race-neutral plan is explainable "only" by race. The Court declines to adopt any of these novel requirements.

Here, Alabama contends that because HB1 sufficiently "resembles" the "race-neutral" maps created by the State's experts—all of which lack two majority-black districts—HB1 does not violate §2. Alabama's reliance on the maps created by its experts Dr. Duchin and Dr. Imai is

misplaced because those maps do not accurately represent the districting process in Alabama. Regardless, the map-comparison test that Alabama proposes is flawed in its fundamentals. Neither the text of §2 nor the fraught debate that produced it suggests that "equal access" to the fundamental right of voting turns on technically complicated computer simulations. Further, while Alabama has repeatedly emphasized that HB1 cannot have violated §2 because none of plaintiffs' two million odd maps contained more than one majority-minority district, that (albeit very big) number is close to irrelevant in practice, where experts estimate the possible number of Alabama districting maps numbers is at least in the trillion trillions.

Alabama would also require plaintiffs to demonstrate that any deviations between the State's enacted plan and race-neutral alternatives "can be explained *only* by racial discrimination." Brief for Alabama 44 (emphasis added). But the Court's precedents and the legislative compromise struck in the 1982 amendments clearly rejected treating discriminatory intent as a requirement for liability under §2. Pp. 22, 25–30.

(d) The Court disagrees with Alabama's assertions that the Court should stop applying §2 in cases like these because the text of §2 does not apply to single-member redistricting and because §2 is unconstitutional as the District Court applied it here. Alabama's understanding of §2 would require abandoning four decades of the Court's §2 precedents. The Court has unanimously held that §2 and the *Gingles* framework apply to claims challenging single-member districts. *Growe* v. *Emison*, 507 U. S. 25, 40. As Congress is undoubtedly aware of the Court's construction of §2 to apply to districting challenges, statutory *stare decisis* counsels staying the course until and unless Congress acts. In any event, the statutory text supports the conclusion that §2 applies to single-member districts. Indeed, the contentious debates in Congress about proportionality would have made little sense if §2's coverage was as limited as Alabama contends.

The Court similarly rejects Alabama's argument that §2 as applied to redistricting is unconstitutional under the Fifteenth Amendment. The Court held over 40 years ago "that, even if §1 of the [Fifteenth] Amendment prohibits only purposeful discrimination," *City of Rome* v. *United States*, 446 U. S. 156, 173, the VRA's "ban on electoral changes that are discriminatory in effect is an appropriate method of promoting the purposes of the Fifteenth Amendment," *id.,* at 177. Alabama's contention that the Fifteenth Amendment does not authorize race-based redistricting as a remedy for §2 violations similarly fails. The Court is not persuaded by Alabama's arguments that §2 as interpreted in *Gingles* exceeds the remedial authority of Congress.

The Court's opinion does not diminish or disregard the concern that

§2 may impermissibly elevate race in the allocation of political power within the States. Instead, the Court simply holds that a faithful application of precedent and a fair reading of the record do not bear those concerns out here. Pp. 30–34.

Nos. 21–1086, 582 F. Supp. 3d 924, and 21–1087, affirmed.

ROBERTS, C. J., delivered the opinion of the Court, except as to Part III–B–1. SOTOMAYOR, KAGAN, and JACKSON, JJ., joined that opinion in full, and KAVANAUGH, J., joined except for Part III–B–1. KAVANAUGH, J., filed an opinion concurring in all but Part III–B–1. THOMAS, J., filed a dissenting opinion, in which GORSUCH, J., joined, in which BARRETT, J., joined as to Parts II and III, and in which ALITO, J., joined as to Parts II–A and II–B. ALITO, J., filed a dissenting opinion, in which GORSUCH, J., joined.

NOTICE: This opinion is subject to formal revision before publication in the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, pio@supremecourt.gov, of any typographical or other formal errors.

SUPREME COURT OF THE UNITED STATES

Nos. 21–1086 and 21–1087

WES ALLEN, ALABAMA SECRETARY OF STATE, ET AL., APPELLANTS

21–1086 *v.*

EVAN MILLIGAN, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

WES ALLEN, ALABAMA SECRETARY OF STATE, ET AL., PETITIONERS

21–1087 *v.*

MARCUS CASTER, ET AL.

ON WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

[June 8, 2023]

CHIEF JUSTICE ROBERTS delivered the opinion of the Court, except as to Part III–B–1.*

In January 2022, a three-judge District Court sitting in Alabama preliminarily enjoined the State from using the districting plan it had recently adopted for the 2022 congressional elections, finding that the plan likely violated Section 2 of the Voting Rights Act, 52 U. S. C. §10301. This Court stayed the District Court's order pending further review. 595 U. S. ___ (2022). After conducting that review, we now affirm.

---

*JUSTICE KAVANAUGH joins all but Part III–B–1 of this opinion.

I

A

Shortly after the Civil War, Congress passed and the States ratified the Fifteenth Amendment, providing that "[t]he right of citizens of the United States to vote shall not be denied or abridged . . . on account of race, color, or previous condition of servitude." U. S. Const., Amdt. 15, §1. In the century that followed, however, the Amendment proved little more than a parchment promise. Jim Crow laws like literacy tests, poll taxes, and "good-morals" requirements abounded, *South Carolina* v. *Katzenbach*, 383 U. S. 301, 312–313 (1966), "render[ing] the right to vote illusory for blacks," *Northwest Austin Municipal Util. Dist. No. One* v. *Holder*, 557 U. S. 193, 220–221 (2009) (THOMAS, J., concurring in judgment in part and dissenting in part). Congress stood up to little of it; "[t]he first century of congressional enforcement of the [Fifteenth] Amendment . . . can only be regarded as a failure." *Id.*, at 197 (majority opinion).

That changed in 1965. Spurred by the Civil Rights movement, Congress enacted and President Johnson signed into law the Voting Rights Act. 79 Stat. 437, as amended, 52 U. S. C. §10301 *et seq.* The Act "create[d] stringent new remedies for voting discrimination," attempting to forever "banish the blight of racial discrimination in voting." *Katzenbach*, 383 U. S., at 308. By 1981, in only sixteen years' time, many considered the VRA "the most successful civil rights statute in the history of the Nation." S. Rep. No. 97–417, p. 111 (1982) (Senate Report).

These cases concern Section 2 of that Act. In its original form, "§2 closely tracked the language of the [Fifteenth] Amendment" and, as a result, had little independent force. *Brnovich* v. *Democratic National Committee*, 594 U. S. ___, ___ (2021) (slip op., at 3).[1] Our leading case on §2 at the

[1] As originally enacted, §2 provided that "[n]o voting qualification or

time was *City of Mobile* v. *Bolden*, which involved a claim by black voters that the City's at-large election system effectively excluded them from participating in the election of city commissioners. 446 U. S. 55 (1980). The commission had three seats, black voters comprised one-third of the City's population, but no black-preferred candidate had ever won election.

The Court ruled against the plaintiffs. The Fifteenth Amendment—and thus §2—prohibits States from acting with a "racially discriminatory motivation" or an "invidious purpose" to discriminate. *Id.*, at 61–65 (plurality opinion). But it does not prohibit laws that are discriminatory only in effect. *Ibid.* The *Mobile* plaintiffs could "register and vote without hindrance"—"their freedom to vote ha[d] not been denied or abridged by anyone." *Id.*, at 65. The fact that they happened to lose frequently was beside the point. Nothing the City had done "purposeful[ly] exclu[ded]" them "from participati[ng] in the election process." *Id.*, at 64.

Almost immediately after it was decided, *Mobile* "produced an avalanche of criticism, both in the media and within the civil rights community." T. Boyd & S. Markman, The 1982 Amendments to the Voting Rights Act: A Legislative History, 40 Wash. & Lee L. Rev. 1347, 1355 (1983) (Boyd & Markman). The New York Times wrote that the decision represented "the biggest step backwards in civil rights to come from the Nixon Court." N. Y. Times, Apr. 23, 1980, p. A22. And the Washington Post described *Mobile* as a "major defeat for blacks and other minorities fighting electoral schemes that exclude them from office." Washington Post, Apr. 23, 1980, p. A5. By focusing on discriminatory intent and ignoring disparate effect, critics argued, the Court had abrogated "the standard used by the courts to

---

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 U. S. C. §1973 (1970 ed.).

determine whether [racial] discrimination existed . . . : Whether such discrimination existed." It's Results That Count, Philadelphia Inquirer, Mar. 3, 1982, p. 8–A.

But *Mobile* had its defenders, too. In their view, abandoning the intent test in favor of an effects test would inevitably require a focus on *proportionality*—wherever a minority group won fewer seats in the legislature than its share of the population, the charge could be made that the State law had a discriminatory effect. That, after all, was the type of claim brought in *Mobile*. But mandating racial proportionality in elections was regarded by many as intolerable. Doing so, wrote Senator Orrin Hatch in the Washington Star, would be "strongly resented by the American public." Washington Star, Sept. 30, 1980, p. A–9. The Wall Street Journal offered similar criticism. An effects test would generate "more, not less, racial and ethnic polarization." Wall Street Journal, Jan. 19, 1982, p. 28.

This sharp debate arrived at Congress's doorstep in 1981. The question whether to broaden §2 or keep it as is, said Hatch—by then Chairman of the Senate Subcommittee before which §2 would be debated—"involve[d] one of the most substantial constitutional issues ever to come before this body." 2 Hearings before the Subcommittee on the Constitution of the Senate Committee on the Judiciary, 97th Cong., 2d Sess., pt. 1, p. 1 (1982).

Proceedings in Congress mirrored the disagreement that had developed around the country. In April 1981, Congressman Peter W. Rodino, Jr.—longtime chairman of the House Judiciary Committee—introduced a bill to amend the VRA, proposing that the words "to deny or abridge" in §2 be replaced with the phrase "*in a manner which results* in a denial or abridgement." H. R. 3112, 97th Cong., 1st Sess., 2 (as introduced) (emphasis added). This was the effects test that *Mobile*'s detractors sought.

But those wary of proportionality were not far behind. Senator Hatch argued that the effects test "was intelligible

only to the extent that it approximated a standard of proportional representation by race." Boyd & Markman 1392. The Attorney General had the same concern. The effects test "would be triggered whenever election results did not mirror the population mix of a particular community," he wrote, producing "essentially a quota system for electoral politics." N. Y. Times, Mar. 27, 1982, p. 23.

The impasse was not resolved until late April 1982, when Senator Bob Dole proposed a compromise. Boyd & Markman 1414. Section 2 would include the effects test that many desired but also a robust disclaimer against proportionality. Seeking to navigate any tension between the two, the Dole Amendment borrowed language from a Fourteenth Amendment case of ours, *White* v. *Regester*, 412 U. S. 755 (1973), which many in Congress believed would allow courts to consider effects but avoid proportionality. The standard for liability in voting cases, *White* explained, was whether "the political processes leading to nomination and election were not equally open to participation by the group in question—[in] that its members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice." *Id.*, at 766.

The Dole compromise won bipartisan support and, on June 18, the Senate passed the 1982 amendments by an overwhelming margin, 85–8. Eleven days later, President Reagan signed the Act into law. The amended §2 reads 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 . . . 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 . . . 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." 52 U. S. C. §10301.

B

For the first 115 years following Reconstruction, the State of Alabama elected no black Representatives to Congress. See *Singleton* v. *Merrill*, 582 F. Supp. 3d 924, 947 (ND Ala. 2022) (*per curiam*). In 1992, several plaintiffs sued the State, alleging that it had been impermissibly diluting the votes of black Alabamians in violation of §2. See *Wesch* v. *Hunt*, 785 F. Supp. 1491, 1493 (SD Ala.). The lawsuit produced a majority-black district in Alabama for the first time in decades. *Id.*, at 1499. And that fall, Birmingham lawyer Earl Hillard became the first black Representative from Alabama since 1877. 582 F. Supp. 3d, at 947.

Alabama's congressional map has "remained remarkably similar" after *Wesch*. Brief for Appellants in No. 21–1086 etc., p. 9 (Brief for Alabama). The map contains seven congressional districts, each with a single representative. See Supp. App. 205–211; 582 F. Supp. 3d, at 951. District 1 encompasses the Gulf Coast region in the southwest; District 2—known as the Wiregrass region—occupies the southeast; District 3 covers the eastern-central part of the State; Districts 4 and 5 stretch width-wise across the north, with the

latter layered atop the former; District 6 is right in the State's middle; and District 7 spans the central west. *Id.*, at 951.

In 2020, the decennial census revealed that Alabama's population had grown by 5.1%. See 1 App. 86. A group of plaintiffs led by Alabama legislator Bobby Singleton sued the State, arguing that the existing congressional map was malapportioned and racially gerrymandered in violation of the Equal Protection Clause. 582 F. Supp. 3d, at 938–939. While litigation was proceeding, the Alabama Legislature's Committee on Reapportionment began creating a new districting map. *Ibid.* Although the prior decade's population growth did not change the number of seats that Alabama would receive in the House, the growth had been unevenly distributed across the State, and the existing map was thus out of date.

To solve the problem, the State turned to experienced mapmaker Randy Hinaman, who had created several districting maps that Alabama used over the past 30 years. *Id.*, at 947–948. The starting point for Hinaman was the then-existing 2011 congressional map, itself a product of the 2001 map that Hinaman had also created. Civ. No. 21–1530 (ND Ala.), ECF Doc. 70–2, pp. 40, 93–94; see also 582 F. Supp. 3d, at 950. Hinaman worked to adjust the 2011 map in accordance with the redistricting guidelines set by the legislature's Reapportionment Committee. *Id.*, at 948–950; 1 App. 275. Those guidelines prioritized population equality, contiguity, compactness, and avoiding dilution of minority voting strength. 582 F. Supp. 3d, at 1035–1036. They also encouraged, as a secondary matter, avoiding incumbent pairings, respecting communities of interest, minimizing the number of counties in each district, and preserving cores of existing districts. *Id.*, at 1036–1037.

The resulting map Hinaman drew largely resembled the 2011 map, again producing only one district in which black voters constituted a majority of the voting age population.

Supp. App. 205–211. The Alabama Legislature enacted Hinaman's map under the name HB1. 582 F. Supp. 3d, at 935, 950–951. Governor Ivey signed HB1 into law on November 4, 2021. *Id.*, at 950.

C

Three groups of plaintiffs brought suit seeking to stop Alabama's Secretary of State from conducting congressional elections under HB1. The first group was led by Dr. Marcus Caster, a resident of Washington County, who challenged HB1 as invalid under §2. *Id.*, at 934–935, 980. The second group, led by Montgomery County resident Evan Milligan, brought claims under §2 and the Equal Protection Clause of the Fourteenth Amendment. *Id.*, at 939–940, 966. Finally, the *Singleton* plaintiffs, who had previously sued to enjoin Alabama's 2011 congressional map, amended their complaint to challenge HB1 as an impermissible racial gerrymander under the Equal Protection Clause. *Id.*, at 938–939.

A three-judge District Court was convened, comprised of Circuit Judge Marcus and District Judges Manasco and Moorer. The *Singleton* and *Milligan* actions were consolidated before the three-judge Court for purposes of preliminary injunction proceedings, while *Caster* proceeded before Judge Manasco on a parallel track. 582 F. Supp. 3d, at 934–935. A preliminary injunction hearing began on January 4, 2022, and concluded on January 12. *Id.*, at 943. In that time, the three-judge District Court received live testimony from 17 witnesses, reviewed more than 1000 pages of briefing and upwards of 350 exhibits, and considered arguments from the 43 different lawyers who had appeared in the litigation. *Id.*, at 935–936. After reviewing that extensive record, the Court concluded in a 227-page opinion that the question whether HB1 likely violated §2 was not "a close one." It did. *Id.*, at 1026. The Court thus preliminarily enjoined Alabama from using HB1 in forthcoming elections.

Id., at 936.[2]

Four days later, on January 28, Alabama moved in this Court for a stay of the District Court's injunction. This Court granted a stay and scheduled the cases for argument, noting probable jurisdiction in *Milligan* and granting certiorari before judgment in *Caster*. 595 U. S. ___ (2022).

II

The District Court found that plaintiffs demonstrated a reasonable likelihood of success on their claim that HB1 violates §2. We affirm that determination.

A

For the past forty years, we have evaluated claims brought under §2 using the three-part framework developed in our decision *Thornburg* v. *Gingles*, 478 U. S. 30 (1986). *Gingles* concerned a challenge to North Carolina's multimember districting scheme, which allegedly diluted the vote of its black citizens. *Id.*, at 34–36. The case presented the first opportunity since the 1982 amendments to address how the new §2 would operate.

Gingles began by describing what §2 guards against. "The essence of a §2 claim," the Court explained, "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." *Id.*, at 47. That occurs where an "electoral structure operates to minimize or cancel out" minority voters' "ability to elect their preferred candidates." *Id.*, at 48. Such a risk is greatest

[2] Judge Manasco, presiding in *Caster*, also preliminarily enjoined Alabama from using HB1. Her opinion was based on the same evidentiary record as was before the three-judge Court, and it adopted in full that Court's "recitation of the evidence, legal analysis, findings of fact and conclusions of law." 1 App. to Emergency Application for Stay in No. 2:21–cv–1536, p. 4; see also 582 F. Supp. 3d, at 942–943, and n. 4. Any reference to the "District Court" in this opinion applies to the *Caster* Court as well as to the three-judge Court.

"where minority and majority voters consistently prefer different candidates" and where minority voters are submerged in a majority voting population that "regularly defeat[s]" their choices. *Ibid.*

To succeed in proving a §2 violation under *Gingles*, plaintiffs must satisfy three "preconditions." *Id.*, at 50. First, the "minority group must be sufficiently large and [geographically] compact to constitute a majority in a reasonably configured district." *Wisconsin Legislature* v. *Wisconsin Elections Comm'n*, 595 U. S. ___, ___ (2022) (*per curiam*) (slip op., at 3) (citing *Gingles*, 478 U. S., at 46–51). A district will be reasonably configured, our cases explain, if it comports with traditional districting criteria, such as being contiguous and reasonably compact. See *Alabama Legislative Black Caucus* v. *Alabama*, 575 U. S. 254, 272 (2015). "Second, the minority group must be able to show that it is politically cohesive." *Gingles*, 478 U. S., at 51. And third, "the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it . . . to defeat the minority's preferred candidate." *Ibid.* Finally, a plaintiff who demonstrates the three preconditions must also show, under the "totality of circumstances," that the political process is not "equally open" to minority voters. *Id.*, at 45–46; see also *id.*, at 36–38 (identifying several factors relevant to the totality of circumstances inquiry, including "the extent of any history of official discrimination in the state . . . that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process").

Each *Gingles* precondition serves a different purpose. The first, focused on geographical compactness and numerosity, is "needed to establish that the minority has the potential to elect a representative of its own choice in some single-member district." *Growe* v. *Emison*, 507 U. S. 25, 40 (1993). The second, concerning the political cohesiveness of the minority group, shows that a representative of its choice

would in fact be elected. See *ibid.* The third precondition, focused on racially polarized voting, "establish[es] that the challenged districting thwarts a distinctive minority vote" at least plausibly on account of race. *Ibid.* And finally, the totality of circumstances inquiry recognizes that application of the *Gingles* factors is "peculiarly dependent upon the facts of each case." 478 U. S., at 79. Before courts can find a violation of §2, therefore, they must conduct "an intensely local appraisal" of the electoral mechanism at issue, as well as a "searching practical evaluation of the 'past and present reality.'" *Ibid.*

Gingles has governed our Voting Rights Act jurisprudence since it was decided 37 years ago. Congress has never disturbed our understanding of §2 as *Gingles* construed it. And we have applied *Gingles* in one §2 case after another, to different kinds of electoral systems and to different jurisdictions in States all over the country. See *Voinovich* v. *Quilter*, 507 U. S. 146 (1993) (Ohio); *Growe*, 507 U. S., at 25 (Minnesota); *Johnson* v. *De Grandy*, 512 U. S. 997 (1994) (Florida); *Holder* v. *Hall*, 512 U. S. 874 (1994) (Georgia); *Abrams* v. *Johnson*, 521 U. S. 74 (1997) (Georgia); *League of United Latin American Citizens* v. *Perry*, 548 U. S. 399, 423 (2006) (*LULAC*) (Texas); *Bartlett* v. *Strickland*, 556 U. S. 1 (2009) (plurality opinion) (North Carolina); *Cooper* v. *Harris*, 581 U. S. 285 (2017) (North Carolina); *Abbott* v. *Perez*, 585 U. S. ___ (2018) (Texas); *Wisconsin Legislature*, 595 U. S. ___ (Wisconsin).

B

As noted, the District Court concluded that plaintiffs' §2 claim was likely to succeed under *Gingles*. 582 F. Supp. 3d, at 1026. Based on our review of the record, we agree.

With respect to the first *Gingles* precondition, the District Court correctly found that black voters could constitute a majority in a second district that was "reasonably configured." 1 App. to Emergency Application for Stay in No. 21–

1086 etc., p. 253 (MSA). The plaintiffs adduced eleven illustrative maps—that is, example districting maps that Alabama could enact—each of which contained two majority-black districts that comported with traditional districting criteria. With respect to compactness, for example, the District Court explained that the maps submitted by one of plaintiffs' experts, Dr. Moon Duchin, "perform[ed] generally better on average than" did HB1. 582 F. Supp. 3d, at 1009. A map offered by another of plaintiffs' experts, Bill Cooper, produced districts roughly as compact as the existing plan. *Ibid.* And none of plaintiffs' maps contained any "tentacles, appendages, bizarre shapes, or any other obvious irregularities that would make it difficult to find" them sufficiently compact. *Id.*, at 1011. Plaintiffs' maps also satisfied other traditional districting criteria. They contained equal populations, were contiguous, and respected existing political subdivisions, such as counties, cities, and towns. *Id.*, at 1011, 1016. Indeed, some of plaintiffs' proposed maps split the same number of county lines as (or even *fewer* county lines than) the State's map. *Id.*, at 1011–1012. We agree with the District Court, therefore, that plaintiffs' illustrative maps "strongly suggest[ed] that Black voters in Alabama" could constitute a majority in a second, reasonably configured, district. *Id.*, at 1010.

The State nevertheless argues that plaintiffs' maps were not reasonably configured because they failed to keep together a traditional community of interest within Alabama. See, *e.g.*, *id.*, at 1012. A "community of interest," according to Alabama's districting guidelines, is an "area with recognized similarities of interests, including but not limited to ethnic, racial, economic, tribal, social, geographic, or historical identities." *Ibid.* Alabama argues that the Gulf Coast region in the southwest of the State is such a community of interest, and that plaintiffs' maps erred by separating it into two different districts. *Ibid.*

We do not find the State's argument persuasive. Only

two witnesses testified that the Gulf Coast was a community of interest. *Id.*, at 1015. The testimony provided by one of those witnesses was "partial, selectively informed, and poorly supported." *Ibid.* The other witness, meanwhile, justified keeping the Gulf Coast together "simply" to preserve "political advantage[]": "You start splitting counties," he testified, "and that county loses its influence. That's why I don't want Mobile County to be split." *Id.*, at 990, 1015. The District Court understandably found this testimony insufficient to sustain Alabama's "overdrawn argument that there can be no legitimate reason to split" the Gulf Coast region. *Id.*, at 1015.

Even if the Gulf Coast did constitute a community of interest, moreover, the District Court found that plaintiffs' maps would still be reasonably configured because they joined together a different community of interest called the Black Belt. *Id.*, at 1012–1014. Named for its fertile soil, the Black Belt contains a high proportion of black voters, who "share a rural geography, concentrated poverty, unequal access to government services, . . . lack of adequate healthcare," and a lineal connection to "the many enslaved people brought there to work in the antebellum period." *Id.*, at 1012–1013; see also 1 App. 299–304. The District Court concluded—correctly, under our precedent—that it did not have to conduct a "beauty contest[]" between plaintiffs' maps and the State's. There would be a split community of interest in both. 582 F. Supp. 3d, at 1012 (quoting *Bush* v. *Vera*, 517 U. S. 952, 977–978 (1996) (plurality opinion)).

The State also makes a related argument based on "core retention"—a term that refers to the proportion of districts that remain when a State transitions from one districting plan to another. See, *e.g.*, Brief for Alabama 25, 61. Here, by largely mirroring Alabama's 2011 districting plan, HB1 performs well on the core retention metric. Plaintiffs' illustrative plans, by contrast, naturally fare worse because they change where the 2011 district lines were drawn. See

e.g., Supp. App. 164–173. But this Court has never held that a State's adherence to a previously used districting plan can defeat a §2 claim. If that were the rule, a State could immunize from challenge a new racially discriminatory redistricting plan simply by claiming that it resembled an old racially discriminatory plan. That is not the law: §2 does not permit a State to provide some voters "less opportunity . . . to participate in the political process" just because the State has done it before. 52 U. S. C. §10301(b).

As to the second and third *Gingles* preconditions, the District Court determined that there was "no serious dispute that Black voters are politically cohesive, nor that the challenged districts' white majority votes sufficiently as a bloc to usually defeat Black voters' preferred candidate." 582 F. Supp. 3d, at 1016 (internal quotation marks omitted). The Court noted that, "on average, Black voters supported their candidates of choice with 92.3% of the vote" while "white voters supported Black-preferred candidates with 15.4% of the vote." *Id.*, at 1017 (internal quotation marks omitted). Plaintiffs' experts described the evidence of racially polarized voting in Alabama as "intens[e]," "very strong," and "very clear." *Ibid.* Even Alabama's expert conceded "that the candidates preferred by white voters in the areas that he looked at regularly defeat the candidates preferred by Black voters." *Id.*, at 1018.

Finally, the District Court concluded that plaintiffs had carried their burden at the totality of circumstances stage. The Court observed that elections in Alabama were racially polarized; that "Black Alabamians enjoy virtually zero success in statewide elections"; that political campaigns in Alabama had been "characterized by overt or subtle racial appeals"; and that "Alabama's extensive history of repugnant racial and voting-related discrimination is undeniable and well documented." *Id.*, at 1018–1024.

We see no reason to disturb the District Court's careful factual findings, which are subject to clear error review and

have gone unchallenged by Alabama in any event. See *Cooper*, 581 U. S., at 309. Nor is there a basis to upset the District Court's legal conclusions. The Court faithfully applied our precedents and correctly determined that, under existing law, HB1 violated §2.

III

The heart of these cases is not about the law as it exists. It is about Alabama's attempt to remake our §2 jurisprudence anew.

The centerpiece of the State's effort is what it calls the "race-neutral benchmark." The theory behind it is this: Using modern computer technology, mapmakers can now generate millions of possible districting maps for a given State. The maps can be designed to comply with traditional districting criteria but to not consider race. The mapmaker can determine how many majority-minority districts exist in each map, and can then calculate the median or average number of majority-minority districts in the entire multimillion-map set. That number is called the race-neutral benchmark.

The State contends that this benchmark should serve as the point of comparison in §2 cases. The benchmark, the State says, was derived from maps that were "race-blind"—maps that cannot have "deni[ed] or abridge[d]" anyone's right to vote "on account of race" because they never took race into "account" in the first place. 52 U. S. C. §10301(a). Courts in §2 cases should therefore compare the number of majority-minority districts in the State's plan to the benchmark. If those numbers are similar—if the State's map "resembles" the benchmark in this way—then, Alabama argues, the State's map also cannot have "deni[ed] or abridge[d]" anyone's right to vote "on account of race." *Ibid.*

Alabama contends that its approach should be adopted for two reasons. First, the State argues that a race-neutral benchmark best matches the text of the Voting Rights Act.

Section 2 requires that the political processes be "equally open." §10301(b). What that means, the State asserts, is that the State's map cannot impose "obstacles or burdens that block or seriously hinder voting on account of race." Brief for Alabama 43. These obstacles do not exist, in the State's view, where its map resembles a map that never took race into "account." *Ibid.* Second, Alabama argues that the *Gingles* framework ends up requiring racial proportionality in districting. According to the State, *Gingles* demands that where "another majority-black district could be drawn, it must be drawn." Brief for Alabama 71 (emphasis deleted). And that sort of proportionality, Alabama continues, is inconsistent with the compromise that Congress struck, with the text of §2, and with the Constitution's prohibition on racial discrimination in voting.

To apply the race-neutral benchmark in practice, Alabama would require §2 plaintiffs to make at least three showings. First, the illustrative plan that plaintiffs adduce for the first *Gingles* precondition cannot have been "based" on race. Brief for Alabama 56. Second, plaintiffs must show at the totality of circumstances stage that the State's enacted plan diverges from the average plan that would be drawn without taking race into account. And finally, plaintiffs must ultimately prove that any deviation between the State's plan and a race-neutral plan is explainable "only" by race—not, for example, by "the State's naturally occurring geography and demography." *Id.*, at 46.

As we explain below, we find Alabama's new approach to §2 compelling neither in theory nor in practice. We accordingly decline to recast our §2 case law as Alabama requests.

A

1

Section 2 prohibits States from imposing any "standard, practice, or procedure . . . in a manner which results in a denial or abridgement of the right of any citizen . . . to vote

on account of race or color." 52 U. S. C. §10301(a). What that means, §2 goes on to explain, is that the political processes in the State must be "equally open," such that minority voters do not "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." §10301(b).

We have understood the language of §2 against the background of the hard-fought compromise that Congress struck. To that end, we have reiterated that §2 turns on the presence of discriminatory effects, not discriminatory intent. See, *e.g.*, *Chisom* v. *Roemer*, 501 U. S. 380, 403–404 (1991). And we have explained that "[i]t is patently clear that Congress has used the words 'on account of race or color' in the Act to mean 'with respect to' race or color, and not to connote any required purpose of racial discrimination." *Gingles*, 478 U. S., at 71, n. 34 (plurality opinion) (some alterations omitted). Individuals thus lack an equal opportunity to participate in the political process when a State's electoral structure operates in a manner that "minimize[s] or cancel[s] out the[ir] voting strength." *Id.*, at 47. That occurs where an individual is disabled from "enter[ing] into the political process in a reliable and meaningful manner" "in the light of past and present reality, political and otherwise." *White*, 412 U. S., at 767, 770. A district is not equally open, in other words, when minority voters face—unlike their majority peers—bloc voting along racial lines, arising against the backdrop of substantial racial discrimination within the State, that renders a minority vote unequal to a vote by a nonminority voter.

The State's reading of §2, by contrast, runs headlong into our precedent. Alabama asserts that a State's map does not "abridge[]" a person's right to vote "on account of race" if the map resembles a sufficient number of race-neutral alternatives. See Brief for Alabama 54–56. But our cases have consistently focused, for purposes of litigation, on the

specific illustrative maps that a plaintiff adduces. Deviation from that map shows it is *possible* that the State's map has a disparate effect on account of race. The remainder of the *Gingles* test helps determine whether that possibility is reality by looking to polarized voting preferences and the frequency of racially discriminatory actions taken by the State, past and present.

A State's liability under §2, moreover, must be determined "based on the totality of circumstances." 52 U. S. C. §10301(b). Yet Alabama suggests there is only one "circumstance[]" that matters—how the State's map stacks up relative to the benchmark. That single-minded view of §2 cannot be squared with the VRA's demand that courts employ a more refined approach. And we decline to adopt an interpretation of §2 that would "revise and reformulate the *Gingles* threshold inquiry that has been the baseline of our §2 jurisprudence" for nearly forty years. *Bartlett*, 556 U. S., at 16 (plurality opinion); see also *Wisconsin Legislature*, 595 U. S., at ___ (slip op., at 7) (faulting lower court for "improperly reduc[ing] *Gingles*' totality-of-circumstances analysis to a single factor"); *De Grandy*, 512 U. S., at 1018 ("An inflexible rule would run counter to the textual command of §2, that the presence or absence of a violation be assessed 'based on the totality of circumstances.'").[3]

2

Alabama also argues that the race-neutral benchmark is required because our existing §2 jurisprudence inevitably demands racial proportionality in districting, contrary to the last sentence of §2(b). But properly applied, the *Gingles* framework itself imposes meaningful constraints on pro-

---

[3]The principal dissent complains that "what the District Court did here is essentially no different from what many courts have done for decades under this Court's superintendence." *Post*, at 47 (opinion of THOMAS, J.). That is not such a bad definition of *stare decisis*.

portionality, as our decisions have frequently demonstrated.

In *Shaw* v. *Reno*, for example, we considered the permissibility of a second majority-minority district in North Carolina, which at the time had 12 seats in the U. S. House of Representatives and a 20% black voting age population. 509 U. S. 630, 633–634 (1993). The second majority-minority district North Carolina drew was "160 miles long and, for much of its length, no wider than the [interstate] corridor." *Id.*, at 635. The district wound "in snakelike fashion through tobacco country, financial centers, and manufacturing areas until it gobble[d] in enough enclaves of black neighborhoods." *Id.*, at 635–636. Indeed, the district was drawn so imaginatively that one state legislator remarked: "[I]f you drove down the interstate with both car doors open, you'd kill most of the people in the district." *Id.*, at 636.

Though North Carolina believed the additional district was required by §2, we rejected that conclusion, finding instead that those challenging the map stated a claim of impermissible racial gerrymandering under the Equal Protection Clause. *Id.*, at 655, 658. In so holding, we relied on the fact that the proposed district was not reasonably compact. *Id.*, at 647. North Carolina had "concentrated a *dispersed* minority population in a single district by disregarding traditional districting principles such as compactness, contiguity, and respect for political subdivisions." *Ibid.* (emphasis added). And "[a] reapportionment plan that includes in one district individuals who belong to the same race, *but who are otherwise separated by geographical and political boundaries*," we said, raised serious constitutional concerns. *Ibid.* (emphasis added).

The same theme emerged in our 1995 decision *Miller* v. *Johnson*, where we upheld a district court's finding that one of Georgia's ten congressional districts was the product of an impermissible racial gerrymander. 515 U. S. 900, 906, 910–911. At the time, Georgia's black voting age population

was 27%, but there was only one majority-minority district. *Id.*, at 906. To comply with the VRA, Georgia thought it necessary to create two more majority-minority districts—achieving proportionality. *Id.*, at 920–921. But like North Carolina in *Shaw*, Georgia could not create the districts without flouting traditional criteria. One district "centered around four discrete, widely spaced urban centers that ha[d] absolutely nothing to do with each other, and stretch[ed] the district hundreds of miles across rural counties and narrow swamp corridors." 515 U. S., at 908. "Geographically," we said of the map, "it is a monstrosity." *Id.*, at 909.

In *Bush* v. *Vera*, a plurality of the Court again explained how traditional districting criteria limited any tendency of the VRA to compel proportionality. The case concerned Texas's creation of three additional majority-minority districts. 517 U. S., at 957. Though the districts brought the State closer to proportional representation, we nevertheless held that they constituted racial gerrymanders in violation of the Fourteenth Amendment. That was because the districts had "no integrity in terms of traditional, neutral redistricting criteria." *Id.*, at 960. One of the majority-black districts consisted "of narrow and bizarrely shaped tentacles." *Id.*, at 965. The proposed majority-Hispanic district resembled "a sacred Mayan bird" with "[s]pindly legs reach[ing] south" and a "plumed head ris[ing] northward." *Id.*, at 974.

The point of all this is a simple one. Forcing proportional representation is unlawful and inconsistent with this Court's approach to implementing §2. The numbers bear the point out well. At the congressional level, the fraction of districts in which black-preferred candidates are likely to win "is currently below the Black share of the eligible voter population in every state but three." Brief for Professors Jowei Chen et al. as *Amici Curiae* 3 (Chen Brief). Only one

State in the country, meanwhile, "has attained a proportional share" of districts in which Hispanic-preferred candidates are likely to prevail. *Id.*, at 3–4. That is because as residential segregation decreases—as it has "sharply" done since the 1970s—satisfying traditional districting criteria such as the compactness requirement "becomes more difficult." T. Crum, Reconstructing Racially Polarized Voting, 70 Duke L. J. 261, 279, and n. 105 (2020).

Indeed, as *amici* supporting the appellees emphasize, §2 litigation in recent years has rarely been successful for just that reason. See Chen Brief 3–4. Since 2010, plaintiffs nationwide have apparently succeeded in fewer than ten §2 suits. *Id.*, at 7. And "the *only* state legislative or congressional districts that were redrawn because of successful Section 2 challenges were a handful of state house districts near Milwaukee and Houston." *Id.*, at 7–8. By contrast, "[n]umerous lower courts" have upheld districting maps "where, due to minority populations' geographic diffusion, plaintiffs couldn't design an additional majority-minority district" or satisfy the compactness requirement. *Id.*, at 15–16 (collecting cases). The same has been true of recent litigation in this Court. See *Abbott*, 585 U. S., at ___–___ (slip op., at 33–34) (finding a Texas district did not violate §2 because "the geography and demographics of south and west Texas do not permit the creation of any more than the seven Latino . . . districts that exist under the current plan").[4]

---

[4] Despite this all, the dissent argues that courts have apparently been "methodically carving the country into racially designated electoral districts" for decades. *Post*, at 48 (opinion of THOMAS, J.). And that, the dissent inveighs, "should inspire us to repentance." *Ibid.* But proportional representation of minority voters is absent from nearly every corner of this country despite §2 being in effect for over 40 years. And in case after case, we have rejected districting plans that would bring States closer to proportionality when those plans violate traditional districting criteria. See *supra*, at 19–21. It seems it is the dissent that is "quixotically joust[ing] with an imaginary adversary." *Post*, at 47 (opinion of THOMAS, J.).

Reapportionment, we have repeatedly observed, "is primarily the duty and responsibility of the State[s]," not the federal courts. *Id.*, at ___ (slip op., at 21). Properly applied, the *Gingles* factors help ensure that remains the case. As respondents themselves emphasize, §2 "never require[s] adoption of districts that violate traditional redistricting principles." Brief for Respondents in No. 21–1087, p. 3. Its exacting requirements, instead, limit judicial intervention to "those instances of intensive racial politics" where the "excessive role [of race] in the electoral process . . . den[ies] minority voters equal opportunity to participate." Senate Report 33–34.

B

Although we are content to reject Alabama's invitation to change existing law on the ground that the State misunderstands §2 and our decisions implementing it, we also address how the race-neutral benchmark would operate in practice. Alabama's approach fares poorly on that score, which further counsels against our adopting it.

1

The first change to existing law that Alabama would require is prohibiting the illustrative maps that plaintiffs submit to satisfy the first *Gingles* precondition from being "based" on race. Brief for Alabama 56. Although Alabama is not entirely clear whether, under its view, plaintiffs' illustrative plans must not take race into account at all or whether they must just not "prioritize" race, *ibid.*, we see no reason to impose such a new rule.

When it comes to considering race in the context of districting, we have made clear that there is a difference "between being aware of racial considerations and being motivated by them." *Miller*, 515 U. S., at 916; see also *North Carolina* v. *Covington*, 585 U. S. ___, ___ (2018) (*per curiam*) (slip op., at 8). The former is permissible; the latter

is usually not. That is because "[r]edistricting legislatures will . . . almost always be aware of racial demographics," *Miller*, 515 U. S., at 916, but such "race consciousness does not lead inevitably to impermissible race discrimination," *Shaw*, 509 U. S., at 646. Section 2 itself "demands consideration of race." *Abbott*, 581 U. S., at ___ (slip op., at 4). The question whether additional majority-*minority* districts can be drawn, after all, involves a "quintessentially race-conscious calculus." *De Grandy*, 512 U. S., at 1020.

At the same time, however, race may not be "the predominant factor in drawing district lines unless [there is] a compelling reason." *Cooper*, 581 U. S., at 291. Race predominates in the drawing of district lines, our cases explain, when "race-neutral considerations [come] into play only after the race-based decision had been made." *Bethune-Hill* v. *Virginia State Bd. of Elections*, 580 U. S. 178, 189 (2017) (internal quotation marks omitted). That may occur where "race for its own sake is the overriding reason for choosing one map over others." *Id.*, at 190.

While the line between racial predominance and racial consciousness can be difficult to discern, see *Miller*, 515 U. S., at 916, it was not breached here. The *Caster* plaintiffs relied on illustrative maps produced by expert Bill Cooper. See 2 App. 591–592. Cooper testified that while it was necessary for him to *consider* race, he also took several other factors into account, such as compactness, contiguity, and population equality. *Ibid.* Cooper testified that he gave all these factors "equal weighting." *Id.*, at 594. And when asked squarely whether race predominated in his development of the illustrative plans, Cooper responded: "No. It was a consideration. This is a Section 2 lawsuit, after all. But it did not predominate or dominate." *Id.*, at 595.

The District Court agreed. It found "Cooper's testimony highly credible" and commended Cooper for "work[ing] hard to give 'equal weight[]' to all traditional redistricting criteria." 582 F. Supp. 3d, at 1005–1006; see also *id.*, at 978–

979. The court also explained that Alabama's evidence of racial predominance in Cooper's maps was exceedingly thin. Alabama's expert, Thomas Bryan, "testified that he never reviewed the exhibits to Mr. Cooper's report" and "that he never reviewed" one of the illustrative plans that Cooper submitted. *Id.*, at 1006. Bryan further testified that he could offer no "conclusions or opinions as to the apparent basis of any individual line drawing decisions in Cooper's illustrative plans." 2 App. 740. By his own admission, Bryan's analysis of any race predominance in Cooper's maps "was pretty light." *Id.*, at 739. The District Court did not err in finding that race did not predominate in Cooper's maps in light of the evidence before it.[5]

The dissent contends that race nevertheless predominated in both Cooper's and Duchin's maps because they were designed to hit "'express racial target[s]'"—namely, two "50%-plus majority-black districts." *Post*, at 15 (opinion of THOMAS, J.) (quoting *Bethune-Hill*, 580 U. S., at 192). This argument fails in multiple ways. First, the dissent's reliance on *Bethune-Hill* is mistaken. In that case, this Court was unwilling to conclude that a State's maps were produced in a racially predominant manner. Instead, we

---

[5] The dissent claims that Cooper "treated 'the minority population in and of itself' as the paramount community of interest in his plans." *Post*, at 14 (opinion of THOMAS, J.) (quoting 2 App. 601). But Cooper testified that he was "aware that the minority population in and of itself *can* be a community of interest." *Id.*, at 601 (emphasis added). Cooper then explained that the relevant community of interest here—the Black Belt—was a "*historical* feature" of the State, not a demographic one. *Ibid.* (emphasis added). The Black Belt, he emphasized, was defined by its "historical boundaries"—namely, the group of "rural counties plus Montgomery County in the central part of the state." *Ibid.* The District Court treated the Black Belt as a community of interest for the same reason.

The dissent also protests that Cooper's "plans prioritized race over neutral districting criteria." *Post*, at 14 (opinion of THOMAS, J.). But as the District Court found, and as Alabama does not contest, Cooper's maps satisfied other traditional criteria, such as compactness, contiguity, equal populations, and respect for political subdivisions.

remanded for the lower court to conduct the predominance analysis itself, explaining that "the use of an express racial target" was just one factor among others that the court would have to consider as part of "[a] holistic analysis." *Id.*, at 192. JUSTICE THOMAS dissented in relevant part, contending that because "the legislature sought to achieve a [black voting-age population] of at least 55%," race necessarily predominated in its decisionmaking. *Id.*, at 198 (opinion concurring in part and dissenting in part). But the Court did not join in that view, and JUSTICE THOMAS again dissents along the same lines today.

The second flaw in the dissent's proposed approach is its inescapable consequence: *Gingles* must be overruled. According to the dissent, racial predominance plagues *every single illustrative map ever adduced* at the first step of *Gingles*. For all those maps were created with an express target in mind—they were created to show, as our cases require, that an additional majority-minority district could be drawn. That is the whole point of the enterprise. The upshot of the approach the dissent urges is not to change how *Gingles* is applied, but to reject its framework outright.

The contention that mapmakers must be entirely "blind" to race has no footing in our §2 case law. The line that we have long drawn is between consciousness and predominance. Plaintiffs adduced at least one illustrative map that comported with our precedents. They were required to do no more to satisfy the first step of *Gingles*.

2

The next condition Alabama would graft onto §2 is a requirement that plaintiffs demonstrate, at the totality of circumstances stage, that the State's enacted plan contains fewer majority-minority districts than the race-neutral benchmark. Brief for Alabama 43. If it does not, then §2 should drop out of the picture. *Id.*, at 44.

Alabama argues that is what should have happened here.

It notes that one of plaintiffs' experts, Dr. Duchin, used an algorithm to create "2 million districting plans for Alabama . . . without taking race into account in any way in the generation process." 2 App. 710. Of these two million "race-blind" plans, none contained two majority-black districts while many plans did not contain any. *Ibid.* Alabama also points to a "race-neutral" computer simulation conducted by another one of plaintiffs' experts, Dr. Kosuke Imai, which produced 30,000 potential maps. Brief for Alabama 55. As with Dr. Duchin's maps, none of the maps that Dr. Imai created contained two majority-black districts. See 2 App. 571–572. Alabama thus contends that because HB1 sufficiently "resembles" the "race-neutral" maps created by Dr. Duchin and Dr. Imai—all of the maps lack two majority-black districts—HB1 does not violate §2. Brief for Alabama 54.

Alabama's reliance on the maps created by Dr. Duchin and Dr. Imai is misplaced. For one, neither Duchin's nor Imai's maps accurately represented the districting process in Alabama. Dr. Duchin's maps were based on old census data—from 2010 instead of 2020—and ignored certain traditional districting criteria, such as keeping together communities of interest, political subdivisions, or municipalities.[6] And Dr. Imai's 30,000 maps failed to incorporate Alabama's own districting guidelines, including keeping together communities of interest and preserving municipal boundaries. See Supp. App. 58–59.[7]

---

[6] Dr. Duchin created her two million map sample as part of an academic article that she helped author, not for her work on this case, and the article was neither entered into evidence below nor made part of the record here. See 2 App. 710; see also M. Duchin & D. Spencer, Models, Race, and the Law, 130 Yale L. J. Forum 744, 763–764 (2021) (Duchin & Spencer).

[7] The principal dissent decrees that Dr. Duchin's and Dr. Imai's maps are "surely probative," forgiving the former's use of stale census data as well as both mapmakers' collective failure to incorporate many traditional districting guidelines. *Post*, at 23–24, and n. 14 (opinion of

But even if the maps created by Dr. Duchin and Dr. Imai were adequate comparators, we could not adopt the map-comparison test that Alabama proposes. The test is flawed in its fundamentals. Districting involves myriad considerations—compactness, contiguity, political subdivisions, natural geographic boundaries, county lines, pairing of incumbents, communities of interest, and population equality. See *Miller*, 515 U. S., at 916. Yet "[q]uantifying, measuring, prioritizing, and reconciling these criteria" requires map drawers to "make difficult, contestable choices." Brief for Computational Redistricting Experts as *Amici Curiae* 8 (Redistricting Brief). And "[i]t is easy to imagine how different criteria could move the median map toward different . . . distributions," meaning that "the same map could be [lawful] or not depending solely on what the mapmakers said they set out to do." *Rucho* v. *Common Cause*, 588 U. S. ___, ___–___ (2019) (slip op., at 27–28). For example, "the scientific literature contains dozens of competing metrics" on the issue of compactness. Redistricting Brief 8. Which one of these metrics should be used? What happens when

THOMAS, J.); see also *post*, at 15, n. 9, 16. In doing so, that dissent ignores Dr. Duchin's testimony that—when using the correct census data—the "randomized algorithms" she employed "found plans with two majority-black districts in literally thousands of different ways." MSA 316–317. The principal dissent and the dissent by JUSTICE ALITO also ignore Duchin's testimony that "it is certainly possible" to draw the illustrative maps she produced in a race-blind manner. 2 App. 713. In that way, even the race-blind standard that the dissents urge would be satisfied here. See *post*, at 21 (opinion of THOMAS, J.); *post*, at 6 (opinion of ALITO, J.). So too could that standard be satisfied in every §2 case; after all, as Duchin explained, any map produced in a deliberately race-predominant manner would necessarily emerge at some point in a random, race-neutral process. 2 App. 713. And although JUSTICE ALITO voices support for an "old-school approach" to §2, even that approach cannot be squared with his understanding of *Gingles*. *Post*, at 6. The very reason a plaintiff adduces a map at the first step of *Gingles* is precisely *because of* its racial composition—that is, because it creates an additional majority-minority district that does not then exist.

the maps they produce yield different benchmark results? How are courts to decide?

Alabama does not say; it offers no rule or standard for determining which of these choices are better than others. Nothing in §2 provides an answer either. In 1982, the computerized mapmaking software that Alabama contends plaintiffs must use to demonstrate an (unspecified) level of deviation did not even exist. See, *e.g.*, J. Chen & N. Stephanopoulos, The Race-Blind Future of Voting Rights, 130 Yale L. J. 862, 881–882 (2021) (Chen & Stephanopoulos). And neither the text of §2 nor the fraught debate that produced it suggests that "equal access" to the fundamental right of voting turns on computer simulations that are technically complicated, expensive to produce, and available to "[o]nly a small cadre of university researchers [that] have the resources and expertise to run" them. Brief for United States as *Amicus Curiae* 28 (citing Chen & Stephanopoulos 882–884).[8]

One final point bears mentioning. Throughout these cases, Alabama has repeatedly emphasized that HB1 cannot have violated §2 because none of plaintiffs' two million odd maps contained more than one majority-minority district. See, *e.g.*, Brief for Alabama 1, 23, 30, 31, 54–56, 70, 79. The point is that two million is a very big number and that sheer volume matters. But as elsewhere, Alabama misconceives the math project that it expects courts to oversee. A brief submitted by three computational redistricting experts explains that the number of possible districting maps in Alabama is at least in the "trillion trillions." Redistricting Brief 6, n. 7. Another publication reports that

[8] None of this is to suggest that algorithmic mapmaking is categorically irrelevant in voting rights cases. Instead, we note only that, in light of the difficulties discussed above, courts should exercise caution before treating results produced by algorithms as all but dispositive of a §2 claim. And in evaluating algorithmic evidence more generally in this context, courts should be attentive to the concerns we have discussed.

the number of potential maps may be orders of magnitude higher: "the universe of all possible connected, population-balanced districting plans that satisfy the state's requirements," it explains, "is likely in the range of googols." Duchin & Spencer 768. Two million maps, in other words, is not many maps at all. And Alabama's insistent reliance on that number, however powerful it may sound in the abstract, is thus close to irrelevant in practice. What would the next million maps show? The next billion? The first trillion of the trillion trillions? Answerless questions all. See, *e.g.*, Redistricting Brief 2 ("[I]t is computationally intractable, and thus effectively impossible, to generate a complete enumeration of all potential districting plans. [Even] algorithms that attempt to create a manageable sample of that astronomically large universe do not consistently identify an average or median map."); Duchin & Spencer 768 ("[A] comprehensive survey of [all districting plans within a State] is impossible.").

Section 2 cannot require courts to judge a contest of computers when there is no reliable way to determine who wins, or even where the finish line is.

3

Alabama's final contention with respect to the race-neutral benchmark is that it requires plaintiffs to demonstrate that any deviations between the State's enacted plan and race-neutral alternatives "can be explained *only* by racial discrimination." Brief for Alabama 44 (emphasis added).

We again find little merit in Alabama's proposal. As we have already explained, our precedents and the legislative compromise struck in the 1982 amendments clearly rejected treating discriminatory intent as a requirement for liability under §2. See, *e.g.*, *Chisom*, 501 U. S., at 403–404; *Shaw*, 509 U. S., at 641; *Reno* v. *Bossier Parish School Bd.*, 520 U. S. 471, 481–482 (1997). Yet Alabama's proposal is

even *more* demanding than the intent test Congress jettisoned. Demonstrating discriminatory intent, we have long held, "does not require a plaintiff to prove that the challenged action rested *solely* on racially discriminatory purpose[]." *Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U. S. 252, 265 (1977) (emphasis added); see also *Reno*, 520 U. S., at 488. Alabama's proposed approach stands in sharp contrast to all this, injecting into the effects test of §2 an evidentiary standard that even our purposeful discrimination cases eschew.

C

Alabama finally asserts that the Court should outright stop applying §2 in cases like these because the text of §2 does not apply to single-member redistricting and because §2 is unconstitutional as the District Court applied it here. We disagree on both counts.

Alabama first argues that §2 does not apply to single-member redistricting. Echoing JUSTICE THOMAS's concurrence in *Holder* v. *Hall*, Alabama reads §2's reference to "standard, practice, or procedure" to mean only the "methods for conducting a part of the voting process that might . . . be used to interfere with a citizen's ability to cast his vote." 512 U. S., at 917–918 (opinion concurring in judgment). Examples of covered activities would include "registration requirements, . . . the locations of polling places, the times polls are open, the use of paper ballots as opposed to voting machines, and other similar aspects of the voting process." *Id.*, at 922. But not "a single-member districting system or the selection of one set of districting lines over another." *Id.*, at 923.

This understanding of §2 cannot be reconciled with our precedent. As recounted above, we have applied §2 to States' districting maps in an unbroken line of decisions stretching four decades. See *supra*, at 11; see also *Brnovich*, 594 U. S., at ___, n. 5 (slip op., at 7, n. 5) (collecting cases).

In doing so, we have unanimously held that §2 and *Gingles* "[c]ertainly . . . apply" to claims challenging single-member districts. *Growe*, 507 U. S., at 40. And we have even invalidated portions of a State's single-district map under §2. See *LULAC*, 548 U. S., at 427–429.[9] Alabama's approach would require "abandoning" this precedent, "overruling the interpretation of §2" as set out in nearly a dozen of our cases. *Holder*, 512 U. S., at 944 (opinion of THOMAS, J.).

We decline to take that step. Congress is undoubtedly aware of our construing §2 to apply to districting challenges. It can change that if it likes. But until and unless it does, statutory *stare decisis* counsels our staying the course. See, *e.g.*, *Kimble* v. *Marvel Entertainment, LLC*, 576 U. S. 446, 456 (2015).[10]

The statutory text in any event supports the conclusion that §2 applies to single-member districts. Alabama's own proffered definition of a "procedure is the manner or method

---

[9] The dissent suggests that *Growe* does not support the proposition that §2 applies to single-member redistricting. *Post*, at 4–5 (opinion of THOMAS, J.). The Court has understood *Growe* much differently. See, *e.g.*, *Abrams* v. *Johnson*, 521 U. S. 74, 90 (1997) ("Our decision in [*Gingles*] set out the basic framework for establishing a vote dilution claim against at-large, multimembers districts; we have since extended the framework to single-member districts." (citing *Growe*, 507 U. S., at 40–41)); *Johnson* v. *De Grandy*, 512 U. S. 997, 1006 (1994) ("In *Growe*, we held that a claim of vote dilution in a single-member district requires proof meeting *the same* three threshold conditions for a dilution challenge to a multimember district . . . ."); *Bartlett* v. *Strickland*, 556 U. S. 1, 12 (plurality opinion) ("The Court later held that the three *Gingles* requirements apply equally in §2 cases involving single-member districts . . . ." (citing *Growe*, 507 U. S., at 40–41)).

[10] JUSTICE ALITO argues that "[t]he *Gingles* framework should be [re]interpreted" in light of changing methods in statutory interpretation. *Post*, at 10 (dissenting opinion). But as we have explained, *Gingles* effectuates the delicate legislative bargain that §2 embodies. And statutory *stare decisis* counsels strongly in favor of not "undo[ing] . . . the compromise that was reached between the House and Senate when §2 was amended in 1982." *Brnovich*, 594 U. S., at ___ (slip op., at 22).

of proceeding in a process or course of action." Brief for Alabama 51 (internal quotation marks omitted). But the manner of proceeding in the act of voting entails determining in which districts voters will vote. The fact that the term "procedure" is preceded by the phrase "qualification or prerequisite to voting," 52 U. S. C. §10301(a), does not change its meaning. It is hard to imagine many more fundamental "prerequisites" to voting than determining where to cast your ballot or who you are eligible to vote for. Perhaps for that reason, even Alabama does not bear the courage of its conviction on this point. It refuses to argue that §2 is inapplicable to multimember districting, though its textual arguments apply with equal force in that context.

The dissent, by contrast, goes where even Alabama does not dare, arguing that §2 is wholly inapplicable to districting because it "focuses on ballot access and counting" only. *Post*, at 2 (opinion of THOMAS, J.). But the statutory text upon which the dissent relies supports the exact opposite conclusion. The relevant section provides that "[t]he terms 'vote' or 'voting' shall include *all action necessary to make a vote effective*." *Ibid.* (quoting 52 U. S. C. §10310(c)(1); emphasis added). Those actions "includ[e], but [are] not limited to, . . . action[s] required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast." §10310(c)(1). It would be anomalous to read the broad language of the statute—"all action necessary," "including but not limited to"—to have the crabbed reach that JUSTICE THOMAS posits. And we have already discussed why determining where to cast a ballot constitutes a "prerequisite" to voting, as the statute requires.

The dissent also contends that "applying §2 to districting rests on systematic neglect of . . . the ballot-access focus of the 1960s' voting-rights struggles." *Post*, at 3 (opinion of THOMAS, J.). But history did not stop in 1960. As we have explained, Congress adopted the amended §2 in response to

the 1980 decision *City of Mobile*, a case about *districting*. And—as the dissent itself acknowledges—"Congress drew §2(b)'s current operative language" from the 1973 decision *White* v. *Regester*, *post*, at 4, n. 3 (opinion of THOMAS, J.), a case that was also about districting (in fact, a case that invalidated two multimember districts in Texas and ordered them redrawn into single-member districts, 412 U. S., at 765). This was not lost on anyone when §2 was amended. Indeed, it was the precise reason that the contentious debates over proportionality raged—debates that would have made little sense if §2 covered only poll taxes and the like, as the dissent contends.

We also reject Alabama's argument that §2 as applied to redistricting is unconstitutional under the Fifteenth Amendment. According to Alabama, that Amendment permits Congress to legislate against only purposeful discrimination by States. See Brief for Alabama 73. But we held over 40 years ago "that, even if §1 of the [Fifteenth] Amendment prohibits only purposeful discrimination, the prior decisions of this Court foreclose any argument that Congress may not, pursuant to §2 [of the Fifteenth Amendment] outlaw voting practices that are discriminatory in effect." *City of Rome* v. *United States*, 446 U. S. 156, 173 (1980). The VRA's "ban on electoral changes that are discriminatory in effect," we emphasized, "is an appropriate method of promoting the purposes of the Fifteenth Amendment." *Id.*, at 177. As *City of Rome* recognized, we had reached the very same conclusion in *South Carolina* v. *Katzenbach*, a decision issued right after the VRA was first enacted. 383 U. S., at 308–309, 329–337; see also *Brnovich*, 594 U. S., at ___ (slip op., at 3).

Alabama further argues that, even if the Fifteenth Amendment authorizes the effects test of §2, that Amendment does not authorize race-based redistricting as a remedy for §2 violations. But for the last four decades, this Court and the lower federal courts have repeatedly applied

the effects test of §2 as interpreted in *Gingles* and, under certain circumstances, have authorized race-based redistricting as a remedy for state districting maps that violate §2. See, *e.g.*, *supra,* at 11; cf. *Mississippi Republican Executive Committee* v. *Brooks*, 469 U. S. 1002 (1984). In light of that precedent, including *City of Rome*, we are not persuaded by Alabama's arguments that §2 as interpreted in *Gingles* exceeds the remedial authority of Congress.

The concern that §2 may impermissibly elevate race in the allocation of political power within the States is, of course, not new. See, *e.g.*, *Shaw*, 509 U. S., at 657 ("Racial gerrymandering, even for remedial purposes, may balkanize us into competing racial factions; it threatens to carry us further from the goal of a political system in which race no longer matters."). Our opinion today does not diminish or disregard these concerns. It simply holds that a faithful application of our precedents and a fair reading of the record before us do not bear them out here.

* * *

The judgments of the District Court for the Northern District of Alabama in the *Caster* case, and of the three-judge District Court in the *Milligan* case, are affirmed.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

Nos. 21–1086 and 21–1087

WES ALLEN, ALABAMA SECRETARY OF STATE, ET AL., APPELLANTS
21–1086 *v.*
EVAN MILLIGAN, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

WES ALLEN, ALABAMA SECRETARY OF STATE, ET AL., PETITIONERS
21–1087 *v.*
MARCUS CASTER, ET AL.

ON WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

[June 8, 2023]

JUSTICE KAVANAUGH, concurring in all but Part III–B–1.

I agree with the Court that Alabama's redistricting plan violates §2 of the Voting Rights Act as interpreted in *Thornburg* v. *Gingles*, 478 U. S. 30 (1986). I write separately to emphasize four points.

First, the upshot of Alabama's argument is that the Court should overrule *Gingles*. But the *stare decisis* standard for this Court to overrule a statutory precedent, as distinct from a constitutional precedent, is comparatively strict. Unlike with constitutional precedents, Congress and the President may enact new legislation to alter statutory precedents such as *Gingles*. In the past 37 years, however, Congress and the President have not disturbed *Gingles*, even as they have made other changes to the Voting Rights Act. Although statutory *stare decisis* is not absolute, "the

Court has ordinarily left the updating or correction of erroneous statutory precedents to the legislative process." *Ramos* v. *Louisiana*, 590 U. S. ___, ___ (2020) (KAVANAUGH, J., concurring in part) (slip op., at 4); see also, *e.g.*, *Kimble* v. *Marvel Entertainment, LLC*, 576 U. S. 446, 456 (2015); *Patterson* v. *McLean Credit Union*, 491 U. S. 164, 172–173 (1989); *Flood* v. *Kuhn*, 407 U. S. 258, 283–284 (1972); *Burnet* v. *Coronado Oil & Gas Co.*, 285 U. S. 393, 406 (1932) (Brandeis, J., dissenting).[1]

Second, Alabama contends that *Gingles* inevitably requires a proportional number of majority-minority districts, which in turn contravenes the proportionality disclaimer in §2(b) of the Voting Rights Act. 52 U. S. C. §10301(b). But Alabama's premise is wrong. As the Court's precedents make clear, *Gingles* does not mandate a proportional number of majority-minority districts. *Gingles* requires the creation of a majority-minority district only when, among other things, (i) a State's redistricting map cracks or packs a large and "geographically compact" minority population and (ii) a plaintiff's proposed alternative map and proposed majority-minority district are "reasonably configured"—namely, by respecting compactness principles and other traditional districting criteria such as county, city, and town lines. See, *e.g.*, *Cooper* v. *Harris*, 581 U. S. 285, 301–302 (2017); *Voinovich* v. *Quilter*, 507 U. S. 146, 153–154 (1993); *ante*, at 10–12, 18–22.

[1] Unlike ordinary statutory precedents, the "Court's precedents applying common-law statutes and pronouncing the Court's own interpretive methods and principles typically do not fall within that category of stringent statutory *stare decisis*." *Ramos*, 590 U. S., at ___, n. 2 (opinion of KAVANAUGH, J.) (slip op., at 5, n. 2); see also, *e.g.*, *Kisor* v. *Wilkie*, 588 U. S. ___, ___–___ (2019) (GORSUCH, J., concurring in judgment) (slip op., at 34–36); *id.*, at ___–___ (KAVANAUGH, J., concurring in judgment) (slip op., at 1–2); *Leegin Creative Leather Products, Inc.* v. *PSKS, Inc.*, 551 U. S. 877, 899–907 (2007); *Arbaugh* v. *Y & H Corp.*, 546 U. S. 500, 510–516 (2006).

If *Gingles* demanded a proportional number of majority-minority districts, States would be forced to group together geographically dispersed minority voters into unusually shaped districts, without concern for traditional districting criteria such as county, city, and town lines. But *Gingles* and this Court's later decisions have flatly rejected that approach. See, *e.g.*, *Abbott* v. *Perez*, 585 U. S. ___, ___–___ (2018) (slip op., at 33–34); *Bush* v. *Vera*, 517 U. S. 952, 979 (1996) (plurality opinion); *Gingles*, 478 U. S., at 50; see also *Miller* v. *Johnson*, 515 U. S. 900, 917–920 (1995); *Shaw* v. *Reno*, 509 U. S. 630, 644–649 (1993); *ante*, at 18–22.[2]

Third, Alabama argues that courts should rely on race-blind computer simulations of redistricting maps to assess whether a State's plan abridges the right to vote on account of race. It is true that computer simulations might help detect the presence or absence of *intentional* discrimination. For example, if all of the computer simulations generated only one majority-minority district, it might be difficult to say that a State had intentionally discriminated on the basis of race by failing to draw a second majority-minority district.

But as this Court has long recognized—and as all Members of this Court today agree—the text of §2 establishes an effects test, not an intent test. See *ante*, at 17; *post*, at 7 (THOMAS, J., dissenting); *post*, at 16 (ALITO, J., dissenting). And the effects test, as applied by *Gingles* to redistricting, requires in certain circumstances that courts account for the race of voters so as to prevent the cracking or packing—whether intentional or not—of large

[2] To ensure that *Gingles* does not improperly morph into a proportionality mandate, courts must rigorously apply the "geographically compact" and "reasonably configured" requirements. See *ante*, at 22 (§2 requirements under *Gingles* are "exacting"). In this case, for example, it is important that at least some of the plaintiffs' proposed alternative maps respect county lines at least as well as Alabama's redistricting plan. See *ante*, at 12.

and geographically compact minority populations. See *Abbott*, 585 U. S., at ___ (slip op., at 4); *Johnson* v. *De Grandy*, 512 U. S. 997, 1006–1007, 1020 (1994); *Voinovich*, 507 U. S., at 153–154; see generally *Brnovich* v. *Democratic National Committee*, 594 U. S. ___, ___ (2021) (slip op., at 22) ("§2 does not demand proof of discriminatory purpose"); *Reno* v. *Bossier Parish School Bd.*, 520 U. S. 471, 482 (1997) (Congress "clearly expressed its desire that §2 *not* have an intent component"); *Holder* v. *Hall*, 512 U. S. 874, 923–924 (1994) (THOMAS, J., concurring in judgment) (§2 adopts a "'results' test, rather than an 'intent' test"); *Chisom* v. *Roemer*, 501 U. S. 380, 394, 404 (1991) ("proof of intent is no longer required to prove a §2 violation" as "Congress made clear that a violation of §2 could be established by proof of discriminatory results alone"); *Gingles*, 478 U. S., at 71, n. 34 (plurality opinion) (§2 does not require "'purpose of racial discrimination'").

Fourth, Alabama asserts that §2, as construed by *Gingles* to require race-based redistricting in certain circumstances, exceeds Congress's remedial or preventive authority under the Fourteenth and Fifteenth Amendments. As the Court explains, the constitutional argument presented by Alabama is not persuasive in light of the Court's precedents. See *ante*, at 33–34; see also *City of Rome* v. *United States*, 446 U. S. 156, 177–178 (1980). JUSTICE THOMAS notes, however, that even if Congress in 1982 could constitutionally authorize race-based redistricting under §2 for some period of time, the authority to conduct race-based redistricting cannot extend indefinitely into the future. See *post*, at 44–45 (dissenting opinion). But Alabama did not raise that temporal argument in this Court, and I therefore would not consider it at this time.

For those reasons, I vote to affirm, and I concur in all but Part III–B–1 of the Court's opinion.

SUPREME COURT OF THE UNITED STATES

Nos. 21–1086 and 21–1087

WES ALLEN, ALABAMA SECRETARY OF STATE, ET AL., APPELLANTS
21–1086 *v.*
EVAN MILLIGAN, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

WES ALLEN, ALABAMA SECRETARY OF STATE, ET AL., PETITIONERS
21–1087 *v.*
MARCUS CASTER, ET AL.

ON WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

[June 8, 2023]

JUSTICE THOMAS, with whom JUSTICE GORSUCH joins, with whom JUSTICE BARRETT joins as to Parts II and III, and with whom JUSTICE ALITO joins as to Parts II–A and II–B, dissenting.

These cases "are yet another installment in the 'disastrous misadventure' of this Court's voting rights jurisprudence." *Alabama Legislative Black Caucus* v. *Alabama*, 575 U. S. 254, 294 (2015) (THOMAS, J., dissenting) (quoting *Holder* v. *Hall*, 512 U. S. 874, 893 (1994) (THOMAS, J., concurring in judgment)). What distinguishes them is the uncommon clarity with which they lay bare the gulf between our "color-blind" Constitution, *Plessy* v. *Ferguson*, 163 U. S. 537, 559 (1896) (Harlan, J., dissenting), and "the consciously segregated districting system currently being constructed in the name of the Voting Rights Act." *Holder*, 512

U. S., at 907 (opinion of THOMAS, J.). The question presented is whether §2 of the Act, as amended, requires the State of Alabama to intentionally redraw its longstanding congressional districts so that black voters can control a number of seats roughly proportional to the black share of the State's population. Section 2 demands no such thing, and, if it did, the Constitution would not permit it.

I

At the outset, I would resolve these cases in a way that would not require the Federal Judiciary to decide the correct racial apportionment of Alabama's congressional seats. Under the statutory text, a §2 challenge must target a "voting qualification or prerequisite to voting or standard, practice, or procedure." 52 U. S. C. §10301(a). I have long been convinced that those words reach only "enactments that regulate citizens' access to the ballot or the processes for counting a ballot"; they "do not include a State's . . . choice of one districting scheme over another." *Holder*, 512 U. S., at 945 (opinion of THOMAS, J.). "Thus, §2 cannot provide a basis for invalidating any district." *Abbott* v. *Perez*, 585 U. S. ___, ___ (2018) (THOMAS, J., concurring) (slip op., at 1).

While I will not repeat all the arguments that led me to this conclusion nearly three decades ago, see *Holder*, 512 U. S., at 914–930 (opinion concurring in judgment), the Court's belated appeal to the statutory text is not persuasive. See *ante*, at 31–32. Whatever words like "practice" and "procedure" are capable of meaning in a vacuum, the prohibitions *of §2* apply to practices and procedures that affect "voting" and "the right . . . to vote." §10301(a). "Vote" and "voting" are defined terms under the Act, and the Act's definition plainly focuses on ballot access and counting:

> "The terms 'vote' or 'voting' shall include all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to,

> registration, listing pursuant to this chapter, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election." §10310(c)(1).

In enacting the original Voting Rights Act in 1965, Congress copied this definition almost verbatim from Title VI of the Civil Rights Act of 1960—a law designed to protect access to the ballot in jurisdictions with patterns or practices of denying such access based on race, and which cannot be construed to authorize so-called vote-dilution claims. See 74 Stat. 91–92 (codified in relevant part at 52 U. S. C. §10101(e)). Title I of the Civil Rights Act of 1964, which cross-referenced the 1960 Act's definition of "vote," likewise protects ballot access alone and cannot be read to address vote dilution. See 78 Stat. 241 (codified in relevant part at 52 U. S. C. §10101(a)). Tellingly, the 1964 Act also used the words "standard, practice, or procedure" to refer specifically to voting qualifications for individuals and the actions of state and local officials in administering such requirements.[1] Our entire enterprise of applying §2 to districting rests on systematic neglect of these statutory antecedents and, more broadly, of the ballot-access focus of the 1960s' voting-rights struggles. See, *e.g.*, *Brnovich* v. *Democratic National Committee*, 594 U. S. ___, ___ (2021) (slip op., at 2) (describing the "notorious methods" by which, prior to the

---

[1] "No person acting under color of law shall . . . in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote." 52 U. S. C. §10101(a)(2)(A).

Voting Rights Act, States and localities deprived black Americans of the ballot: "poll taxes, literacy tests, property qualifications, white primaries, and grandfather clauses" (alterations and internal quotation marks omitted)).[2]

Moreover, the majority drastically overstates the *stare decisis* support for applying §2 to single-member districting plans like the one at issue here.[3] As the majority implicitly acknowledges, this Court has only applied §2 to invalidate one single-member district in one case. See *League of United Latin American Citizens* v. *Perry*, 548 U. S. 399, 447 (2006) (*LULAC*) (opinion of Kennedy, J.). And no party in that case argued that the plaintiffs' vote-dilution claim was not cognizable. As for *Growe* v. *Emison*, 507 U. S. 25 (1993), it held only that the threshold preconditions for challenging

---

[2] The majority suggests that districting lines are a "'prerequisite to voting'" because they "determin[e] where" voters "cast [their] ballot[s]." *Ante*, at 32. But, of course, a voter's polling place is a separate matter from the district to which he is assigned, and communities are often moved between districts without changing where their residents go to vote. The majority's other example ("who [voters] are eligible to vote for," *ibid.*) is so far a stretch from the Act's focus on voting qualifications and voter action that it speaks for itself.

[3] The majority chides Alabama for declining to specifically argue that §2 is inapplicable to multimember and at-large districting plans. But these cases are about a single-member districting plan, and it is hardly uncommon for parties to limit their arguments to the question presented. Further, while I do not myself believe that the text of §2 applies to multimember or at-large plans, the idea that such plans might be especially problematic from a vote-dilution standpoint is hardly foreign to the Court's precedents, see *Johnson* v. *De Grandy*, 512 U. S. 997, 1012 (1994); *Growe* v. *Emison*, 507 U. S. 25, 40 (1993); cf. *Holder* v. *Hall*, 512 U. S. 874, 888 (1994) (O'Connor, J., concurring in part and concurring in judgment) (explaining that single-member districts may provide the benchmark when multimember or at-large systems are challenged, but suggesting no benchmark for challenges to single-member districts), or to the historical evolution of vote-dilution claims. Neither the case from which the 1982 Congress drew §2(b)'s current operative language, see *White* v. *Regester*, 412 U. S. 755, 766 (1973), nor the one it was responding to, *Mobile* v. *Bolden*, 446 U. S. 55 (1980), involved single-member districts.

multimember and at-large plans must limit challenges to single-member districts with *at least* the same force, as "[i]t would be peculiar [if] a vote-dilution challenge to the (more dangerous) multimember district require[d] a higher threshold showing than a vote-fragmentation challenge to a single-member district." *Id.*, at 40. *Growe* did not consider (or, thus, reject) an argument that §2 does not apply to single-member districts.

In any event, *stare decisis* should be no barrier to reconsidering a line of cases that "was based on a flawed method of statutory construction from its inception," has proved incapable of principled application after nearly four decades of experience, and puts federal courts in the business of "methodically carving the country into racially designated electoral districts." *Holder*, 512 U. S., at 945 (opinion of THOMAS, J.). This Court has "never applied *stare decisis* mechanically to prohibit overruling our earlier decisions determining the meaning of statutes," and it should not do so here. *Monell* v. *New York City Dept. of Social Servs.*, 436 U. S. 658, 695 (1978). *Stare decisis* did not save "separate but equal," despite its repeated reaffirmation in this Court and the pervasive reliance States had placed upon it for decades. See, *e.g.*, Brief for Appellees in *Brown* v. *Board of Education*, O. T. 1953, No. 1, pp. 18–30. It should not rescue modern-day forms of *de jure* racial balkanization—which, as these cases show, is exactly where our §2 vote-dilution jurisprudence has led.[4]

---

[4] JUSTICE KAVANAUGH's partial concurrence emphasizes the supposedly enhanced *stare decisis* force of statutory-interpretation precedents. See *ante*, at 1–2. This emphasis is puzzling in several respects. As an initial matter, I can perceive no conceptual "basis for applying a heightened version of *stare decisis* to statutory-interpretation decisions"; rather, "our judicial duty is to apply the law to the facts of the case, regardless of how easy it is for the law to change." *Gamble* v. *United States*, 587 U. S. ___, ___ (2019) (THOMAS, J., concurring) (slip op., at 14). Nor does that approach appear to have any historical foundation in judicial practice at

II

Even if §2 applies here, however, Alabama should prevail. The District Court found that Alabama's congressional districting map "dilutes" black residents' votes because, while it is *possible* to draw two majority-black districts, Alabama's map only has one.[5] But the critical question in all vote-dilution cases is: "Diluted relative to what benchmark?" *Gonzalez* v. *Aurora*, 535 F. 3d 594, 598 (CA7 2008) (Easterbrook, C. J.). Neither the District Court nor the majority has any defensible answer. The text of §2 and the logic of vote-dilution claims require a meaningfully race-neutral benchmark, and no race-neutral benchmark can justify the District Court's finding of vote dilution in these cases. The only benchmark that can justify it—and the one that the District Court demonstrably applied—is

---

the founding or for more than a century thereafter. See T. Lee, Stare Decisis in Historical Perspective: From the Founding Era to the Rehnquist Court, 52 Vand. L. Rev. 647, 708–732 (1999). But, even putting those problems aside, any appeal to heightened statutory *stare decisis* is particularly misplaced in this context. As the remainder of this dissent explains in depth, the Court's §2 precedents differ from "ordinary statutory precedents" in two vital ways. *Ante*, at 2, n. 1 (opinion of KAVANAUGH, J.). The first is their profound tension with the Constitution's hostility to racial classifications, a tension that JUSTICE KAVANAUGH acknowledges and that makes every §2 question the reverse side of a corresponding constitutional question. See *ante*, at 4. The second is that, to whatever extent §2 applies to districting, it can only "be understood as a delegation of authority to the courts to develop a common law of racially fair elections." C. Elmendorf, Making Sense of Section 2: Of Biased Votes, Unconstitutional Elections, and Common Law Statutes, 160 U. Pa. L. Rev. 377, 383 (2012). It would be absurd to maintain that this Court's "notoriously unclear and confusing" §2 case law follows, in any straightforward way, from the statutory text's high-flown language about the equal openness of political processes. *Merrill* v. *Milligan*, 595 U. S. ___, ___ (2022) (KAVANAUGH, J., concurring in grant of applications for stays) (slip op., at 6).

[5] Like the majority, I refer to both courts below as "the District Court" without distinction.

the decidedly nonneutral benchmark of proportional allocation of political power based on race.

A

As we have long recognized, "the very concept of vote dilution implies—and, indeed, necessitates—the existence of an 'undiluted' practice against which the fact of dilution may be measured." *Reno* v. *Bossier Parish School Bd.*, 520 U. S. 471, 480 (1997). In a challenge to a districting plan, a court must be able to compare a State's enacted plan with "a hypothetical, undiluted plan," *ibid.*, ascertained by an "objective and workable standard." *Holder*, 512 U. S., at 881 (plurality opinion); see also *id.*, at 887 (opinion of O'Connor, J.) (noting the "general agreement" on this point).

To be sure, it is no easy task to identify an objective, "undiluted" benchmark against which to judge a districting plan. As we recently held in the analogous context of partisan gerrymandering, "federal courts are not equipped to apportion political power as a matter of fairness." *Rucho* v. *Common Cause*, 588 U. S. ___, ___ (2019) (slip op., at 17). Yet §2 vote-dilution cases require nothing less. If §2 prohibited only intentional racial discrimination, there would be no difficulty in finding a clear and workable rule of decision. But the "results test" that Congress wrote into §2 to supersede *Mobile* v. *Bolden*, 446 U. S. 55 (1980), eschews intent as the criterion of liability. See *Bossier Parish School Bd.*, 520 U. S., at 482. Accordingly, a §2 vote-dilution claim does not simply "as[k] . . . for the elimination of a racial classification." *Rucho*, 588 U. S., at ___ (slip op., at 21). It asks, instead, "for a fair share of political power and influence, with all the justiciability conundrums that entails." *Ibid.* Nevertheless, if §2 applies to single-member districts, we must accept that some "objective and workable standard for choosing a reasonable benchmark" exists; otherwise, single-member districts "cannot be challenged as dilutive under

§2." *Holder*, 512 U. S., at 881 (plurality opinion).

Given the diverse circumstances of different jurisdictions, it would be fanciful to expect a one-size-fits-all definition of the appropriate benchmark. Cf. *Thornburg* v. *Gingles*, 478 U. S. 30, 79 (1986) (explaining that the vote-dilution inquiry "is peculiarly dependent upon the facts of each case and requires an intensely local appraisal" (citation and internal quotation marks omitted)). One overriding principle, however, should be obvious. A proper districting benchmark must be *race neutral*: It must not assume, *a priori*, that an acceptable plan should include any particular number or proportion of minority-controlled districts.

I begin with §2's text. As relevant here, §2(a) prohibits a State from "impos[ing] or appl[ying]" any electoral rule "in a manner which results in a denial or abridgement of the right . . . to vote on account of race or color." §10301(a). Section 2(b) then provides that §2(a) is violated

> "if, based on the totality of circumstances, . . . the political processes leading to nomination or election in the State . . . are not equally open to participation by members of [a protected class] 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 . . . 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." §10301(b).

As we held two Terms ago in *Brnovich*, the "equal openness" requirement is "the core" and "touchstone" of §2(b),

with "equal opportunity" serving an ancillary function.[6] 594 U. S., at ___ (slip op., at 15). Relying significantly on §2(b)'s disclaimer of a right to proportional representation, we also held that §2 does not enact a "freewheeling disparate-impact regime." *Id.*, at ___, and n. 14 (slip op., at 22, and n. 14). *Brnovich* further stressed the value of "benchmarks with which . . . challenged [electoral] rule[s] can be compared," *id.*, at ___ (slip op., at 17), and that "a meaningful comparison is essential" in judging the significance of any challenged scheme's racially disparate impact. *Id.*, at ___ (slip op., at 18). To the extent §2 applies to districting plans, then, it requires that they be "equally open to participation" by voters of all races, but it is not a pure disparate-impact statute and does not guarantee proportional representation.

In its main argument here, Alabama simply carries these principles to their logical conclusion: Any vote-dilution benchmark must be race neutral. See Brief for Appellants 32–46. Whatever "equal openness" means in the context of single-member districting, no "meaningful comparison" is possible using a benchmark that builds in a presumption in favor of minority-controlled districts. Indeed, any benchmark other than a race-neutral one would render the vote-dilution inquiry fundamentally circular, allowing courts to conclude that a districting plan "dilutes" a minority's voting strength "on account of race" merely because it does not measure up to an ideal already defined in racial terms. Such a question-begging standard would not answer our precedents' demand for an "*objective*," "reasonable benchmark." *Holder*, 512 U. S., at 881 (plurality opinion) (emphasis added). Nor could any nonneutral benchmark be reconciled with *Brnovich*'s rejection of a disparate-impact

---

[6] While *Brnovich* involved a time-place-and-manner voting rule, not a vote-dilution challenge to a districting plan, its analysis logically must apply to vote-dilution cases if the text of §2 covers such claims at all.

regime or the text's disclaimer of a right to proportional representation. 594 U. S., at ___, and n. 14 (slip op., at 22, and n. 14).

There is yet another compelling reason to insist on a race-neutral benchmark. "The Constitution abhors classifications based on race." *Grutter* v. *Bollinger*, 539 U. S. 306, 353 (2003) (THOMAS, J., concurring in part and dissenting in part). Redistricting is no exception. "Just as the State may not, absent extraordinary justification, segregate citizens on the basis of race in its public parks, buses, golf courses, beaches, and schools," the State also "may not separate its citizens into different voting districts on the basis of race." *Miller* v. *Johnson*, 515 U. S. 900, 911 (1995) (citations omitted). "[D]istricting maps that sort voters on the basis of race '"are by their very nature odious."'" *Wisconsin Legislature* v. *Wisconsin Elections Comm'n*, 595 U. S. ___, ___ (2022) (*per curiam*) (slip op., at 2) (quoting *Shaw* v. *Reno*, 509 U. S. 630, 643 (1993) (*Shaw I*)). Accordingly, our precedents apply strict scrutiny whenever race was "the predominant factor motivating [the placement of] a significant number of voters within or without a particular district," *Miller*, 515 U. S., at 916, or, put another way, whenever "[r]ace was the criterion that . . . could not be compromised" in a district's formation. *Shaw* v. *Hunt*, 517 U. S. 899, 907 (1996) (*Shaw II*).

Because "[r]acial gerrymandering, even for remedial purposes, may balkanize us into competing racial factions" and undermine "the goal of a political system in which race no longer matters," *Shaw I*, 509 U. S., at 657, our cases have long recognized the need to interpret §2 to avoid "unnecessarily infus[ing] race into virtually every redistricting" plan. *LULAC*, 548 U. S., at 446 (opinion of Kennedy, J.); accord, *Bartlett* v. *Strickland*, 556 U. S. 1, 21 (2009) (plurality opinion). Plainly, however, that "infusion" is the inevitable result of any race-based benchmark. Any interpretation of §2 that permits courts to condemn enacted

districting plans as dilutive relative to a nonneutral benchmark "would result in a substantial increase in the number of mandatory districts drawn with race as 'the predominant factor motivating the legislature's decision,'" thus "'raising serious constitutional questions.'" *Id.*, at 21–22 (first quoting *Miller*, 515 U. S., at 916, then quoting *LULAC*, 548 U. S., at 446). To avoid setting §2 on a collision course with the Constitution, courts must apply a race-neutral benchmark in assessing any claim that a districting plan unlawfully dilutes a racial minority's voting strength.

B

The plaintiffs in these cases seek a "proportional allocation of political power according to race." *Holder*, 512 U. S., at 936 (opinion of THOMAS, J.). According to the 2020 census, black Alabamians account for 27.16% of the State's total population and 25.9% of its voting-age population, both figures slightly less than two-sevenths. Of Alabama's seven existing congressional districts, one, District 7, is majority-black.[7] These cases were brought to compel "the creation of

---

[7] District 7 owes its majority-black status to a 1992 court order. See *Wesch* v. *Hunt*, 785 F. Supp. 1491, 1493–1494, 1496–1497, 1501–1502 (SD Ala.), aff'd *sub nom. Camp* v. *Wesch*, 504 U. S. 902 (1992). At the time, the Justice Department's approach to preclearance under §5 of the Act followed the "so-called 'max-black' policy," which "required States, including Alabama, to create supermajority-black voting districts or face denial of preclearance." *Alabama Legislative Black Caucus* v. *Alabama*, 575 U. S. 254, 298 (2015) (THOMAS, J., dissenting). Although *Wesch* was a §2 case and the court-imposed plan that resulted was not subject to preclearance, see 785 F. Supp., at 1499–1500, there can be little doubt that a similar ethos dominated that litigation, in which all parties stipulated to the desirability of a *65%-plus* majority-black district. See *id.*, at 1498–1499. To satisfy that dubious need, the *Wesch* court aggressively adjusted the northeast and southeast corners of the previous District 7. In the northeast, where District 7 once encompassed all of Tuscaloosa County and the more or less rectangular portion of Jefferson County not included in District 6, the 1992 plan drew a long, thin "finger" that traversed the southeastern third of Tuscaloosa County to reach deep into the

two majority-minority congressional districts"—roughly proportional control. 1 App. 135 (emphasis added); see also *id.*, at 314 ("Plaintiffs seek an order . . . ordering a congressional redistricting plan that includes two majority-Black congressional districts").

Remarkably, the majority fails to acknowledge that two minority-controlled districts would mean proportionality, or even that black Alabamians are about two-sevenths of the State. Yet that context is critical to the issues before us, not least because it explains the extent of the racial sorting the plaintiffs' goal would require. "[A]s a matter of mathematics," single-member districting "tends to deal out representation far short of proportionality to virtually *all* minorities, from environmentalists in Alaska to Republicans in Massachusetts." M. Duchin & D. Spencer, Models, Race, and the Law, 130 Yale L. J. Forum 744, 752 (2021) (Duchin & Spencer). As such, creating two majority-black districts would require Alabama to aggressively "sort voters on the basis of race." *Wisconsin Legislature*, 595 U. S., at ___ (slip op., at 2).

The plaintiffs' 11 illustrative maps make that clear. All 11 maps refashion existing District 2 into a majority-black district while preserving the current black majority in District 7. They all follow the same approach: Starting with majority-black areas of populous Montgomery County, they

heart of urban Birmingham. See Supp. App. 207–208. Of the Jefferson County residents captured by the "finger," 75.48% were black. *Wesch*, 785 F. Supp., at 1569. In the southeast, District 7 swallowed a jigsaw-shaped portion of Montgomery County, the residents of which were 80.18% black. *Id.*, at 1575. Three years later, in *Miller* v. *Johnson*, 515 U. S. 900, 923–927 (1995), we rejected the "max-black" policy as unwarranted by §5 and inconsistent with the Constitution. But "much damage to the States' congressional and legislative district maps had already been done," including in Alabama. *Alabama Legislative Black Caucus*, 575 U. S., at 299 (THOMAS, J., dissenting).

expand District 2 east and west to encompass predominantly majority-black areas throughout the rural "Black Belt." In the process, the plans are careful to leave enough of the Black Belt for District 7 to maintain its black majority. Then—and critically—the plans have District 2 extend a southwestern tendril into Mobile County to capture a dense, high-population majority-black cluster in urban Mobile.[8] See Supp. App. 184, 186, 188, 190, 193, 195, 197, 199, 201, 203; see also *id.*, at 149.

Those black Mobilians currently reside in the urban heart of District 1. For 50 years, District 1 has occupied the southwestern pocket of Alabama, consisting of the State's two populous Gulf Coast counties (Mobile and Baldwin) as well as some less populous areas to the immediate north and east. See *id.*, at 205–211. It is indisputable that the Gulf Coast region is the sort of community of interest that the Alabama Legislature might reasonably think a congressional district should be built around. It contains Alabama's only coastline, its fourth largest city, and the Port of Mobile. Its physical geography runs north along the Alabama and Mobile Rivers, whose paths District 1 follows. Its economy is tied to the Gulf—to shipping, shipbuilding, tourism, and commercial fishing. See Brief for Coastal Alabama Partnership as *Amicus Curiae* 13–15.

But, for the plaintiffs to secure their majority-black District 2, this longstanding, compact, and eminently sensible district must be radically transformed. In the Gulf Coast region, the newly drawn District 1 would retain only the majority-white areas that District 2 did not absorb on its path to Mobile's large majority-black population. To make

[8] I have included an Appendix, *infra*, illustrating the plaintiffs' 11 proposed maps. The first 10 images display the "black-only" voting-age population of census-designated voting districts in relation to the maps' hypothetical district lines. The record does not contain a similar illustration for the 11th map, but a simple visual comparison with the other maps suffices.

up the lost population, District 1 would have to extend eastward through largely majority-white rural counties along the length of Alabama's border with the Florida panhandle. The plaintiffs do not assert that white residents on the Gulf Coast have anything special in common with white residents in those communities, and the District Court made no such finding. The plaintiffs' maps would thus reduce District 1 to the leftover white communities of the southern fringe of the State, its shape and constituents defined almost entirely by the need to make District 2 majority-black while also retaining a majority-black District 7.

The plaintiffs' mapmaking experts left little doubt that their plans prioritized race over neutral districting criteria. Dr. Moon Duchin, who devised four of the plans, testified that achieving "two majority-black districts" was a "nonnegotiable principl[e]" in her eyes, a status shared only by our precedents' "population balance" requirement. 2 App. 634; see also *id.*, at 665, 678. Only "after" those two "nonnegotiable[s]" were satisfied did Dr. Duchin then give lower priority to "contiguity" and "compactness." *Id.*, at 634. The architect of the other seven maps, William Cooper, considered "minority voting strengt[h]" a "traditional redistricting principl[e]" in its own right, *id.*, at 591, and treated "the minority population in and of itself" as the paramount community of interest in his plans, *id.*, at 601.

Statistical evidence also underscored the illustrative maps' extreme racial sorting. Another of the plaintiffs' experts, Dr. Kosuke Imai, computer generated 10,000 districting plans using a race-blind algorithm programmed to observe several objective districting criteria. Supp. App. 58–59. None of those plans contained even one majority-black district. *Id.*, at 61. Dr. Imai generated another 20,000 plans using the same algorithm, but with the additional constraint that they must contain at least one majority-black district; none of those plans contained a second majority-black district, or even a second district with a

black voting-age population above 40%. *Id.*, at 54, 67, 71–72. In a similar vein, Dr. Duchin testified about an academic study in which she had randomly "generated 2 million districting plans for Alabama" using a race-neutral algorithm that gave priority to compactness and contiguity. 2 App. 710; see Duchin & Spencer 765. She "found some [plans] with one majority-black district, but never found a second . . . majority-black district in 2 million attempts." 2 App. 710. "[T]hat it is hard to draw two majority-black districts by accident," Dr. Duchin explained, "show[ed] the importance of doing so on purpose." *Id.*, at 714.[9]

The plurality of Justices who join Part III–B–I of THE CHIEF JUSTICE's opinion appear to agree that the plaintiffs could not prove the first precondition of their statewide vote-dilution claim—that black Alabamians could constitute a majority in two "reasonably configured" districts, *Wisconsin Legislature*, 595 U. S., at ___ (slip op., at 3)—by drawing an illustrative map in which race was predominant. See *ante*, at 25. That should be the end of these cases, as the illustrative maps here are palpable racial gerrymanders. The plaintiffs' experts clearly applied "express racial target[s]" by setting out to create 50%-plus majority-black districts in both Districts 2 and 7. *Bethune-Hill* v. *Virginia State Bd. of Elections*, 580 U. S. 178, 192 (2017). And it is impossible to conceive of *the State* adopting the illustrative maps without pursuing the same racially motivated goals. Again, the maps' key design features are: (1) making District 2 majority-black by connecting black

[9]The majority notes that this study used demographic data from the 2010 census, not the 2020 one. That is irrelevant, since the black population share in Alabama changed little (from 26.8% to 27.16%) between the two censuses. To think that this minor increase might have changed Dr. Duchin's results would be to entirely miss her point: that proportional representation for *any* minority, unless achieved "by design," is a statistical anomaly in almost all single-member-districting systems. Duchin & Spencer 764.

residents in one metropolitan area (Montgomery) with parts of the rural Black Belt and black residents in another metropolitan area (Mobile); (2) leaving enough of the Black Belt's majority-black rural areas for District 7 to maintain its majority-black status; and (3) reducing District 1 to the white remainder of the southern third of the State.

If the State did this, we would call it a racial gerrymander, and rightly so. We would have no difficulty recognizing race as "the predominant factor motivating [the placement of] significant number[s] of voters within or without" Districts 1, 2, and 7. *Miller*, 515 U. S., at 916. The "stark splits in the racial composition of populations moved into and out of" Districts 1 and 2 would make that obvious. *Bethune-Hill*, 580 U. S., at 192. So would the manifest absence of any nonracial justification for the new District 1. And so would the State's clear intent to ensure that *both* Districts 2 and 7 hit their preordained racial targets. See *ibid.* (noting that "pursu[it of] a common redistricting policy toward multiple districts" may show predominance). That the plan delivered proportional control for a particular minority—a statistical anomaly that over 2 million race-blind simulations did not yield and 20,000 *race-conscious* simulations did not even approximate—would be still further confirmation.

The State could not justify such a plan simply by arguing that it was less bizarre to the naked eye than other, more elaborate racial gerrymanders we have encountered. See *ante*, at 19–20 (discussing cases). As we held in *Miller*, visual "bizarreness" is not "a necessary element of the constitutional wrong," only "persuasive circumstantial evidence." 515 U. S., at 912–913.[10]

---

[10] Of course, bizarreness is in the eye of the beholder, and, while labels like "'tentacles'" or "'appendages'" have no ultimate legal significance, it is far from clear that they do not apply here. See *ante*, at 12. The tendrils with which the various versions of illustrative District 2 would

Nor could such a plan be explained by supposed respect for the Black Belt. For present purposes, I accept the District Court's finding that the Black Belt is a significant community of interest. But the entire black population of the Black Belt—some 300,000 black residents, see Supp. App. 33—is too small to provide a majority in a *single* congressional district, let alone two.[11] The black residents needed to populate majority-black versions of Districts 2 and 7 are overwhelmingly concentrated in the urban counties of Jefferson (*i.e.*, the Birmingham metropolitan area, with about 290,000 black residents), Mobile (about 152,000 black residents), and Montgomery (about 134,000 black residents). *Id.*, at 83. Of the three, only Montgomery County is in the

---

capture black Mobilians are visually striking and are easily recognized as a racial grab against the backdrop of the State's demography. The District 7 "finger," which encircles the black population of the Birmingham metropolitan area in order to separate them from their white neighbors and link them with black rural areas in the west of the State, also stands out to the naked eye. The District Court disregarded the "finger" because it has been present in every districting plan since 1992, including the State's latest enacted plan. *Singleton* v. *Merrill*, 582 F. Supp. 3d 924, 1011 (ND Ala. 2022) (*per curiam*). But that reasoning would allow plaintiffs to bootstrap one racial gerrymander as a reason for permitting a second. Because the question is not before us, I express no opinion on whether existing District 7 is constitutional as enacted by the State. It is indisputable, however, that race predominated in the original creation of the district, see n. 7, *supra*, and it is plain that the primary race-neutral justification for the district today must be the State's legitimate interest in "preserving the cores of prior districts" and the fact that the areas constituting District 7's core have been grouped together for decades. *Karcher* v. *Daggett*, 462 U. S. 725, 740 (1983); see also *id.*, at 758 (Stevens, J., concurring) (explaining that residents of a political unit "often develop a community of interest"). The plaintiffs' maps, however, necessarily would require the State to assign little weight to core retention with respect to other districts. There could then be no principled race-neutral justification for prioritizing core retention only when it preserved an existing majority-black district, while discarding it when it stood in the way of creating a new one.

[11] The equal-population baseline for Alabama's seven districts is 717,154 persons per district.

Black Belt. The plaintiffs' maps, therefore, cannot and do not achieve their goal of two majority-black districts by "join[ing] together" the Black Belt, as the majority seems wrongly to believe. *Ante*, at 13. Rather, their majority-black districts are anchored by three separate high-density clusters of black residents in three separate metropolitan areas, two of them outside the Black Belt. The Black Belt's largely rural remainder is then *divided* between the two districts to the extent needed to fill out their population numbers with black majorities in both. Respect for the Black Belt as a community of interest cannot explain this approach. The only explanation is the plaintiffs' express racial target: two majority-black districts and statewide proportionality.

The District Court nonetheless found that race did not predominate in the plaintiffs' illustrative maps because Dr. Duchin and Mr. Cooper "prioritized race only as necessary . . . to draw two reasonably compact majority-Black congressional districts," as opposed to "maximiz[ing] the number of majority-Black districts, or the BVAP [black voting-age population] in any particular majority-Black district." *Singleton* v. *Merrill*, 582 F. Supp. 3d 924, 1029–1030 (ND Ala. 2022) (*per curiam*). This reasoning shows a profound misunderstanding of our racial-gerrymandering precedents. As explained above, what triggers strict scrutiny is the intentional use of a racial classification in placing "a significant number of voters within or without a particular district." *Miller*, 515 U. S., at 916. Thus, *any* plan whose predominant purpose is to achieve a nonnegotiable, predetermined racial target in a nonnegotiable, predetermined number of districts is a racial gerrymander subject to strict scrutiny. The precise fraction used as the racial target, and the number of districts it is applied to, are irrelevant.

In affirming the District Court's nonpredominance finding, the plurality glosses over these plain legal errors,[12] and it entirely ignores Dr. Duchin's plans—presumably because her own explanation of her method sounds too much like textbook racial predominance. Compare 2 App. 634 ("[A]fter . . . what I took to be *nonnegotiable* principles of population balance *and seeking two majority-black districts*, *after that*, I took contiguity as a requirement and compactness as paramount" (emphasis added)) and *id.*, at 635 ("I took . . . county integrity to take precedence over the level of [black voting-age population] *once that level was past 50 percent*" (emphasis added)), with *Bethune-Hill*, 580 U. S., at 189 (explaining that race predominates when it "'was the criterion that . . . could not be compromised,' and race-neutral considerations 'came into play only after the race-based decision had been made'" (quoting *Shaw II*, 517 U. S., at 907)), and *Miller*, 515 U. S., at 916 (explaining that race predominates when "the [mapmaker] subordinated traditional race-neutral districting principles . . . to racial

---

[12] The plurality's somewhat elliptical discussion of "the line between racial predominance and racial consciousness," *ante*, at 23, suggests that it may have fallen into a similar error. To the extent the plurality supposes that, under our precedents, a State may purposefully sort voters based on race to some indefinite extent without crossing the line into predominance, it is wrong, and its predominance analysis would water down decades of racial-gerrymandering jurisprudence. Our constitutional precedents' line between racial awareness and racial predominance simply tracks the distinction between awareness of consequences, on the one hand, and discriminatory *purpose*, on the other. See *Miller*, 515 U. S., at 916 ("'Discriminatory purpose implies more than intent as volition or intent as awareness of consequences. It implies that the decisionmaker selected or reaffirmed a particular course of action at least in part "because of," not merely "in spite of," its adverse effects'" (alterations and some internal quotation marks omitted)); accord, *Shaw I*, 509 U. S. 630, 646 (1993). And our statements that §2 "demands consideration of race," *Abbott* v. *Perez*, 585 U. S. ___, ___ (2018) (slip op., at 4), and uses a "race-conscious calculus," *De Grandy*, 512 U. S., at 1020, did not imply that a State can ever purposefully sort voters on a race-predominant basis without triggering strict scrutiny.

considerations"). The plurality thus affirms the District Court's finding only in part and with regard to Mr. Cooper's plans alone.

In doing so, the plurality acts as if the only relevant evidence were Mr. Cooper's testimony about his own mental state and the State's expert's analysis of Mr. Cooper's maps. See *ante*, at 23–24. Such a blinkered view of the issue is unjustifiable. All 11 illustrative maps follow the same approach to creating two majority-black districts. The essential design features of Mr. Cooper's maps are indistinguishable from Dr. Duchin's, and it is those very design features that would require race to predominate. None of the plaintiffs' maps could possibly be drawn by a mapmaker who was merely "aware of," rather than motivated by, "racial demographics." *Miller*, 515 U. S., at 916. They could only ever be drawn by a mapmaker whose predominant motive was hitting the "express racial target" of two majority-black districts. *Bethune-Hill*, 580 U. S., at 192.[13]

The plurality endeavors in vain to blunt the force of this obvious fact. See *ante*, at 24–25. Contrary to the plurality's apparent understanding, nothing in *Bethune-Hill* suggests

[13] The plurality's reasoning does not withstand scrutiny even on its own terms. Like Dr. Duchin, Mr. Cooper found it "necessary to consider race" to construct two majority-black districts, 2 App. 591, and he frankly acknowledged "reconfigur[ing]" the southern part of the State "to create the second African-American majority district," *id.*, at 610. Further, his conclusory statement that race did not "predominate" in his plans, *id.*, at 595, must be interpreted in light of the rest of his testimony and the record as a whole. Mr. Cooper recognized communities of interest as a traditional districting principle, but he applied that principle in a nakedly race-focused manner, explaining that "the minority population in and of itself" was the community of interest that was "top of mind as [he] was drawing the plan[s]." *Id.*, at 601. As noted, he also testified that he considered "minority voting strengt[h]" to be a "traditional redistricting principl[e]" in its own right. *Id.*, at 591. His testimony therefore buttresses, rather than undermines, the conclusion already obvious from the maps themselves: Only a mapmaker pursuing a fixed racial target would produce them.

that "an express racial target" is not highly probative evidence of racial predominance. 580 U. S., at 192 (placing "express racial target[s]" alongside "stark splits in the racial composition of [redistricted] populations" as "relevant districtwide evidence"). That the *Bethune-Hill* majority "decline[d]" to act as a "'court of . . . first view,'" instead leaving the ultimate issue of predominance for remand, cannot be transmuted into such an implausible holding or, in truth, any holding at all. *Id.*, at 193.

The plurality is also mistaken that my predominance analysis would doom every illustrative map a §2 plaintiff "ever adduced." *Ante*, at 25 (emphasis deleted). Rather, it would mean only that—because §2 requires a race-neutral benchmark—plaintiffs cannot satisfy their threshold burden of showing a reasonably configured alternative plan with a proposal that could only be viewed as a racial gerrymander if enacted by the State. This rule would not bar a showing, in an appropriate case, that a State could create an additional majority-minority district through a reasonable redistricting process in which race did not predominate. It would, on the other hand, screen out efforts to use §2 to push racially proportional districting to the limits of what a State's geography and demography make possible—the approach taken by the illustrative maps here.

C

The foregoing analysis should be enough to resolve these cases: If the plaintiffs have not shown that Alabama could create two majority-black districts without resorting to a racial gerrymander, they cannot have shown that Alabama's one-majority-black-district map "dilutes" black Alabamians' voting strength relative to any meaningfully race-neutral benchmark. The inverse, however, is not true: Even if it were possible to regard the illustrative maps as not requiring racial predominance, it would not necessarily follow that a two-majority-black-district map was an appropriate

benchmark. All that might follow is that the illustrative maps were reasonably configured—in other words, that they were consistent with some reasonable application of traditional districting criteria in which race did not predominate. See *LULAC*, 548 U. S., at 433. But, in virtually all jurisdictions, there are countless possible districting schemes that could be considered reasonable in that sense. The mere fact that a plaintiff's illustrative map is *one* of them cannot justify making it the benchmark against which other plans should be judged. Cf. *Rucho*, 588 U. S., at ___–___ (slip op., at 19–20) (explaining the lack of judicially manageable standards for evaluating the relative fairness of different applications of traditional districting criteria).

That conceptual gap—between "reasonable" and "benchmark"—is highly relevant here. Suppose, for argument's sake, that Alabama *reasonably* could decide to create two majority-black districts by (1) connecting Montgomery's black residents with Mobile's black residents, (2) dividing up the rural parts of the Black Belt between that district and another district with its population core in the majority-black parts of the Birmingham area, and (3) accepting the extreme disruption to District 1 and the Gulf Coast that this approach would require. The plaintiffs prefer that approach because it allows the creation of two majority-black districts, which they think Alabama should have. But even if that approach were reasonable, there is hardly any compelling race-neutral reason to elevate such a plan to a *benchmark* against which all other plans must be measured. Nothing in Alabama's geography or demography makes it clearly the best way, or even a particularly attractive way, to draw three of seven equally populous districts. The State has obvious legitimate, race-neutral reasons to prefer its own map—most notably, its interest in "preserving the cores of prior districts" and the Gulf Coast community of interest in District 1. *Karcher* v. *Daggett*, 462 U. S. 725, 740 (1983). And even *discounting* those interests

would not yield a race-neutral case for treating the plaintiffs' approach as a suitable benchmark: Absent core retention, there is no apparent race-neutral reason to insist that District 7 remain a majority-black district uniting Birmingham's majority-black neighborhoods with majority-black rural areas in the Black Belt.

Finally, it is surely probative that over 2 million race-neutral simulations did not yield a single plan with two majority-black districts, and even 20,000 simulations with a one-majority-black-district floor did not yield a second district with a black voting-age population over 40%. If any plan with two majority-black districts would be an "out-out-out-outlier" within the likely universe of race-neutral districting plans, *Rucho*, 588 U. S., at ___ (KAGAN, J., dissenting) (slip op., at 19), it is hard to see how the mere possibility of drawing two majority-black districts could show that a one-district map diluted black Alabamians' votes relative to any appropriate benchmark.[14]

---

[14] The majority points to limitations of Dr. Duchin's and Dr. Imai's algorithms that do not undermine the strong inference from their results to the conclusion that no two-majority-black-district plan could be an appropriate proxy for the undiluted benchmark. *Ante*, at 26, 28–29. I have already explained why the fact that Dr. Duchin's study used 2010 census data is irrelevant. See n. 9, *supra*. As for the algorithms' inability to incorporate all possible districting considerations, the absence of additional *constraints* cannot explain their failure to produce any maps hitting the plaintiffs' preferred racial target. Next, while it is true that the number of possible districting plans is extremely large, that does not mean it is impossible to generate a statistically significant sample. Here, for instance, Dr. Imai explained that "10,000 simulated plans" was sufficient to "yield statistically precise conclusions" and that any higher number would "not materially affect" the results. Supp. App. 60. Finally, the majority notes Dr. Duchin's testimony that her "exploratory algorithms" found "thousands" of possible two-majority-black-district maps. 2 App. 622; see *ante*, at 27, n. 7. Setting aside that Dr. Duchin never provided the denominator of which those "thousands" were the numerator, it is no wonder that the algorithms in question generated such maps; as Dr.

D

Given all this, by what benchmark did the District Court find that Alabama's enacted plan was dilutive? The answer is as simple as it is unlawful: The District Court applied a benchmark of proportional control based on race. To be sure, that benchmark was camouflaged by the elaborate vote-dilution framework we have inherited from *Gingles*. But nothing else in that framework or in the District Court's reasoning supplies an alternative benchmark capable of explaining the District Court's bottom line: that Alabama's one-majority-black-district map dilutes black voters' fair share of political power.

Under *Gingles*, the majority explains, there are three "preconditions" to a vote-dilution claim: (1) the relevant "minority group must be sufficiently large and geographically compact to constitute a majority in a reasonably configured district"; (2) the minority group must be "politically cohesive"; and (3) the majority group must "vot[e] sufficiently as a bloc to enable it to defeat the minority's preferred candidate[s]." *Ante*, at 10 (alterations and internal quotation marks omitted). If these preconditions are satisfied, *Gingles* instructs courts to "consider the totality of the circumstances and to determine, based upon a searching practical evaluation of the past and present reality, whether the political process is equally open to minority voters." 478 U. S., at 79 (citation and internal quotation marks omitted).

The majority gives the impression that, in applying this framework, the District Court merely followed a set of well-

---

Duchin explained, she programmed them with "an algorithmic preference" for "plans in which there would be a second majority-minority district." 2 App. 709. Thus, all that those algorithmic results prove is that it is *possible* to draw two majority-black districts in Alabama if one sets out to do so, especially with the help of sophisticated mapmaking software. What is still lacking is any justification for treating a two-majority-black-district map as a proxy for the undiluted benchmark.

settled, determinate legal principles. But it is widely acknowledged that "*Gingles* and its progeny have engendered considerable disagreement and uncertainty regarding the nature and contours of a vote dilution claim," with commentators "noting the lack of any 'authoritative resolution of the basic questions one would need to answer to make sense of [§2's] results test.'" *Merrill* v. *Milligan*, 595 U. S. ___, ___–___ (2022) (ROBERTS, C. J., dissenting from grant of applications for stays) (slip op., at 1–2) (quoting C. Elmendorf, Making Sense of Section 2: Of Biased Votes, Unconstitutional Elections, and Common Law Statutes, 160 U. Pa. L. Rev. 377, 389 (2012)). If there is any "area of law notorious for its many unsolved puzzles," this is it. J. Chen & N. Stephanopoulos, The Race-Blind Future of Voting Rights, 130 Yale L. J. 862, 871 (2021); see also Duchin & Spencer 758 ("Vote dilution on the basis of group membership is a crucial instance of the lack of a prescribed ideal").

The source of this confusion is fundamental: Quite simply, we have never succeeded in translating the *Gingles* framework into an objective and workable method of identifying the undiluted benchmark. The second and third preconditions are all but irrelevant to the task. They essentially collapse into one question: Is voting racially polarized such that minority-preferred candidates consistently lose to majority-preferred ones? See *Gingles*, 478 U. S., at 51. Even if the answer is yes, that tells a court nothing about "how hard it 'should' be for minority voters to elect their preferred candidates under an acceptable system." *Id.*, at 88 (O'Connor, J., concurring in judgment). Perhaps an acceptable system is one in which the minority simply cannot elect its preferred candidates; it is, after all, a minority. Rejecting that outcome as "dilutive" requires a value judgment relative to a benchmark that polarization alone cannot provide.

The first *Gingles* precondition is only marginally more useful. True, the benchmark in a redistricting challenge

must be “a hypothetical, undiluted plan,” *Bossier Parish School Bd.*, 520 U. S., at 480, and the first precondition at least requires plaintiffs to identify *some* hypothetical alternative plan. Yet that alternative plan need only be “reasonably configured,” and—as explained above—to say that a plan is *reasonable* is a far cry from establishing an objective standard of fairness.

That leaves only the *Gingles* framework’s final stage: the totality-of-circumstances determination whether a State’s “political process is equally open to minority voters.” 478 U. S., at 79. But this formulation is mere verbiage unless one knows what an “equally open” system should look like—in other words, what the benchmark is. And, our cases offer no substantive guidance on how to identify the undiluted benchmark at the totality stage. The best they have to offer is a grab bag of amorphous “factors”—widely known as the Senate factors, after the Senate Judiciary Committee Report accompanying the 1982 amendments to §2—that *Gingles* said “typically may be relevant to a §2 claim.” See *id.*, at 44–45. Those factors, however, amount to no more than “a list of possible considerations that might be consulted by a court attempting to develop a *gestalt* view of the political and racial climate in a jurisdiction.” *Holder*, 512 U. S., at 938 (opinion of THOMAS, J.). Such a *gestalt* view is far removed from the necessary benchmark of a hypothetical, undiluted districting plan.

To see this, one need only consider the District Court’s use of the Senate factors here. See 582 F. Supp. 3d, at 1018–1024. The court began its totality-stage analysis by reiterating what nobody disputes: that voting in Alabama is racially polarized, with black voters overwhelmingly preferring Democrats and white voters largely preferring Republicans. To rebut the State’s argument that this pattern is attributable to politics, not race *per se*, the court noted that Donald Trump (who is white) prevailed over Ben Car-

son (who is black) in the 2016 Republican Presidential primary. Next, the court observed that black candidates rarely win statewide elections in Alabama and that black state legislators overwhelmingly come from majority-minority districts. The court then reviewed Alabama's history of racial discrimination, noted other voting-rights cases in which the State was found liable, and cataloged socioeconomic disparities between black and white Alabamians in everything from car ownership to health insurance coverage. The court attributed these disparities "at least in part" to the State's history of discrimination and found that they hinder black residents from participating in politics today, notwithstanding the fact that black and white Alabamians register and turn out to vote at similar rates. *Id.*, at 1021–1022. Last, the court interpreted a handful of comments by three white politicians as "racial campaign appeals." *Id.*, at 1023–1024.

In reviewing this march through the Senate factors, it is impossible to discern any overarching standard or central question, only what might be called an impressionistic moral audit of Alabama's racial past and present. Nor is it possible to determine any logical nexus between this audit and the remedy ordered: a congressional districting plan in which black Alabamians can control more than one seat. Given the District Court's finding that two reasonably configured majority-black districts could be drawn, would Alabama's one-district map have been acceptable if Ben Carson had won the 2016 primary, or if a greater number of black Alabamians owned cars?

The idea that such factors could explain the District Court's judgment line is absurd. The plaintiffs' claims pose one simple question: What is the "right" number of Alabama's congressional seats that black voters who support Democrats "should" control? Neither the Senate factors nor the *Gingles* framework as a whole offers any principled answer.

In reality, the limits of the *Gingles* preconditions and the aimlessness of the totality-of-circumstances inquiry left the District Court only one obvious and readily administrable option: a benchmark of "allocation of seats in direct proportion to the minority group's percentage in the population." *Holder*, 512 U. S., at 937 (opinion of THOMAS, J.). True, as disussed above, that benchmark is impossible to square with what the majority calls §2(b)'s "robust disclaimer against proportionality," *ante*, at 5, and it runs headlong into grave constitutional problems. See *Parents Involved in Community Schools* v. *Seattle School Dist. No. 1*, 551 U. S. 701, 730 (2007) (plurality opinion). Nonetheless, the intuitive pull of proportionality is undeniable. "Once one accepts the proposition that the effectiveness of votes is measured in terms of the control of seats, the core of any vote dilution claim" "is inherently based on ratios between the numbers of the minority in the population and the numbers of seats controlled," and there is no more logical ratio than direct proportionality. *Holder*, 512 U. S., at 902 (opinion of THOMAS, J.). Combine that intuitive appeal with the "lack of any better alternative" identified in our case law to date, *id.*, at 937, and we should not be surprised to learn that proportionality generally explains the results of §2 cases after the *Gingles* preconditions are satisfied. See E. Katz, M. Aisenbrey, A. Baldwin, E. Cheuse, & A. Weisbrodt, Documenting Discrimination in Voting: Judicial Findings Under Section 2 of the Voting Rights Act Since 1982, 39 U. Mich. J. L. Reform 643, 730–732 (2006) (surveying lower court cases and finding a near-perfect correlation between proportionality findings and liability results).

Thus, in the absence of an alternative benchmark, the vote-dilution inquiry has a strong and demonstrated tendency to collapse into a rough two-part test: (1) Does the challenged districting plan give the relevant minority group control of a proportional share of seats? (2) If not, has the plaintiff shown that some reasonably configured districting

plan could better approximate proportional control? In this approach, proportionality is the ultimate benchmark, and the first *Gingles* precondition becomes a proxy for whether that benchmark is reasonably attainable in practice.

Beneath all the trappings of the *Gingles* framework, that two-part test describes how the District Court applied §2 here. The gravitational force of proportionality is obvious throughout its opinion. At the front end, the District Court even built proportionality into its understanding of *Gingles*' first precondition, finding the plaintiffs' illustrative maps to be reasonably configured in part *because* they "provide[d] a number of majority-Black districts . . . roughly proportional to the Black percentage of the population." 582 F. Supp. 3d, at 1016. At the back end, the District Court concluded its "totality" analysis by revisiting proportionality and finding that it "weigh[ed] decidedly in favor of the plaintiffs." *Id.*, at 1025. While the District Court disclaimed giving overriding significance to proportionality, the fact remains that nothing else in its reasoning provides a logical nexus to its finding of a districting wrong and a need for a districting remedy. Finally, as if to leave no doubt about its implicit benchmark, the court admonished the State that "any remedial plan will need to include two districts in which Black voters either comprise a voting-age majority or something quite close." *Id.*, at 1033. In sum, the District Court's thinly disguised benchmark was proportionality: Black Alabamians are about two-sevenths of the State's population, so they should control two of the State's seven congressional seats.

That was error—perhaps an understandable error given the limitations of the *Gingles* framework, but error nonetheless. As explained earlier, any principled application of §2 to cases such as these requires a meaningfully race-neutral benchmark. The benchmark cannot be an *a priori* thumb on the scale for racially proportional control.

E

The majority opinion does not acknowledge the District Court's express proportionality-based reasoning. That omission is of a piece with its earlier noted failures to acknowledge the well-known indeterminacy of the *Gingles* framework, that black Alabamians are about two-sevenths of the State's population, and that the plaintiffs here are thus seeking statewide proportionality. Through this pattern of omissions, the majority obscures the burning question in these cases. The District Court's vote-dilution finding can be justified only by a racially loaded benchmark—specifically, a benchmark of proportional control based on race. Is that the benchmark the statute demands? The majority fails to confront this question head on, and it studiously avoids mentioning anything that would require it to do so.

The same nonresponsiveness infects the majority's analysis, which is largely devoted to rebutting an argument nobody makes. Contrary to the majority's telling, Alabama does not equate the "race-neutral benchmark" with "the median or average number of majority-minority districts" in a large computer-generated set of race-blind districting plans. *Ante*, at 15. The State's argument for a race-neutral benchmark is rooted in the text of §2, the logic of vote-dilution claims, and the constitutional problems with any nonneutral benchmark. See Brief for Appellants 32–46. It then relies on the computer evidence in these cases, among other facts, to argue that the plaintiffs have not shown dilution relative to any race-neutral benchmark. See *id.*, at 54–56. But the idea that "race-neutral benchmark" *means* the composite average of many computer-generated plans is the majority's alone.

After thus straw-manning Alabama's arguments at the outset, the majority muddles its own response. In a perfunctory footnote, it disclaims any holding that "algorithmic map making" evidence "is categorically irrelevant" in §2

cases. *Ante*, at 28, n. 8. That conclusion, however, is the obvious implication of the majority's reasoning and rhetoric. See *ante*, at 27 (decrying a "map-comparison test" as "flawed in its fundamentals" even if it involves concededly "adequate comparators"); see also *ante*, at 17–18 (stating that the "focu[s]" of §2 analysis is "on the specific illustrative maps that a plaintiff adduces," leaving unstated the implication that other algorithmically generated maps are irrelevant). The majority in effect, if not in word, thus forecloses any meaningful use of computer evidence to help locate the undiluted benchmark.

There are two critical problems with this fiat. The first, which the majority seems to recognize yet fails to resolve, is that excluding such computer evidence from view cannot be reconciled with §2's command to consider "the totality of circumstances."[15] Second—and more fundamentally—the reasons that the majority gives for downplaying the relevance of computer evidence would more logically support a holding that there is no judicially manageable way of applying §2's results test to single-member districts. The majority waxes about the "myriad considerations" that go into districting, the "difficult, contestable choices" those considerations require, and how "[n]othing in §2 provides an an-

---

[15] The majority lodges a similar accusation against the State's arguments (or what it takes to be the State's arguments). See *ante*, at 18 ("Alabama suggests there is only one 'circumstance' that matters—how the State's map stacks up relative to the benchmark" (alteration omitted)). But its rebuke is misplaced. The "totality of circumstances" means that courts must consider all circumstances relevant to an issue. It does not mean that they are forbidden to attempt to define the substantive standard that governs that issue. In arguing that a vote-dilution claim requires judging a State's plan relative to an undiluted benchmark to be drawn from the totality of circumstances—including, where probative, the results of districting simulations—the State argues little more than what we have long acknowledged. See *Reno* v. *Bossier Parish School Bd.*, 520 U. S. 471, 480 (1997).

swer" to the question of how well any given algorithm approximates the correct benchmark. *Ante*, at 27–28 (internal quotation marks omitted). In the end, it concludes, "Section 2 cannot require courts to judge a contest of computers" in which "there is no reliable way to determine who wins, or even where the finish line is." *Ante*, at 29.

The majority fails to recognize that *whether* vote-dilution claims require an undiluted benchmark is not up for debate. If §2 applies to single-member districting plans, courts cannot dispense with an undiluted benchmark for comparison, ascertained by an objective and workable method. *Bossier Parish School Bd.*, 520 U. S., at 480; *Holder*, 512 U. S., at 881 (plurality opinion). Of course, I would be the last person to deny that defining the undiluted benchmark is difficult. See *id.*, at 892 (opinion of THOMAS, J.) (arguing that it "immerse[s] the federal courts in a hopeless project of weighing questions of political theory"). But the "myriad considerations" and "[a]nswerless questions" the majority frets about, *ante*, at 27, 29, are inherent in the very enterprise of applying §2 to single-member districts. Everything the majority says about the difficulty of defining the undiluted benchmark *with* computer evidence applies with equal or greater force to the task of defining it *without* such evidence. At their core, the majority's workability concerns are an isolated demand for rigor against the backdrop of a legal regime that has long been "'inherently standardless,'" and must remain so until the Court either discovers a principled and objective method of identifying the undiluted benchmark, *Holder*, 512 U. S., at 885 (plurality opinion), or abandons this enterprise altogether, see *id.*, at 945 (opinion of THOMAS, J.).

Ultimately, the majority has very little to say about the appropriate benchmark. What little it does say suggests that the majority sees no real alternative to the District Court's proportional-control benchmark, though it appears unwilling to say so outright. For example, in a nod to the

statutory text and its "equal openness" requirement, the majority asserts that "[a] district is not equally open . . . when minority voters face—unlike their majority peers—bloc voting along racial lines, arising against the backdrop of substantial racial discrimination within the State, that renders a minority vote unequal to a vote by a nonminority voter." *Ante*, at 17. But again, we have held that dilution cannot be shown without an objective, undiluted benchmark, and this verbiage offers no guidance for how to determine it.[16] Later, the majority asserts that "the *Gingles* framework itself imposes meaningful constraints on proportionality." *Ante*, at 18–19. But the only constraint on proportionality the majority articulates is that it is often *difficult to achieve*—which, quite obviously, is no principled limitation at all. *Ante*, at 20–22.

Thus, the end result of the majority's reasoning is no different from the District Court's: The ultimate benchmark is a racially proportional allocation of seats, and the main question on which liability turns is whether a closer approximation to proportionality is possible under any reasonable application of traditional districting criteria.[17] This ap-

[16] To the extent it is any sort of answer to the benchmark question, it tends inevitably toward proportionality. By equating a voting minority's inability to win elections with a vote that has been "render[ed] . . . unequal," *ante*, at 17, the majority assumes "that members of [a] minority are denied a fully effective use of the franchise unless they are able to control seats in an elected body." *Holder*, 512 U. S., at 899 (opinion of THOMAS, J.). That is precisely the assumption that leads to the proportional-control benchmark. See *id.*, at 902, 937.

[17] Indeed, the majority's attempt to deflect this analysis only confirms its accuracy. The majority stresses that its understanding of *Gingles* permits the rejection of "plans that would bring States closer to proportionality *when those plans violate traditional districting criteria*." *Ante*, at 21, n. 4 (emphasis added). JUSTICE KAVANAUGH, similarly, defends *Gingles* against the charge of "mandat[ing] a proportional number of

proach, moreover, is consistent with how the majority describes the role of plaintiffs' illustrative maps, as well as an unjustified practical asymmetry to which its rejection of computer evidence gives rise. Courts are to "focu[s] . . . on the specific illustrative maps that a plaintiff adduces," *ante*, at 17–18, by which the majority means that courts should *not* "focu[s]" on statistical evidence showing those maps to be outliers. Thus, plaintiffs may use an algorithm to generate any number of maps that meet specified districting criteria and a preferred racial target; then, they need only produce one of those maps to "sho[w] it is *possible* that the State's map" is dilutive. *Ante*, at 18 (emphasis in original). But the State may not use algorithmic evidence to suggest that the plaintiffs' map is an unsuitable benchmark for comparison—not even, apparently, if it can prove that the illustrative map is an outlier among "billion[s]" or "trillion[s]" of concededly "adequate comparators." *Ante*, at 27, 29; see also *ante*, at 29 (rejecting sampling algorithms). This arbitrary restriction amounts to a thumb on the scale for §2 plaintiffs—an unearned presumption that any "reasonable" map they put forward constitutes a benchmark against which the State's map can be deemed dilutive. And, once the comparison is framed in that way, the only workable rule of decision is proportionality. See *Holder*, 512 U. S., at 941–943 (opinion of THOMAS, J.).

By affirming the District Court, the majority thus approves its benchmark of proportional control limited only by feasibility, and it entrenches the most perverse tendencies

———————

majority-minority districts" by emphasizing that it requires only the creation of majority-minority districts that are compact and reasonably configured. *Ante*, at 2 (opinion concurring in part). All of this precisely tracks my point: As construed by the District Court and the majority, §2 mandates an ever closer approach to proportional control that stops only when a court decides that a further step in that direction would no longer be consistent with any reasonable application of traditional districting criteria.

of our vote-dilution jurisprudence. It guarantees that courts will continue to approach vote-dilution claims just as the District Court here did: with no principled way of determining how many seats a minority "should" control and with a strong temptation to bless every incremental step toward a racially proportional allocation that plaintiffs can pass off as consistent with any reasonable map.

III

As noted earlier, the Court has long recognized the need to avoid interpretations of §2 that "'would unnecessarily infuse race into virtually every redistricting, raising serious constitutional questions.'" *Bartlett*, 556 U. S., at 21 (plurality opinion) (quoting *LULAC*, 548 U. S., at 446 (opinion of Kennedy, J.)). Today, however, by approving the plaintiffs' racially gerrymandered maps as reasonably configured, refusing to ground §2 vote-dilution claims in a race-neutral benchmark, and affirming a vote-dilution finding that can only be justified by a benchmark of proportional control, the majority holds, in substance, that race belongs in virtually every redistricting. It thus drives headlong into the very constitutional problems that the Court has long sought to avoid. The result of this collision is unmistakable: If the District Court's application of §2 was correct as a statutory matter, §2 is unconstitutional as applied here.

Because the Constitution "restricts consideration of race and the [Voting Rights Act] demands consideration of race," *Abbott*, 585 U. S., at ___ (slip op., at 4), strict scrutiny is implicated wherever, as here, §2 is applied to require a State to adopt or reject any districting plan on the basis of race. See *Bartlett*, 556 U. S., at 21–22 (plurality opinion). At this point, it is necessary to confront directly one of the more confused notions inhabiting our redistricting jurisprudence. In several cases, we have "assumed" that compliance with §2 of the Voting Rights Act could be a compelling state interest, before proceeding to *reject* race-predominant

plans or districts as insufficiently tailored to that asserted interest. See, *e.g.*, *Wisconsin Legislature*, 595 U. S., at ___ (slip op., at 3); *Cooper* v. *Harris*, 581 U. S. 285, 292 (2017); *Shaw II*, 517 U. S., at 915; *Miller*, 515 U. S., at 921. But we have never applied this assumption to *uphold* a districting plan that would otherwise violate the Constitution, and the slightest reflection on first principles should make clear why it would be problematic to do so.[18] The Constitution is supreme over statutes, not vice versa. *Marbury* v. *Madison*, 1 Cranch 137, 178 (1803). Therefore, if complying with a federal statute would require a State to engage in unconstitutional racial discrimination, the proper conclusion is not that the statute excuses the State's discrimination, but that the statute is invalid.

If Congress has any power at all to require States to sort voters into congressional districts based on race, that power must flow from its authority to "enforce" the Fourteenth and Fifteenth Amendments "by appropriate legislation." Amdt. 14, §5; Amdt. 15, §2. Since Congress in 1982 replaced intent with effects as the criterion of liability, however, "a violation of §2 is no longer *a fortiori* a violation of" either Amendment. *Bossier Parish School Bd.*, 520 U. S., at 482. Thus, §2 can be justified only under Congress' power to "enact reasonably prophylactic legislation to deter constitutional harm." *Allen* v. *Cooper*, 589 U. S. ___, ___ (2020) (slip op., at 11) (alteration and internal quotation marks omitted); see *City of Boerne* v. *Flores*, 521 U. S. 507, 517–529 (1997). Because Congress' prophylactic-

---

[18] In *Bethune-Hill* v. *Virginia State Bd. of Elections*, 580 U. S. 178 (2017), the Court upheld a race-predominant district based on the assumed compelling interest of complying with §5 of the Voting Rights Act. *Id.*, at 193–196. There, the Court was explicit that it was still merely "assum[ing], without deciding," that the asserted interest was compelling, as the plaintiffs "d[id] not dispute that compliance with §5 was a compelling interest at the relevant time." *Id.*, at 193.

enforcement authority is "remedial, rather than substantive," "[t]here must be a congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end."[19] *Id.*, at 520. Congress' chosen means, moreover, must "'consist with the letter and spirit of the constitution.'" *Shelby County* v. *Holder*, 570 U. S. 529, 555 (2013) (quoting *McCulloch* v. *Maryland*, 4 Wheat. 316, 421 (1819)); accord, *Miller*, 515 U. S., at 927.

Here, as with everything else in our vote-dilution jurisprudence, the task of sound analysis is encumbered by the lack of clear principles defining §2 liability in districting. It is awkward to examine the "congruence" and "proportionality" of a statutory rule whose very meaning exists in a perpetual state of uncertainty. The majority makes clear, however, that the primary factual predicate of a vote-dilution claim is "bloc voting along racial lines" that results in majority-preferred candidates defeating minority-preferred ones. *Ante*, at 17; accord, *Gingles*, 478 U. S., at 48 ("The theoretical basis for [vote-dilution claims] is that where minority and majority voters consistently prefer different candidates, the majority, by virtue of its numerical superiority, will regularly defeat the choices of minority voters"). And, as I have shown, the remedial logic with which the District Court's construction of §2 addresses that "wrong" rests on a proportional-control benchmark limited only by feasibility. Thus, the relevant statutory rule may be approximately stated as follows: If voting is racially polarized in a jurisdiction, and if there exists any more or less reasonably configured districting plan that would enable the minority group to constitute a majority in a number of districts roughly proportional to its share of the population, then the jurisdiction

[19] While our congruence-and-proportionality cases have focused primarily on the Fourteenth Amendment, they make clear that the same principles govern "Congress' parallel power to enforce the provisions of the Fifteenth Amendment." *City of Boerne*, 521 U. S., at 518.

must ensure that its districting plan includes that number of majority-minority districts "or something quite close."[20] 582 F. Supp. 3d, at 1033. Thus construed and applied, §2 is not congruent and proportional to any provisions of the Reconstruction Amendments.

To determine the congruence and proportionality of a measure, we must begin by "identify[ing] with some precision the scope of the constitutional right at issue." *Board of Trustees of Univ. of Ala.* v. *Garrett*, 531 U. S. 356, 365 (2001). The Reconstruction Amendments "forbi[d], so far as civil and political rights are concerned, discrimination . . . against any citizen because of his race," ensuring that "[a]ll citizens are equal before the law." *Gibson* v. *Mississippi*, 162 U. S. 565, 591 (1896) (Harlan, J.). They dictate "that the Government must treat citizens as individuals, not as simply components of a racial, religious, sexual or national class." *Miller*, 515 U. S., at 911 (internal quotation marks omitted). These principles are why the Constitution presumptively forbids race-predominant districting, "even for remedial purposes." *Shaw I*, 509 U. S., at 657.

These same principles foreclose a construction of the Amendments that would entitle members of racial minorities, *qua* racial minorities, to have their preferred candidates win elections. Nor do the Amendments limit the rights of members of a racial majority to support *their* preferred candidates—regardless of whether minorities prefer different candidates and of whether "the majority, by virtue of its numerical superiority," regularly prevails. *Gingles*, 478 U. S., at 48. Nor, finally, do the Amendments establish a norm of proportional control of elected offices on the basis of race. See *Parents Involved*, 551 U. S., at 730–731 (plurality opinion); *Shaw I*, 509 U. S., at 657. And these notions

[20] This formulation does not specifically account for the District Court's findings under the Senate factors, which, as I have explained, lack any traceable logical connection to the finding of a districting wrong or the need for a districting remedy.

are not merely *foreign to* the Amendments. Rather, they are *radically inconsistent* with the Amendments' command that government treat citizens as individuals and their "goal of a political system in which race no longer matters." *Ibid.*

Those notions are, however, the values at the heart of §2 as construed by the District Court and the majority. As applied here, the statute effectively considers it a legal wrong by the State if white Alabamians vote for candidates from one political party at high enough rates, provided that black Alabamians vote for candidates from the other party at a still higher rate. And the statute remedies that wrong by requiring the State to engage in race-based redistricting in the direction of proportional control.

I am not certain that Congress' enforcement power could *ever* justify a statute so at odds "'with the letter and spirit of the constitution.'" *Shelby County*, 570 U. S., at 555. If it could, it must be because Congress "identified a history and pattern" of actual constitutional violations that, for some reason, required extraordinary prophylactic remedies. *Garrett*, 531 U. S., at 368. But the legislative record of the 1982 amendments is devoid of any showing that might justify §2's blunt approximation of a "racial register for allocating representation on the basis of race." *Holder*, 512 U. S., at 908 (opinion of THOMAS, J.). To be sure, the Senate Judiciary Committee Report that accompanied the 1982 amendment to the Voting Rights Act "listed many examples of what the Committee *took to be* unconstitutional vote dilution." *Brnovich*, 594 U. S., at ___ (slip op., at 6) (emphasis added). But the Report also showed the Committee's fundamental lack of "concern with whether" those examples reflected the "intentional" discrimination required "to raise a constitutional issue." *Allen*, 589 U. S., at ___ (slip op., at 15). The Committee's "principal reason" for rejecting discriminatory purpose was simply that it preferred an alternative legal standard; it thought *Mobile*'s intent test was

"the wrong question," and that courts should instead ask whether a State's election laws offered minorities "a fair opportunity to participate" in the political process. S. Rep. No. 97–417, p. 36.

As applied here, the amended §2 thus falls on the wrong side of "the line between measures that remedy or prevent unconstitutional actions and measures that make a substantive change in the governing law." *City of Boerne*, 521 U. S., at 519. It replaces the constitutional right against intentionally discriminatory districting with an amorphous race-based right to a "fair" distribution of political power, a "right" that cannot be implemented without requiring the very evils the Constitution forbids.

If that alone were not fatal, §2's "reach and scope" further belie any congruence and proportionality between its districting-related commands, on the one hand, and actionable constitutional wrongs, on the other. *Id.*, at 532. Its "[s]weeping coverage ensures its intrusion at every level of government" and in every electoral system. *Ibid.* It "has no termination date or termination mechanism." *Ibid.* Thus, the amended §2 is not spatially or temporally "limited to those cases in which constitutional violations [are] most likely." *Id.*, at 533. Nor does the statute limit its reach to "attac[k] a particular type" of electoral mechanism "with a long history as a 'notorious means to deny and abridge voting rights on racial grounds.'" *Ibid.* (quoting *South Carolina* v. *Katzenbach*, 383 U. S. 301, 355 (1966) (Black, J., concurring and dissenting)). In view of this "indiscriminate scope," "it simply cannot be said that 'many of [the districting plans] affected by the congressional enactment have a significant likelihood of being unconstitutional.'" *Florida Prepaid Postsecondary Ed. Expense Bd.* v. *College Savings Bank*, 527 U. S. 627, 647 (1999) (quoting *City of Boerne*, 521 U. S., at 532).

Of course, under the logically unbounded totality-of-

circumstances inquiry, a court applying §2 can always embroider its vote-dilution determination with findings about past or present unconstitutional discrimination. But this possibility does nothing to heal either the fundamental contradictions between §2 and the Constitution or its extreme overbreadth relative to actual constitutional wrongs. "A generalized assertion of past discrimination" cannot justify race-based redistricting, "because it provides no guidance for a legislative body to determine the precise scope of the injury it seeks to remedy." *Shaw II*, 517 U. S., at 909 (internal quotation marks omitted). To justify a statute tending toward the proportional allocation of political power by race throughout the Nation, it cannot be enough that a court can recite some indefinite quantum of discrimination in the relevant jurisdiction. If it were, courts "could uphold [race-based] remedies that are ageless in their reach into the past, and timeless in their ability to affect the future." *Wygant* v. *Jackson Bd. of Ed.*, 476 U. S. 267, 276 (1986) (plurality opinion). That logic "would effectively assure that race will always be relevant in [redistricting], and that the ultimate goal of eliminating entirely from governmental decisionmaking such irrelevant factors as a human being's race will never be achieved." *Parents Involved*, 551 U. S., at 730 (plurality opinion) (alteration and internal quotation marks omitted).

For an example of these baleful results, we need look no further than the congressional districts at issue here. In 1992, Alabama and a group of §2 plaintiffs, whom a federal court chose to regard as the representatives "of all African-American citizens of the State of Alabama," stipulated that the State's black population was "'sufficiently compact and contiguous to comprise a single member significant majority (65% or more) African American Congressional district,'" and that, "'[c]onsequently,'" such a "'district should be created.'" *Wesch* v. *Hunt*, 785 F. Supp. 1491, 1493, 1498 (SD Ala.). Accepting that stipulation, the court reworked

District 7 into an irregularly shaped supermajority-black district—one that scooped up populous clusters of black voters in the disparate urban centers of Birmingham and Montgomery to connect them across a swath of largely majority-black rural areas—without even "decid[ing] whether the creation of a majority African-American district [was] mandated by either §2 or the Constitution." *Id.*, at 1499; see n. 7, *supra*. It did not occur to the court that the Constitution might *forbid* such an extreme racial gerrymander, as it quite obviously did. But, once District 7 had come into being as a racial gerrymander thought necessary to satisfy §2, it became an all-but-immovable fixture of Alabama's districting scheme.

Now, 30 years later, the plaintiffs here demand that Alabama carve up not two but three of its main urban centers on the basis of race, and that it configure those urban centers' black neighborhoods with the outlying majority-black rural areas so that black voters can control not one but two of the State's seven districts. The Federal Judiciary now upholds their demand—overriding the State's undoubted interest in preserving the core of its existing districts, its plainly reasonable desire to maintain the Gulf Coast region as a cohesive political unit, and its persuasive arguments that a race-neutral districting process would not produce anything like the districts the plaintiffs seek. Our reasons for doing so boil down to these: that the plaintiffs' proposed districts are more or less within the vast universe of reasonable districting outcomes; that Alabama's white voters do not support the black minority's preferred candidates; that Alabama's racial climate, taken as a rarefied whole, crosses some indefinable line justifying our interference; and, last but certainly not least, that black Alabamians are about two-sevenths of the State's overall population.

By applying §2 in this way to claims of this kind, we encourage a conception of politics as a struggle for power between "competing racial factions." *Shaw I*, 509 U. S., at

657. We indulge the pernicious tendency of assigning Americans to "creditor" and "debtor race[s]," even to the point of redistributing political power on that basis. *Adarand Constructors, Inc.* v. *Peña*, 515 U. S. 200, 239 (1995) (Scalia, J., concurring in part and concurring in judgment). We ensure that the race-based redistricting we impose on Alabama now will bear divisive consequences long into the future, just as the initial creation of District 7 segregated Jefferson County for decades and minted the template for crafting black "political homelands" in Alabama. *Holder*, 512 U. S., at 905 (opinion of THOMAS, J.). We place States in the impossible position of having to weigh just how much racial sorting is necessary to avoid the "competing hazards" of violating §2 and violating the Constitution. *Abbott*, 585 U. S., at ___ (slip op., at 4) (internal quotation marks omitted). We have even put ourselves in the ridiculous position of "assuming" that compliance with a statute can excuse disobedience to the Constitution. Worst of all, by making it clear that there are political dividends to be gained in the discovery of new ways to sort voters along racial lines, we prolong immeasurably the day when the "sordid business" of "divvying us up by race" is no more. *LULAC*, 548 U. S., at 511 (ROBERTS, C. J., concurring in part, concurring in judgment in part, and dissenting in part). To the extent §2 requires any of this, it is unconstitutional.

The majority deflects this conclusion by appealing to two of our older Voting Rights Act cases, *City of Rome* v. *United States*, 446 U. S. 156 (1980), and *South Carolina* v. *Katzenbach*, 383 U. S. 301, that did not address §2 at all and, indeed, predate Congress' adoption of the results test. *Ante*, at 33–34. That maneuver is untenable. *Katzenbach* upheld §5's preclearance requirements, §4(b)'s original coverage formula, and other related provisions aimed at "a small number of States and political subdivisions" where "systematic resistance to the Fifteenth Amendment" had long been

flagrant. 383 U. S., at 328; see also *id.*, at 315–317 (describing the limited issues presented). Fourteen years later, *City of Rome* upheld the 1975 Act extending §5's preclearance provisions for another seven years. See 446 U. S., at 172–173. The majority's reliance on these cases to validate a statutory rule not there at issue could make sense only if we assessed the congruence and proportionality of the Voting Rights Act's rules wholesale, without considering their individual features, or if *Katzenbach* and *City of Rome* meant that Congress has plenary power to enact whatever rules it chooses to characterize as combating "discriminatory . . . effect[s]." *Ante*, at 33 (internal quotation marks omitted). Neither proposition makes any conceptual sense or is consistent with our cases. See, *e.g.*, *Shelby County*, 570 U. S., at 550–557 (holding the 2006 preclearance coverage formula unconstitutional); *Northwest Austin Municipal Util. Dist. No. One* v. *Holder*, 557 U. S. 193, 203 (2009) (emphasizing the distinctness of §§2 and 5); *City of Boerne*, 521 U. S., at 533 (discussing *City of Rome* as a paradigm case of congruence-and-proportionality review of remedial legislation); *Miller*, 515 U. S., at 927 (stressing that construing §5 to require "that States engage in presumptively unconstitutional race-based districting" would raise "troubling and difficult constitutional questions," notwithstanding *City of Rome*).

In fact, the majority's cases confirm the very limits on Congress' enforcement powers that are fatal to the District Court's construction of §2. *City of Rome*, for example, immediately after one of the sentences quoted by the majority, explained the remedial rationale for its approval of the 1975 preclearance extension: "Congress could rationally have concluded that, because electoral changes *by jurisdictions with a demonstrable history of intentional racial discrimination in voting create the risk of purposeful discrimination*, it was proper to prohibit changes that have a discriminatory impact." 446 U. S., at 177 (emphasis added; footnote

omitted). The next section of *City of Rome* then separately examined and upheld the reasonableness of the extension's 7-year time period. See *id.*, at 181–182. *City of Rome* thus stands for precisely the propositions for which *City of Boerne* cited it: Congress may adopt "[p]reventive measures . . . when there is reason to believe that many of the laws affected by the congressional enactment have a significant likelihood of being unconstitutional," 521 U. S., at 532, particularly when it employs "termination dates, geographic restrictions, or egregious predicates" that "tend to ensure Congress' means are proportionate to ends legitimate," *id.*, at 533; see also *id.*, at 532–533 (analyzing *Katzenbach* in similar terms); *Shelby County*, 570 U. S., at 535, 545–546 (same). Again, however, the amended §2 lacks any such salutary limiting principles; it is unbounded in time, place, and subject matter, and its districting-related commands have no nexus to any likely constitutional wrongs.

In short, as construed by the District Court, §2 does not remedy or deter unconstitutional discrimination in districting in any way, shape, or form. On the contrary, it *requires* it, hijacking the districting process to pursue a goal that has no legitimate claim under our constitutional system: the proportional allocation of political power on the basis of race. Such a statute "cannot be considered remedial, preventive legislation," and the race-based redistricting it would command cannot be upheld under the Constitution. *City of Boerne*, 521 U. S., at 532.[21]

---

[21] JUSTICE KAVANAUGH, at least, recognizes that §2's constitutional footing is problematic, for he agrees that "race-based redistricting cannot extend indefinitely into the future." *Ante*, at 4 (opinion concurring in part). Nonetheless, JUSTICE KAVANAUGH votes to sustain a system of institutionalized racial discrimination in districting—under the aegis of a statute that applies nationwide and has no expiration date—and thus to prolong the "lasting harm to our society" caused by the use of racial classifications in the allocation of political power. *Shaw I*, 509 U. S., at 657. I cannot agree with that approach. The Constitution no more tolerates this discrimination today than it will tolerate it tomorrow.

IV

These cases are not close. The plaintiffs did not prove that Alabama's districting plan "impose[s] or applie[s]" any "voting qualification or prerequisite to voting or standard, practice, or procedure" that effects "a denial or abridgement of the[ir] right . . . to vote on account of race or color." §10301(a). Nor did they prove that Alabama's congressional districts "are not equally open to participation" by black Alabamians. §10301(b). The plaintiffs did not even prove that it is possible to achieve two majority-black districts without resorting to a racial gerrymander. The most that they can be said to have shown is that sophisticated mapmakers can proportionally allocate Alabama's congressional districts based on race in a way that exceeds the Federal Judiciary's ability to recognize as a racial gerrymander with the naked eye. The District Court held that this showing, plus racially polarized voting and its *gestalt* view of Alabama's racial climate, was enough to require the State to redraw its districting plan on the basis of race. If that is the benchmark for vote dilution under §2, then §2 is nothing more than a racial entitlement to roughly proportional control of elective offices—limited only by feasibility—wherever different racial groups consistently prefer different candidates.

If that is what §2 means, the Court should hold that it is unconstitutional. If that is not what it means, but §2 applies to districting, then the Court should hold that vote-dilution challenges require a race-neutral benchmark that bears no resemblance to unconstitutional racial registers. On the other hand, if the Court believes that finding a race-neutral benchmark is as impossible as much of its rhetoric suggests, it should hold that §2 cannot be applied to single-member districting plans for want of an "objective and workable standard for choosing a reasonable benchmark." *Holder*, 512 U. S., at 881 (plurality opinion). Better yet, it could adopt the correct interpretation of §2 and hold that a

single-member districting plan is not a "voting qualification," a "prerequsite to voting," or a "standard, practice, or procedure," as the Act uses those terms. One way or another, the District Court should be reversed.

The majority goes to great lengths to decline all of these options and, in doing so, to fossilize all of the worst aspects of our long-deplorable vote-dilution jurisprudence. The majority recites *Gingles*' shopworn phrases as if their meaning were self-evident, and as if it were not common knowledge that they have spawned intractable difficulties of definition and application. It goes out of its way to reaffirm §2's applicability to single-member districting plans both as a purported original matter and on highly exaggerated *stare decisis* grounds. It virtually ignores Alabama's primary argument—that, whatever the benchmark is, it must be race neutral—choosing, instead, to quixotically joust with an imaginary adversary. In the process, it uses special pleading to close the door on the hope cherished by some thoughtful observers, see *Gonzalez*, 535 F. 3d, at 599–600, that computational redistricting methods might offer a principled, race-neutral way out of the thicket *Gingles* carried us into. Finally, it dismisses grave constitutional questions with an insupportably broad holding based on demonstrably inapposite cases.[22]

I find it difficult to understand these maneuvers except as proceeding from a perception that what the District Court did here is essentially no different from what many courts have done for decades under this Court's superintendence, joined with a sentiment that it would be unthinkable to disturb that approach to the Voting Rights Act in any way. I share the perception, but I cannot understand the sentiment. It is true that, "under our direction, federal

[22] The Court does not address whether §2 contains a private right of action, an issue that was argued below but was not raised in this Court. See *Brnovich* v. *Democratic National Committee*, 594 U. S. ___, ___ (2021) (GORSUCH, J., concurring) (slip op., at 1).

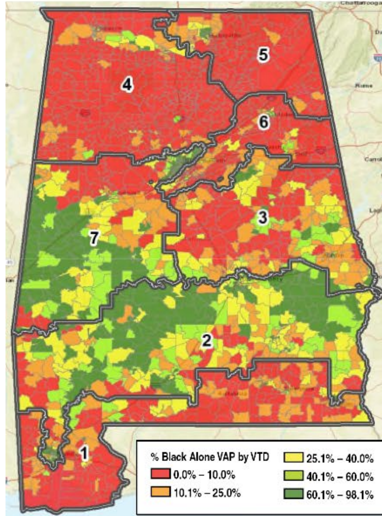
courts [have been] engaged in methodically carving the country into racially designated electoral districts" for decades now. *Holder*, 512 U. S., at 945 (opinion of THOMAS, J.). But that fact should inspire us to repentance, not resignation. I am even more convinced of the opinion that I formed 29 years ago:

> "In my view, our current practice should not continue. Not for another Term, not until the next case, not for another day. The disastrous implications of the policies we have adopted under the Act are too grave; the dissembling in our approach to the Act too damaging to the credibility of the Federal Judiciary. The 'inherent tension'—indeed, I would call it an irreconcilable conflict—between the standards we have adopted for evaluating vote dilution claims and the text of the Voting Rights Act would itself be sufficient in my view to warrant overruling the interpretation of §2 set out in *Gingles*. When that obvious conflict is combined with the destructive effects our expansive reading of the Act has had in involving the Federal Judiciary in the project of dividing the Nation into racially segregated electoral districts, I can see no reasonable alternative to abandoning our current unfortunate understanding of the Act." *Id.*, at 944.

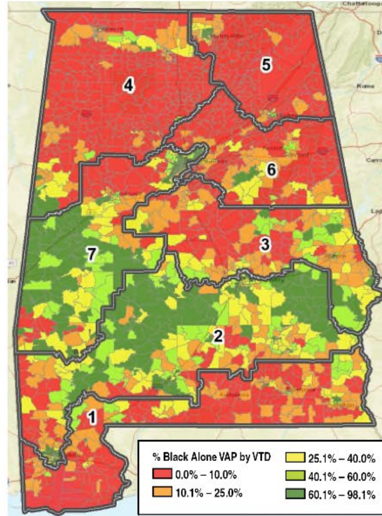
I respectfully dissent.

APPENDIX

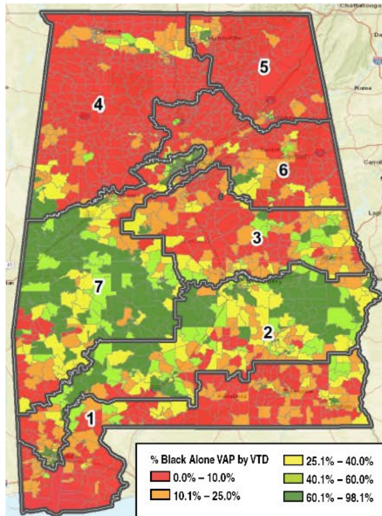
Duchin Plan 1



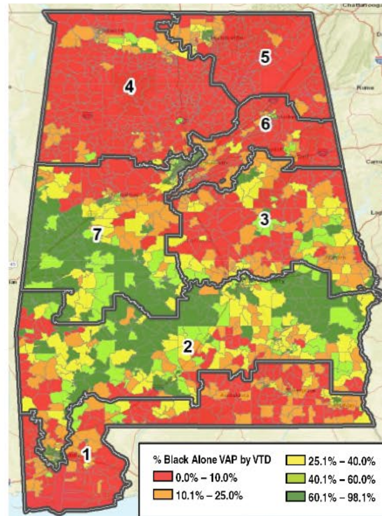
Duchin Plan 2



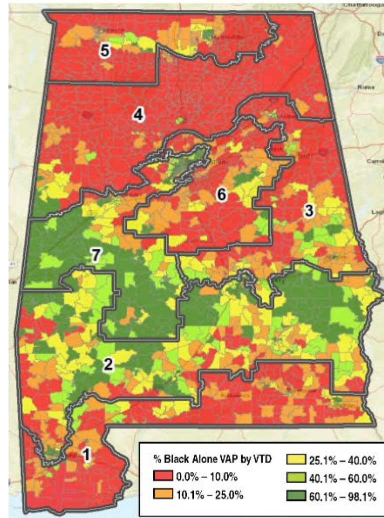
Duchin Plan 3



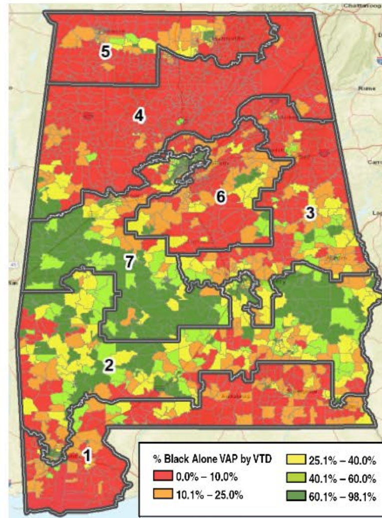
Duchin Plan 4



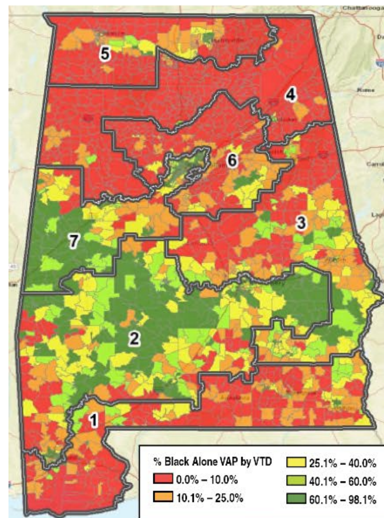
Cooper Plan 1



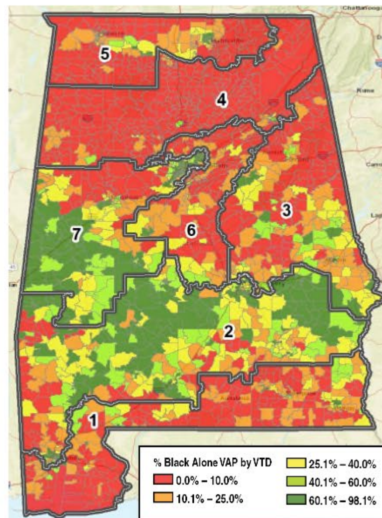
Cooper Plan 2



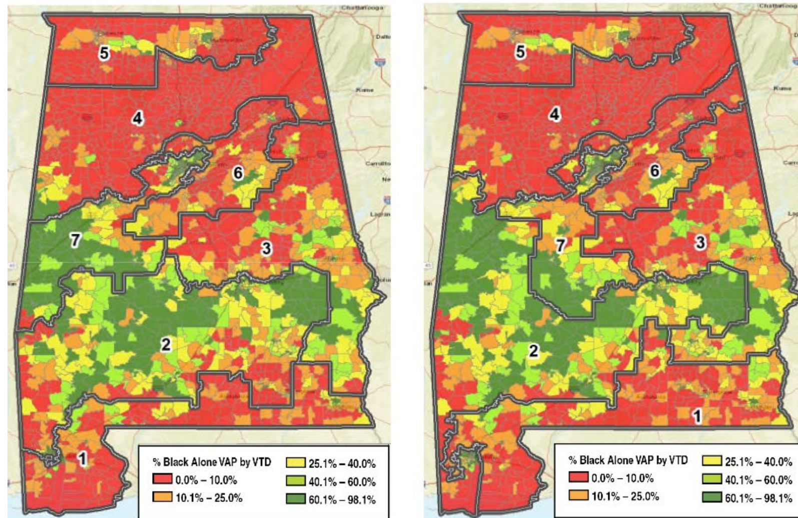
Cooper Plan 3



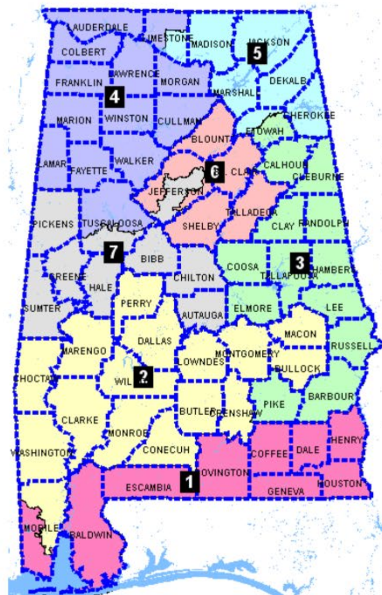
Cooper Plan 4



Cooper Plan 5 Cooper Plan 6



Cooper Plan 7



SUPREME COURT OF THE UNITED STATES

Nos. 21–1086 and 21–1087

WES ALLEN, ALABAMA SECRETARY OF STATE, ET AL., APPELLANTS

21–1086 *v.*

EVAN MILLIGAN, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

WES ALLEN, ALABAMA SECRETARY OF STATE, ET AL., PETITIONERS

21–1087 *v.*

MARCUS CASTER, ET AL.

ON WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

[June 8, 2023]

JUSTICE ALITO, with whom JUSTICE GORSUCH joins, dissenting.

Based on a flawed understanding of the framework adopted in *Thornburg* v. *Gingles*, 478 U. S. 30 (1986), the Court now holds that the congressional districting map adopted by the Alabama Legislature violates §2 of the Voting Rights Act. Like the Court, I am happy to apply *Gingles* in these cases. But I would interpret that precedent in a way that heeds what §2 actually says, and I would take constitutional requirements into account. When the *Gingles* framework is viewed in this way, it is apparent that the decisions below must be vacated.

I

A

Gingles marked the Court's first encounter with the amended version of §2 that Congress enacted in 1982, and the Court's opinion set out an elaborate framework that has since been used to analyze a variety of §2 claims. Under that framework, a plaintiff must satisfy three "preconditions." *Id.*, at 50. As summarized in more recent opinions, they are as follows:

> "First, [the] 'minority group' [whose interest the plaintiff represents] must be 'sufficiently large and geographically compact to constitute a majority' in some reasonably configured legislative district. Second, the minority group must be 'politically cohesive.' And third, a district's white majority must 'vote[ ] sufficiently as a bloc' to usually 'defeat the minority's preferred candidate.'" *Cooper* v. *Harris*, 581 U. S. 285, 301–302 (2017) (citations omitted).

See also *Wisconsin Legislature* v. *Wisconsin Elections Comm'n*, 595 U. S. ___, ___ (2022) (*per curiam*) (slip op., at 3); *Merrill* v. *Milligan*, 595 U. S. ___, ___ (2022) (KAGAN, J., dissenting from grant of applications for stays) (slip op., at 3–4).

If a §2 plaintiff can satisfy all these preconditions, the court must then decide whether, based on the totality of the circumstances, the plaintiff's right to vote was diluted. See *Gingles*, 478 U. S., at 46–48, 79. And to aid in that inquiry, *Gingles* approved consideration of a long list of factors set out in the Senate Judiciary Committee's Majority Report on the 1982 VRA amendments. *Id.*, at 44–45 (citing S. Rep. No. 97–417, pp. 28–30 (1982)).

B

My fundamental disagreement with the Court concerns the first *Gingles* precondition. In cases like these, where

the claim is that §2 requires the creation of an additional majority-minority district, the first precondition means that the plaintiff must produce an additional illustrative majority-minority district that is "reasonably configured." *Cooper*, 581 U. S., at 301; *Wisconsin Legislature*, 595 U. S., at ___ (slip op., at 3); see also *Gingles*, 478 U. S., at 50.

The Court's basic error is that it misunderstands what it means for a district to be "reasonably configured." Our cases make it clear that "reasonably configured" is not a synonym for "compact." We have explained that the first precondition also takes into account other traditional districting criteria like attempting to avoid the splitting of political subdivisions and "communities of interest." *League of United Latin American Citizens* v. *Perry*, 548 U. S. 399, 433–434 (2006) (*LULAC*).

To its credit, the Court recognizes that compactness is not enough and that a district is not reasonably configured if it flouts other "traditional districting criteria." *Ante*, at 10. At various points in its opinion it names quite a few: minimizing the splitting of counties and other political subdivisions, keeping "communities of interest" together where possible, and avoiding the creation of new districts that require two incumbents to run against each other. *Ante*, at 12, 26–27. In addition, the Court acknowledges that a district is not "reasonably configured" if it does not comport with the Equal Protection Clause's one-person, one-vote requirement. *Ante*, at 27. But the Court fails to explain why compliance with "traditional districting criteria" matters under §2 or why the only relevant equal protection principle is the one-person, one-vote requirement. If the Court had attempted to answer these questions, the defect in its understanding of the first *Gingles* precondition would be unmistakable.

To explain this, I begin with what is probably the most frequently mentioned traditional districting criterion and ask why it should matter under §2 whether a proposed

majority-minority district is "compact." Neither the Voting Rights Act (VRA) nor the Constitution imposes a compactness requirement. The Court notes that we have struck down bizarrely shaped districts, *ante*, at 19–20, but we did not do that for esthetic reasons. Compactness in and of itself is not a legal requirement—or even necessarily an esthetic one. (Some may find fancifully shaped districts more pleasing to the eye than boring squares.)

The same is true of departures from other traditional districting criteria. Again, nothing in the Constitution or the VRA demands compliance with these criteria. If a whimsical state legislature cavalierly disregards county and municipal lines and communities of interest, draws weirdly shaped districts, departs radically from a prior map solely for the purpose of change, and forces many incumbents to run against each other, neither the Constitution nor the VRA would make any of that illegal *per se*. Bizarrely shaped districts and other marked departures from traditional districting criteria matter because mapmakers usually heed these criteria, and when it is evident that they have not done so, there is reason to suspect that something untoward—specifically, unconstitutional racial gerrymandering—is afoot. See, *e.g.*, *Shaw* v. *Reno*, 509 U. S. 630, 643–644 (1993); *Bush* v. *Vera*, 517 U. S. 952, 979 (1996) (plurality opinion); cf. *LULAC*, 548 U. S., at 433–435.

Conspicuous violations of traditional districting criteria constitute strong *circumstantial evidence* of unconstitutionality. And when it is shown that the configuration of a district is attributable predominantly to race, that is more than circumstantial evidence that the district is unlawful. That is *direct evidence* of illegality because, as we have often held, race may not "predominate" in the drawing of district lines. See, *e.g.*, *Cooper*, 581 U. S., at 292; *Bethune-Hill* v. *Virginia State Bd. of Elections*, 580 U. S. 178, 191–192 (2017); *Shaw* v. *Hunt*, 517 U. S. 899, 906–907 (1996)

(*Shaw II*); *Miller* v. *Johnson*, 515 U. S. 900, 920 (1995).[1]

Because non-predominance is a longstanding and vital feature of districting law, it must be honored in a *Gingles* plaintiff's illustrative district. If race predominated in the creation of such a district, the plaintiff has failed to satisfy both our precedent, which requires "reasonably configured" districts, and the terms of §2, which demand equal openness. Two Terms ago, we engaged in a close analysis of the text of §2 and explained that its "key requirement" is that the political processes leading to nomination or election must be "'equally open to participation' by members of a protected class." *Brnovich* v. *Democratic National Committee*, 594 U. S. ___, ___ (2021) (slip op., at 6, 15) (quoting 52 U. S. C. §10301(b); emphasis deleted). "[E]qual openness," we stressed, must be our "touchstone" in interpreting and applying that provision. 594 U. S., at ___ (slip op., at 15).

When the race of one group is the predominant factor in the creation of a district, that district goes beyond making the electoral process equally open to the members of the group in question. It gives the members of that group an advantage that §2 does not require and that the Constitution may forbid. And because the creation of majority-minority districts is something of a zero-sum endeavor, giving an advantage to one minority group may disadvantage others.

C

What all this means is that a §2 plaintiff who claims that a districting map violates §2 because it fails to include an additional majority-minority district must show at the outset that such a district can be created without making race the predominant factor in its creation. The plaintiff bears both the burden of production and the burden of persuasion

[1] Alabama's districting guidelines explicitly incorporate this non-predominance requirement. See *Singleton* v. *Merrill*, 582 F. Supp. 3d 924, 1036 (ND Ala. 2022).

on this issue, see *Voinovich* v. *Quilter*, 507 U. S. 146, 155–156 (1993); *White* v. *Regester*, 412 U. S. 755, 766 (1973), but a plaintiff can satisfy the former burden simply by adducing evidence—in any acceptable form—that race did not predominate.

A plaintiff need not offer computer-related evidence. Once upon a time, legislative maps were drawn without using a computer, and nothing prevents a §2 plaintiff from taking this old-school approach in creating an illustrative district. See, *e.g.*, M. Altman, K. McDonald, & M. McDonald, From Crayons to Computers: The Evolution of Computer Use in Redistricting, 23 Soc. Sci. Computer Rev. 334, 335–336 (2005). In that event, the plaintiff can simply call upon the mapmaker to testify about the process he or she used and the role, if any, that race played in that process. The defendant may seek to refute that testimony in any way that the rules of civil procedure and evidence allow.

If, as will often be the case today, a §2 plaintiff's mapmaker uses a computer program, the expert can testify about the weight, if any, that the program gives to race. The plaintiff will presumably argue that any role assigned to race was not predominant, and the defendant can contest this by cross-examining the plaintiff's expert, seeking the actual program in discovery, and calling its own expert to testify about the program's treatment of race. After this, the trial court will be in a position to determine whether the program gave race a "predominant" role.

This is an entirely workable scheme. It does not obligate either party to offer computer evidence, and it minimizes the likelihood of a clash between what §2 requires and what the Constitution forbids. We have long assumed that §2 is consistent with the Constitution. See, *e.g.*, *Cooper*, 581 U. S., at 301 (assuming States have a compelling interest in complying with §2); *Shaw II*, 517 U. S., at 915 (same); *Vera*, 517 U. S., at 977 (plurality opinion) (same). But that cannot mean that every conceivable interpretation of §2 is

constitutional, and I do not understand the majority's analysis of Alabama's constitutional claim to suggest otherwise. *Ante*, at 33–34; *ante*, at 4 (KAVANAUGH, J., concurring in part).

Our cases make it perfectly clear that using race as a "predominant factor" in drawing legislative districts is unconstitutional unless the stringent requirements of strict scrutiny can be satisfied,[2] and therefore if §2 can be found to require the adoption of an additional majority-minority district that was created under a process that assigned race a "predominant" role, §2 and the Constitution would be headed for a collision.

II

When the meaning of a "reasonably configured" district is properly understood, it is apparent that the decisions below must be vacated and that the cases must be remanded for the application of the proper test. In its analysis of whether the plaintiffs satisfied the first *Gingles* precondition, the District Court gave much attention to some traditional districting criteria—specifically, compactness and avoiding the splitting of political subdivisions and communities of interest—but it failed to consider whether the plaintiffs had shown that their illustrative districts were created without giving race a "predominant role." *Singleton* v. *Merrill*, 582 F. Supp. 3d 924, 1008–1016 (ND Ala. 2022). For this reason, the District Court's §2 analysis was deficient.

It is true that the District Court addressed the question of race-predominance when it discussed and rejected the State's argument that the plaintiffs' maps violated the Equal Protection Clause, but the court's understanding of predominance was deeply flawed. The court began this part

---

[2] Although our cases have posited that racial predominance may be acceptable if strict scrutiny is satisfied, the Court does not contend that it is satisfied here.

of its opinion with this revealing statement:

> "Dr. Duchin and Mr. Cooper [plaintiffs' experts] testified that they *prioritized race* only for the purpose of determining and to the extent necessary to determine whether it was possible for the *Milligan* plaintiffs and the *Caster* plaintiffs to state a Section Two claim. As soon as they determined the answer to that question, they assigned greater weight to other traditional redistricting criteria." *Id.*, at 1029–1030 (emphasis added).

This statement overlooks the obvious point that by "prioritiz[ing] race" at the outset, Dr. Duchin and Mr. Cooper gave race a predominant role.

The next step in the District Court's analysis was even more troubling. The court wrote, "Dr. Duchin's testimony that she considered two majority-Black districts as 'non-negotiable' does not" show that race played a predominant role in her districting process. *Id.*, at 1030. But if achieving a certain objective is "non-negotiable," then achieving that objective will necessarily play a predominant role. Suppose that a couple are relocating to the Washington, D. C., metropolitan area, and suppose that one says to the other, "I'm flexible about where we live, but it has to be in Maryland. That's non-negotiable." Could anyone say that finding a home in Maryland was not a "predominant" factor in the couple's search? Or suppose that a person looking for a flight tells a travel agent, "It has to be non-stop. That's non-negotiable." Could it be said that the number of stops between the city of origin and the destination was not a "predominant" factor in the search for a good flight? The obvious answer to both these questions is no, and the same is true about the role of race in the creation of a new district. If it is "non-negotiable" that the district be majority black, then race is given a predominant role.

The District Court wrapped up this portion of its opinion with a passage that highlighted its misunderstanding of the

first *Gingles* precondition. The court thought that a §2 plaintiff cannot proffer a reasonably configured majority-minority district without first attempting to see if it is possible to create such a district—that is, by first making the identification of such a district "non-negotiable." *Ibid.* But that is simply not so. A plaintiff's expert can first create maps using only criteria that do not give race a predominant role and then determine how many contain the desired number of majority-minority districts.

One final observation about the District Court's opinion is in order. The opinion gives substantial weight to the disparity between the percentage of majority-black House districts in the legislature's plan (14%) and the percentage of black voting-age Alabamians (27%), while the percentage in the plaintiffs' plan (29%) came closer to that 27% mark. See, *e.g.*, *id.*, at 946, 1016, 1018, 1025–1026; see also *id.*, at 958–959, 969, 976, 982, 991–992, 996–997. Section 2 of the VRA, however, states expressly that no group has a right to representation "in numbers equal to their proportion in the population." 52 U. S. C. §10301(b). This provision was a critical component of the compromise that led to the adoption of the 1982 amendments, as the Court unanimously agreed two Terms ago. See *Brnovich*, 594 U. S., at ___, and n. 14 (slip op., at 22, and n. 14); *id.*, at ___, n. 6 (KAGAN, J., dissenting) (slip op., at 19, n. 6). The District Court's reasoning contravened this statutory proviso. See *ante*, at 11–12, 28–30 (THOMAS, J., dissenting).

III

The Court spends much of its opinion attacking what it takes to be the argument that Alabama has advanced in this litigation. I will not debate whether the Court's characterization of that argument is entirely correct, but as applied to the analysis I have just set out, the Court's criticisms miss the mark.

A

The major theme of this part of the Court's opinion is that Alabama's argument, in effect, is that "*Gingles* must be overruled." *Ante*, at 25. But as I wrote at the beginning of this opinion, I would decide these cases under the *Gingles* framework. We should recognize, however, that the *Gingles* framework is not the same thing as a statutory provision, and it is a mistake to regard it as such. *National Pork Producers Council* v. *Ross*, 598 U. S. ___, ___ (2023) (slip op., at 9) ("[T]he language of an opinion is not always to be parsed as though we were dealing with language of a statute" (quoting *Reiter* v. *Sonotone Corp.*, 442 U. S. 330, 341 (1979))). In applying that framework today, we should keep in mind subsequent developments in our case law.

One important development has been a sharpening of the methodology used in interpreting statutes. *Gingles* was decided at a time when the Court's statutory interpretation decisions sometimes paid less attention to the actual text of the statute than to its legislative history, and *Gingles* falls into that category. The Court quoted §2 but then moved briskly to the Senate Report. See 478 U. S., at 36–37, 43, and n. 7. Today, our statutory interpretation decisions focus squarely on the statutory text. *National Assn. of Mfrs.* v. *Department of Defense*, 583 U. S. 109, 127 (2018); *Puerto Rico* v. *Franklin Cal. Tax-Free Trust*, 579 U. S. 115, 125 (2016); cf. *Brnovich*, 594 U. S., at ___ (slip op., at 14). And as we held in *Brnovich*, "[t]he key requirement" set out in the text of §2 is that a State's electoral process must be "'equally open'" to members of all racial groups. *Id.*, at ___ (slip op., at 15). The *Gingles* framework should be interpreted in a way that gives effect to this standard.

Another development that we should not ignore concerns our case law on racial predominance. Post-*Gingles* decisions like *Miller*, 515 U. S., at 920, *Shaw II*, 517 U. S., at 906–907, and *Vera*, 517 U. S., at 979 (plurality opinion), made it clear that it is unconstitutional to use race as a

"predominant" factor in legislative districting. "[W]hen statutory language is susceptible of multiple interpretations, a court may shun an interpretation that raises serious constitutional doubts and instead may adopt an alternative that avoids those problems." *Jennings* v. *Rodriguez*, 583 U. S. ___, ___ (2018) (slip op., at 2). This same principle logically applies with even greater force when we interpret language in one of our prior opinions. It therefore goes without question that we should apply the *Gingles* framework in a way that does not set up a confrontation between §2 and the Constitution, and understanding the first *Gingles* precondition in the way I have outlined achieves that result.[3]

B

The Court's subsidiary criticisms of Alabama's arguments are likewise inapplicable to my analysis. The Court suggests that the "centerpiece" of Alabama's argument regarding the role race can permissibly play in a plaintiff's illustrative map seeks the imposition of "a new rule." *Ante*, at 15, 22. But I would require only what our cases already demand: that all legislative districts be produced without giving race a "predominant" role.[4]

---

[3] The second and third *Gingles* preconditions, which concern racially polarized voting, cannot contribute to avoiding a clash between §2 and the Constitution over racial predominance in the drawing of lines. Those preconditions do not concern the drawing of lines in plaintiffs' maps, and in any event, because voting in much of the South is racially polarized, they are almost always satisfied anyway. Alabama does not contest that they are satisfied here.

[4] The Court appears to contend that it does not matter if race predominated in the drawing of these maps because the maps *could have* been drawn without race predominating. See *ante*, at 26–27, n. 7. But of course, many policies *could be* selected for race-neutral reasons. They nonetheless must be assessed under the relevant standard for intentional reliance on race if their imposition was in fact motivated by race. See, *e.g.*, *Hunter* v. *Underwood*, 471 U. S. 222, 227–231 (1985); *Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U. S. 252, 264–

The Court maintains that Alabama's benchmark scheme would be unworkable because of the huge number of different race-neutral maps that could be drawn. As the Court notes, there are apparently numerous "competing metrics on the issue of compactness" alone, and each race-neutral computer program may assign different values to each traditional districting criterion. *Ante*, at 27 (internal quotation marks omitted).

My analysis does not create such problems. If a §2 plaintiff chooses to use a computer program to create an illustrative district, the court need ask only whether *that program* assigned race a predominant role.

The Court argues that Alabama's focus on race-neutral maps cannot be squared with a totality-of-the-circumstances test because "Alabama suggests there is only one 'circumstance[ ]' that matters—how the State's map stacks up relative to the benchmark" maps. *Ante*, at 18. My analysis, however, simply follows the *Gingles* framework, under which a court must first determine whether a §2 plaintiff has satisfied three "preconditions" before moving on to consider the remainder of relevant circumstances. See *Growe* v. *Emison*, 507 U. S. 25, 40–41 (1993) (unless plaintiffs establish all three preconditions, there "neither has been a wrong nor can be a remedy").

IV

As noted, I would vacate and remand for the District Court to apply the correct understanding of *Gingles* in the first instance. Such a remand would require the District Court to determine whether the plaintiffs have shown that their illustrative maps did not give race a predominant role, and I will therefore comment briefly on my understanding of the relevant evidence in the record as it now stands.

---

266 (1977); *Washington* v. *Davis*, 426 U. S. 229, 241–248 (1976).

A

In my view, there is strong evidence that race played a predominant role in the production of the plaintiffs' illustrative maps and that it is most unlikely that a map with more than one majority-black district could be created without giving race such a role. An expert hired by the *Milligan* plaintiffs, Dr. Kosuke Imai, used a computer algorithm to create 30,000 potential maps, none of which contained two majority-black districts. See 2 App. 571–572; Supp. App. 59, 72. In fact, in 20,000 of those simulations, Dr. Imai intentionally created one majority-minority district, and yet even with one majority-minority district guaranteed as a baseline, none of those 20,000 attempts produced a second one. See 2 App. 571–572; Supp. App. 72.

Similarly, Dr. Moon Duchin, another expert hired by the *Milligan* plaintiffs, opined that "it is hard to draw two majority-black districts by accident." 2 App. 714. Dr. Duchin also referred to a study where she generated two million maps of potential district configurations in Alabama, none of which contained a second majority-minority district. *Id.*, at 710. And the first team of trained mapmakers that plaintiff Milligan consulted was literally unable to draw a two-majority-black-district map, even when they tried. *Id.*, at 511–512. Milligan concluded at the time that the feat was impossible. *Id.*, at 512.

The majority quibbles about the strength of this evidence, protesting that Dr. Imai's studies failed to include as controls certain redistricting criteria and that Dr. Duchin's two-million-map study was based on 2010 census data, see *ante*, at 26–27, and nn. 6–7, but this is unconvincing for several reasons. It is plaintiffs' burden to produce evidence and satisfy the *Gingles* preconditions, so if their experts' maps were deficient, that is no strike against Alabama. And the racial demographics of the State changed little between 2010 and 2020, Supp. App. 82, which is presumably why Dr. Duchin herself raised the older study in answering

questions about her work in this litigation, see 2 App. 710. If it was impossible to draw two such districts in 2010, it surely at least requires a great deal of intentional effort now.

The Court suggests that little can be inferred from Dr. Duchin's two-million-map study because two million maps are not that many in comparison to the "trillion trillion" maps that are possible. See *ante*, at 28–29, and n. 9. In making this argument, the Court relies entirely on an *amicus* brief submitted by three computational redistricting experts in support of the appellees. See Brief for Computational Redistricting Experts 2, 6, n. 7. These experts' argument concerns a complicated statistical issue, and I think it is unwise for the Court to make their argument part of our case law based solely on this brief. By the time this *amicus* brief was submitted, the appellants had already filed their main brief, and it was too late for any experts with contrary views to submit an *amicus* brief in support of appellants. Computer simulations are widely used today to make predictions about many important matters, and I would not place stringent limits on their use in VRA litigation without being quite sure of our ground. If the cases were remanded, the parties could take up this issue if they wished and call experts to support their positions on the extent to which the two million maps in the study are or can be probative of the full universe of maps.

In sum, based on my understanding of the current record, I am doubtful that the plaintiffs could get by the first *Gingles* precondition, but I would let the District Court sort this matter out on remand.

B

Despite the strong evidence that two majority-minority districts cannot be drawn without singular emphasis on race, a plurality nonetheless concludes that race did not predominate in the drawing of the plaintiffs' illustrative

maps. See *ante*, at 22–25. Their conclusion, however, rests on a faulty view of what non-predominance means.

The plurality's position seems to be that race does not predominate in the creation of a districting map so long as the map does not violate other traditional districting criteria such as compactness, contiguity, equally populated districts, minimizing county splits, etc. *Ibid*. But this conclusion is irreconcilable with our cases. In *Miller*, for instance, we acknowledged that the particular district at issue was not "shape[d] . . . bizarre[ly] on its face," but we nonetheless held that race predominated because of the legislature's "overriding desire to assign black populations" in a way that would create an additional "majority-black district." 515 U. S., at 917.

Later cases drove home the point that conformity with traditional districting principles does not necessarily mean that a district was created without giving race a predominant role. In *Cooper*, we held that once it was shown that race was "'the overriding reason'" for the selection of a particular map, "a further showing of 'inconsistency between the enacted plan and traditional redistricting criteria' is unnecessary to a finding of racial predominance." 581 U. S., at 301, n. 3 (quoting *Bethune-Hill*, 580 U. S., at 190). We noted that the contrary argument was "foreclosed almost as soon as it was raised in this Court." *Cooper*, 581 U. S., at 301, n. 3; see also *Vera*, 517 U. S., at 966 (plurality opinion) (race may still predominate even if "traditional districting principle[s] do correlate to some extent with the district's layout"). "Traditional redistricting principles . . . are numerous and malleable. . . . By deploying those factors in various combinations and permutations, a [mapmaker] could construct a plethora of potential maps that look consistent with traditional, race-neutral principles." *Bethune-Hill*, 580 U. S., at 190. Here, a plurality allows plaintiffs to do precisely what we warned against in *Bethune-Hill*.

The plurality's analysis of predominance contravenes our

precedents in another way. We have been sensitive to the gravity of "'trapp[ing]'" States "'between the competing hazards of liability'" imposed by the Constitution and the VRA. *Id.*, at 196 (quoting *Vera*, 517 U. S., at 977). The VRA's demand that States not unintentionally "dilute" the votes of particular groups must be reconciled with the Constitution's demand that States generally avoid intentional augmentation of the political power of any one racial group (and thus the diminution of the power of other groups). The plurality's predominance analysis shreds that prudential concern. If a private plaintiff can demonstrate §2 liability based on the production of a map that the State has every reason to believe it could not constitutionally draw, we have left "state legislatures too little breathing room" and virtually guaranteed that they will be on the losing end of a federal court's judgment. *Bethune-Hill*, 580 U. S., at 196.

* * *

The Court's treatment of *Gingles* is inconsistent with the text of §2, our precedents on racial predominance, and the fundamental principle that States are almost always prohibited from basing decisions on race. Today's decision unnecessarily sets the VRA on a perilous and unfortunate path. I respectfully dissent.

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

BRNOVICH, ATTORNEY GENERAL OF ARIZONA, ET AL. *v.* DEMOCRATIC NATIONAL COMMITTEE ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 19–1257. Argued March 2, 2021—Decided July 1, 2021*

Arizona law generally makes it very easy to vote. Voters may cast their ballots on election day in person at a traditional precinct or a "voting center" in their county of residence. Ariz. Rev. Stat. §16–411(B)(4). Arizonans also may cast an "early ballot" by mail up to 27 days before an election, §§16–541, 16–542(C), and they also may vote in person at an early voting location in each county, §§16–542(A), (E). These cases involve challenges under §2 of the Voting Rights Act of 1965 (VRA) to aspects of the State's regulations governing precinct-based election-day voting and early mail-in voting. First, Arizonans who vote in person on election day in a county that uses the precinct system must vote in the precinct to which they are assigned based on their address. See §16–122; see also §16–135. If a voter votes in the wrong precinct, the vote is not counted. Second, for Arizonans who vote early by mail, Arizona House Bill 2023 (HB 2023) makes it a crime for any person other than a postal worker, an elections official, or a voter's caregiver, family member, or household member to knowingly collect an early ballot—either before or after it has been completed. §§16–1005(H)–(I).

The Democratic National Committee and certain affiliates filed suit, alleging that both the State's refusal to count ballots cast in the wrong precinct and its ballot-collection restriction had an adverse and disparate effect on the State's American Indian, Hispanic, and African-American citizens in violation of §2 of the VRA. Additionally, they alleged that the ballot-collection restriction was "enacted with discriminatory

---

*Together with No. 19–1258, *Arizona Republican Party et al.* v. *Democratic National Committee et al.*, also on certiorari to the same court.

intent" and thus violated both §2 of the VRA and the Fifteenth Amendment. The District Court rejected all of the plaintiffs' claims. The court found that the out-of-precinct policy had no "meaningfully disparate impact" on minority voters' opportunities to elect representatives of their choice. Turning to the ballot-collection restriction, the court found that it was unlikely to cause "a meaningful inequality" in minority voters' electoral opportunities and that it had not been enacted with discriminatory intent. A divided panel of the Ninth Circuit affirmed, but the en banc court reversed. It first concluded that both the out-of-precinct policy and the ballot-collection restriction imposed a disparate burden on minority voters because they were more likely to be adversely affected by those rules. The en banc court also held that the District Court had committed clear error in finding that the ballot-collection law was not enacted with discriminatory intent.

Held: Arizona's out-of-precinct policy and HB 2023 do not violate §2 of the VRA, and HB 2023 was not enacted with a racially discriminatory purpose. Pp. 12–37.

(a) Two threshold matters require the Court's attention. First, the Court rejects the contention that no petitioner has Article III standing to appeal the decision below as to the out-of-precinct policy. All that is needed to entertain an appeal of that issue is one party with standing. *Little Sisters of the Poor Saints Peter and Paul Home* v. *Pennsylvania*, 591 U. S. ___, ___, n. 6. Attorney General Brnovich, as an authorized representative of the State (which intervened below) in any action in federal court, fits the bill. See *Virginia House of Delegates* v. *Bethune-Hill*, 587 U. S. ___, ___. Second, the Court declines in these cases to announce a test to govern all VRA §2 challenges to rules that specify the time, place, or manner for casting ballots. It is sufficient for present purposes to identify certain guideposts that lead to the Court's decision in these cases. Pp. 12–13.

(b) The Court's statutory interpretation starts with a careful consideration of the text. Pp. 13–25.

(1) The Court first construed the current version of §2 in *Thornburg* v. *Gingles*, 478 U. S. 30, which was a vote-dilution case where the Court took its cue from §2's legislative history. The Court's many subsequent vote-dilution cases have followed the path *Gingles* charted. Because the Court here considers for the first time how §2 applies to generally applicable time, place, or manner voting rules, it is appropriate to take a fresh look at the statutory text. Pp. 13–14.

(2) In 1982, Congress amended the language in §2 that had been interpreted to require proof of discriminatory intent by a plurality of the Court in *Mobile* v. *Bolden*, 446 U. S. 55. In place of that language, §2(a) now uses the phrase "in a manner which results in a denial or

abridgement of the right . . . to vote on account of race or color." Section 2(b) in turn explains what must be shown to establish a §2 violation. Section 2(b) states that §2 is violated only where "the political processes leading to nomination or election" are not "*equally open* to participation" by members of the relevant protected group "*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." (Emphasis added.) In §2(b), the phrase "in that" is "used to specify the respect in which a statement is true." New Oxford American Dictionary 851. Thus, equal openness and equal opportunity are not separate requirements. Instead, it appears that the core of §2(b) is the requirement that voting be "equally open." The statute's reference to equal "opportunity" may stretch that concept to some degree to include consideration of a person's ability to use the means that are equally open. But equal openness remains the touchstone. Pp. 14–15.

(3) Another important feature of §2(b) is its "totality of circumstances" requirement. Any circumstance that has a logical bearing on whether voting is "equally open" and affords equal "opportunity" may be considered. Pp. 15–21.

(i) The Court mentions several important circumstances but does not attempt to compile an exhaustive list. Pp. 15–19.

(A) The size of the burden imposed by a challenged voting rule is highly relevant. Voting necessarily requires some effort and compliance with some rules; thus, the concept of a voting system that is "equally open" and that furnishes equal "opportunity" to cast a ballot must tolerate the "usual burdens of voting." *Crawford* v. *Marion County Election Bd.*, 553 U. S. 181, 198. Mere inconvenience is insufficient. P. 16.

(B) The degree to which a voting rule departs from what was standard practice when §2 was amended in 1982 is a relevant consideration. The burdens associated with the rules in effect at that time are useful in gauging whether the burdens imposed by a challenged rule are sufficient to prevent voting from being equally "open" or furnishing an equal "opportunity" to vote in the sense meant by §2. Widespread current use is also relevant. Pp. 17–18.

(C) The size of any disparities in a rule's impact on members of different racial or ethnic groups is an important factor to consider. Even neutral regulations may well result in disparities in rates of voting and noncompliance with voting rules. The mere fact that there is some disparity in impact does not necessarily mean that a system is not equally open or that it does not give everyone an equal opportunity to vote. And small disparities should not be artificially magnified. P. 18.

(D) Consistent with §2(b)'s reference to a States' "political

processes," courts must consider the opportunities provided by a State's entire system of voting when assessing the burden imposed by a challenged provision. Thus, where a State provides multiple ways to vote, any burden associated with one option cannot be evaluated without also taking into account the other available means. P. 18.

(E) The strength of the state interests—such as the strong and entirely legitimate state interest in preventing election fraud—served by a challenged voting rule is an important factor. Ensuring that every vote is cast freely, without intimidation or undue influence, is also a valid and important state interest. In determining whether a rule goes too far "based on the totality of circumstances," rules that are supported by strong state interests are less likely to violate §2. Pp. 18–19.

(ii) Some factors identified in *Thornburg* v. *Gingles,* 478 U. S. 30, were designed for use in vote-dilution cases and are plainly inapplicable in a case that involves a challenge to a facially neutral time, place, or manner voting rule. While §2(b)'s "totality of circumstances" language permits consideration of certain other *Gingles* factors, their only relevance in cases involving neutral time, place, and manner rules is to show that minority group members suffered discrimination in the past and that effects of that discrimination persist. The disparate-impact model employed in Title VII and Fair Housing Act cases is not useful here. Pp. 19–21.

(4) Section 2(b) directs courts to consider "the totality of circumstances," but the dissent would make §2 turn almost entirely on one circumstance: disparate impact. The dissent also would adopt a least-restrictive means requirement that would force a State to prove that the interest served by its voting rule could not be accomplished in any other less burdensome way. Such a requirement has no footing in the text of §2 or the Court's precedent construing it and would have the potential to invalidate just about any voting rule a State adopts. Section 2 of the VRA provides vital protection against discriminatory voting rules, and no one suggests that discrimination in voting has been extirpated or that the threat has been eliminated. Even so, §2 does not transfer the States' authority to set non-discriminatory voting rules to the federal courts. Pp. 21–25.

(c) Neither Arizona's out-of-precinct policy nor its ballot-collection law violates §2 of the VRA. Pp. 25–34.

(1) Having to identify one's polling place and then travel there to vote does not exceed the "usual burdens of voting." *Crawford*, 553 U. S., at 198. In addition, the State made extensive efforts to reduce the impact of the out-of-precinct policy on the number of valid votes ultimately cast, *e.g.,* by sending a sample ballot to each household that includes a voter's proper polling location. The burdens of identifying

and traveling to one's assigned precinct are also modest when considering Arizona's "political processes" as a whole. The State offers other easy ways to vote, which likely explains why out-of-precinct votes on election day make up such a small and apparently diminishing portion of overall ballots cast.

Next, the racial disparity in burdens allegedly caused by the out-of-precinct policy is small in absolute terms. Of the Arizona counties that reported out-of-precinct ballots in the 2016 general election, a little over 1% of Hispanic voters, 1% of African-American voters, and 1% of Native American voters who voted on election day cast an out-of-precinct ballot. For non-minority voters, the rate was around 0.5%. A procedure that appears to work for 98% or more of voters to whom it applies—minority and non-minority alike—is unlikely to render a system unequally open.

Appropriate weight must be given to the important state interests furthered by precinct-based voting. It helps to distribute voters more evenly among polling places; it can put polling places closer to voter residences; and it helps to ensure that each voter receives a ballot that lists only the candidates and public questions on which he or she can vote. Precinct-based voting has a long pedigree in the United States, and the policy of not counting out-of-precinct ballots is widespread.

The Court of Appeals discounted the State's interests because it found no evidence that a less restrictive alternative would threaten the integrity of precinct-based voting. But §2 does not require a State to show that its chosen policy is absolutely necessary or that a less restrictive means would not adequately serve the State's objectives. Considering the modest burdens allegedly imposed by Arizona's out-of-precinct policy, the small size of its disparate impact, and the State's justifications, the rule does not violate §2. Pp. 25–30.

(2) Arizona's HB 2023 also passes muster under §2. Arizonans can submit early ballots by going to a mailbox, a post office, an early ballot drop box, or an authorized election official's office. These options entail the "usual burdens of voting," and assistance from a statutorily authorized proxy is also available. The State also makes special provision for certain groups of voters who are unable to use the early voting system. See §16–549(C). And here, the plaintiffs were unable to show the extent to which HB 2023 disproportionately burdens minority voters.

Even if the plaintiffs were able to demonstrate a disparate burden caused by HB 2023, the State's "compelling interest in preserving the integrity of its election procedures" would suffice to avoid §2 liability. *Purcell* v. *Gonzalez*, 549 U. S. 1, 4. The Court of Appeals viewed the State's justifications for HB 2023 as tenuous largely because there was no evidence of early ballot fraud in Arizona. But prevention of fraud

is not the only legitimate interest served by restrictions on ballot collection. Third-party ballot collection can lead to pressure and intimidation. Further, a State may take action to prevent election fraud without waiting for it to occur within its own borders. Pp. 30–34.

(d) HB 2023 was not enacted with a discriminatory purpose, as the District Court found. Appellate review of that conclusion is for clear error. *Pullman-Standard* v. *Swint*, 456 U. S. 273, 287–288. The District Court's finding on the question of discriminatory intent had ample support in the record. The court considered the historical background and the highly politicized sequence of events leading to HB 2023's enactment; it looked for any departures from the normal legislative process; it considered relevant legislative history; and it weighed the law's impact on different racial groups. See *Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U. S. 252, 266–268. The court found HB 2023 to be the product of sincere legislative debate over the wisdom of early mail-in voting and the potential for fraud. And it took care to distinguish between racial motives and partisan motives. The District Court's interpretation of the evidence was plausible based on the record, so its permissible view is not clearly erroneous. See *Anderson* v. *Bessemer City*, 470 U. S. 564, 573–574. The Court of Appeals concluded that the District Court committed clear error by failing to apply a "cat's paw" theory—which analyzes whether an actor was a "dupe" who was "used by another to accomplish his purposes." That theory has its origin in employment discrimination cases and has no application to legislative bodies. Pp. 34–37.

948 F. 3d 989, reversed and remanded.

ALITO, J., delivered the opinion of the Court, in which ROBERTS, C. J., and THOMAS, GORSUCH, KAVANAUGH, and BARRETT, JJ., joined. GORSUCH, J., filed a concurring opinion, in which THOMAS, J., joined. KAGAN, J., filed a dissenting opinion, in which BREYER and SOTOMAYOR, JJ., joined.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

Nos. 19–1257 and 19–1258

MARK BRNOVICH, ATTORNEY GENERAL OF ARIZONA, ET AL., PETITIONERS
19–1257 *v.*
DEMOCRATIC NATIONAL COMMITTEE, ET AL.

ARIZONA REPUBLICAN PARTY, ET AL., PETITIONERS
19–1258 *v.*
DEMOCRATIC NATIONAL COMMITTEE, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[July 1, 2021]

JUSTICE ALITO delivered the opinion of the Court.

In these cases, we are called upon for the first time to apply §2 of the Voting Rights Act of 1965 to regulations that govern how ballots are collected and counted. Arizona law generally makes it very easy to vote. All voters may vote by mail or in person for nearly a month before election day, but Arizona imposes two restrictions that are claimed to be unlawful. First, in some counties, voters who choose to cast a ballot in person on election day must vote in their own precincts or else their ballots will not be counted. Second, mail-in ballots cannot be collected by anyone other than an election official, a mail carrier, or a voter's family member, household member, or caregiver. After a trial, a District Court upheld these rules, as did a panel of the United

States Court of Appeals for the Ninth Circuit. But an en banc court, by a divided vote, found them to be unlawful. It relied on the rules' small disparate impacts on members of minority groups, as well as past discrimination dating back to the State's territorial days. And it overturned the District Court's finding that the Arizona Legislature did not adopt the ballot-collection restriction for a discriminatory purpose. We now hold that the en banc court misunderstood and misapplied §2 and that it exceeded its authority in rejecting the District Court's factual finding on the issue of legislative intent.

I

A

Congress enacted the landmark Voting Rights Act of 1965, 79 Stat. 437, as amended, 52 U. S. C. §10301 *et seq.*, in an effort to achieve at long last what the Fifteenth Amendment had sought to bring about 95 years earlier: an end to the denial of the right to vote based on race. Ratified in 1870, the Fifteenth Amendment provides in §1 that "[t]he 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." Section 2 of the Amendment then grants Congress the "power to enforce [the Amendment] by appropriate legislation."

Despite the ratification of the Fifteenth Amendment, the right of African-Americans to vote was heavily suppressed for nearly a century. States employed a variety of notorious methods, including poll taxes, literacy tests, property qualifications, "'white primar[ies],'" and "'grandfather clause[s].'"[1] Challenges to some blatant efforts reached this Court and were held to violate the Fifteenth Amendment.

[1] H. R. Rep. No. 439, 89th Cong., 1st Sess., 8, 11–13 (1965); S. Rep. No. 162, 89th Cong., 1st Sess., pt. 3, pp. 4–5 (1965); see *South Carolina* v. *Katzenbach*, 383 U. S. 301, 309–315 (1966).

See, *e.g.*, *Guinn* v. *United States*, 238 U. S. 347, 360–365 (1915) (grandfather clause); *Myers* v. *Anderson*, 238 U. S. 368, 379–380 (1915) (same); *Lane* v. *Wilson*, 307 U. S. 268, 275–277 (1939) (registration scheme predicated on grandfather clause); *Smith* v. *Allwright*, 321 U. S. 649, 659–666 (1944) (white primaries); *Schnell* v. *Davis*, 336 U. S. 933 (1949) (*per curiam*), affirming 81 F. Supp. 872 (SD Ala. 1949) (test of constitutional knowledge); *Gomillion* v. *Lightfoot*, 364 U. S. 339, 347 (1960) (racial gerrymander). But as late as the mid-1960s, black registration and voting rates in some States were appallingly low. See *South Carolina* v. *Katzenbach*, 383 U. S. 301, 313 (1966).

Invoking the power conferred by §2 of the Fifteenth Amendment, see 383 U. S., at 308; *City of Rome* v. *United States*, 446 U. S. 156, 173 (1980), Congress enacted the Voting Rights Act (VRA) to address this entrenched problem. The Act and its amendments in the 1970s specifically forbade some of the practices that had been used to suppress black voting. See §§4(a), (c), 79 Stat. 438–439; §6, 84 Stat. 315; §102, 89 Stat. 400, as amended, 52 U. S. C. §§10303(a), (c), 10501 (prohibiting the denial of the right to vote in any election for failure to pass a test demonstrating literacy, educational achievement or knowledge of any particular subject, or good moral character); see also §10, 79 Stat. 442, as amended, 52 U. S. C. §10306 (declaring poll taxes unlawful); §11, 79 Stat. 443, as amended, 52 U. S. C. §10307 (prohibiting intimidation and the refusal to allow or count votes). Sections 4 and 5 of the VRA imposed special requirements for States and subdivisions where violations of the right to vote had been severe. And §2 addressed the denial or abridgment of the right to vote in any part of the country.

As originally enacted, §2 closely tracked the language of the Amendment it was adopted to enforce. Section 2 stated simply that "[n]o 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." 79 Stat. 437.

Unlike other provisions of the VRA, §2 attracted relatively little attention during the congressional debates[2] and was "little-used" for more than a decade after its passage.[3] But during the same period, this Court considered several cases involving "vote-dilution" claims asserted under the Equal Protection Clause of the Fourteenth Amendment. See *Whitcomb* v. *Chavis*, 403 U. S. 124 (1971); *Burns* v. *Richardson*, 384 U. S. 73 (1966); *Fortson* v. *Dorsey*, 379 U. S. 433 (1965). In these and later vote-dilution cases, plaintiffs claimed that features of legislative districting plans, including the configuration of legislative districts and the use of multi-member districts, diluted the ability of particular voters to affect the outcome of elections.

One Fourteenth Amendment vote-dilution case, *White* v. *Regester*, 412 U. S. 755 (1973), came to have outsized importance in the development of our VRA case law. In *White*, the Court affirmed a District Court's judgment that two multi-member electoral districts were "being used invidiously to cancel out or minimize the voting strength of racial groups." *Id.*, at 765. The Court explained what a vote-dilution plaintiff must prove, and the words the Court chose would later assume great importance in VRA §2 matters. According to *White*, a vote-dilution plaintiff had to show that "the political processes leading to nomination and election were not *equally open* to participation by the group in question—that its members had *less opportunity* than did other residents in the district to participate in the political processes and to elect legislators of their choice." *Id.*, at 766 (emphasis added). The decision then recited many pieces of evidence the District Court had taken into account, and it

[2] See *Mobile* v. *Bolden*, 446 U. S. 55, 60–61 (1980) (plurality opinion) (describing §2's "sparse" legislative history).

[3] Boyd & Markman, The 1982 Amendments to the Voting Rights Act: A Legislative History, 40 Wash. & Lee L. Rev. 1347, 1352–1353 (1983).

found that this evidence sufficed to prove the plaintiffs' claim. See *id.*, at 766–769. The decision in *White* predated *Washington* v. *Davis*, 426 U. S. 229 (1976), where the Court held that an equal-protection challenge to a facially neutral rule requires proof of discriminatory purpose or intent, *id.*, at 238–245, and the *White* opinion said nothing one way or the other about purpose or intent.

A few years later, the question whether a VRA §2 claim required discriminatory purpose or intent came before this Court in *Mobile* v. *Bolden*, 446 U. S. 55 (1980). The plurality opinion for four Justices concluded first that §2 of the VRA added nothing to the protections afforded by the Fifteenth Amendment. *Id.*, at 60–61. The plurality then observed that prior decisions "ha[d] made clear that action by a State that is racially neutral on its face violates the Fifteenth Amendment only if motivated by a discriminatory purpose." *Id.*, at 62. The obvious result of those premises was that facially neutral voting practices violate §2 only if motivated by a discriminatory purpose. The plurality read *White* as consistent with this requirement. *Bolden*, 446 U. S., at 68–70.

Shortly after *Bolden* was handed down, Congress amended §2 of the VRA. The oft-cited Report of the Senate Judiciary Committee accompanying the 1982 Amendment stated that the amendment's purpose was to repudiate *Bolden* and establish a new vote-dilution test based on what the Court had said in *White*. See S. Rep. No. 97–417, pp. 2, 15–16, 27. The bill that was initially passed by the House of Representatives included what is now §2(a). In place of the phrase "to deny or abridge the right . . . to vote on account of race or color," the amendment substituted "in a manner which *results in* a denial or abridgement of the right . . . to vote on account of race or color." H. R. Rep. No. 97–227, p. 48 (1981) (emphasis added); H. R. 3112, 97th Cong., 1st Sess., §2, p. 8 (introduced Oct. 7, 1981).

The House bill "originally passed . . . under a loose understanding that §2 would prohibit all discriminatory 'effects' of voting practices, and that intent would be 'irrelevant,'" but "[t]his version met stiff resistance in the Senate." *Mississippi Republican Executive Committee* v. *Brooks*, 469 U. S. 1002, 1010 (1984) (Rehnquist, J., dissenting) (quoting H. R. Rep. No. 97–227, at 29). The House and Senate compromised, and the final product included language proposed by Senator Dole. 469 U. S., at 1010–1011; S. Rep. No. 97–417, at 3–4; 128 Cong. Rec. 14131–14133 (1982) (Sen. Dole describing his amendment).

What is now §2(b) was added, and that provision sets out what must be shown to prove a §2 violation. It requires consideration of "the totality of circumstances" in each case and demands proof 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 protected class "*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." 52 U. S. C. §10301(b) (emphasis added). Reflecting the Senate Judiciary Committee's stated focus on the issue of vote dilution, this language was taken almost verbatim from *White*.

This concentration on the contentious issue of vote dilution reflected the results of the Senate Judiciary Committee's extensive survey of what it regarded as Fifteenth Amendment violations that called out for legislative redress. See, *e.g.*, S. Rep. No. 97–417, at 6, 8, 23–24, 27, 29. That survey listed many examples of what the Committee took to be unconstitutional vote dilution, but the survey identified only three isolated episodes involving the outright denial of the right to vote, and none of these concerned the equal application of a facially neutral rule specifying the time, place, or manner of voting. See *id.*, at 30, and

n. 119.[4] These sparse results were presumably good news. They likely showed that the VRA and other efforts had achieved a large measure of success in combating the previously widespread practice of using such rules to hinder minority groups from voting.

This Court first construed the amended §2 in *Thornburg* v. *Gingles*, 478 U. S. 30 (1986)—another vote-dilution case. Justice Brennan's opinion for the Court set out three threshold requirements for proving a §2 vote-dilution claim, and, taking its cue from the Senate Report, provided a non-exhaustive list of factors to be considered in determining whether §2 had been violated. *Id.*, at 44–45, 48–51, 80. "The essence of a §2 claim," the Court said, "is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities" of minority and non-minority voters to elect their preferred representatives. *Id.*, at 47.

In the years since *Gingles*, we have heard a steady stream of §2 vote-dilution cases,[5] but until today, we have not considered how §2 applies to generally applicable time, place, or manner voting rules. In recent years, however, such claims have proliferated in the lower courts.[6]

---

[4] See *Brown* v. *Post*, 279 F. Supp. 60, 63 (WD La. 1968) (parish clerks discriminated with respect to absentee voting); *United States* v. *Post*, 297 F. Supp. 46, 51 (WD La. 1969) (election official induced blacks to vote in accordance with outdated procedures and made votes ineffective); *Toney* v. *White*, 488 F. 2d 310, 312 (CA5 1973) (registrar discriminated in purging voting rolls).

[5] See *Chisom* v. *Roemer*, 501 U. S. 380 (1991) (multi-member district); *Houston Lawyers' Assn.* v. *Attorney General of Tex.*, 501 U. S. 419 (1991) (at-large elections); *Voinovich* v. *Quilter*, 507 U. S. 146 (1993) (districting); *Growe* v. *Emison*, 507 U. S. 25 (1993) (same); *Holder* v. *Hall*, 512 U. S. 874 (1994) (single-member commission); *Johnson* v. *De Grandy*, 512 U. S. 997 (1994) (districting); *Abrams* v. *Johnson*, 521 U. S. 74 (1997) (same); *League of United Latin American Citizens* v. *Perry*, 548 U. S. 399 (2006) (same); *Abbott* v. *Perez*, 585 U. S. ___ (2018) (same).

[6] See Brief for Sen. Ted Cruz et al. as *Amici Curiae* 22–24 (describing §2 challenges to laws regulating absentee voting, precinct voting, early

B

The present dispute concerns two features of Arizona voting law, which generally makes it quite easy for residents to vote. All Arizonans may vote by mail for 27 days before an election using an "early ballot." Ariz. Rev. Stat. Ann. §§16–541 (2015), 16–542(C) (Cum. Supp. 2020). No special excuse is needed, §§16–541(A), 16–542(A), and any voter may ask to be sent an early ballot automatically in future elections, §16–544(A) (2015). In addition, during the 27 days before an election, Arizonans may vote in person at an early voting location in each county. See §§16–542(A), (E). And they may also vote in person on election day.

Each county is free to conduct election-day voting either by using the traditional precinct model or by setting up "voting centers." §16–411(B)(4) (Cum. Supp. 2020). Voting centers are equipped to provide all voters in a county with the appropriate ballot for the precinct in which they are registered, and this allows voters in the county to use whichever vote center they prefer. See *ibid.*

The regulations at issue in this suit govern precinct-based election-day voting and early mail-in voting. Voters who choose to vote in person on election day in a county that uses the precinct system must vote in their assigned precincts. See §16–122 (2015); see also §16–135. If a voter goes to the wrong polling place, poll workers are trained to direct the voter to the right location. *Democratic Nat. Comm.* v. *Reagan*, 329 F. Supp. 3d 824, 859 (Ariz. 2018); see Tr. 1559, 1586 (Oct. 12, 2017); Tr. Exh. 370 (Pima County Elections Inspectors Handbook). If a voter finds that his or her name does not appear on the register at what the voter believes

voting periods, voter identification (ID), election observer zones, same-day registration, durational residency, and straight-ticket voting); Brief for State of Ohio et al. as *Amici Curiae* 23–25 (describing various §2 challenges); Brief for Liberty Justice Center as *Amicus Curiae* 1–3, 7–11 (describing long-running §2 challenges to Wisconsin voter ID law).

is the right precinct, the voter ordinarily may cast a provisional ballot. Ariz. Rev. Stat. Ann. §16–584 (Cum. Supp. 2020). That ballot is later counted if the voter's address is determined to be within the precinct. See *ibid.* But if it turns out that the voter cast a ballot at the wrong precinct, that vote is not counted. See §16–584(E); App. 37–41 (election procedures manual); Ariz. Rev. Stat. Ann. §16–452(C) (misdemeanor to violate rules in election procedures manual).

For those who choose to vote early by mail, Arizona has long required that "[o]nly the elector may be in possession of that elector's unvoted early ballot." §16–542(D). In 2016, the state legislature enacted House Bill 2023 (HB 2023), which makes it a crime for any person other than a postal worker, an elections official, or a voter's caregiver, family member, or household member to knowingly collect an early ballot—either before or after it has been completed. §§16–1005(H)–(I).

In 2016, the Democratic National Committee and certain affiliates brought this suit and named as defendants (among others) the Arizona attorney general and secretary of state in their official capacities. Among other things, the plaintiffs claimed that both the State's refusal to count ballots cast in the wrong precinct and its ballot-collection restriction "adversely and disparately affect Arizona's American Indian, Hispanic, and African American citizens," in violation of §2 of the VRA. *Democratic Nat. Comm.* v. *Hobbs*, 948 F. 3d 989, 998 (CA9 2020) (en banc). In addition, they alleged that the ballot-collection restriction was "enacted with discriminatory intent" and thus violated both §2 of the VRA and the Fifteenth Amendment. *Ibid.*

After a 10-day bench trial, 329 F. Supp. 3d, at 832, 833–838, the District Court made extensive findings of fact and rejected all the plaintiffs' claims, *id.*, at 838–883. The court first found that the out-of-precinct policy "has no meaning-

fully disparate impact on the opportunities of minority voters to elect" representatives of their choice. *Id.*, at 872. The percentage of ballots invalidated under this policy was very small (0.15% of all ballots cast in 2016) and decreasing, and while the percentages were slightly higher for members of minority groups, the court found that this disparity "does not result in minorities having unequal access to the political process." *Ibid.* The court also found that the plaintiffs had not proved that the policy "causes minorities to show up to vote at the wrong precinct at rates higher than their non-minority counterparts," *id.*, at 873, and the court noted that the plaintiffs had not even challenged "the manner in which Arizona counties allocate and assign polling places or Arizona's requirement that voters re-register to vote when they move," *ibid.*

The District Court similarly found that the ballot-collection restriction is unlikely to "cause a meaningful inequality in the electoral opportunities of minorities." *Id.*, at 871. Rather, the court noted, the restriction applies equally to all voters and "does not impose burdens beyond those traditionally associated with voting." *Ibid.* The court observed that the plaintiffs had presented no records showing how many voters had previously relied on now-prohibited third-party ballot collectors and that the plaintiffs also had "provided no quantitative or statistical evidence" of the percentage of minority and non-minority voters in this group. *Id.*, at 866. "[T]he vast majority" of early voters, the court found, "do not return their ballots with the assistance of a [now-prohibited] third-party collector," *id.*, at 845, and the evidence largely showed that those who had used such collectors in the past "ha[d] done so out of convenience or personal preference, or because of circumstances that Arizona law adequately accommodates in other ways," *id.*, at 847.[7]

[7] An ill or disabled voter may have a ballot delivered by a special election board, and curbside voting at polling places is also allowed. 329

In addition, the court noted, none of the individual voters called by the plaintiffs had even claimed that the ballot-collection restriction "would make it significantly more difficult to vote." *Id.*, at 871.

Finally, the court found that the ballot-collection law had not been enacted with discriminatory intent. "[T]he majority of H.B. 2023's proponents," the court found, "were sincere in their belief that ballot collection increased the risk of early voting fraud, and that H.B. 2023 was a necessary prophylactic measure to bring early mail ballot security in line with in-person voting." *Id.*, at 879. The court added that "some individual legislators and proponents were motivated in part by partisan interests." *Id.,* at 882. But it distinguished between partisan and racial motives, while recognizing that "racially polarized voting can sometimes blur the lines." *Ibid.*

A divided panel of the Ninth Circuit affirmed, but an en banc court reversed. The en banc court first concluded that both the out-of-precinct policy and the ballot-collection restriction imposed disparate burdens on minority voters because such voters were more likely to be adversely affected by those rules. 948 F. 3d, at 1014–1016, 1032–1033. Then, based on an assessment of the vote-dilution factors used in *Gingles*, the en banc majority found that these disparate burdens were "in part caused by or linked to 'social and historical conditions'" that produce inequality. 948 F. 3d, at 1032 (quoting *Gingles*, 478 U. S., at 47); see 948 F. 3d, at 1037. Among other things, the court relied on racial discrimination dating back to Arizona's territorial days, current socioeconomic disparities, racially polarized voting, and racial campaign appeals. See *id.*, at 1016–1032, 1033–1037.

The en banc majority also held that the District Court had committed clear error in finding that the ballot-collection

---

F. Supp. 3d, at 848.

law was not enacted with discriminatory intent. The en banc court did not claim that a majority of legislators had voted for the law for a discriminatory purpose, but the court held that these lawmakers "were used as 'cat's paws'" by others. *Id.*, at 1041.

One judge in the majority declined to join the court's holding on discriminatory intent, and four others dissented across the board. A petition for a writ of certiorari was filed by the Arizona attorney general on his own behalf and on behalf of the State, which had intervened below; another petition was filed by the Arizona Republican Party and other private parties who also had intervened. We granted the petitions and agreed to review both the Ninth Circuit's understanding and application of VRA §2 and its holding on discriminatory intent. 591 U. S. ___ (2020).

II

We begin with two preliminary matters. Secretary of State Hobbs contends that no petitioner has Article III standing to appeal the decision below as to the out-of-precinct policy, but we reject that argument. All that is needed to entertain an appeal of that issue is one party with standing, see *Little Sisters of the Poor Saints Peter and Paul Home* v. *Pennsylvania*, 591 U. S. ___, ___, n. 6 (2020) (slip op., at 13, n. 6), and we are satisfied that Attorney General Brnovich fits the bill. The State of Arizona intervened below, see App. 834; there is "[n]o doubt" as an Article III matter that "the State itself c[an] press this appeal," *Virginia House of Delegates* v. *Bethune-Hill*, 587 U. S. ___, ___ (2019) (slip op., at 4); and the attorney general is authorized to represent the State in any action in federal court, Ariz. Rev. Stat. Ann. §41–193(A)(3) (2021); see *Arizonans for Official English* v. *Arizona*, 520 U. S. 43, 51, n. 4 (1997).

Second, we think it prudent to make clear at the beginning that we decline in these cases to announce a test to govern all VRA §2 claims involving rules, like those at issue

here, that specify the time, place, or manner for casting ballots. Each of the parties advocated a different test, as did many *amici* and the courts below. In a brief filed in December in support of petitioners, the Department of Justice proposed one such test but later disavowed the analysis in that brief.[8] The Department informed us, however, that it did not disagree with its prior conclusion that the two provisions of Arizona law at issue in these cases do not violate §2 of the Voting Rights Act.[9] All told, no fewer than 10 tests have been proposed. But as this is our first foray into the area, we think it sufficient for present purposes to identify certain guideposts that lead us to our decision in these cases.

III

A

We start with the text of VRA §2. It now provides:

> "(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

---

[8] Letter from E. Kneedler, Deputy Solicitor General, to S. Harris, Clerk of Court (Feb. 16, 2021).

[9] *Ibid.*

> 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." 52 U. S. C. §10301.

In *Gingles*, our seminal §2 vote-dilution case, the Court quoted the text of amended §2 and then jumped right to the Senate Judiciary Committee Report, which focused on the issue of vote dilution. 478 U. S., at 36–37, 43, and n. 7. Our many subsequent vote-dilution cases have largely followed the path that *Gingles* charted. But because this is our first §2 time, place, or manner case, a fresh look at the statutory text is appropriate. Today, our statutory interpretation cases almost always start with a careful consideration of the text, and there is no reason to do otherwise here.

B

Section 2(a), as noted, omits the phrase "to deny or abridge the right . . . to vote on account of race or color," which the *Bolden* plurality had interpreted to require proof of discriminatory intent. In place of that language, §2(a) substitutes the phrase "in a manner which *results in* a denial or abridgement of the right . . . to vote on account of race or color." (Emphasis added.) We need not decide what this text would mean if it stood alone because §2(b), which was added to win Senate approval, explains what must be shown to establish a §2 violation. Section 2(b) states that §2 is violated only where "the political processes leading to nomination or election" are not "*equally open* to participation" by members of the relevant protected group "*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." (Emphasis added.)

The key requirement is that the political processes leading to nomination and election (here, the process of voting) must be "equally open" to minority and non-minority groups alike, and the most relevant definition of the term "open," as used in §2(b), is "without restrictions as to who may participate," Random House Dictionary of the English Language 1008 (J. Stein ed. 1966), or "requiring no special status, identification, or permit for entry or participation," Webster's Third New International Dictionary 1579 (1976).

What §2(b) means by voting that is not "equally open" is further explained by this language: "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 phrase "in that" is "used to specify the respect in which a statement is true."[10] Thus, equal openness and equal opportunity are not separate requirements. Instead, equal opportunity helps to explain the meaning of equal openness. And the term "opportunity" means, among other things, "a combination of circumstances, time, and place suitable or favorable for a particular activity or action." *Id.*, at 1583; see also Random House Dictionary of the English Language, at 1010 ("an appropriate or favorable time or occasion," "a situation or condition favorable for attainment of a goal").

Putting these terms together, it appears that the core of §2(b) is the requirement that voting be "equally open." The statute's reference to equal "opportunity" may stretch that concept to some degree to include consideration of a person's ability to *use* the means that are equally open. But equal openness remains the touchstone.

---

[10] The New Oxford American Dictionary 851 (2d ed. 2005); see 7 Oxford English Dictionary 763 (2d ed. 1989) ("in presence, view, or consequence of the fact that"); Webster's New International Dictionary 1253 (2d ed. 1934) ("Because; for the reason that").

C

One other important feature of §2(b) stands out. The provision requires consideration of "the totality of circumstances." Thus, any circumstance that has a logical bearing on whether voting is "equally open" and affords equal "opportunity" may be considered. We will not attempt to compile an exhaustive list, but several important circumstances should be mentioned.

1

1. First, the size of the burden imposed by a challenged voting rule is highly relevant. The concepts of "open[ness]" and "opportunity" connote the absence of obstacles and burdens that block or seriously hinder voting, and therefore the size of the burden imposed by a voting rule is important. After all, every voting rule imposes a burden of some sort. Voting takes time and, for almost everyone, some travel, even if only to a nearby mailbox. Casting a vote, whether by following the directions for using a voting machine or completing a paper ballot, requires compliance with certain rules. But because voting necessarily requires some effort and compliance with some rules, the concept of a voting system that is "equally open" and that furnishes an equal "opportunity" to cast a ballot must tolerate the "usual burdens of voting." *Crawford* v. *Marion County Election Bd.*, 553 U. S. 181, 198 (2008) (opinion of Stevens, J.). Mere inconvenience cannot be enough to demonstrate a violation of §2.[11]

---

[11] There is a difference between openness and opportunity, on the one hand, and the absence of inconvenience, on the other. For example, suppose that an exhibit at a museum in a particular city is open to everyone free of charge every day of the week for several months. Some residents of the city who have the opportunity to view the exhibit may find it inconvenient to do so for many reasons—the problem of finding parking, dislike of public transportation, anticipation that the exhibit will be crowded, a plethora of weekend chores and obligations, etc. Or, to take another example, a college course may be open to all students and all

2. For similar reasons, the degree to which a voting rule departs from what was standard practice when §2 was amended in 1982 is a relevant consideration. Because every voting rule imposes a burden of some sort, it is useful to have benchmarks with which the burdens imposed by a challenged rule can be compared. The burdens associated with the rules in widespread use when §2 was adopted are therefore useful in gauging whether the burdens imposed by a challenged rule are sufficient to prevent voting from being equally "open" or furnishing an equal "opportunity" to vote in the sense meant by §2. Therefore, it is relevant that in 1982 States typically required nearly all voters to cast their ballots in person on election day and allowed only narrow and tightly defined categories of voters to cast absentee ballots. See, *e.g.*, 17 N. Y. Elec. Law Ann. §8–100 *et seq.* (West 1978), §8–300 *et seq.* (in-person voting), §8–400 *et seq.* (limited-excuse absentee voting); Pa. Stat. Ann., Tit. 25, §3045 *et seq.* (Purdon 1963) (in-person voting), §3149.1 *et seq.* (limited-excuse absentee voting); see §3146.1 (Purdon Cum. Supp. 1993) (same); Ohio Rev. Code Ann. §3501.02 *et seq.* (Lexis 1972) (in-person voting), §3509.01 *et seq.* (limited-excuse absentee voting); see §3509.02 (Lexis Supp. 1986) (same); Fla. Stat. Ann. §101.011 *et seq.* (1973) (in-person voting), §101.62 *et seq.* (limited-excuse absentee voting); see §97.063 (1982) (same); Ill. Rev. Stat., ch.46, §17–1 *et seq.* (West 1977) (in-person voting), §19–1 *et seq.* (limited-excuse absentee voting); D. C. Code §§1–1109, 1–1110 (1973) (in-person voting and limited-excuse absentee voting); see §1–1313 (1981) (same). As of January 1980, only three States permitted no-excuse absentee voting. See Gronke & Galanes-Rosenbaum, America Votes! 261, 267–269

---

may have the opportunity to enroll, but some students may find it inconvenient to take the class for a variety of reasons. For example, classes may occur too early in the morning or on Friday afternoon; too much reading may be assigned; the professor may have a reputation as a hard grader; etc.

(B. Griffith ed. 2008); see also J. Sargent et al., Congressional Research Service, The Growth of Early and Nonprecinct Place Balloting, in Election Laws of the Fifty States and the District of Columbia (rev. 1976). We doubt that Congress intended to uproot facially neutral time, place, and manner regulations that have a long pedigree or are in widespread use in the United States. We have no need to decide whether adherence to, or a return to, a 1982 framework is necessarily lawful under §2, but the degree to which a challenged rule has a long pedigree or is in widespread use in the United States is a circumstance that must be taken into account.

3. The size of any disparities in a rule's impact on members of different racial or ethnic groups is also an important factor to consider. Small disparities are less likely than large ones to indicate that a system is not equally open. To the extent that minority and non-minority groups differ with respect to employment, wealth, and education, even neutral regulations, no matter how crafted, may well result in some predictable disparities in rates of voting and noncompliance with voting rules. But the mere fact there is some disparity in impact does not necessarily mean that a system is not equally open or that it does not give everyone an equal opportunity to vote. The size of any disparity matters. And in assessing the size of any disparity, a meaningful comparison is essential. What are at bottom very small differences should not be artificially magnified. *E.g.*, *Frank* v. *Walker*, 768 F. 3d 744, 752, n. 3 (CA7 2014).

4. Next, courts must consider the opportunities provided by a State's entire system of voting when assessing the burden imposed by a challenged provision. This follows from §2(b)'s reference to the collective concept of a State's "political processes" and its "political process" as a whole. Thus, where a State provides multiple ways to vote, any burden imposed on voters who choose one of the available options cannot be evaluated without also taking into account the

other available means.

5. Finally, the strength of the state interests served by a challenged voting rule is also an important factor that must be taken into account. As noted, every voting rule imposes a burden of some sort, and therefore, in determining "based on the totality of circumstances" whether a rule goes too far, it is important to consider the reason for the rule. Rules that are supported by strong state interests are less likely to violate §2.

One strong and entirely legitimate state interest is the prevention of fraud. Fraud can affect the outcome of a close election, and fraudulent votes dilute the right of citizens to cast ballots that carry appropriate weight. Fraud can also undermine public confidence in the fairness of elections and the perceived legitimacy of the announced outcome.

Ensuring that every vote is cast freely, without intimidation or undue influence, is also a valid and important state interest. This interest helped to spur the adoption of what soon became standard practice in this country and in other democratic nations the world round: the use of private voting booths. See *Burson* v. *Freeman*, 504 U. S. 191, 202–205 (1992) (plurality opinion).

2

While the factors set out above are important, others considered by some lower courts are less helpful in a case like the ones at hand. First, it is important to keep in mind that the *Gingles* or "Senate" factors grew out of and were designed for use in vote-dilution cases. Some of those factors are plainly inapplicable in a case involving a challenge to a facially neutral time, place, or manner voting rule. Factors three and four concern districting and election procedures

like "majority vote requirements," "anti-single shot provisions,"[12] and a "candidate slating process."[13] See *Gingles*, 478 U. S., at 37 (internal quotation marks omitted). Factors two, six, and seven (which concern racially polarized voting, racially tinged campaign appeals, and the election of minority-group candidates), *ibid.*, have a bearing on whether a districting plan affects the opportunity of minority voters to elect their candidates of choice. But in cases involving neutral time, place, and manner rules, the only relevance of these and the remaining factors is to show that minority group members suffered discrimination in the past (factor one) and that effects of that discrimination persist (factor five). *Id.,* at 36–37. We do not suggest that these factors should be disregarded. After all, §2(b) requires consideration of "the totality of circumstances." But their relevance is much less direct.

We also do not find the disparate-impact model employed in Title VII and Fair Housing Act cases useful here. The text of the relevant provisions of Title VII and the Fair Housing Act differ from that of VRA §2, and it is not obvious why Congress would conform rules regulating voting to

---

[12] Where voters are allowed to vote for multiple candidates in a race for multiple seats, single-shot voting is the practice of voting for only one candidate. "'"Single-shot voting enables a minority group to win some at-large seats if it concentrates its vote behind a limited number of candidates and if the vote of the majority is divided among a number of candidates."'" *Gingles*, 478 U. S., at 38–39, n. 5 (quoting *City of Rome* v. *United States*, 446 U. S. 156, 184, n. 19 (1980)); see also United States Commission on Civil Rights, The Voting Rights Act: Ten Years After 206–207 (1975).

[13] Slating has been described as "a process in which some influential non-governmental organization selects and endorses a group or 'slate' of candidates, rendering the election little more than a stamp of approval for the candidates selected." *Westwego Citizens for Better Govt.* v. *Westwego*, 946 F. 2d 1109, 1116, n. 5 (CA5 1991). Exclusion from such a system can make it difficult for minority groups to elect their preferred candidates. See, *e.g.*, *White* v. *Regester*, 412 U. S. 755, 766–767, and n. 11 (1973) (describing one example).

those regulating employment and housing. For example, we think it inappropriate to read §2 to impose a strict "necessity requirement" that would force States to demonstrate that their legitimate interests can be accomplished only by means of the voting regulations in question. Stephanopoulos, Disparate Impact, Unified Law, 128 Yale L. J. 1566, 1617–1619 (2019) (advocating such a requirement). Demanding such a tight fit would have the effect of invalidating a great many neutral voting regulations with long pedigrees that are reasonable means of pursuing legitimate interests. It would also transfer much of the authority to regulate election procedures from the States to the federal courts. For those reasons, the Title VII and Fair Housing Act models are unhelpful in §2 cases.

D

The interpretation set out above follows directly from what §2 commands: consideration of "the totality of circumstances" that have a bearing on whether a State makes voting "equally open" to all and gives everyone an equal "opportunity" to vote. The dissent, by contrast, would rewrite the text of §2 and make it turn almost entirely on just one circumstance—disparate impact.

That is a radical project, and the dissent strains mightily to obscure its objective. To that end, it spends 20 pages discussing matters that have little bearing on the questions before us. The dissent provides historical background that all Americans should remember, see *post*, at 3–7 (opinion of KAGAN, J.), but that background does not tell us how to decide these cases. The dissent quarrels with the decision in *Shelby County* v. *Holder*, 570 U. S. 529 (2013), see *post*, at 7–9, which concerned §§4 and 5 of the VRA, not §2. It discusses all sorts of voting rules that are not at issue here. See *post*, at 9–12. And it dwells on points of law that nobody disputes: that §2 applies to a broad range of voting rules, practices, and procedures; that an "abridgement" of the

right to vote under §2 does not require outright denial of the right; that §2 does not demand proof of discriminatory purpose; and that a "facially neutral" law or practice may violate that provision. See *post,* at 12–20.

Only after this extended effort at misdirection is the dissent's aim finally unveiled: to undo as much as possible the compromise that was reached between the House and Senate when §2 was amended in 1982. Recall that the version originally passed by the House did not contain §2(b) and was thought to prohibit any voting practice that had "discriminatory effects," loosely defined. See *supra*, at 5–6. That is the freewheeling disparate-impact regime the dissent wants to impose on the States. But the version enacted into law includes §2(b), and that subsection directs us to consider "the totality of circumstances," not, as the dissent would have it, the totality of just one circumstance.[14] There is nothing to the dissent's charge that we are departing from the statutory text by identifying some of those considerations.

We have listed five relevant circumstances and have explained why they all stem from the statutory text and have a bearing on the determination that §2 requires. The dissent does not mention a single additional consideration, and

---

[14] The dissent erroneously claims that the Senate-House compromise was only about proportional representation and not about "the equal-access right" at issue in the present cases. *Post*, at 19, n. 6. The text of the bill initially passed by the House had no equal-access right. See H. R. Rep. No. 97–227, p. 48 (1981); H. R. 3112, 97th Cong., 1st Sess., §2, p. 8 (introduced Oct. 7, 1981). Section 2(b) was the Senate's creation, and that provision is what directed courts to look beyond mere "results" to whether a State's "political processes" are "equally open," considering "the totality of circumstances." See *Mississippi Republican Executive Committee* v. *Brooks*, 469 U. S. 1002, 1010 (1984) (Rehnquist, J., dissenting) ("The compromise bill retained the 'results' language but also incorporated language directly from this Court's opinion in *White* v. *Regester*"). And while the proviso on proportional representation may not apply as directly in this suit, it is still a signal that §2 imposes something other than a pure disparate-impact regime.

it does its best to push aside all but one of the circumstances we discuss. It entirely rejects three of them: the size of the burden imposed by a challenged rule, see *post*, at 22–23, the landscape of voting rules both in 1982 and in the present, *post,* at 24–25,[15] and the availability of other ways to vote, *post,* at 23–24. Unable to bring itself to completely reject consideration of the state interests that a challenged rule serves, the dissent tries to diminish the significance of this circumstance as much as possible. See *post,* at 26–29. According to the dissent, an interest served by a voting rule, no matter how compelling, cannot support the rule unless a State can prove to the satisfaction of the courts that this interest could not be served by any other means. *Post*, at 17–18, 26–29. Such a requirement has no footing in the text of §2 or our precedent construing it.[16]

---

[15] The dissent objects to consideration of the 1982 landscape because even rules that were prevalent at that time are invalid under §2 if they, well, violate §2. *Post,* at 24. We of course agree with that tautology. But the question is what it *means* to provide equal opportunity, and given that every voting rule imposes some amount of burden, rules that were and are commonplace are useful comparators when considering the totality of circumstances. Unlike the dissent, Congress did not set its sights on every facially neutral time, place, or manner voting rule in existence. See, *e.g.,* S. Rep. No. 97–417, at 10, n. 22 (describing what the Senate Judiciary Committee viewed as "blatant direct impediments to voting").

[16] For support, the dissent offers a baseless reading of one of our vote-dilution decisions. In *Houston Lawyers' Assn.*, 501 U. S. 419, we considered a §2 challenge to an electoral scheme wherein all trial judges in a judicial district were elected on a district-wide basis. *Id.,* at 422. The State asserted that it had a strong interest in district-wide judicial elections on the theory that they make every individual judge at least partly accountable to minority voters in the jurisdiction. *Id.,* at 424, 426. That unique interest, the State contended, should have "automatically" exempted the electoral scheme from §2 scrutiny altogether. *Id.,* at 426. We disagreed, holding that the State's interest was instead "a legitimate factor to be considered by courts among the 'totality of circumstances' in determining whether a §2 violation has occurred." *Ibid.* To illustrate why an "automati[c]" exemption from §2's coverage was inappropriate,

That requirement also would have the potential to invalidate just about any voting rule a State adopts. Take the example of a State's interest in preventing voting fraud. Even if a State could point to a history of serious voting fraud within its own borders, the dissent would apparently strike down a rule designed to prevent fraud unless the State could demonstrate an inability to combat voting fraud in any other way, such as by hiring more investigators and prosecutors, prioritizing voting fraud investigations, and heightening criminal penalties. Nothing about equal openness and equal opportunity dictates such a high bar for States to pursue their legitimate interests.

With all other circumstances swept away, all that remains in the dissent's approach is the size of any disparity in a rule's impact on members of protected groups. As we

---

the Court hypothesized a case involving an "uncouth" district shaped like the one in *Gomillion* v. *Lightfoot*, 364 U. S. 339, 340 (1960), for which an inquiry under §2 "would at least arguably be required." 501 U. S., at 427. The Court then wrote the language upon which the dissent seizes: "Placing elections for single-member offices entirely beyond the scope of coverage of §2 would preclude such an inquiry, even if the State's interest in maintaining the 'uncouth' electoral system was trivial or illusory and even if any resulting impairment of a minority group's voting strength could be remedied without significantly impairing the State's interest in electing judges on a district-wide basis." *Id.,* at 427–428.

That *reductio ad absurdum*, used to demonstrate only why an automatic exemption from §2 scrutiny was inappropriate, did not announce an "inquiry" at all—much less the least-burdensome-means requirement the dissent would have us smuggle in from materially different statutory regimes. *Post*, at 18, n. 5, 26. Perhaps that is why *no one*—not the parties, not the United States, not the 36 other *amici*, not the courts below, and certainly not this Court in subsequent decisions—has advanced the dissent's surprising reading of a single phrase in *Houston Lawyers Assn*. The dissent apparently thinks that in 1991 we silently abrogated the principle that the nature of a State's interest is but one of many factors to consider, see *Thornburg* v. *Gingles*, 478 U. S. 30, 44–45 (1986), and that our subsequent cases have erred by failing simply to ask whether a less burdensome measure would suffice. Who knew?

have noted, differences in employment, wealth, and education may make it virtually impossible for a State to devise rules that do not have some disparate impact. But under the dissent's interpretation of §2, any "statistically significant" disparity—wherever *that* is in the statute—may be enough to take down even facially neutral voting rules with long pedigrees that reasonably pursue important state interests. *Post*, at 15, n. 4, 19–20, 32–33.[17]

Section 2 of the Voting Rights Act provides vital protection against discriminatory voting rules, and no one suggests that discrimination in voting has been extirpated or that the threat has been eliminated. But §2 does not deprive the States of their authority to establish non-discriminatory voting rules, and that is precisely what the dissent's radical interpretation would mean in practice. The dissent is correct that the Voting Rights Act exemplifies our country's commitment to democracy, but there is nothing democratic about the dissent's attempt to bring about a wholesale transfer of the authority to set voting rules from the States to the federal courts.

---

[17] We do not think §2 is so procrustean. Statistical significance may provide "evidence that something besides random error is at work," Federal Judicial Center, Reference Manual on Scientific Evidence 252 (3d ed. 2011), but it does not necessarily determine causes, and as the dissent acknowledges, *post,* at 15, n. 4, it is not the be-all and end-all of disparate-impact analysis. See Federal Judicial Center, Reference Manual, at 252 ("[S]ignificant differences . . . are not evidence that [what is at work] is legally or practically important. Statisticians distinguish between statistical and practical significance to make the point. When practical significance is lacking—when the size of a disparity is negligible—there is no reason to worry about statistical significance"); *ibid.*, n. 102 (citing authorities). Moreover, whatever might be "standard" in other contexts, *post,* at 15, n. 4, we have explained that VRA §2's focus on equal "open[ness]" and equal "opportunity" does not impose a standard disparate-impact regime.

IV

A

In light of the principles set out above, neither Arizona's out-of-precinct rule nor its ballot-collection law violates §2 of the VRA. Arizona's out-of-precinct rule enforces the requirement that voters who choose to vote in person on election day must do so in their assigned precincts. Having to identify one's own polling place and then travel there to vote does not exceed the "usual burdens of voting." *Crawford*, 553 U. S., at 198 (opinion of Stevens, J.) (noting the same about making a trip to the department of motor vehicles). On the contrary, these tasks are quintessential examples of the usual burdens of voting.

Not only are these unremarkable burdens, but the District Court's uncontested findings show that the State made extensive efforts to reduce their impact on the number of valid votes ultimately cast. The State makes accurate precinct information available to all voters. When precincts or polling places are altered between elections, each registered voter is sent a notice showing the voter's new polling place. 329 F. Supp. 3d, at 859. Arizona law also mandates that election officials send a sample ballot to each household that includes a registered voter who has not opted to be placed on the permanent early voter list, Ariz. Rev. Stat. Ann. §16–510(C) (2015), and this mailing also identifies the voter's proper polling location, 329 F. Supp. 3d, at 859. In addition, the Arizona secretary of state's office sends voters pamphlets that include information (in both English and Spanish) about how to identify their assigned precinct. *Ibid.*

Polling place information is also made available by other means. The secretary of state's office operates websites that provide voter-specific polling place information and allow voters to make inquiries to the secretary's staff. *Ibid.* Arizona's two most populous counties, Maricopa and Pima,

provide online polling place locators with information available in English and Spanish. *Ibid.* Other groups offer similar online tools. *Ibid.* Voters may also identify their assigned polling place by calling the office of their respective county recorder. *Ibid.* And on election day, poll workers in at least some counties are trained to redirect voters who arrive at the wrong precinct. *Ibid*; see Tr. 1559, 1586; Tr. Exh. 370 (Pima County Elections Inspectors Handbook).

The burdens of identifying and traveling to one's assigned precinct are also modest when considering Arizona's "political processes" as a whole. The Court of Appeals noted that Arizona leads other States in the rate of votes rejected on the ground that they were cast in the wrong precinct, and the court attributed this to frequent changes in polling locations, confusing placement of polling places, and high levels of residential mobility. 948 F. 3d, at 1000–1004. But even if it is marginally harder for Arizona voters to find their assigned polling places, the State offers other easy ways to vote. Any voter can request an early ballot without excuse. Any voter can ask to be placed on the permanent early voter list so that an early ballot will be mailed automatically. Voters may drop off their early ballots at any polling place, even one to which they are not assigned. And for nearly a month before election day, any voter can vote in person at an early voting location in his or her county. The availability of those options likely explains why out-of-precinct votes on election day make up such a small and apparently diminishing portion of overall ballots cast—0.47% of all ballots in the 2012 general election and just 0.15% in 2016. 329 F. Supp. 3d, at 872.

Next, the racial disparity in burdens allegedly caused by the out-of-precinct policy is small in absolute terms. The District Court accepted the plaintiffs' evidence that, of the Arizona counties that reported out-of-precinct ballots in the 2016 general election, a little over 1% of Hispanic voters, 1% of African-American voters, and 1% of Native American

voters who voted on election day cast an out-of-precinct ballot. *Ibid.* For non-minority voters, the rate was around 0.5%. *Ibid.* (citing Tr. Exh. 97, at 3, 20–21). A policy that appears to work for 98% or more of voters to whom it applies—minority and non-minority alike—is unlikely to render a system unequally open.

The Court of Appeals attempted to paint a different picture, but its use of statistics was highly misleading for reasons that were well explained by Judge Easterbrook in a §2 case involving voter IDs. As he put it, a distorted picture can be created by dividing one percentage by another. *Frank*, 768 F. 3d, at 752, n. 3. He gave this example: "If 99.9% of whites had photo IDs, and 99.7% of blacks did," it could be said that "'blacks are three times as likely as whites to lack qualifying ID' (0.3 ÷ 0.1 = 3), but such a statement would mask the fact that the populations were effectively identical." *Ibid.*

That is exactly what the en banc Ninth Circuit did here. The District Court found that among the counties that reported out-of-precinct ballots in the 2016 general election, roughly 99% of Hispanic voters, 99% of African-American voters, and 99% of Native American voters who voted on election day cast their ballots in the right precinct, while roughly 99.5% of non-minority voters did so. 329 F. Supp. 3d, at 872. Based on these statistics, the en banc Ninth Circuit concluded that "minority voters in Arizona cast [out-of-precinct] ballots at twice the rate of white voters." 948 F. 3d, at 1014; see *id.*, at 1004–1005. This is precisely the sort of statistical manipulation that Judge Easterbrook rightly criticized, namely, 1.0 ÷ 0.5 = 2. Properly understood, the statistics show only a small disparity that provides little support for concluding that Arizona's political processes are not equally open.

The Court of Appeals' decision also failed to give appropriate weight to the state interests that the out-of-precinct rule serves. Not counting out-of-precinct votes induces

compliance with the requirement that Arizonans who choose to vote in-person on election day do so at their assigned polling places. And as the District Court recognized, precinct-based voting furthers important state interests. It helps to distribute voters more evenly among polling places and thus reduces wait times. It can put polling places closer to voter residences than would a more centralized voting-center model. In addition, precinct-based voting helps to ensure that each voter receives a ballot that lists only the candidates and public questions on which he or she can vote, and this orderly administration tends to decrease voter confusion and increase voter confidence in elections. See 329 F. Supp. 3d, at 878. It is also significant that precinct-based voting has a long pedigree in the United States. See 948 F. 3d, at 1062–1063 (Bybee, J., dissenting) (citing J. Harris, Election Administration in the United States 206–207 (1934)). And the policy of not counting out-of-precinct ballots is widespread. See 948 F. 3d, at 1072–1088 (collecting and categorizing state laws).

The Court of Appeals discounted the State's interests because, in its view, there was no evidence that a less restrictive alternative would threaten the integrity of precinct-based voting. The court thought the State had no good reason for not counting an out-of-precinct voter's choices with respect to the candidates and issues also on the ballot in the voter's proper precinct. See *id.*, at 1030–1031. We disagree with this reasoning.

Section 2 does not require a State to show that its chosen policy is absolutely necessary or that a less restrictive means would not adequately serve the State's objectives. And the Court of Appeals' preferred alternative would have obvious disadvantages. Partially counting out-of-precinct ballots would complicate the process of tabulation and could lead to disputes and delay. In addition, as one of the en banc dissenters noted, it would tend to encourage voters who are primarily interested in only national or state-wide

elections to vote in whichever place is most convenient even if they know that it is not their assigned polling place. See *id.*, at 1065–1066 (opinion of Bybee, J.).

In light of the modest burdens allegedly imposed by Arizona's out-of-precinct policy, the small size of its disparate impact, and the State's justifications, we conclude the rule does not violate §2 of the VRA.[18]

B

HB 2023 likewise passes muster under the results test of §2. Arizonans who receive early ballots can submit them by going to a mailbox, a post office, an early ballot drop box, or an authorized election official's office within the 27-day early voting period. They can also drop off their ballots at any polling place or voting center on election day, and in order to do so, they can skip the line of voters waiting to vote in person. 329 F. Supp. 3d, at 839 (citing ECF Doc. 361, ¶57). Making any of these trips—much like traveling to an assigned polling place—falls squarely within the heartland of the "usual burdens of voting." *Crawford*, 553 U. S., at 198 (opinion of Stevens, J.). And voters can also ask a statutorily authorized proxy—a family member, a household member, or a caregiver—to mail a ballot or drop

[18] In arguing that Arizona's out-of-precinct policy violates §2, the dissent focuses on the State's decisions about the siting of polling places and the frequency with which voting precincts are changed. See *post*, at 33 ("Much of the story has to do with the siting and shifting of polling places"). But the plaintiffs did not challenge those practices. See 329 F. Supp. 3d, at 873 ("Plaintiffs . . . do not challenge the manner in which Arizona counties allocate and assign polling places or Arizona's requirement that voters re-register to vote when they move"). The dissent is thus left with the unenviable task of explaining how something like a 0.5% disparity in discarded ballots between minority and non-minority groups suffices to render Arizona's political processes not equally open to participation. See *supra,* at 27–28. A voting rule with that effect would not be—to use the dissent's florid example—one that a "minority vote suppressor in Arizona" would want in his or her "bag of tricks." *Post*, at 33.

it off at any time within 27 days of an election.

Arizona also makes special provision for certain groups of voters who are unable to use the early voting system. Every county must establish a special election board to serve voters who are "confined as the result of a continuing illness or physical disability," are unable to go to the polls on election day, and do not wish to cast an early vote by mail. Ariz. Rev. Stat. Ann. §16–549(C) (Cum. Supp. 2020). At the request of a voter in this group, the board will deliver a ballot in person and return it on the voter's behalf. §§16–549(C), (E). Arizona law also requires employers to give employees time off to vote when they are otherwise scheduled to work certain shifts on election day. §16–402 (2015).

The plaintiffs were unable to provide statistical evidence showing that HB 2023 had a disparate impact on minority voters. Instead, they called witnesses who testified that third-party ballot collection tends to be used most heavily in disadvantaged communities and that minorities in Arizona—especially Native Americans—are disproportionately disadvantaged. 329 F. Supp. 3d, at 868, 870. But from that evidence the District Court could conclude only that prior to HB 2023's enactment, "minorities generically were more likely than non-minorities to return their early ballots with the assistance of third parties." *Id.*, at 870. How much more, the court could not say from the record. *Ibid.* Neither can we. And without more concrete evidence, we cannot conclude that HB 2023 results in less opportunity to participate in the political process.[19]

---

[19] Not one to let the absence of a key finding get in the way, the dissent concludes from its own review of the evidence that HB 2023 "prevents many Native Americans from making effective use of one of the principal means of voting in Arizona," and that "[w]hat is an inconsequential burden for others is for these citizens a severe hardship." *Post*, at 38. What is missing from those statements is any evidence about the actual size of the disparity. (For that matter, by the time the dissent gets around to assessing HB 2023, it appears to have lost its zeal for statistical significance, which is nowhere to be seen. See *post*, at 35–40, and n. 13.) The

Even if the plaintiffs had shown a disparate burden caused by HB 2023, the State's justifications would suffice to avoid §2 liability. "A State indisputably has a compelling interest in preserving the integrity of its election process." *Purcell* v. *Gonzalez*, 549 U. S. 1, 4 (2006) (*per curiam*) (internal quotation marks omitted). Limiting the classes of persons who may handle early ballots to those less likely to have ulterior motives deters potential fraud and improves voter confidence. That was the view of the bipartisan Commission on Federal Election Reform chaired by former President Jimmy Carter and former Secretary of State James Baker. The Carter-Baker Commission noted that "[a]bsentee balloting is vulnerable to abuse in several ways: . . . Citizens who vote at home, at nursing homes, at the workplace, or in church are more susceptible to pressure, overt and subtle, or to intimidation." Report of the Comm'n on Fed. Election Reform, Building Confidence in U. S. Elections 46 (Sept. 2005).

The Commission warned that "[v]ote buying schemes are

---

reader will search in vain to discover where the District Court "found" to what extent HB 2023 would make it "'significantly more difficult'" for Native Americans to vote. *Post,* at 39, n. 15 (citing 329 F. Supp. 3d, at 868, 870). Rather, "[b]ased on" the very same evidence the dissent cites, the District Court could find only that minorities were "generically" more likely than non-minorities to make use of third-party ballot-collection. *Id.,* at 870. The District Court's explanation as to why speaks for itself:

"Although there are significant socioeconomic disparities between minorities and non-minorities in Arizona, these disparities are an imprecise proxy for disparities in ballot collection use. Plaintiffs do not argue that all or even most socioeconomically disadvantaged voters use ballot collection services, nor does the evidence support such a finding. Rather, the anecdotal estimates from individual ballot collectors indicate that a relatively small number of voters have used ballot collection services in past elections." *Ibid.*; see also *id.,* at 881 ("[B]allot collection was used as a [get-out-the-vote] strategy in mostly low-efficacy minority communities, though the Court cannot say how often voters used ballot collection, *nor can it measure the degree or significance of any disparities in its usage*" (emphasis added)).

far more difficult to detect when citizens vote by mail," and it recommended that "States therefore should reduce the risks of fraud and abuse in absentee voting by prohibiting 'third-party' organizations, candidates, and political party activists from handling absentee ballots." *Ibid.* The Commission ultimately recommended that States limit the classes of persons who may handle absentee ballots to "the voter, an acknowledged family member, the U. S. Postal Service or other legitimate shipper, or election officials." *Id.*, at 47. HB 2023 is even more permissive in that it also authorizes ballot-handling by a voter's household member and caregiver. See Ariz. Rev. Stat. Ann. §16–1005(I)(2). Restrictions on ballot collection are also common in other States. See 948 F. 3d, at 1068–1069, 1088–1143 (Bybee, J., dissenting) (collecting state provisions).

The Court of Appeals thought that the State's justifications for HB 2023 were tenuous in large part because there was no evidence that fraud in connection with early ballots had occurred in Arizona. See *id.*, at 1045–1046. But prevention of fraud is not the only legitimate interest served by restrictions on ballot collection. As the Carter-Baker Commission recognized, third-party ballot collection can lead to pressure and intimidation. And it should go without saying that a State may take action to prevent election fraud without waiting for it to occur and be detected within its own borders. Section 2's command that the political processes remain equally open surely does not demand that "a State's political system sustain some level of damage before the legislature [can] take corrective action." *Munro* v. *Socialist Workers Party*, 479 U. S. 189, 195 (1986). Fraud is a real risk that accompanies mail-in voting even if Arizona had the good fortune to avoid it. Election fraud has had serious consequences in other States. For example, the North Carolina Board of Elections invalidated the results of a 2018 race for a seat in the House of Representatives for

evidence of fraudulent mail-in ballots.[20] The Arizona Legislature was not obligated to wait for something similar to happen closer to home.[21]

As with the out-of-precinct policy, the modest evidence of racially disparate burdens caused by HB 2023, in light of the State's justifications, leads us to the conclusion that the law does not violate §2 of the VRA.

V

We also granted certiorari to review whether the Court of Appeals erred in concluding that HB 2023 was enacted with a discriminatory purpose. The District Court found that it

---

[20] See Blinder, Election Fraud in North Carolina Leads to New Charges for Republican Operative, N. Y. Times, July 30, 2019, https://www.nytimes.com/2019/07/30/us/mccrae-dowless-indictment.html; Graham, North Carolina Had No Choice, The Atlantic, Feb. 22, 2019, https://www.theatlantic.com/politics/archive/2019/02/north-carolina-9th-fraud-board-orders-new-election/583369/.

[21] The dissent's primary argument regarding HB 2023 concerns its effect on Native Americans who live on remote reservations. The dissent notes that many of these voters do not receive mail delivery at home, that the nearest post office may be some distance from their homes, and that they may not have automobiles. *Post,* at 36. We do not dismiss these problems, but for a number of reasons, they do not provide a basis for invalidating HB 2023. The burdens that fall on remote communities are mitigated by the long period of time prior to an election during which a vote may be cast either in person or by mail and by the legality of having a ballot picked up and mailed by family or household members. And in this suit, no individual voter testified that HB 2023 would make it significantly more difficult for him or her to vote. 329 F. Supp. 3d, at 871. Moreover, the Postal Service is required by law to "provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining." 39 U. S. C. §101(b); see also §403(b)(3). Small post offices may not be closed "solely for operating at a deficit," §101(b), and any decision to close or consolidate a post office may be appealed to the Postal Regulatory Commission, see §404(d)(5). An alleged failure by the Postal Service to comply with its statutory obligations in a particular location does not in itself provide a ground for overturning a voting rule that applies throughout an entire State.

was not, 329 F. Supp. 3d, at 882, and appellate review of that conclusion is for clear error, *Pullman-Standard* v. *Swint*, 456 U. S. 273, 287–288 (1982). If the district court's view of the evidence is plausible in light of the entire record, an appellate court may not reverse even if it is convinced that it would have weighed the evidence differently in the first instance. *Anderson* v. *Bessemer City*, 470 U. S. 564, 573–574 (1985). "Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *Id.*, at 574.

The District Court's finding on the question of discriminatory intent had ample support in the record. Applying the familiar approach outlined in *Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U. S. 252, 266–268 (1977), the District Court considered the historical background and the sequence of events leading to HB 2023's enactment; it looked for any departures from the normal legislative process; it considered relevant legislative history; and it weighed the law's impact on different racial groups. See 329 F. Supp. 3d, at 879.

The court noted, among other things, that HB 2023's enactment followed increased use of ballot collection as a Democratic get-out-the-vote strategy and came "on the heels of several prior efforts to restrict ballot collection, some of which were spearheaded by former Arizona State Senator Don Shooter." *Id.*, at 879. Shooter's own election in 2010 had been close and racially polarized. Aiming in part to frustrate the Democratic Party's get-out-the-vote strategy, Shooter made what the court termed "unfounded and often far-fetched allegations of ballot collection fraud." *Id.*, at 880. But what came after the airing of Shooter's claims and a "racially-tinged" video created by a private party was a serious legislative debate on the wisdom of

early mail-in voting. *Ibid.*[22]

That debate, the District Court concluded, was sincere and led to the passage of HB 2023 in 2016. Proponents of the bill repeatedly argued that mail-in ballots are more susceptible to fraud than in-person voting. *Ibid.* The bill found support from a few minority officials and organizations, one of which expressed concern that ballot collectors were taking advantage of elderly Latino voters. *Ibid.* And while some opponents of the bill accused Republican legislators of harboring racially discriminatory motives, that view was not uniform. See *ibid*. One Democratic state senator pithily described the "'problem'" HB 2023 aimed to "'solv[e]'" as the fact that "'one party is better at collecting ballots than the other one.'" *Id.*, at 882 (quoting Tr. Exh. 25, at 35).

We are more than satisfied that the District Court's interpretation of the evidence is permissible. The spark for the debate over mail-in voting may well have been provided by one Senator's enflamed partisanship, but partisan motives are not the same as racial motives. See *Cooper* v. *Harris*, 581 U. S. ___, ___–___ (2017) (slip op., at 19–20). The District Court noted that the voting preferences of members of a racial group may make the former look like the latter, but it carefully distinguished between the two. See 329 F. Supp. 3d, at 879, 882. And while the District Court recognized that the "racially-tinged" video helped spur the debate about ballot collection, it found no evidence that the legislature as a whole was imbued with racial motives. *Id.,* at 879–880.

---

[22] The District Court also noted prior attempts on the part of the Arizona Legislature to regulate or limit third-party ballot collection in 2011 and 2013. It reasonably concluded that any procedural irregularities in those attempts had less probative value for inferring the purpose behind HB 2023 because the bills were passed "during different legislative sessions by a substantially different composition of legislators." 329 F. Supp. 3d, at 881.

The Court of Appeals did not dispute the District Court's assessment of the sincerity of HB 2023's proponents. It even agreed that some members of the legislature had a "sincere, though mistaken, non-race-based belief that there had been fraud in third-party ballot collection, and that the problem needed to be addressed." 948 F. 3d, at 1040. The Court of Appeals nevertheless concluded that the District Court committed clear error by failing to apply a "'cat's paw'" theory sometimes used in employment discrimination cases. *Id.,* at 1040–1041. A "cat's paw" is a "dupe" who is "used by another to accomplish his purposes." Webster's New International Dictionary 425 (2d ed. 1934). A plaintiff in a "cat's paw" case typically seeks to hold the plaintiff's employer liable for "the animus of a supervisor who was not charged with making the ultimate [adverse] employment decision." *Staub* v. *Proctor Hospital*, 562 U. S. 411, 415 (2011).

The "cat's paw" theory has no application to legislative bodies. The theory rests on the agency relationship that exists between an employer and a supervisor, but the legislators who vote to adopt a bill are not the agents of the bill's sponsor or proponents. Under our form of government, legislators have a duty to exercise their judgment and to represent their constituents. It is insulting to suggest that they are mere dupes or tools.

* * *

Arizona's out-of-precinct policy and HB 2023 do not violate §2 of the VRA, and HB 2023 was not enacted with a racially discriminatory purpose. The judgment of the Court of Appeals is reversed, and the cases are remanded for further proceedings consistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

Nos. 19–1257 and 19–1258

MARK BRNOVICH, ATTORNEY GENERAL OF ARIZONA, ET AL., PETITIONERS
19–1257 *v.*
DEMOCRATIC NATIONAL COMMITTEE, ET AL.

ARIZONA REPUBLICAN PARTY, ET AL., PETITIONERS
19–1258 *v.*
DEMOCRATIC NATIONAL COMMITTEE, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[July 1, 2021]

JUSTICE GORSUCH, with whom JUSTICE THOMAS joins, concurring.

I join the Court's opinion in full, but flag one thing it does not decide. Our cases have assumed—without deciding—that the Voting Rights Act of 1965 furnishes an implied cause of action under §2. See *Mobile* v. *Bolden*, 446 U. S. 55, 60, and n. 8 (1980) (plurality opinion). Lower courts have treated this as an open question. *E.g., Washington* v. *Finlay*, 664 F. 2d 913, 926 (CA4 1981). Because no party argues that the plaintiffs lack a cause of action here, and because the existence (or not) of a cause of action does not go to a court's subject-matter jurisdiction, see *Reyes Mata* v. *Lynch*, 576 U. S. 143, 150 (2015), this Court need not and does not address that issue today.

SUPREME COURT OF THE UNITED STATES

Nos. 19–1257 and 19–1258

MARK BRNOVICH, ATTORNEY GENERAL OF ARIZONA, ET AL., PETITIONERS
19–1257 *v.*
DEMOCRATIC NATIONAL COMMITTEE, ET AL.

ARIZONA REPUBLICAN PARTY, ET AL., PETITIONERS
19–1258 *v.*
DEMOCRATIC NATIONAL COMMITTEE, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[July 1, 2021]

JUSTICE KAGAN, with whom JUSTICE BREYER and JUSTICE SOTOMAYOR join, dissenting.

If a single statute represents the best of America, it is the Voting Rights Act. It marries two great ideals: democracy and racial equality. And it dedicates our country to carrying them out. Section 2, the provision at issue here, guarantees that members of every racial group will have equal voting opportunities. Citizens of every race will have the same shot to participate in the political process and to elect representatives of their choice. They will all own our democracy together—no one more and no one less than any other.

If a single statute reminds us of the worst of America, it is the Voting Rights Act. Because it was—and remains—so necessary. Because a century after the Civil War was fought, at the time of the Act's passage, the promise of po-

litical equality remained a distant dream for African American citizens. Because States and localities continually "contriv[ed] new rules," mostly neutral on their face but discriminatory in operation, to keep minority voters from the polls. *South Carolina* v. *Katzenbach*, 383 U. S. 301, 335 (1966). Because "Congress had reason to suppose" that States would "try similar maneuvers in the future"—"pour[ing] old poison into new bottles" to suppress minority votes. *Ibid.*; *Reno* v. *Bossier Parish School Bd.*, 528 U. S. 320, 366 (2000) (Souter, J., concurring in part and dissenting in part). Because Congress has been proved right.

The Voting Rights Act is ambitious, in both goal and scope. When President Lyndon Johnson sent the bill to Congress, ten days after John Lewis led marchers across the Edmund Pettus Bridge, he explained that it was "carefully drafted to meet its objective—the end of discrimination in voting in America." H. R. Doc. No. 120, 89th Cong., 1st Sess., 1–2 (1965). He was right about how the Act's drafting reflected its aim. "The end of discrimination in voting" is a far-reaching goal. And the Voting Rights Act's text is just as far-reaching. A later amendment, adding the provision at issue here, became necessary when this Court construed the statute too narrowly. And in the last decade, this Court assailed the Act again, undoing its vital Section 5. See *Shelby County* v. *Holder*, 570 U. S. 529 (2013). But Section 2 of the Act remains, as written, as expansive as ever—demanding that every citizen of this country possess a right at once grand and obvious: the right to an equal opportunity to vote.

Today, the Court undermines Section 2 and the right it provides. The majority fears that the statute Congress wrote is too "radical"—that it will invalidate too many state voting laws. See *ante*, at 21, 25. So the majority writes its own set of rules, limiting Section 2 from multiple directions. See *ante*, at 16–19. Wherever it can, the majority gives a cramped reading to broad language. And then it uses that

reading to uphold two election laws from Arizona that discriminate against minority voters. I could say—and will in the following pages—that this is not how the Court is supposed to interpret and apply statutes. But that ordinary critique woefully undersells the problem. What is tragic here is that the Court has (yet again) rewritten—in order to weaken—a statute that stands as a monument to America's greatness, and protects against its basest impulses. What is tragic is that the Court has damaged a statute designed to bring about "the end of discrimination in voting." I respectfully dissent.

I

The Voting Rights Act of 1965 is an extraordinary law. Rarely has a statute required so much sacrifice to ensure its passage. Never has a statute done more to advance the Nation's highest ideals. And few laws are more vital in the current moment. Yet in the last decade, this Court has treated no statute worse. To take the measure of today's harm, a look to the Act's past must come first. The idea is not to recount, as the majority hurriedly does, some bygone era of voting discrimination. See *ante*, at 2–3. It is instead to describe the electoral practices that the Act targets—and to show the high stakes of the present controversy.

A

Democratic ideals in America got off to a glorious start; democratic practice not so much. The Declaration of Independence made an awe-inspiring promise: to institute a government "deriving [its] just powers from the consent of the governed." But for most of the Nation's first century, that pledge ran to white men only. The earliest state election laws excluded from the franchise African Americans, Native Americans, women, and those without property. See A. Keyssar, The Right To Vote: The Contested History of Democracy in the United States 8–21, 54–60 (2000). In

1855, on the precipice of the Civil War, only five States permitted African Americans to vote. *Id.*, at 55. And at the federal level, our Court's most deplorable holding made sure that no black people could enter the voting booth. See *Dred Scott* v. *Sandford*, 19 How. 393 (1857).

But the "American ideal of political equality . . . could not forever tolerate the limitation of the right to vote" to whites only. *Mobile* v. *Bolden*, 446 U. S. 55, 103–104 (1980) (Marshall, J., dissenting). And a civil war, dedicated to ensuring "government of the people, by the people, for the people," brought constitutional change. In 1870, after a hard-fought battle over ratification, the Fifteenth Amendment carried the Nation closer to its founding aspirations. "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." Those words promised to enfranchise millions of black citizens who only a decade earlier had been slaves. Frederick Douglass held that the Amendment "means that we are placed upon an equal footing with all other men"—that with the vote, "liberty is to be the right of all." 4 The Frederick Douglass Papers 270–271 (J. Blassingame & J. McKivigan eds. 1991). President Grant had seen much blood spilled in the Civil War; now he spoke of the fruits of that sacrifice. In a self-described "unusual" message to Congress, he heralded the Fifteenth Amendment as "a measure of grander importance than any other one act of the kind from the foundation of our free Government"—as "the most important event that has occurred since the nation came into life." Ulysses S. Grant, Message to the Senate and House of Representatives (Mar. 30, 1870), in 7 Compilation of the Messages and Papers of the Presidents 1789–1897, pp. 55–56 (J. Richardson ed. 1898).

Momentous as the Fifteenth Amendment was, celebration of its achievements soon proved premature. The Amendment's guarantees "quickly became dead letters in

much of the country." Foner, The Strange Career of the Reconstruction Amendments, 108 Yale L. J. 2003, 2007 (1999). African Americans daring to go to the polls often "met with coordinated intimidation and violence." *Northwest Austin Municipal Util. Dist. No. One* v. *Holder*, 557 U. S. 193, 218–219 (2009) (THOMAS, J., concurring in judgment in part and dissenting in part). And almost immediately, legislators discovered that bloodless actions could also suffice to limit the electorate to white citizens. Many States, especially in the South, suppressed the black vote through a dizzying array of methods: literacy tests, poll taxes, registration requirements, and property qualifications. See *Katzenbach*, 383 U. S., at 310–312. Most of those laws, though facially neutral, gave enough discretion to election officials to prevent significant effects on poor or uneducated whites. The idea, as one Virginia representative put it, was "to disfranchise every negro that [he] could disfranchise," and "as few white people as possible." Keyssar 113. Decade after decade after decade, election rules blocked African Americans—and in some States, Hispanics and Native Americans too—from making use of the ballot. See *Oregon* v. *Mitchell*, 400 U. S. 112, 132 (1970) (opinion of Black, J.) (discussing treatment of non-black groups). By 1965, only 27% of black Georgians, 19% of black Alabamians, and 7%—yes, 7%—of black Mississippians were registered to vote. See C. Bullock, R. Gaddie, & J. Wert, The Rise and Fall of the Voting Rights Act 23 (2016).

The civil rights movement, and the events of a single Bloody Sunday, created pressure for change. Selma was the heart of an Alabama county whose 15,000 black citizens included, in 1961, only 156 on the voting rolls. See D. Garrow, Protest at Selma 31 (1978). In the first days of 1965, the city became the epicenter of demonstrations meant to force Southern election officials to register African American voters. As weeks went by without results, organizers announced a march from Selma to Birmingham. On March 7,

some 600 protesters, led by future Congressman John Lewis, sought to cross the Edmund Pettus Bridge. State troopers in riot gear responded brutally: "Turning their nightsticks horizontally, they rushed into the crowd, knocking people over like bowling pins." G. May, Bending Toward Justice 87 (2013). Then came men on horseback, "swinging their clubs and ropes like cowboys driving cattle to market." *Ibid*. The protestors were beaten, knocked unconscious, and bloodied. Lewis's skull was fractured. "I thought I was going to die on this bridge," he later recalled. Rojas, Selma Helped Define John Lewis's Life, N. Y. Times, July 28, 2020.

A galvanized country responded. Ten days after the Selma march, President Johnson wrote to Congress proposing legislation to "help rid the Nation of racial discrimination in every aspect of the electoral process and thereby insure the right of all to vote." H. R. Doc. No. 120, at 1. (To his attorney general, Johnson was still more emphatic: "I want you to write the goddamnedest toughest voting rights act that you can devise." H. Raines, My Soul Is Rested 337 (1983).) And in August 1965, after the bill's supporters overcame a Senate filibuster, Johnson signed the Voting Rights Act into law. Echoing Grant's description of the Fifteenth Amendment, Johnson called the statute "one of the most monumental laws in the entire history of American freedom." Public Papers of the Presidents, Lyndon B. Johnson, Vol. 2, Aug. 6, 1965, p. 841 (1966) (Johnson Papers).

"After a century's failure to fulfill the promise" of the Fifteenth Amendment, "passage of the VRA finally led to signal improvement." *Shelby County*, 570 U. S., at 562 (Ginsburg, J., dissenting). In the five years after the statute's passage, almost as many African Americans registered to vote in six Southern States as in the entire century before 1965. See Davidson, The Voting Rights Act: A Brief History, in Controversies in Minority Voting 21 (B. Grofman &

C. Davidson eds. 1992). The crudest attempts to block voting access, like literacy tests and poll taxes, disappeared. Legislatures often replaced those vote denial schemes with new measures—mostly to do with districting—designed to dilute the impact of minority votes. But the Voting Rights Act, operating for decades at full strength, stopped many of those measures too. See, *e.g.*, *Chisom* v. *Roemer*, 501 U. S. 380 (1991); *Allen* v. *State Bd. of Elections*, 393 U. S. 544 (1969). As a famed dissent assessed the situation about a half-century after the statute's enactment: The Voting Rights Act had become "one of the most consequential, efficacious, and amply justified exercises of federal legislative power in our Nation's history." *Shelby County*, 570 U. S., at 562 (Ginsburg, J., dissenting).[1]

B

Yet efforts to suppress the minority vote continue. No one would know this from reading the majority opinion. It hails the "good news" that legislative efforts had mostly shifted by the 1980s from vote denial to vote dilution. *Ante*, at 7. And then it moves on to other matters, as though the Voting Rights Act no longer has a problem to address—as though once literacy tests and poll taxes disappeared, so too did efforts to curb minority voting. But as this Court recognized about a decade ago, "racial discrimination and racially polarized voting are not ancient history." *Bartlett* v. *Strickland*, 556 U. S. 1, 25 (2009). Indeed, the problem of voting discrimination has become worse since that time—in part because of what this Court did in *Shelby County*.

[1] The majority brands this historical account part of an "extended effort at misdirection." *Ante*, at 22. I am tempted merely to reply: Enough said about the majority's outlook on the statute before us. But I will add what should be obvious—that no one can understand the Voting Rights Act without recognizing what led Congress to enact it, and what Congress wanted it to change.

Weaken the Voting Rights Act, and predictable consequences follow: yet a further generation of voter suppression laws.

Much of the Voting Rights Act's success lay in its capacity to meet ever-new forms of discrimination. Experience showed that "[w]henever one form of voting discrimination was identified and prohibited, others sprang up in its place." *Shelby County*, 570 U. S., at 560 (Ginsburg, J., dissenting). Combating those efforts was like "battling the Hydra"—or to use a less cultured reference, like playing a game of whack-a-mole. *Ibid*. So Congress, in Section 5 of the Act, gave the Department of Justice authority to review all new rules devised by jurisdictions with a history of voter suppression—and to block any that would have discriminatory effects. See 52 U. S. C. §§10304(a)–(b). In that way, the Act would prevent the use of new, more nuanced methods to restrict the voting opportunities of non-white citizens.

And for decades, Section 5 operated as intended. Between 1965 and 2006, the Department stopped almost 1200 voting laws in covered areas from taking effect. See *Shelby County*, 570 U. S., at 571 (Ginsburg, J., dissenting). Some of those laws used districting to dilute minority voting strength—making sure that the votes of minority citizens would carry less weight than the votes of whites in electing candidates. Other laws, even if facially neutral, disproportionately curbed the ability of non-white citizens to cast a ballot at all. So, for example, a jurisdiction might require forms of identification that those voters were less likely to have; or it might limit voting places and times convenient for those voters; or it might purge its voter rolls through mechanisms especially likely to ensnare them. See *id*., at 574–575. In reviewing mountains of such evidence in 2006, Congress saw a continuing need for Section 5. Although "discrimination today is more subtle than the visible methods used in 1965," Congress found, it still produces "the

same [effects], namely a diminishing of the minority community's ability to fully participate in the electoral process." H. R. Rep. No. 109–478, p. 6 (2006). Congress thus reauthorized the preclearance scheme for 25 years.

But this Court took a different view. Finding that "[o]ur country has changed," the Court saw only limited instances of voting discrimination—and so no further need for preclearance. *Shelby County*, 570 U. S., at 547–549, 557. Displacing Congress's contrary judgment, the Court struck down the coverage formula essential to the statute's operation. The legal analysis offered was perplexing: The Court based its decision on a "principle of equal [state] sovereignty" that a prior decision of ours had rejected—and that has not made an appearance since. *Id.*, at 544 (majority opinion); see *id.*, at 587–588 (Ginsburg, J., dissenting). Worse yet was the Court's blithe confidence in assessing what was needed and what was not. "[T]hings have changed dramatically," the Court reiterated, *id.*, at 547: The statute that was once a necessity had become an imposition. But how did the majority know there was nothing more for Section 5 to do—that the (undoubted) changes in the country went so far as to make the provision unnecessary? It didn't, as Justice Ginsburg explained in dissent. The majority's faith that discrimination was almost gone derived, at least in part, from the success of Section 5—from its record of blocking discriminatory voting schemes. Discarding Section 5 because those schemes had diminished was "like throwing away your umbrella in a rainstorm because you are not getting wet." *Id.*, at 590.

The rashness of the act soon became evident. Once Section 5's strictures came off, States and localities put in place new restrictive voting laws, with foreseeably adverse effects on minority voters. On the very day *Shelby County* issued, Texas announced that it would implement a strict voter-identification requirement that had failed to clear Section 5. See Elmendorf & Spencer, Administering Section 2 of

the Voting Rights Act After *Shelby County*, 115 Colum. L. Rev. 2143, 2145–2146 (2015). Other States—Alabama, Virginia, Mississippi—fell like dominoes, adopting measures similarly vulnerable to preclearance review. See *ibid*. The North Carolina Legislature, starting work the day after *Shelby County*, enacted a sweeping election bill eliminating same-day registration, forbidding out-of-precinct voting, and reducing early voting, including souls-to-the-polls Sundays. (That law went too far even without Section 5: A court struck it down because the State's legislators had a racially discriminatory purpose. *North Carolina State Conference of NAACP* v. *McCrory*, 831 F. 3d 204 (CA4 2016).) States and localities redistricted—drawing new boundary lines or replacing neighborhood-based seats with at-large seats—in ways guaranteed to reduce minority representation. See Elmendorf, 115 Colum. L. Rev., at 2146. And jurisdictions closed polling places in mostly minority areas, enhancing an already pronounced problem. See Brief for Leadership Conference on Civil and Human Rights et al. as *Amici Curiae* 14–15 (listing closure schemes); Pettigrew, The Racial Gap in Wait Times, 132 Pol. Sci. Q. 527, 527 (2017) (finding that lines in minority precincts are twice as long as in white ones, and that a minority voter is six times more likely to wait more than an hour).[2]

And that was just the first wave of post-*Shelby County*

---

[2] Although causation is hard to establish definitively, those post-*Shelby County* changes appear to have reduced minority participation in the next election cycle. The most comprehensive study available found that in areas freed from Section 5 review, white turnout remained the same, but "minority participation dropped by 2.1 percentage points"—a stark reversal in direction from prior elections. Ang, Do 40-Year-Old Facts Still Matter?, 11 Am. Econ. J.: Applied Economics, No. 3, pp. 1, 35 (2019). The results, said the scholar who crunched the numbers, "provide early evidence that the Shelby ruling may jeopardize decades of voting rights progress." *Id*., at 36. The election laws passed in *Shelby County*'s wake "may have negated many of the gains made under preclearance." *Ibid*.

laws. In recent months, State after State has taken up or enacted legislation erecting new barriers to voting. See Brennan Center for Justice, Voting Laws Roundup: May 2021 (online source archived at www.supremecourt.gov) (compiling legislation). Those laws shorten the time polls are open, both on Election Day and before. They impose new prerequisites to voting by mail, and shorten the windows to apply for and return mail ballots. They make it harder to register to vote, and easier to purge voters from the rolls. Two laws even ban handing out food or water to voters standing in line. Some of those restrictions may be lawful under the Voting Rights Act. But chances are that some have the kind of impact the Act was designed to prevent—that they make the political process less open to minority voters than to others.

So the Court decides this Voting Rights Act case at a perilous moment for the Nation's commitment to equal citizenship. It decides this case in an era of voting-rights retrenchment—when too many States and localities are restricting access to voting in ways that will predictably deprive members of minority groups of equal access to the ballot box. If "any racial discrimination in voting is too much," as the *Shelby County* Court recited, then the Act still has much to do. 570 U. S., at 557. Or more precisely, the fraction of the Act remaining—the Act as diminished by the Court's hand. Congress never meant for Section 2 to bear all of the weight of the Act's commitments. That provision looks to courts, not to the Executive Branch, to restrain discriminatory voting practices. And litigation is an after-the-fact remedy, incapable of providing relief until an election—usually, more than one election—has come and gone. See *id.*, at 572 (Ginsburg, J., dissenting). So Section 2 was supposed to be a back-up, for all its sweep and power. But after *Shelby County*, the vitality of Section 2—a "permanent, nationwide ban on racial discrimination in voting"—matters more than ever. *Id.*, at 557 (majority opinion). For after *Shelby*

County, Section 2 is what voters have left.

II

Section 2, as drafted, is well-equipped to meet the challenge. Congress meant to eliminate all "discriminatory election systems or practices which operate, designedly or otherwise, to minimize or cancel out the voting strength and political effectiveness of minority groups." S. Rep. No. 97–417, p. 28 (1982) (S. Rep.). And that broad intent is manifest in the provision's broad text. As always, this Court's task is to read that language as Congress wrote it— to give the section all the scope and potency Congress drafted it to have. So I start by showing how Section 2's text requires courts to eradicate voting practices that make it harder for members of some races than of others to cast a vote, unless such a practice is necessary to support a strong state interest. I then show how far from that text the majority strays. Its analysis permits exactly the kind of vote suppression that Section 2, by its terms, rules out of bounds.

A

Section 2, as relevant here, has two interlocking parts. Subsection (a) states the law's basic prohibition:

> "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." 52 U. S. C. §10301(a).

Subsection (b) then tells courts how to apply that bar—or otherwise said, when to find that an infringement of the voting right has occurred:

> "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 given race] in that [those] members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." §10301(b).[3]

Those provisions have a great many words, and I address them further below. But their essential import is plain: Courts are to strike down voting rules that contribute to a racial disparity in the opportunity to vote, taking all the relevant circumstances into account.

The first thing to note about Section 2 is how far its prohibitory language sweeps. The provision bars any "voting qualification," any "prerequisite to voting," or any "standard, practice, or procedure" that "results in a denial or abridgement of the right" to "vote on account of race." The overlapping list of covered state actions makes clear that Section 2 extends to every kind of voting or election rule. Congress carved out nothing pertaining to "voter qualifications or the manner in which elections are conducted." *Holder* v. *Hall*, 512 U. S. 874, 922 (1994) (THOMAS, J., concurring in judgment). So, for example, the provision "covers all manner of registration requirements, the practices surrounding registration," the "locations of polling places, the times polls are open, the use of paper ballots as opposed to voting machines, and other similar aspects of the voting process that might be manipulated to deny any citizen the right to cast a ballot and have it properly counted." *Ibid.* All those rules and more come within the statute—so long as they result in a race-based "denial or abridgement" of the

---

[3] A final sentence, not at issue here, specifies that the voting right provided does not entitle minority citizens to proportional representation in electoral offices. See *infra*, at 19, n. 6.

voting right. And the "denial or abridgement" phrase speaks broadly too. "[A]bridgment necessarily means something more subtle and less drastic than the complete denial of the right to cast a ballot, denial being separately forbidden." *Bossier*, 528 U. S., at 359 (Souter, J., concurring in part and dissenting in part). It means to "curtail," rather than take away, the voting right. American Heritage Dictionary 4 (1969).

The "results in" language, connecting the covered voting rules to the prohibited voting abridgement, tells courts that they are to focus on the law's effects. Rather than hinge liability on state officials' motives, Congress made it ride on their actions' consequences. That decision was as considered as considered comes. This Court, as the majority notes, had construed the original Section 2 to apply to facially neutral voting practices "only if [they were] motivated by a discriminatory purpose." *Bolden*, 446 U. S., at 62; see *ante*, at 5. Congress enacted the current Section 2 to reverse that outcome—to make clear that "results" alone could lead to liability. An intent test, the Senate Report explained, "asks the wrong question." S. Rep., at 36. If minority citizens "are denied a fair opportunity to participate," then "the system should be changed, regardless of" what "motives were in an official's mind." *Ibid.* Congress also saw an intent test as imposing "an inordinately difficult burden for plaintiffs." *Ibid.* Even if state actors had purposefully discriminated, they would likely be "ab[le] to offer a non-racial rationalization," supported by "a false trail" of "official resolutions" and "other legislative history eschewing any racial motive." *Id.*, at 37. So only a results-focused statute could prevent States from finding ways to abridge minority citizens' voting rights.

But when to conclude—looking to effects, not purposes—that a denial or abridgment has occurred? Again, answering that question is subsection (b)'s function. See *supra*, at 12–13. It teaches that a violation is established when,

"based on the totality of circumstances," a State's electoral system is "not equally open" to members of a racial group. And then the subsection tells us what that means. A system is not equally open if members of one race have "less opportunity" than others to cast votes, to participate in politics, or to elect representatives. The key demand, then, is for equal political opportunity across races.

That equal "opportunity" is absent when a law or practice makes it harder for members of one racial group, than for others, to cast ballots. When Congress amended Section 2, the word "opportunity" meant what it also does today: "a favorable or advantageous combination of circumstances" for some action. See American Heritage Dictionary, at 922. In using that word, Congress made clear that the Voting Rights Act does not demand equal outcomes. If members of different races have the same opportunity to vote, but go to the ballot box at different rates, then so be it—that is their preference, and Section 2 has nothing to say. But if a law produces different voting opportunities across races—if it establishes rules and conditions of political participation that are less favorable (or advantageous) for one racial group than for others—then Section 2 kicks in. It applies, in short, whenever the law makes it harder for citizens of one race than of others to cast a vote.[4]

And that is so even if (as is usually true) the law does not

[4] I agree with the majority that "very small differences" among racial groups do not matter. *Ante*, at 18. Some racial disparities are too small to support a finding of unequal access because they are not statistically significant—that is, because they might have arisen from chance alone. See *Matrixx Initiatives*, *Inc*. v. *Siracusano*, 563 U. S. 27, 39 (2011). The statistical significance test is standard in all legal contexts addressing disparate impact. See *Ricci* v. *DeStefano*, 557 U. S. 557, 587 (2009). In addition, there may be some threshold of what is sometimes called "practical significance"—a level of inequality that, even if statistically meaningful, is just too trivial for the legal system to care about. See Federal Judicial Center, Reference Manual on Scientific Evidence 252 (3d ed. 2011) (discussing differences that are not "practically important").

single out any race, but instead is facially neutral. Suppose, as Justice Scalia once did, that a county has a law limiting "voter registration [to] only three hours one day a week." *Chisom*, 501 U. S., at 408 (dissenting opinion). And suppose that policy makes it "more difficult for blacks to register than whites"—say, because the jobs African Americans disproportionately hold make it harder to take time off in that window. *Ibid.* Those citizens, Justice Scalia concluded, would then "have less opportunity 'to participate in the political process' than whites, and §2 would therefore be violated." *Ibid.* (emphasis deleted). In enacting Section 2, Congress documented many similar (if less extreme) facially neutral rules—"registration requirements," "voting and registration hours," voter "purging" policies, and so forth—that create disparities in voting opportunities. S. Rep., at 10, n. 22; H. R. Rep. No. 97–227, pp. 11–17 (1981) (H. R. Rep.). Those laws, Congress thought, would violate Section 2, though they were not facially discriminatory, because they gave voters of different races unequal access to the political process.

Congress also made plain, in calling for a totality-of-circumstances inquiry, that equal voting opportunity is a function of both law and background conditions—in other words, that a voting rule's validity depends on how the rule operates in conjunction with facts on the ground. "[T]otality review," this Court has explained, stems from Congress's recognition of "the demonstrated ingenuity of state and local governments in hobbling minority voting power." *Johnson* v. *De Grandy*, 512 U. S. 997, 1018 (1994). Sometimes, of course, state actions overtly target a single race: For example, Congress was acutely aware, in amending Section 2, of the elimination of polling places in African American neighborhoods. See S. Rep., at 10, 11, and n. 22; H. R. Rep., at 17, 35. But sometimes government officials enact facially neutral laws that leverage—and become discriminatory by dint of—pre-existing social and economic

conditions. The classic historical cases are literacy tests and poll taxes. A more modern example is the one Justice Scalia gave, of limited registration hours. Congress knew how those laws worked: It saw that "inferior education, poor employment opportunities, and low incomes"—all conditions often correlated with race—could turn even an ordinary-seeming election rule into an effective barrier to minority voting in certain circumstances. *Thornburg* v. *Gingles*, 478 U. S. 30, 69 (1986) (plurality opinion). So Congress demanded, as this Court has recognized, "an intensely local appraisal" of a rule's impact—"a searching practical evaluation of the 'past and present reality.'" *Id*., at 79; *De Grandy*, 512 U. S., at 1018 (quoting S. Rep., at 30). "The essence of a §2 claim," we have said, is that an election law "interacts with social and historical conditions" in a particular place to cause race-based inequality in voting opportunity. *Gingles*, 478 U. S., at 47 (majority opinion). That interaction is what the totality inquiry is mostly designed to discover.

At the same time, the totality inquiry enables courts to take into account strong state interests supporting an election rule. An all-things-considered inquiry, we have explained, is by its nature flexible. See *De Grandy*, 512 U. S., at 1018. On the one hand, it allows no "safe harbor[s]" for election rules resulting in discrimination. *Ibid*. On the other hand, it precludes automatic condemnation of those rules. Among the "balance of considerations" a court is to weigh is a State's need for the challenged policy. *Houston Lawyers' Assn.* v. *Attorney General of Tex.*, 501 U. S. 419, 427 (1991). But in making that assessment of state interests, a court must keep in mind—just as Congress did—the ease of "offer[ing] a non-racial rationalization" for even blatantly discriminatory laws. S. Rep., at 37; see *supra*, at 14. State interests do not get accepted on faith. And even a genuine and strong interest will not suffice if a plaintiff can prove that it can be accomplished in a less discriminatory

way. As we have put the point before: When a less racially biased law would not "significantly impair[] the State's interest," the discriminatory election rule must fall. *Houston Lawyers' Assn.*, 501 U. S., at 428.[5]

So the text of Section 2, as applied in our precedents, tells us the following, every part of which speaks to the ambition of Congress's action. Section 2 applies to any voting rule, of any kind. The provision prohibits not just the denial but also the abridgment of a citizen's voting rights on account of race. The inquiry is focused on effects: It asks not about why state officials enacted a rule, but about whether that rule results in racial discrimination. The discrimination that is of concern is inequality of voting opportunity. That kind of discrimination can arise from facially neutral (not just targeted) rules. There is a Section 2 problem when an

---

[5] The majority pretends that *Houston Lawyers' Assn.* did not ask about the availability of a less discriminatory means of serving the State's end, see *ante*, at 23, n. 16—but the inquiry is right there on page 428 (examining "if [the] impairment of a minority group's voting strength could be remedied without significantly impairing the State's interest in electing judges on a district-wide basis"). In posing that question, the Court did what Congress wanted, because absent a necessity test, States could too easily get away with offering "non-racial" but pretextual "rationalization[s]." S. Rep., at 37; see *supra*, at 14. And the Court did what it always does in applying laws barring discriminatory effects—ask whether a challenged policy is necessary to achieve the asserted goal. See *infra*, at 26.

Contrary to the majority's view, that kind of inquiry would not result in "invalidat[ing] just about any voting rule a State adopts." *Ante*, at 24. A plaintiff bears the burden of showing that a less discriminatory law would be "at least as effective in achieving the [State's] legitimate purpose." *Reno* v. *American Civil Liberties Union*, 521 U. S. 844, 874 (1997). And "cost may be an important factor" in that analysis, so the plaintiff could not (as the majority proposes) say merely that the State can combat fraud by "hiring more investigators and prosecutors." *Burwell* v. *Hobby Lobby Stores*, *Inc.*, 573 U. S. 682, 730 (2014); *ante*, at 24. Given those features of the alternative-means inquiry, a State that tries both to serve its electoral interests and to give its minority citizens equal electoral access will rarely have anything to fear from a Section 2 suit.

election rule, operating against the backdrop of historical, social, and economic conditions, makes it harder for minority citizens than for others to cast ballots. And strong state interests may save an otherwise discriminatory rule, but only if that rule is needed to achieve them—that is, only if a less discriminatory rule will not attain the State's goal.

That is a lot of law to apply in a Section 2 case. Real law—the kind created by Congress. (A strange thing, to hear about it all only in a dissent.)[6] None of this law threatens to "take down," as the majority charges, the mass of state and local election rules. *Ante*, at 25. Here is the flipside of what I have said above, now from the plaintiff's perspective: Section 2 demands proof of a statistically significant racial disparity in electoral opportunities (not

---

[6] Contra the majority, see *ante*, at 5–6, 22, and n. 14, the House-Senate compromise reached in amending Section 2 has nothing to do with the law relevant here. The majority is hazy about the content of this compromise for a reason: It was about proportional representation. As then-Justice Rehnquist explained, members of the Senate expressed concern that the "results in" language of the House-passed bill would provide not "merely for equal 'access' to the political process" but also "for proportional representation" of minority voters. *Mississippi Republican Executive Committee* v. *Brooks*, 469 U. S. 1002, 1010 (1984) (dissenting opinion). Senator Dole's solution was to add text making clear that minority voters had a right to equal voting opportunities, but no right to elect minority candidates "in numbers equal to their proportion in the population." 52 U. S. C. §10301(b). The Dole Amendment, as Justice Rehnquist noted, ensured that under the "results in" language equal "'access' only was required." 469 U. S., at 1010–1011; see 128 Cong. Rec. 14132 (1982) (Sen. Dole explaining that as amended "the focus of the standard is on whether there is equal access to the political process, not on whether members of a particular minority group have achieved proportional election results"). Nothing—literally nothing—suggests that the Senate wanted to water down the equal-access right that everyone agreed the House's language covered. So the majority is dead wrong to say that I want to "undo" the House-Senate compromise. *Ante*, at 22. It is the majority that wants to transform that compromise to support a view of Section 2 held in neither the House nor the Senate.

outcomes) resulting from a law not needed to achieve a government's legitimate goals. That showing is hardly insubstantial; and as a result, Section 2 vote denial suits do not often succeed (even with lower courts applying the law as written, not the majority's new, concocted version). See Brief for State and Local Election Officials as *Amici Curiae* 15 (finding only nine winning cases since *Shelby County*, each involving "an intensely local appraisal" of a "controversial polic[y] in specific places"). But Section 2 was indeed meant to do something important—crucial to the operation of our democracy. The provision tells courts—however "radical" the majority might find the idea, *ante*, at 25—to eliminate facially neutral (as well as targeted) electoral rules that unnecessarily create inequalities of access to the political process. That is the very project of the statute, as conceived and as written—and now as damaged by this Court.

B

The majority's opinion mostly inhabits a law-free zone. It congratulates itself in advance for giving Section 2's text "careful consideration." *Ante*, at 14. And then it leaves that language almost wholly behind. See *ante*, at 14–21. (Every once in a while, when its lawmaking threatens to leap off the page, it thinks to sprinkle in a few random statutory words.) So too the majority barely mentions this Court's precedents construing Section 2's text. On both those counts, you can see why. As just described, Section 2's language is broad. See *supra*, at 12–20. To read it fairly, then, is to read it broadly. And to read it broadly is to do much that the majority is determined to avoid. So the majority ignores the sweep of Section 2's prohibitory language. It fails to note Section 2's application to every conceivable kind of voting rule. It neglects to address the provision's concern with how those rules may "abridge[]," not just

deny, minority citizens' voting rights. It declines to consider Congress's use of an effects test, rather than a purpose test, to assess the rules' legality. Nor does the majority acknowledge the force of Section 2's implementing provision. The majority says as little as possible about what it means for voting to be "equally open," or for voters to have an equal "opportunity" to cast a ballot. See *ante*, at 14–15. It only grudgingly accepts—and then apparently forgets—that the provision applies to facially neutral laws with discriminatory consequences. Compare *ante*, at 22, with *ante*, at 25. And it hints that as long as a voting system is sufficiently "open," it need not be equally so. See *ante*, at 16, 18. In sum, the majority skates over the strong words Congress drafted to accomplish its equally strong purpose: ensuring that minority citizens can access the electoral system as easily as whites.[7]

The majority instead founds its decision on a list of mostly made-up factors, at odds with Section 2 itself. To excuse this unusual free-form exercise, the majority notes

---

[7] In a single sentence, the majority huffs that "nobody disputes" various of these "points of law." *Ante*, at 21. Excellent! I only wish the majority would take them to heart, both individually and in combination. For example, the majority says it agrees that Section 2 reaches beyond denials of voting to any "abridgement." But then, as I'll later discuss, it insists that Section 2 has an interest only in rules that "block or seriously hinder voting"—which appears to create a "denial or *serious* abridgement" standard. *Ante*, at 16; see *infra*, at 22–23. Or, for example, the majority says it accepts that Section 2 may prohibit facially neutral election rules. But the majority takes every opportunity of casting doubt on those applications. Each facially neutral rule it mentions is one that it "doubt[s]" Congress could have "intended to uproot." *Ante*, at 18; see *ante*, at 6, 18, 21, 25. And it criticizes this dissent for understanding the statute (but how could anyone understand it differently?) as focusing on the racially "disparate impact" of neutral election rules on the opportunity to vote. *Ante*, at 21. Most fundamentally, the majority refuses to acknowledge how all the "points of law" it professes to agree with work in tandem to signal a statute of significant power and scope.

that Section 2 authorizes courts to conduct a "totality of circumstances" analysis. *Ante*, at 16. But as described above, Congress mainly added that language so that Section 2 could protect against "the demonstrated ingenuity of state and local governments in hobbling minority voting power." *De Grandy*, 512 U. S., at 1018; see *supra*, at 16–17. The totality inquiry requires courts to explore how ordinary-seeming laws can interact with local conditions—economic, social, historical—to produce race-based voting inequalities. That inquiry hardly gives a court the license to devise whatever limitations on Section 2's reach it would have liked Congress to enact. But that is the license the majority takes. The "important circumstances" it invents all cut in one direction—toward limiting liability for race-based voting inequalities. *Ante*, at 16. (Indeed, the majority gratuitously dismisses several factors that point the opposite way. See *ante*, at 19–21.) Think of the majority's list as a set of extra-textual restrictions on Section 2—methods of counteracting the law Congress actually drafted to achieve the purposes *Congress* thought "important." The list—not a test, the majority hastens to assure us, with delusions of modesty—stacks the deck against minority citizens' voting rights. Never mind that Congress drafted a statute to protect those rights—to prohibit any number of schemes the majority's non-test test makes it possible to save.

Start with the majority's first idea: a "[m]ere inconvenience[]" exception to Section 2. *Ante*, at 16. Voting, the majority says, imposes a set of "usual burdens": Some time, some travel, some rule compliance. *Ibid*. And all of that is beneath the notice of Section 2—even if those burdens fall highly unequally on members of different races. See *ibid*. But that categorical exclusion, for seemingly small (or "[un]usual" or "[un]serious") burdens, is nowhere in the provision's text. To the contrary (and as this Court has recognized before), Section 2 allows no "safe harbor[s]" for election rules resulting in disparate voting opportunities. *De*

Grandy, 512 U. S., at 1018; see *supra*, at 17. The section applies to *any* discriminatory "voting qualification," "prerequisite to voting," or "standard, practice, or procedure"—even the kind creating only (what the majority thinks of as) an ordinary burden. And the section cares about *any* race-based "abridgments" of voting, not just measures that come near to preventing that activity. Congress, recall, was intent on eradicating the "subtle, as well as the obvious," ways of suppressing minority voting. *Allen*, 393 U. S., at 565; see *supra*, at 14. One of those more subtle ways is to impose "inconveniences," especially a collection of them, differentially affecting members of one race. The certain result—because every inconvenience makes voting both somewhat more difficult and somewhat less likely—will be to deter minority votes. In countenancing such an election system, the majority departs from Congress's vision, set down in text, of ensuring equal voting opportunity. It chooses equality-lite.

And what is a "mere inconvenience" or "usual burden" anyway? The drafters of the Voting Rights Act understood that "social and historical conditions," including disparities in education, wealth, and employment, often affect opportunities to vote. *Gingles*, 478 U. S., at 47; see *supra*, at 16–17. What does not prevent one citizen from casting a vote might prevent another. How is a judge supposed to draw an "inconvenience" line in some reasonable place, taking those differences into account? Consider a law banning the handing out of water to voters. No more than—or not even—an inconvenience when lines are short; but what of when they are, as in some neighborhoods, hours-long? The point here is that judges lack an objective way to decide which voting obstacles are "mere" and which are not, for all voters at all times. And so Section 2 does not ask the question.

The majority's "multiple ways to vote" factor is similarly flawed. *Ante*, at 18. True enough, a State with three ways

to vote (say, on Election Day; early in person; or by mail) may be more "open" than a State with only one (on Election Day). And some other statute might care about that. But Section 2 does not. What it cares about is that a State's "political processes" are "*equally* open" to voters of all races. And a State's electoral process is not equally open if, for example, the State "only" makes Election Day voting by members of one race peculiarly difficult. The House Report on Section 2 addresses that issue. It explains that an election system would violate Section 2 if minority citizens had a lesser opportunity than white citizens to use absentee ballots. See H. R. Rep., at 31, n. 106. Even if the minority citizens could just as easily vote in person, the scheme would "result in unequal access to the political process." *Id.*, at 31. That is not some piece of contestable legislative history. It is the only reading of Section 2 possible, given the statute's focus on equality. Maybe the majority does not mean to contest that proposition; its discussion of this supposed factor is short and cryptic. But if the majority does intend to excuse so much discrimination, it is wrong. Making one method of voting less available to minority citizens than to whites necessarily means giving the former "less opportunity than other members of the electorate to participate in the political process." §10301(b).

The majority's history-and-commonality factor also pushes the inquiry away from what the statute demands. The oddest part of the majority's analysis is the idea that "what was standard practice when §2 was amended in 1982 is a relevant consideration." *Ante*, at 16. The 1982 state of the world is no part of the Section 2 test. An election rule prevalent at that time may make voting harder for minority than for white citizens; Section 2 then covers such a rule, as it covers any other. And contrary to the majority's unsupported speculation, Congress "intended" exactly that. *Ante*, at 17; see H. R. Rep., at 14 (explaining that the Act aimed to eradicate the "numerous practices and procedures which

act as continued barriers to registration and voting").[8] Section 2 was meant to disrupt the status quo, not to preserve it—to eradicate then-current discriminatory practices, not to set them in amber. See *Bossier*, 528 U. S., at 334 (under Section 2, "[i]f the *status quo*" abridges the right to vote "relative to what the right to vote *ought to be*, the status quo itself must be changed").[9] And as to election rules common now, the majority oversimplifies. Even if those rules are unlikely to violate Section 2 everywhere, they may easily do so somewhere. That is because the demographics and political geography of States vary widely and Section 2's application depends on place-specific facts. As we have recognized, the statute calls for "an intensely local appraisal," not a count-up-the-States exercise. *Gingles*, 478 U. S., at 79; see *supra*, at 17. This case, as I'll later discuss, offers a perfect illustration of how the difference between those two approaches can matter. See *infra*, at 29–40.

---

[8] The House Report listed some of those offensive, even though facially neutral and then-prevalent, practices: "inconvenient location and hours of registration, dual registration for county and city elections," "frequent and unnecessary purgings and burdensome registration requirements, and failure to provide . . . assistance to illiterates." H. R. Rep., at 14. So too the Senate Report complained of "inconvenient voting and registration hours" and "reregistration requirements and purging of voters." S. Rep., at 10, n. 22; see *supra*, at 16.

[9] Even setting aside Section 2's status-quo-disrupting lean, this Court has long rejected—including just last Term—the majority's claim that the state of the world at the time of a statute's enactment provides a useful "benchmark[ ]" when applying a broadly written law. *Ante*, at 17. Such a law will typically come to encompass applications—even "important" ones—that were not "foreseen at the time of enactment." *Bostock* v. *Clayton County*, 590 U. S. ___, ___ (2020) (slip op., at 26). To prevent that from happening—as the majority does today, on the ground that Congress simply must have "intended" it—is "to displace the plain meaning of the law in favor of something lying behind it." *Ibid.*; see *id.*, at ___ (slip op., at 30) (When a law is "written in starkly broad terms," it is "virtually guaranteed that unexpected applications [will] emerge over time").

That leaves only the majority's discussion of state interests, which is again skewed so as to limit Section 2 liability. No doubt that under our precedent, a state interest in an election rule "is a legitimate factor to be considered." *Houston Lawyers' Assn.*, 501 U. S., at 426. But the majority wrongly dismisses the need for the closest possible fit between means and end—that is, between the terms of the rule and the State's asserted interest. *Ante*, at 21. In the past, this Court has stated that a discriminatory election rule must fall, no matter how weighty the interest claimed, if a less biased law would not "significantly impair[that] interest." *Houston Lawyers' Assn.*, 501 U. S., at 428; see *supra*, at 17–18, and n. 5. And as the majority concedes, we apply that kind of means-end standard in every other context—employment, housing, banking—where the law addresses racially discriminatory effects: There, the rule must be "strict[ly] necess[ary]" to the interest. *Ante*, at 21; see, *e.g.*, *Albemarle Paper Co.* v. *Moody*, 422 U. S. 405, 425 (1975) (holding that an employment policy cannot stand if another policy, "without a similarly undesirable racial effect, would also serve the employer's legitimate interest"). The majority argues that "[t]he text of [those] provisions" differs from Section 2's. *Ante*, at 20. But if anything, Section 2 gives less weight to competing interests: Unlike in most discrimination laws, they enter the inquiry only through the provision's reference to the "totality of circumstances"—through, then, a statutory backdoor. So the majority falls back on the idea that "[d]emanding such a tight fit would have the effect of invalidating a great many neutral voting regulations." *Ante*, at 21; see *ante*, at 25. But a state interest becomes relevant only when a voting rule, even if neutral on its face, is found *not* neutral in operation—only, that is, when the rule provides unequal access to the political process. Apparently, the majority does not want to "invalidate [too] many" of those actually discriminatory rules. But Congress had a different goal in enacting

Section 2.

The majority's approach, which would ask only whether a discriminatory law "*reasonably* pursue[s] important state interests," gives election officials too easy an escape from Section 2. *Ante*, at 25 (emphasis added). Of course preventing voter intimidation is an important state interest. And of course preventing election fraud is the same. But those interests are also easy to assert groundlessly or pretextually in voting discrimination cases. Congress knew that when it passed Section 2. Election officials can all too often, the Senate Report noted, "offer a non-racial rationalization" for even laws that "purposely discriminate[]." S. Rep., at 37; see *supra*, at 14, 17–18, and n. 5. A necessity test filters out those offerings. See, *e.g.*, *Albemarle*, 422 U. S., at 425. It thereby prevents election officials from flouting, circumventing, or discounting Section 2's command not to discriminate.

In that regard, the past offers a lesson to the present. Throughout American history, election officials have asserted anti-fraud interests in using voter suppression laws. Poll taxes, the classic mechanism to keep black people from voting, were often justified as "preserv[ing] the purity of the ballot box [and] facilitat[ing] honest elections." J. Kousser, The Shaping of Southern Politics 111, n. 9 (1974). A raft of election regulations—including "elaborate registration procedures" and "early poll closings"—similarly excluded white immigrants (Irish, Italians, and so on) from the polls on the ground of "prevent[ing] fraud and corruption." Keyssar 159; see *ibid.* (noting that in those times "claims of widespread corruption" were backed "almost entirely" by "anecdotes [with] little systematic investigation or evidence"). Take even the majority's example of a policy advancing an "important state interest": "the use of private voting booths," in which voters marked their own ballots. *Ante*, at 19. In the majority's high-minded account, that innovation—then known as the Australian voting system, for the

country that introduced it—served entirely to prevent undue influence. But when adopted, it also prevented many illiterate citizens—especially African Americans—from voting. And indeed, that was partly the point. As an 1892 Arkansas song went:

> The Australian Ballot works like a charm,
> It makes them think and scratch,
> And when a Negro gets a ballot
> He has certainly got his match.

Kousser 54. Across the South, the Australian ballot decreased voter participation among whites by anywhere from 8% to 28% but among African Americans by anywhere from 15% to 45%. See *id.*, at 56. Does that mean secret ballot laws violate Section 2 today? Of course not. But should the majority's own example give us all a bit of pause? Yes, it should. It serves as a reminder that States have always found it natural to wrap discriminatory policies in election-integrity garb.

Congress enacted Section 2 to prevent those maneuvers from working. It knew that States and localities had over time enacted measure after measure imposing discriminatory voting burdens. And it knew that governments were proficient in justifying those measures on non-racial grounds. So Congress called a halt. It enacted a statute that would strike down all unnecessary laws, including facially neutral ones, that result in members of a racial group having unequal access to the political process.

But the majority is out of sympathy with that measure. The majority thinks a statute that would remove those laws is not, as Justice Ginsburg once called it, "consequential, efficacious, and amply justified." *Shelby County*, 570 U. S., at 562 (dissenting opinion). Instead, the majority thinks it too "radical" to stomach. *Ante*, at 21, 25. The majority objects to an excessive "transfer of the authority to set voting rules from the States to the federal courts." *Ante*, at 25. It

even sees that transfer as "[un]democratic." *Ibid.* But maybe the majority should pay more attention to the "historical background" that it insists "does not tell us how to decide this case." *Ante*, at 21. That history makes clear the incongruity, in interpreting this statute, of the majority's paean to state authority—and conversely, its denigration of federal responsibility for ensuring non-discriminatory voting rules. The Voting Rights Act was meant to replace state and local election rules that needlessly make voting harder for members of one race than for others. The text of the Act perfectly reflects that objective. The "democratic" principle it upholds is not one of States' rights as against federal courts. The democratic principle it upholds is the right of every American, of every race, to have equal access to the ballot box. The majority today undermines that principle as it refuses to apply the terms of the statute. By declaring some racially discriminatory burdens inconsequential, and by refusing to subject asserted state interests to serious means-end scrutiny, the majority enables voting discrimination.

III

Just look at Arizona. Two of that State's policies disproportionately affect minority citizens' opportunity to vote. The first—the out-of-precinct policy—results in Hispanic and African American voters' ballots being thrown out at a statistically higher rate than those of whites. And whatever the majority might say about the ordinariness of such a rule, Arizona applies it in extra-ordinary fashion: Arizona is *the* national outlier in dealing with out-of-precinct votes, with the next-worst offender nowhere in sight. The second rule—the ballot-collection ban—makes voting meaningfully more difficult for Native American citizens than for others. And nothing about how that ban is applied is "usual" either—this time because of how many of the

State's Native American citizens need to travel long distances to use the mail. Both policies violate Section 2, on a straightforward application of its text. Considering the "totality of circumstances," both "result in" members of some races having "less opportunity than other members of the electorate to participate in the political process and to elect a representative of their choice." §10301(b). The majority reaches the opposite conclusion because it closes its eyes to the facts on the ground.[10]

A

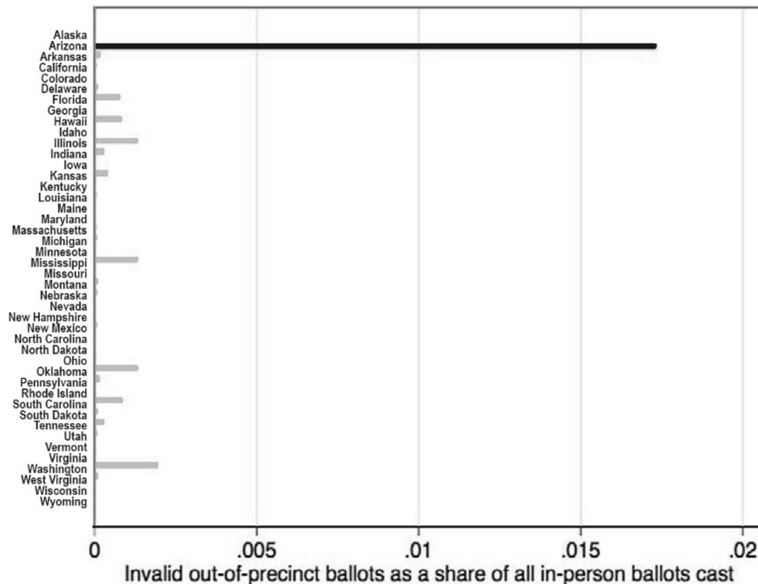
Arizona's out-of-precinct policy requires discarding any Election Day ballot cast elsewhere than in a voter's assigned precinct. Under the policy, officials throw out every choice in every race—including national or statewide races (*e.g.*, for President or Governor) that appear identically on every precinct's ballot. The question is whether that policy unequally affects minority citizens' opportunity to cast a vote.

Although the majority portrays Arizona's use of the rule as "unremarkable," *ante*, at 26, the State is in fact a national aberration when it comes to discarding out-of-precinct ballots. In 2012, about 35,000 ballots across the country were thrown out because they were cast at the wrong precinct. See U. S. Election Assistance Commission, 2012 Election Administration and Voting Survey 53 (2013). Nearly one in three of those discarded votes—10,979—was cast in Arizona. *Id*., at 52. As the Court of Appeals concluded, and the chart below indicates, Arizona threw away ballots in that year at 11 times the rate of the second-place discarder (Washington State). *Democratic Nat. Committee* v. *Hobbs*, 948 F. 3d 989, 1001 (CA9 2020); see App. 72. Somehow the majority labels that difference "marginal[],"

[10] Because I would affirm the Court of Appeals' holding that the effects of these policies violate Section 2, I need not pass on that court's alternative holding that the laws were enacted with discriminatory intent.

ante, at 27, but it is anything but. More recently, the number of discarded ballots in the State has gotten smaller: Arizona counties have increasingly abandoned precinct-based voting (in favor of county-wide "vote centers"), so the out-of-precinct rule has fewer votes to operate on. And the majority primarily relies on those latest (2016) numbers. But across the five elections at issue in this litigation (2008–2016), Arizona threw away far more out-of-precinct votes—almost 40,000—than did any other State in the country.

Figure 6: Rejected out-of-precinct ballots as a share of in-person ballots cast according to 2012 EAC Report



Votes in such numbers can matter—enough for Section 2 to apply. The majority obliquely suggests not, comparing the smallish number of thrown-out votes (minority and non-minority alike) to the far larger number of votes cast and

counted. See *ante*, at 27. But elections are often fought and won at the margins—certainly in Arizona. Consider the number of votes separating the two presidential candidates in the most recent election: 10,457. That is fewer votes than Arizona discarded under the out-of-precinct policy in two of the prior three presidential elections. This Court previously rejected the idea—the "erroneous assumption"—"that a small group of voters can never influence the outcome of an election." *Chisom*, 501 U. S., at 397, n. 24. For that reason, we held that even "a small minority" group can claim Section 2 protection. See *ibid*. Similarly here, the out-of-precinct policy—which discards thousands upon thousands of ballots in every election—affects more than sufficient votes to implicate Section 2's guarantee of equal electoral opportunity.

And the out-of-precinct policy operates unequally: Ballots cast by minorities are more likely to be discarded. In 2016, Hispanics, African Americans, and Native Americans were about twice as likely—or said another way, 100% more likely—to have their ballots discarded than whites. See App. 122. And it is possible to break that down a bit. Sixty percent of the voting in Arizona is from Maricopa County. There, Hispanics were 110% more likely, African Americans 86% more likely, and Native Americans 73% more likely to have their ballots tossed. See *id*., at 153. Pima County, the next largest county, provides another 15% of the statewide vote. There, Hispanics were 148% more likely, African Americans 80% more likely, and Native Americans 74% more likely to lose their votes. See *id*., at 157. The record does not contain statewide figures for 2012. But in Maricopa and Pima Counties, the percentages were about the same as in 2016. See *id*., at 87, 91. Assessing those disparities, the plaintiffs' expert found, and the District Court accepted, that the discriminatory impact of the out-of-precinct policy was statistically significant—meaning, again, that it was highly unlikely to occur by chance.

See *Democratic Nat. Committee* v. *Reagan*, 329 F. Supp. 3d 824, 871 (Ariz. 2018); *supra*, at 15, n. 4.

The majority is wrong to assert that those statistics are "highly misleading." *Ante*, at 28. In the majority's view, they can be dismissed because the great mass of voters are unaffected by the out-of-precinct policy. See *ibid*. But Section 2 is less interested in "absolute terms" (as the majority calls them) than in relative ones. *Ante*, at 27; see *supra*, at 14–15. Arizona's policy creates a statistically significant disparity between minority and white voters: Because of the policy, members of different racial groups do not in fact have an equal likelihood of having their ballots counted. Suppose a State decided to throw out 1% of the Hispanic vote each election. Presumably, the majority would not approve the action just because 99% of the Hispanic vote is unaffected. Nor would the majority say that Hispanics in that system have an equal shot of casting an effective ballot. Here, the policy is not so overt; but under Section 2, that difference does not matter. Because the policy "results in" statistically significant inequality, it implicates Section 2. And the kind of inequality that the policy produces is not the kind only a statistician could see. A rule that throws out, each and every election, thousands of votes cast by minority citizens is a rule that can affect election outcomes. If you were a minority vote suppressor in Arizona or elsewhere, you would want that rule in your bag of tricks. You would not think it remotely irrelevant.

And the case against Arizona's policy grows only stronger the deeper one digs. The majority fails to conduct the "searching practical evaluation" of "past and present reality" that Section 2's "totality of circumstances" inquiry demands. *De Grandy*, 512 U. S., at 1018. Had the majority done so, it would have discovered why Arizona's out-of-precinct policy has such a racially disparate impact on voting opportunity. Much of the story has to do with the siting and shifting of polling places. Arizona moves polling places

at a startling rate. Maricopa County (recall, Arizona's largest by far) changed 40% or more of polling places before both the 2008 and the 2012 elections. See 329 F. Supp. 3d, at 858 (noting also that changes "continued to occur in 2016"). In 2012 (the election with the best data), voters affected by those changes had an out-of-precinct voting rate that was 40% higher than other voters did. See *ibid.* And, critically, Maricopa's relocations hit minority voters harder than others. In 2012, the county moved polling stations in African American and Hispanic neighborhoods 30% more often than in white ones. See App. 110–111. The odds of those changes leading to mistakes increased yet further because the affected areas are home to citizens with relatively low education and income levels. See *id.*, at 170–171. And even putting relocations aside, the siting of polling stations in minority areas caused significant out-of-precinct voting. Hispanic and Native American voters had to travel further than white voters did to their assigned polling places. See *id.*, at 109. And all minority voters were disproportionately likely to be assigned to polling places other than the ones closest to where they lived. See *id.*, at 109, and n. 30, 175–176. Small wonder, given such siting decisions, that minority voters found it harder to identify and get to their correct precincts. But the majority does not address these matters.[11]

---

[11] The majority's excuse for failing to consider the plaintiffs' evidence on Arizona's siting of polling places is that the plaintiffs did not bring a separate claim against those practices. See *ante*, at 30, n. 18. If that sounds odd, it is. The majority does not contest that the evidence on polling-place siting is relevant to the plaintiffs' challenge to the out-of-precinct policy. Nor could the majority do so. The siting practices are one of the background conditions against which the out-of-precinct policy operates—exactly the kind of thing that a totality-of-circumstances analysis demands a court take into account. To refuse to think about those practices because the plaintiffs might have brought a freestanding claim against them is to impose an out-of-thin-air pleading requirement that

Facts also undermine the State's asserted interests, which the majority hangs its hat on. A government interest, as even the majority recognizes, is "merely one factor to be considered" in Section 2's totality analysis. *Houston Lawyers' Assn.*, 501 U. S., at 427; see *ante*, at 19. Here, the State contends that it needs the out-of-precinct policy to support a precinct-based voting system. But 20 other States combine precinct-based systems with mechanisms for partially counting out-of-precinct ballots (that is, counting the votes for offices like President or Governor). And the District Court found that it would be "administratively feasible" for Arizona to join that group. 329 F. Supp. 3d, at 860. Arizona—echoed by the majority—objects that adopting a partial-counting approach would decrease compliance with the vote-in-your-precinct rule (by reducing the penalty for a voter's going elsewhere). But there is more than a little paradox in that response. We know from the extraordinary number of ballots Arizona discards that its current system fails utterly to "induce[] compliance." *Ante*, at 28–29; see *supra*, at 30–31. Presumably, that is because the system—most notably, its placement and shifting of polling places—sows an unparalleled level of voter confusion. A State that makes compliance with an election rule so unusually hard is in no position to claim that its interest in "induc[ing] compliance" outweighs the need to remedy the race-based discrimination that rule has caused.

B

Arizona's law mostly banning third-party ballot collection also results in a significant race-based disparity in voting opportunities. The problem with that law again lies in facts nearly unique to Arizona—here, the presence of rural Native American communities that lack ready access to mail

---

operates to exclude exactly the evidence that most strongly signals a Section 2 violation.

service. Given that circumstance, the Arizona statute discriminates in just the way Section 2 proscribes. The majority once more comes to a different conclusion only by ignoring the local conditions with which Arizona's law interacts.

The critical facts for evaluating the ballot-collection rule have to do with mail service. Most Arizonans vote by mail. But many rural Native American voters lack access to mail service, to a degree hard for most of us to fathom. Only 18% of Native voters in rural counties receive home mail delivery, compared to 86% of white voters living in those counties. See 329 F. Supp. 3d, at 836. And for many or most, there is no nearby post office. Native Americans in rural Arizona "often must travel 45 minutes to 2 hours just to get to a mailbox." 948 F. 3d, at 1006; see 329 F. Supp. 3d, at 869 ("Ready access to reliable and secure mail service is nonexistent" in some Native American communities). And between a quarter to a half of households in these Native communities do not have a car. See *ibid.* So getting ballots by mail and sending them back poses a serious challenge for Arizona's rural Native Americans.[12]

For that reason, an unusually high rate of Native Americans used to "return their early ballots with the assistance of third parties." *Id.*, at 870.[13] As the District Court found: "[F]or many Native Americans living in rural locations,"

---

[12] Certain Hispanic communities in Arizona confront similar difficulties. For example, in the border town of San Luis, which is 98% Hispanic, "[a]lmost 13,000 residents rely on a post office located across a major highway" for their mail service. 329 F. Supp. 3d, at 869. The median income in San Luis is $22,000, so "many people [do] not own[ ] cars"—making it "difficult" to "receiv[e] and send[ ] mail." *Ibid.*

[13] The majority faults the plaintiffs for failing to provide "concrete" statistical evidence on this point. See *ante*, at 31. But no evidence of that kind exists: Arizona has never compiled data on third-party ballot collection. And the witness testimony the plaintiffs offered in its stead allowed the District Court to conclude that minority voters, and especially Native Americans, disproportionately needed third-party assistance to vote. See 329 F. Supp. 3d, at 869–870.

voting "is an activity that requires the active assistance of friends and neighbors." *Ibid.* So in some Native communities, third-party collection of ballots—mostly by fellow clan members—became "standard practice." *Ibid.* And stopping it, as one tribal election official testified, "would be a huge devastation." *Ibid.*; see Brief for Navajo Nation as *Amicus Curiae* 19–20 (explaining that ballot collection is how Navajo voters "have historically handled their mail-in ballots").

Arizona has always regulated these activities to prevent fraud. State law makes it a felony offense for a ballot collector to fail to deliver a ballot. See Ariz. Rev. Stat. Ann. §16–1005 (Cum. Supp. 2020). It is also a felony for a ballot collector to tamper with a ballot in any manner. See *ibid.* And as the District Court found, "tamper evident envelopes and a rigorous voter signature verification procedure" protect against any such attempts. 329 F. Supp. 3d, at 854. For those reasons and others, no fraud involving ballot collection has ever come to light in the State. *Id.*, at 852.

Still, Arizona enacted—with full knowledge of the likely discriminatory consequences—the near-blanket ballot-collection ban challenged here. The first version of the law—much less stringent than the current one—passed the Arizona Legislature in 2011. But the Department of Justice, in its Section 5 review, expressed skepticism about the statute's compliance with the Voting Rights Act, and the legislature decided to repeal the law rather than see it blocked (and thereby incur statutory penalties). See 329 F. Supp. 3d, at 880; 52 U. S. C. §10303(a)(1)(E) (providing that if a state law fails Section 5 review, the State may not escape the preclearance process for another 10 years). Then, this Court decided *Shelby County*. With Section 5 gone, the State Legislature felt free to proceed with a new ballot-collection ban, despite the potentially discriminatory effects that the preclearance process had revealed. The enacted law contains limited exceptions for family members and caregivers. But it includes no similar exceptions for clan

members or others with Native kinship ties. They and anyone else who picks up a neighbor's ballot and takes it to a post office, or delivers it to an election site, is punishable as a felon. See Ariz. Rev. Stat. §16–1005(H).

Put all of that together, and Arizona's ballot-collection ban violates Section 2. The ban interacts with conditions on the ground—most crucially, disparate access to mail service—to create unequal voting opportunities for Native Americans. Recall that only 18% of rural Native Americans in the State have home delivery; that travel times of an hour or more to the nearest post office are common; that many members of the community do not have cars. See *supra*, at 36. Given those facts, the law prevents many Native Americans from making effective use of one of the principal means of voting in Arizona.[14] What is an inconsequential burden for others is for these citizens a severe hardship. And the State has shown no need for the law to go so far. Arizona, as noted above, already has statutes in place to deter fraudulent collection practices. See *supra*, at 37. Those laws give every sign of working. Arizona has not offered any evidence of fraud in ballot collection, or even an account of a harm threatening to happen. See 329 F. Supp. 3d, at 852 ("[T]here has never been a case of voter fraud associated with ballot collection charged in Arizona"). And anyway, Arizona did not have to entirely forego a ballot-collection restriction to comply with Section 2. It could, for

[14] To make matters worse, in-person voting does not provide a feasible alternative for many rural Native voters. Given the low population density on Arizona's reservations, the distance to an assigned polling place—like that to a post office—is usually long. Again, many Native citizens do not own cars. And the State's polling-place siting practices cause some voters to go to the wrong precincts. Respecting the last factor, the District Court found that because Navajo voters "lack standard addresses[,] their precinct assignments" are "based upon guesswork." *Democratic Nat. Committee* v. *Reagan*, 329 F. Supp. 3d 824, 873 (Ariz. 2018). As a result, there is frequent "confusion about the voter's correct polling place." *Ibid.*

example, have added an exception to the statute for Native clan or kinship ties, to accommodate the special, "intensely local" situation of the rural Native American community. *Gingles*, 478 U. S., at 79. That Arizona did not do so shows, at best, selective indifference to the voting opportunities of its Native American citizens.

The majority's opinion fails to acknowledge any of these facts. It quotes extensively from the District Court's finding that the ballot-collection ban does not interfere with the voting opportunities of minority groups generally. See *ante*, at 31, n. 19. But it never addresses the court's separate finding that the ban poses a unique burden for Native Americans. See *supra*, at 36–37. Except in a pair of footnotes responding to this dissent, the term "Native American" appears once (count it, once) in the majority's five-page discussion of Arizona's ballot-collection ban. So of course that community's strikingly limited access to mail service is not addressed.[15] In the majority's alternate world, the

[15] In one of those footnotes, the majority defends its omission by saying that "no individual [Native American] voter testified that [the collection ban] would make it significantly more difficult for him or her to vote." *Ante*, at 34, n. 21. But as stated above, the District Court found, based on the testimony of "lawmakers, elections officials[,] community advocates," and tribal representatives, that the ban would have that effect for many Native American voters. 329 F. Supp. 3d, at 868; see *id*., at 870 ("[F]or many Native Americans living in rural locations," voting "is an activity that requires the active assistance of friends and neighbors"); *supra*, at 36–37. The idea that the claim here fails because the plaintiffs did not produce *less* meaningful evidence (a single person's experience) does not meet the straight-face standard. And the majority's remaining argument is, if anything, more eccentric. Here, the majority assures us that the Postal Service has a "statutory obligation[]" to provide "effective and regular postal services to rural areas." *Ante*, at 34, n. 21. But the record shows what the record shows—once again, in the Court of Appeals' words, that Native Americans in rural Arizona "often must travel 45 minutes to 2 hours just to get to a mailbox." *Democratic Nat. Committee* v. *Hobbs*, 948 F. 3d 989, 1006 (CA9 2020). That kind of background circumstance is central to Section 2's totality-of-circumstances

collection ban is just a "usual burden[] of voting" for everyone. *Ante*, at 30. And in that world, "[f]raud is a real risk" of ballot collection—as to every community, in every circumstance—just because the State in litigation asserts that it is. *Ante*, at 33. The State need not even show that the discriminatory rule it enacted is necessary to prevent the fraud it purports to fear. So the State has no duty to substitute a non-discriminatory rule that would adequately serve its professed goal. Like the rest of today's opinion, the majority's treatment of the collection ban thus flouts what Section 2 commands: the eradication of election rules resulting in unequal opportunities for minority voters.

IV

Congress enacted the Voting Rights Act to address a deep fault of our democracy—the historical and continuing attempt to withhold from a race of citizens their fair share of influence on the political process. For a century, African Americans had struggled and sacrificed to wrest their voting rights from a resistant Nation. The statute they and their allies at long last attained made a promise to all Americans. From then on, Congress demanded, the political process would be equally open to every citizen, regardless of race.

One does not hear much in the majority opinion about that promise. One does not hear much about what brought Congress to enact the Voting Rights Act, what Congress hoped for it to achieve, and what obstacles to that vision remain today. One would never guess that the Act is, as the President who signed it wrote, "monumental." Johnson Papers 841. For all the opinion reveals, the majority might

---

analysis—and here produces a significant racial disparity in the opportunity to vote. The majority's argument to the contrary is no better than if it condoned a literacy test on the ground that a State had long had a statutory obligation to teach all its citizens to read and write.

be considering any old piece of legislation—say, the Lanham Act or ERISA.

But then, at least, the majority should treat the Voting Rights Act as if it were ordinary legislation. The Court always says that it must interpret a statute according to its text—that it has no warrant to override congressional choices. But the majority today flouts those choices with abandon. The language of Section 2 is as broad as broad can be. It applies to any policy that "results in" disparate voting opportunities for minority citizens. It prohibits, without any need to show bad motive, even facially neutral laws that make voting harder for members of one race than of another, given their differing life circumstances. That is the expansive statute Congress wrote, and that our prior decisions have recognized. But the majority today lessens the law—cuts Section 2 down to its own preferred size. The majority creates a set of extra-textual exceptions and considerations to sap the Act's strength, and to save laws like Arizona's. No matter what Congress wanted, the majority has other ideas.

This Court has no right to remake Section 2. Maybe some think that vote suppression is a relic of history—and so the need for a potent Section 2 has come and gone. Cf. *Shelby County*, 570 U. S., at 547 ("[T]hings have changed dramatically"). But Congress gets to make that call. Because it has not done so, this Court's duty is to apply the law as it is written. The law that confronted one of this country's most enduring wrongs; pledged to give every American, of every race, an equal chance to participate in our democracy; and now stands as the crucial tool to achieve that goal. That law, of all laws, deserves the sweep and power Congress gave it. That law, of all laws, should not be diminished by this Court.

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ANDY KIM *in his personal capacity as a candidate for U.S. Senate*, ***et al.***, Plaintiffs, v. **CHRISTINE GIORDANO HANLON,** ***et al.***, Defendants.	Civil Action No. 24-1098 (ZNQ) (TJB) **OPINION**

QURAISHI, District Judge

THIS MATTER comes before the Court upon a Motion for Preliminary Injunction (the "Motion", ECF No. 5) filed by Plaintiffs Andy Kim, Sarah Schoengood, Carolyn Rush, and their respective campaign committees (collectively, "Plaintiffs"). Plaintiffs filed a brief in support of their Motion. ("Moving Br.", ECF No. 5-1.) Defendant County Clerks Christine Giordano Hanlon, Scott M. Colabella, Paula Sollami Covello, Mary H. Melfi, Steve Peter, Holly Mackey, Nancy J. Pinkin, Joseph J. Giralo, John S. Hogan, Joanne Schwartz, Joseph Ripa, Rita Rothberg, Celeste M. Riley, Christopher J. Durkin, James N. Hogan, E. Junior Maldonado, Ann Grossi, Danielle Ireland-Imhof, and Joanne Rajoppi (collectively, "Defendants") filed oppositions to the Motion. (ECF Nos. 16, 26, 44–46, 48–51, 53, 54, 57, 59–61, 63, 65, 69.)[1] Plaintiffs filed a reply

[1] The Court granted a Motion to Intervene filed by the Camden County Democratic Committee ("CCDC") (ECF No. 121), and the CCDC attended the evidentiary hearing but did not file its own brief opposing Plaintiffs' Motion for Preliminary Injunction.

brief in further support of their Motion. ("Reply", ECF No. 95.)[2] At the Court's request, the parties filed a letter identifying *all* the relevant submissions before the Court on the Motion for Preliminary Injunction. (ECF No. 193.)[3]

Pursuant to Federal Rule of Civil Procedure 65, the Court conducted an evidentiary hearing ("Hearing") on the record on March 18, 2024. (ECF No. 159; "Hearing Tr.")

The Court has carefully considered the parties' submissions as well as the evidence and arguments presented at the Hearing. For the reasons set forth below, the Court will **GRANT** the Motion for Preliminary Injunction.

I. BACKGROUND AND PROCEDURAL HISTORY[4]

This matter arises out of the upcoming 2024 Democratic primary election (the "2024 Primary") for which Plaintiffs have declared their candidacies. Plaintiff Andy Kim is running for U.S. Senate. Plaintiff Sarah Schoengood is running for the U.S. House of Representatives for New Jersey's Third Congressional District. Plaintiff Carolyn Rush is running for the U.S. House of Representatives for New Jersey's Second Congressional District. Defendants are the County Clerks for nineteen of the twenty-one counties in New Jersey.[5]

On February 26, 2024, Plaintiffs filed a Verified Complaint raising concerns with a ballot design used for primary elections in nineteen of the twenty-one counties in New Jersey. ("V.C.",

---

[2] The Court additionally received six amici submissions, (ECF Nos. 90 (certifications from candidate amici), 116–18, 128, 134, 136.)

[3] The Court has carefully reviewed each of these submissions. It does note that the parties' joint list appears to have omitted the Response in Opposition by Joanne Schwartz at ECF No. 53.

[4] The Court recites the procedural history only as relevant to the instant Motion. Notably, various issues concerning the underlying litigation that are not relevant here, such as discovery disputes, have been stayed pending the Court's resolution of Plaintiffs' Motion.

[5] The remaining two County Clerks are named as interested parties, together with Tahesha Way in her official capacity as Secretary of State for New Jersey and her related role as chief elections officer in the state. The Attorney General for the State of New Jersey advised by letter dated March 17, 2024, that he was electing not to intervene in this matter. (ECF No. 149.) His letter included additional discussion that this Court does not consider, given that it was essentially provided by a non-party that had not sought leave to brief the Court amicus curiae.

ECF No. 1.) Plaintiffs' Motion for Preliminary Injunction was filed on the same day. (ECF No. 5.) In their Verified Complaint, Plaintiffs allege that the ballot design's "bracketing system" infringes upon their constitutional rights under the First Amendment[6]—specifically, the Right to Vote (Count I), Equal Protection (Count II), and Freedom of Association (Count III)—and that it violates the Elections Clause of the U.S. Constitution (Count IV). (V.C. ¶¶ 168–227.)[7]

Defendants were properly served. (ECF No. 8.) Interested parties Tahesha Way, as Secretary of State for New Jersey, and County Clerks for the remaining two counties in New Jersey were furnished with copies of, *inter alia*, the Verified Complaint and Plaintiffs' Motion. (*Id.*) Plaintiffs also furnished the following non-parties with copies of the Verified Complaint and Motion: all declared candidates that at the time were running against Plaintiffs in the upcoming primary election, the Democratic and Republican State Committees, and all county party committees for whom email addresses could be found. (*Id.*)

By way of background, the Verified Complaint alleges the following facts.

In nineteen of its twenty-one counties, New Jersey's primary election ballot system features, or "brackets," certain groups of candidates together in the same column[8] based on endorsements by political party leaders (the "Bracketing Structure"), rather than grouping candidates together based on the office for which they are running ("Office Block Structure").[9] (V.C. ¶¶ 3–6, 53–55, 62.) New Jersey is the only state in the country that organizes its primary election ballots by the Bracketing Structure. (*Id.* at 2 n.1; *id.* ¶¶ 1, 5.) The Bracketing Structure is

---

[6] Plaintiffs correctly plead their First Amendment injuries via the Fourteenth Amendment. For the sake of brevity only, the Court refers directly to the First Amendment.
[7] Plaintiffs' claims are brought pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, and 42 U.S.C. § 1983.
[8] The Verified Complaint refers to "column" as either the vertical or horizontal grouping together of the various bracketed candidates on New Jersey ballots. (V.C. ¶ 3.)
[9] The two New Jersey counties that do not and have historically not used the Bracketing Structure for their ballots, Salem County and Sussex County, use the Office Block Structure instead. (*Id.* ¶ 55.)

governed by New Jersey state law,[10] which allows candidates to request that they be bracketed, or grouped, with other party-endorsed candidates on the ballot. (*Id.* ¶¶ 6, 59–60.)

Once the deadline passes for submitting bracketing requests, whichever office position the County Clerk draws first becomes the "pivot point" of that county's ballot. (*Id.* ¶ 56.) The pivot point is the first column (or row, depending on the design) that appears on that county's primary ballot. (*Id.* ¶¶ 56, 65–66.)[11] This is known as the "preferential ballot draw." (*Id.* ¶ 7.) The other candidates endorsed by the county party and thus bracketed with the endorsed pivot point candidate(s) are then automatically placed on that same column (or row), with the same county party slogan. (*Id.* ¶¶ 6, 14, 62, 65.) This is referred to as the "county line." (*Id.* at 3.)

If a candidate chooses not to bracket with other candidates, or requests to do so but loses that spot to another candidate, that candidate is an "unbracketed candidate." (*Id.* ¶ 58.) Unbracketed candidates cannot receive the first ballot position (*i.e.*, the top left position), and are placed instead either farther to the right or farther to the bottom of the ballot, with no guarantee that they will be placed on the next available column after the bracketed candidates. (*Id.* ¶¶ 65–67.)[12] As a result, unbracketed candidates tend to occupy obscure parts of the ballot that appear less important and are harder to locate, and may be grouped in a column with other candidates with whom they did not want to be associated. (*Id.* ¶ 67.)

The Bracketing Structure is not imposed consistently throughout New Jersey, as the layout for a given county's ballot depends on that county's pivot point, and County Clerks have applied

[10] Defendants are elected officials vested with certain statutory duties and obligations including but not limited to designing, preparing, and printing all ballots, issuing mail-in ballots, and conducting a drawing for ballot positions for various elections held in various counties. (*Id.* ¶¶ 28–47.)

[11] According to the Verified Complaint, New Jersey law requires U.S. Senators (or Governors, if not Senators) to be drawn as the pivot point when those positions are up for election. (*Id.* ¶¶ 69–70.)

[12] Specifically, the Verified Complaint alleges that unbracketed candidates are: "(a) placed multiple columns away from the bracketed candidates, (b) stacked in the same column as another candidate for the exact same office, and/or (c) placed in the same column as candidates with whom they did not request to bracket and who requested a different ballot slogan." (*Id.* ¶ 67.)

internally inconsistent approaches to determining the pivot point candidate. (*Id.* ¶¶ 73, 75–76.) The Verified Complaint makes several allegations regarding the purported effects of the county line on elections in New Jersey, including positional bias, "arbitrary advantage[s]" that are given to candidates on the county line, and voter confusion. (*Id.* ¶¶ 77–78, 84–87.) Several expert reports were submitted with the Verified Complaint in connection with Plaintiffs' claims. (*Id.* ¶¶ 103–133; *id.* at Exs. B–E.)

The Verified Complaint also alleges the ways each Plaintiff has been or will be affected by the county line. Kim launched his campaign for the position of U.S. Senator in the 2024 Primary on September 23, 2023. (*Id.* ¶ 144.) Within one week after Tammy Murphy's campaign started for the same position, numerous counties in New Jersey endorsed her, including some of the largest Democratic counties in the state and totaling over half of New Jersey's registered Democratic voters. (*Id.* ¶ 145.) Although Kim at the time had received some endorsements himself, Murphy's position on the county line over Kim in certain counties disadvantaged Kim in the election and forced him to consider choosing to bracket with other candidates to avoid further disadvantages. (*Id.* ¶¶ 147–50.) Previously, Kim was elected three times—in 2018, 2020, and 2022—to represent New Jersey's Third Congressional District. (*Id.* ¶ 137.) Although Kim was unopposed in 2018 and 2020, he expressed frustration in 2018 with having to appear on the ballot in a column with Senator Bob Menendez. (*Id.* ¶¶ 139–40, 142.) After this suit was filed and the Hearing was conducted, Tammy Murphy announced her withdrawal from the Democratic Primary. Kim has been offered the county line in 17 counties. He accepted the line in 16, declining the county line in Camden because the CCDC is adverse to him in this suit.[13] He will therefore not appear on the county line in Camden.

[13] As of the parties' last communication dated March 27, 2024 on the status of endorsements, Cumberland County had not yet offered Mr. Kim its endorsement. (ECF No. 188.)

Schoengood declared her candidacy on January 21, 2024, for New Jersey's Third Congressional District, which is comprised of the counties of Monmouth, Burlington, and Mercer. (*Id.* ¶¶ 151–52.) She did so after the deadline had passed for her to seek endorsement in Monmouth County by its Democratic Committee, and thus will not be featured on the county line. (*Id.*) She will also not be featured on the county line in Burlington County, which had already by that time selected its endorsed candidate. (*Id.* ¶ 153.) Schoengood does not wish to consider bracketing with any senatorial candidate other than Kim, with whom her ideology aligns, and therefore it is "virtually certain" she will be excluded from preferential ballot draws in the Third Congressional District. (*Id.* ¶¶ 154, 157.) She is thus an unbracketed candidate. (*Id.* ¶ 155.)

Rush declared her candidacy for New Jersey's Second Congressional District, which is comprised of the counties of Atlantic, Cape May, Cumberland, and Salem, and portions of Gloucester and Ocean Counties, both in the 2024 Primary and in the 2022 primary election. (*Id.* ¶ 158.) In 2022, her opponent Tim Alexander was featured on the county line in Cumberland, Cape May, Atlantic, and Ocean Counties. (*Id.* ¶ 159.) In Gloucester County, Rush shared the county line with Alexander even though the vote was only for one person. (*Id.* ¶ 160.) She did not prevail in the election despite obtaining 38.8% of the total vote. (*Id.*) In the 2024 Primary, four counties had endorsed Alexander for the county line by the time the Verified Complaint was filed, putting her at a "substantial electoral disadvantage." (*Id.* ¶ 162.)

Voting for the 2024 Primary will occur on June 4, 2024. (*Id.* ¶ 164.) Plaintiffs filed the instant Motion for Preliminary Injunction seeking declaratory and injunctive relief, including an order enjoining Defendants from using the county line system in the 2024 Primary.

II. JURISDICTION

Based on the nature of the constitutional claims asserted, the Court has jurisdiction over the subject matter of this suit pursuant to 28 U.S.C. §§ 1331 and 1343.

III. STANDING

Defendants challenge Plaintiffs' standing to raise their claims. The analysis is relatively straightforward. Plaintiffs' First Amendment claims allege that the Bracketing System and ballot placement for primaries in New Jersey confer advantages to candidates who win a county line, bracket with other candidates, and/or are placed in an early position on the ballot. There is at least one county where Kim will not have the county line: Camden. There is at least one county where Schoengood will not have the county line: Monmouth, Burlington, and Mercer. Finally, there is at least one county where Rush will not have the county line: Ocean County. Moreover, even in counties where Plaintiffs will be appearing on a county line and/or bracket, they allege an associational harm of being forced to associate with other candidates not of their choosing. With respect to Plaintiffs' Elections Clause claims, Plaintiffs' allegations of an impermissible regulation of federal elections are sufficient to show an injury-in-fact given that the Bracketing Structure regulates federal elections, and the three plaintiffs allege injuries related to their candidacy in such elections. Accordingly, the Court finds that Plaintiffs have alleged sufficient injuries-in-fact.

Moreover, Plaintiffs' injuries derive from the current and future enforcement of the Bracketing Structure. Thus, Plaintiffs' injuries flow directly from Defendants' actions. *See Duke Power Co. v. Carolina Env't Study Grp., Inc.*, 438 U.S. 59, 77–78 (1978) (applying a "but for" test to the causation analysis). It is likely that a declaratory judgment stating that the Bracketing Structure is unconstitutional and an injunction enjoining Defendants from enforcing it would prevent Plaintiffs' injuries. *See Friends of the Earth*, *Inc. v. Laidlaw Env'tal Servs.*, 528 U.S. 167,

185–86 (2000) (reasoning that "for a plaintiff who is injured or faces the threat of future injury due to illegal conduct ongoing at the time of suit, a sanction that effectively abates that conduct and prevents its recurrence provides a form of redress"); *New Jersey Civ. Just. Inst. v. Grewal*, Civ. No. 19-17518, 2021 WL 1138144, at *5 (D.N.J. Mar. 25, 2021) (same).

For these reasons, the Court concludes Plaintiffs have standing to raise each of their claims in this matter.

IV. FAILURE TO JOIN CERTAIN PARTIES

Defendants (other than Holly Mackey and E. Junior Maldonado) argue that this matter should be dismissed because certain parties were not named despite being required under Federal Rule of Civil Procedure 19. (*See, e.g.*, ECF No. 63 at 39–41.) The list of parties that Defendants view as indispensable is substantial: Plaintiffs' opponents in the primary; all other primary candidates; all county Democratic and Republican county committees; county boards of election and superintendents of election; and all local and statewide political organizations. Defendants argue that these absent parties' constitutional rights "hang in the balance." (ECF No. 50 at 5.)

Plaintiffs respond that the Court has already rejected similar arguments in *Conforti v. Hanlon*, Civ. No. 20-8267, 2022 WL 1744774 (D.N.J. May 31, 2022), and should do so again here. In their view, Plaintiffs in this case have gone further than *Conforti* plaintiffs by naming as Interested Parties the other County Clerks (Salem and Sussex) and the Secretary of State; and serving the Verified Complaint and Motion on their opponents in the primary, the Democratic and Republican State Committees, and 39 of the 42 Democratic and Republican county party committees. (Reply at 1–3; V.C. ¶¶ 48–52.) None of these parties has sought to intervene other than the Camden County Democratic Committee.

A Rule 19 analysis is a two-step process. *See Gen. Refractories Co. v. First State Ins. Co.*, 500 F.3d 306, 312 (3d Cir. 2007). Given that a failure to name a required party can be grounds for dismissal for lack of subject-matter jurisdiction, *see Provident Tradesmens Bank & Trust Co. v. Patterson*, 390 U.S. 102, 117 (1968), a court must first determine whether a party is a "necessary" party that must be joined if "feasible" under Rule 19(a). *Janney Montgomery Scott, Inc. v. Shepard Niles, Inc.*, 11 F.3d 399, 404 (3d Cir. 1993).[14] If the party is necessary, but joinder is not feasible because it would defeat subject-matter jurisdiction, then the Court must determine whether the party is "indispensable" under Rule 19(b). *Gen. Refractories Co*., 500 F.3d at 312*; accord Janney Montgomery Scott*, 11 F.3d. at 404. "A holding that joinder is compulsory under Rule 19(a) is a necessary predicate to the district court's discretionary determination under Rule 19(b)." *Culinary Serv. of Delaware Valley, Inc. v. Borough of Yardley, Pa.*, 385 F. App'x 135, 145 (3d Cir. 2010) (citation omitted). If the party is found to be indispensable under Rule 19(b), the action therefore cannot go forward. *See Janney Montgomery Scott*, 11 F.3d. at 404.

Rule 19(a)(1) provides that:

---

[14] The Third Circuit in *Janney Montgomery Scott* discussed the differences between the present and prior Rule 19 wording:

> The present version of Rule 19 does not use the word "necessary." It refers to parties who should be joined if *feasible.* The term *necessary* in referring to a Rule 19(a) analysis harks back to an earlier version of Rule 19. It survives in case law at the price of some confusion. *See Provident Tradesmens Bank & Trust Co. v. Patterson*, 390 U.S. 102, 116 n. 12, 88 S. Ct. 733, 741 n. 12, 19 L. Ed. 2d 936 (1968) ("Where the new version [of the Rule] emphasizes the pragmatic consideration of the effects of the alternatives of proceeding or dismissing, the older version tended to emphasize classification of parties as 'necessary' or 'indispensable.'"); *see also Park v. Didden*, 695 F.2d 626, 627 (D.C. Cir. 1982) (acknowledging 1966 amendments to the Rule as attempt to circumvent "'a jurisprudence of labels'") (citation omitted).

Id. at 404 n.4. However, *Janney Montgomery Scott* favorably used the "necessary" language in its analysis. Therefore, the Court will employ the same language in its own analysis.

> *Required Party*. A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:
>
> (A) in that person's absence, the court cannot accord complete relief among existing parties; or
>
> (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
>
> > (i) as a practical matter impair or impede the person's ability to protect the interest; or
> >
> > (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

Fed. R. Civ. P. 19(a)(1). "Any party whose absence results in any of the problems identified in either subsection is a party whose joinder is compulsory if feasible." *Janney Montgomery Scott*, 11 F.3d at 405.

Here, the Court finds that joinder of the parties sought by Defendants is feasible because the matter presents a federal question (such that joinder of the additional defendants would not risk depriving the Court of subject matter jurisdiction) and because Plaintiffs have neither argued nor shown that the absent parties would not be subject to formal[15] service of process. Accordingly, the Court moves on to assessing the alternative prongs of Rule 19(a)(1)(A) and 19(a)(1)(B) to determine whether joinder of the absent parties is "necessary."

"Subsection (a)(1)(A) is limited to considerations of whether the court can grant complete relief to persons already named; the effect on unnamed parties is immaterial." *Culinary Serv. of Delaware Valley*, 385 F. App'x at 145; *accord Field v. Volkswagenwerk AG*, 626 F.2d 293, 301 (3d Cir. 1980), *modified on other grounds* (quoting 3A James W. Moore et al., *Moore's Federal*

---

[15] The Court distinguishes formal service of process from any informal process by which Plaintiffs have served the various absent parties identified in their Verified Complaint. (V.C. ¶¶ 48–52.)

Practice ¶¶ 19.07–1[2], at 19–128 (2d ed. 1979), and counseling that "mere theoretical considerations of disposing of the whole controversy should not be employed" to dismiss an action [on Rule 19(a)(1) grounds] 'where it appears unlikely that absent persons could be adversely affected'").

"Subsection (a)(1)(B), however, requires the court to take into consideration the effect the resolution of the dispute may have on absent parties." *Culinary Serv. of Delaware Valley*, 385 F. App'x at 145 (citation omitted). "Under the first prong of subsection (a)(1)(B), a party must show that some outcome of the federal case would preclude the absent parties with respect to an issue material to the absent parties' rights or duties." *Id.* (citation omitted). "[C]oncerns regarding privity and the possibility of preclusion are too speculative to require joinder. *Id.* (citation omitted). "The second prong of (a)(1)(B) focuses on the obligations of named parties, not absent parties." *Id.* (citations omitted). "Further, an unsubstantiated or speculative risk will not satisfy Rule 19(a) criteria—the possibility of exposure to multiple or inconsistent obligations must be real." *Id.* (citation omitted).

Subsection (a)(1)(A) does not apply to absent parties. Therefore, the Court will consider whether the absent parties must be joined under subsection (a)(1)(B). First, the Court finds that the absent County Boards of Elections and Superintendents of Elections are not necessary parties under subsection (a)(1)(B)(i). The Defendant County Clerks argue that ordering the County Clerks to change the ballot structure will not afford complete relief because "the putative new ballot structure Plaintiffs seek to have the Court impose would need to be configured to voting machines, which are outside of the control and purview of the County Clerks." (ECF No. 63 at 39–40.) Rather, the Defendant County Clerks contend, each County's Board of Elections or Superintendent of Elections has custody over voting machines. (*See id.*) (citing N.J. Stat. § 19:48-6)). Therefore,

the County Clerks argue that at least joinder of those absent parties is necessary to afford complete relief. (*See id.*)

The Court disagrees that custody over voting machines is relevant to the issue at hand. The issue here is ballot design, over which Defendant County Clerks do, in fact, have custody and control. (*See* V.C. ¶¶ 28–47.)

Furthermore, the Court finds the absent County Boards of Elections and Superintendents of Elections are not necessary parties under subsection (a)(1)(B)(ii). This subsection focuses on the effect on obligations of named parties, and there is no real risk that deciding the case without joining the absent parties would expose any of the named parties to "a substantial risk of incurring double, multiple, or otherwise inconsistent obligations . . . ." Fed. R. Civ. P. 19(a)(1)(B)(ii). For instance, a county clerk's duties regarding voting machines are clearly delineated in N.J. Stat. §19:48-6 and other provisions of New Jersey law (*see* V.C. ¶¶ 28–47), and any concerns on their behalf are purely speculative. The Court therefore finds that although it is feasible to join the County Boards of Elections and Superintendents of Elections, it is not necessary to join these absent parties in this action. For this reason, the Court need not decide whether the County Boards of Elections and Superintendents of Elections are indispensable parties under Rule 19(b).

The Court next considers whether the other absent parties Defendants mention—other primary candidates; all county Democratic and Republican county committees; Plaintiffs' opponents in the primary; and all local and statewide political organizations—are necessary parties under subsection (a)(1)(B). For the reasons stated below, the Court finds that these are not necessary parties.

Defendants argue that these are necessary parties under subsection (a)(1)(B)(i) because "the Bracketing System at least serves a legitimate interest of political candidates to associate with

one another and for political parties to endorse candidates . . . ." (ECF No. 63 at 40.) Defendants note that the Supreme Court held these constitutional interests to be compelling in *Eu v. San Francisco County Democratic Central Committee*, 489 U.S. 214 (1989) and that upending the bracketing system would impair the interests of the absent parties. (ECF No. 63 at 40.)

However, Defendants misplace their reliance on *Eu*. That case concerned challenges to sections of the California Election Code that purported to, *inter alia*, ban primary endorsements by political parties and dictate the organization and composition of those parties. *See Eu, 489 U.S.* at 216. The U.S. Supreme Court in *Eu* opined:

> Barring political parties from endorsing and opposing candidates not only burdens their freedom of speech but also infringes upon their freedom of association. It is well settled that partisan political organizations enjoy freedom of association protected by the First and Fourteenth Amendments. Freedom of association means not only that an individual voter has the right to associate with the political party of her choice, but also that a political party has a right to "'identify the people who constitute the association,'" and to select a "standard bearer who best represents the party's ideologies and preferences." Depriving a political party of the power to endorse suffocates this right.

Id. at 224 (citations omitted).

Defendants have not adequately explained how a change to the county line balloting system would burden the interests of the absent political committees, parties, and organizations. Unlike in *Eu*, this is not a case of an outright ban on primary endorsements by political parties, nor is it a case of a state dictating the internal organization of a political party or political organization. Absent the Bracketing Structure, political parties and political organizations would still maintain the freedom to endorse their preferred candidates. Merely presenting the information in a different format, the Office Block Structure, will not detract from the political parties' and political organizations' freedom of speech and association. In fact, Plaintiffs made clear in their Verified Complaint that they do not seek to inhibit political parties' ability to endorse candidates:

> Plaintiffs do not seek to disrupt the conduct of parties in their right to endorse the standard-bearer of their choice, or their right to contribute and pool resources to support that candidate in the primary or general election. Nor do Plaintiffs seek to disrupt the ability of parties to signify their endorsements or slogans on the ballot alongside the candidates of their choice.

(V.C. ¶ 17.) Clearly, the Defendants' stated interest does not rise to the level of the interests identified in *Eu.* Consequently, the Court finds that these parties are not necessary under subsection (a)(1)(B)(i). Nor are they necessary under subsection (a)(1)(B)(ii). Any concerns about the effect of the balloting system on the existing parties are purely speculative, as there is no real risk that deciding the case without joining these absent parties would adversely affect the obligations of the named parties. In fact, the allegations in the Verified Complaint (as well as Plaintiffs' supporting evidence discussed further, infra) suggest that maintaining the *current* Bracketing Structure adversely affects the named parties by creating "arbitrary advantage[s]" for candidates on the county line and leading to voter confusion. (V.C. ¶¶ 77–78, 84–87.) For the above reasons, the Court finds that the absent parties are not required to be joined under Rule 19(a). Therefore, the Court need not decide whether they are indispensable parties under Rule 19(b).[16]

[16] Even if Rule 19(b) did apply, the Court would find the absent parties were not indispensable parties. Under Rule 19(b), the Court would have to consider, in relevant part: "(1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;" or "(2) the extent to which any prejudice could be lessened or avoided by: (A) protective provisions in the judgment; (B) shaping the relief; or (C) other measures[.]" Fed. R. Civ. P. 19(b). Regarding (1), as discussed, Defendants have not adequately explained how failing to join the absent parties would prejudice the absent parties or the existing parties. Regarding (2), Defendants argue that there is no way to shape the relief Plaintiffs seek—requiring the County Clerks to use an "office-block ballot"—that would not require joining the absent county officials. (*See* ECF No. 63 at 41.) However, this argument is undermined by the fact that Salem County and Sussex County both use the Office Block Structure instead of the Bracketing Structure. (*See* V.C. ¶ 55.) Moreover, Plaintiffs' expert, Mr. Ryan Macias, testified at the Hearing that all of New Jersey's balloting machines are capable of laying out both paper and electronic ballots in the Office Block Structure instead of the Bracketing Structure. (*See* Hearing Tr. at 93:21–96:19). Defendants' response, via their expert David Passante's testimony, that their county officials and printing staff are unprepared to implement a new balloting system, does not entirely rebut Macias's point and therefore does not constitute a compelling reason to join additional parties. (*See* Hearing Tr. 257:16–259:17.)

V. THE MARCH 18, 2024 EVIDENTIARY HEARING

A. DEFENDANTS' MOTIONS IN LIMINE

The Court first addresses seven motions in limine filed on the day of the Hearing by Defendants Durkin, Ireland-Imhof, and Rajoppi ("Moving Defendants"). The motions sought to prevent Plaintiffs' expert witnesses from testifying and to preclude the Court's consideration of their expert reports. (ECF Nos. 152–158.) Plaintiffs filed an omnibus brief opposing all seven motions. ("MIL Opp'n Br.", ECF No. 177.) This unusual posture warrants some explanation.

Defendants first indicated their intention to file "pre-hearing motions" of an unspecified type as part of a Joint Proposed Hearing Agenda filed by the parties three days before the Hearing:

> *Defendants' Position:* Any pre-hearing motions shall be filed on or before March 15, 2024. Defendants believe that motions related to evidence are appropriate in advance of an evidentiary hearing and intend on filing same today. Defendants have offered to Plaintiffs that responses to any such motions may be filed by March 17, 2024.

(ECF No. 140 at 5.) Plaintiffs responded that they did not believe pre-hearing motions were appropriate given the nature of the Hearing. (*Id.*) On the basis of the information provided by the parties, the Court decided the issue by instructing counsel "to timely raise any objections during the hearing rather than file pre-hearing motions." (ECF No. 141 at 5.)

At the start of the Hearing, however, Moving Defendants' intentions became clear when they raised their dispute as to the qualifications of Plaintiffs' experts. (*See* Hearing Tr. 24:13–25:25.) Given that the Hearing had already commenced and there was no jury involved, the Court exercised its discretion to permit the experts to testify as planned, and reserved its decision as to the merits of the motions in limine. (*Id.* at 26:1–14.) *See UGI Sunbury LLC v. A Permanent Easement for 1.775 Acres*, 949 F.3d 825, 833 (3d Cir. 2020). Accordingly, the Court addresses

the motions by assessing, after the fact, the experts' testimony and reports. For the reasons set forth below, the Motions in Limine will be **DENIED**.

1. MOTION No. 1: SEEKING TO EXCLUDE TESTIMONY OF ALL PLAINTIFFS' EXPERTS BASED ON FAILURE TO COMPLY WITH DISCOVERY REQUIREMENT

Moving Defendants' First Motion in Limine is premised on discovery and cries unfair delay. They cite Federal Rule of Civil Procedure 26 for the principle that expert disclosures must be made "at least 90 days before the date set for trial or for the case to be ready for trial[.]" ("First MIL", ECF No. 152-2 at 5) (quoting Fed. R. Civ. P. 26(a)(2)(D)(i)). Moving Defendants argue that Plaintiffs contacted their experts more than two months before disclosing their opinions in this suit and Plaintiffs obtained one complete expert report nearly two months before filing suit. (*Id.* at 6.) According to Moving Defendants, Plaintiffs' decision to pursue an "eleventh-hour filing" with regard to the primary election deprived all Defendants of the opportunity to depose Plaintiffs' experts or prepare rebuttal reports. (*Id.*)

Plaintiffs broadly argue that all seven of Moving Defendants' motions in limine are merely attempts to "relitigate their claims of 'delay.'" (MIL Opp'n Br. at 1.) Plaintiffs also argue that Moving Defendants "confuse *admissibility* of an expert's testimony with the question of how much *weight* it should be given" when addressing the merits of Plaintiffs' Motion. (*Id.*) (emphasis in original). Finally, Plaintiffs contend that Moving Defendants misunderstand the concept of "relevance" under the Federal Rules of Evidence as well as "how time can be computed" in the context of an expedited hearing under the Federal Rules of Civil Procedure. (*Id.*) (emphasis in original). As it relates to the First Motion in Limine, Plaintiffs detail the timeline, content, and speed of the expert reports authored by Dr. Wang, Dr. Pasek, Dr. Rubin, and Dr. Appel. (*Id.* at 5–9.) Plaintiffs take the position that they brought this emergent application in a timely manner, with the proper evidence to support such application consistent with Article III standing requirements.

(*Id.*) Plaintiffs deny the existence of any "grand scheme to line the whole case up in advance, press the pause button, and press play at the last second." (*Id.*)

First, Moving Defendants provide no authority to support the notion that the disclosure requirements of Rule 26(a)(2)(D)(i) apply to a hearing on a motion for preliminary injunction. (*See generally* First MIL.) Indeed, as accurately quoted by Moving Defendants' brief, the language of this part of the Rule contemplates a "trial" rather than a preliminary hearing. (*Id.* at 5–6; *see also* MIL Opp'n Br. at 10.) Setting aside the language of the Rule, Plaintiffs and the Court agree: reason dictates that it would defeat the purpose of a litigant seeking emergent relief if that litigant were required to wait 91 days for a hearing so that it could meet the strictures of Rule 26(a)(2)(D)(i). (MIL Opp'n Br. at 10.) Here, Plaintiffs provided their expert reports the very same day they filed suit. Plaintiffs explain how the experts "worked concurrently and not sequentially" and the four expert reports "could not have come any earlier than they did." (*Id.* at 8–9.) Their disclosures could not reasonably be expected to have been provided to Moving Defendants any earlier.

Next, as Plaintiffs note, Moving Defendants' actual challenge is to when this suit was filed. That issue is properly addressed on the merits of Plaintiffs' emergent application rather than on a motion in limine. As a final alternative, even if Plaintiffs' disclosures could be deemed a technical violation under Rule 26(a), the Court finds that Plaintiffs' technical failure was nevertheless "substantially justified" within the meaning of Rule 37(c)(1) based on the circumstances of this case. For these reasons, the Court will **DENY** Moving Defendants' First Motion in Limine (ECF No. 152).

2. MOTION Nos. 2–5: SEEKING TO EXCLUDE TESTIMONY OF RUBIN, APPEL, WANG, AND PASEK BASED ON THE FEDERAL RULES OF EVIDENCE

Four of the Motions in Limine—the Second through Fifth Motions in Limine—raise challenges to the experts' testimony and reports based on Federal Rule of Evidence 702 alone or in combination with Rule 402. (ECF Nos. 153–156.) The Court can dispose of these Motions quickly. The Federal Rules of Evidence are "relaxed" in the context of a hearing on a motion for preliminary injunction. (*See* Hearing Tr. 89:18–19) (Court reminding counsel of relaxed application of evidence rules); *see also Kos Pharms., Inc. v. Andrx Corp.*, 369 F.3d 700, 718 (3d Cir. 2004); *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981) (noting that because preliminary injunctions have a "limited purpose," they are "customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits"). For reasons unclear, the moving briefs supporting these motions in limine do not acknowledge, much less mention, that fact. Plaintiffs however, repeatedly emphasize that Moving Defendants' arguments improperly challenge the admissibility of the expert testimony.[17] (*See* MIL Opp'n Br. at 1, 12, 17.) At best, Plaintiffs claim, Moving Defendants' challenges relate to the weight the Court should give the expert reports and testimony. (*See id.* at 12, 17.)

Given the expedited schedule leading up to the Hearing driven by the emergent nature of the pending application, coupled with the relaxed standards generally utilized during a preliminary injunction hearing, the Court declines to exclude the expert testimony as inadmissible. With respect to emergent applications, courts routinely permit expert testimony at preliminary injunction hearings before addressing any challenges to the expert testimony. *See, e.g.*, *In re Ohio*

[17] For the avoidance of doubt, Plaintiffs firmly oppose Moving Defendants' admissibility challenges and Plaintiffs' position is that "each and every expert proffered by Plaintiffs qualifies as an expert under Rule 702." (MIL Opp'n Br. at 4.)

Execution Protocol Litig., Civ. No. 11-1016, 2018 WL 6382108, at *2 (S.D. Ohio Dec. 6, 2018) ("However in this case it is simply not possible to put the process on hold while the *Daubert* inquiry is separately conducted, given the imminence of the hearing . . . ."); *F.T.C. v. BF Labs Inc.*, Civ. No. 14-815, 2014 WL 7238080, at *2 n.3 (W.D. Mo. Dec. 12, 2014) (explaining that defendants moved to exclude expert testimony but the court took the motions "under advisement" and permitted the expert to testify at the hearing). Notably, at this stage of the proceedings, rather than evaluate the admissibility of the expert testimony, the more appropriate inquiry is to determine whether the expert reports and testimony "present the indicia of reliability common to expert testimony." *Parks v. City of Charlotte*, Civ. No. 17-670, 2018 WL 4643193, at *4 (W.D.N.C. Sept. 27, 2018).

Here, the Court finds that, for the limited purposes of resolving the pending preliminary injunction application, Plaintiffs' expert reports and their testimony contain the indicia of reliability sought under Rule 702 and *Daubert*. The reports and testimony seek to explain, *inter alia*, the "feasibility of using New Jersey's existing equipment and software to present office-block ballots to primary voters," the impact the county line had on candidates who were awarded it, and how ballot design affects voter behavior. (*See generally* MIL Opp'n Br.) Notably, the experts rely upon their professional and educational experience when providing the various quantitative and statistical analysis within their respective reports. Further, the Court finds that the various challenges raised in the Second through Fifth Motions in Limine attacking the reliability, relevance, and methodological flaws of the reports and testimony more properly go to the weight the Court affords the testimony and not the admissibility. *See BF Labs Inc.*, 2014 WL 7238080, at *2 n.3. For these reasons, the Court will **DENY** Moving Defendants' Second through Fifth Motions in Limine (ECF Nos. 153–156).

3. MOTIONS Nos. 6–7: SEEKING TO EXCLUDE THE TESTIMONY OF PASEK AND MACIAS BASED ON THE FEDERAL RULES OF CIVIL PROCEDURE

The Sixth and Seventh Motions in Limine raise challenges to Dr. Pasek and Mr. Macias's testimony and reports based on Rule 26(a)(2)(D)(ii).[18] ("Sixth MIL", ECF No. 157; "Seventh MIL", ECF No. 158.) Moving Defendants rely on Rule 26(a)(2)(D)(ii) for the proposition that an expert's reply is prohibited unless it is "intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(a)(2)(B)." (Sixth MIL at 1) (quoting Fed. R. Civ. P. 26(a)(2)(D)(ii)). Here, Moving Defendants have not procured their own experts. (*Id.*) Accordingly, they argue that Dr. Pasek's Expert Reply, attached as Exhibit A to Plaintiffs' Reply ("Expert Reply", ECF No. 95 at 48–57), and Mr. Macias' expert report and testimony should be excluded because they do "not purport to rebut any expert report submitted by any of the Defendants[.]" (Sixth MIL at 1.)

First, the Court finds that Moving Defendants' reliance on Rule 26(a)(2)(D)(ii) to exclude Dr. Pasek's Expert Reply and testimony is inapposite. Rule 26(a)(2)(D)(ii) governs expert *rebuttal* reports, not expert *reply* reports. *See Haskins v. First Am. Title Ins. Co.*, Civ. No. 10-5044, 2013 WL 5410531, at *2 (D.N.J. Sept. 26, 2013) (citing *Crowley v. Chait*, 332 F. Supp. 2d 530, 550–51 (D.N.J. 2004)); *Kleen Prods. LLC v. Int'l Paper*, 306 F.R.D. 585, 591 (N.D. Ill. 2015) ("Rule 26 does not address reply expert reports.") Unlike Mr. Macias's report, which Plaintiffs' characterized as a "rebuttal", (ECF No. 115), Dr. Pasek's Expert Reply was submitted as part of Plaintiffs' Reply Brief. Therefore, the Expert Reply is a reply report, not a rebuttal report.

[18] Defendants also argue that Mr. Macias's report should be excluded because it was filed and served on March 13, 2024, a day after the Court's deadline for Plaintiffs to reply to Defendants' opposition of March 12, 2024. (Seventh MIL at 1; ECF No. 34.) Notably, Defendants do not argue that they suffered any impact or prejudice due to this one-day delay. As such, the Court rejects Defendants' challenge to Mr. Macias's report on this basis.

Even so, Moving Defendants' challenge to the expert testimony is narrow because they do not challenge the contents of the testimony. Instead, Moving Defendants argue that Dr. Pasek and Mr. Macias do not respond to any expert testimony procured by Moving Defendants. (Sixth MIL at 1; Seventh MIL at 2.) Though Moving Defendants did not procure experts, Plaintiffs argue that the expert reports responded to Defense certifications that "contained a fair amount of 'technical discussion.'" (*Id.* at 22) (quoting Suppl. Certification of Ryan Macias, ECF No. 171 at ¶ 5). Plaintiffs emphasize Dr. Pasek and Mr. Macias were responding to briefs and certifications containing "arguments that were at least arguably in the realm of experts, not fact witnesses." (MIL Opp'n Br. at 20–21.) And as Plaintiffs reiterate, rules of procedure are relaxed in the context of preliminary injunction hearings. (MIL Opp'n Br. at 20, 22.) Moving Defendants recognize that the emergent nature of this application might have impacted their opportunity to procure experts. (Sixth MIL at 1.) Yet Moving Defendants fail to appreciate that Plaintiffs' experts are rebutting arguments raised by Moving Defendants in their various opposition briefs and certifications in the absence of, or even more accurately, in lieu of, expert testimony. Considering the circumstances of this case and the emergent nature of the application, the Court rejects Moving Defendants' hyper-technical challenge to the Expert Reply and testimony of Dr. Pasek and the expert report and testimony of Mr. Macias, especially in light of these experts' responses to evidence put forth by Defendants. For these reasons, the Court will **DENY** Moving Defendants' Sixth and Seventh Motions in Limine (ECF Nos. 157–158).

B. HEARING CONDUCT AND TESTIMONY

On February 29, three days after the Verified Complaint and emergent application were filed, the Court conducted a case management teleconference with counsel for the parties. The Court set March 18 as the date for a one-day hearing and emphasized that it sought an *evidentiary* hearing rather than mere oral argument from counsel. The primary purpose of the hearing was to

provide Defendants with an opportunity to challenge Plaintiffs' proofs that were previously provided to the Court through documentary evidence as well as an opportunity for Defendants to introduce their own evidence. The Court instructed counsel to meet and confer and submit a proposed agenda for the one-day hearing by March 15 that included identification of witnesses and a proposed schedule. (ECF No. 34.) The parties timely submitted a proposed schedule—which although it presented some disputes, was largely agreed upon—but it identified an improbable number of witnesses for a one-day hearing: fifteen. (ECF No. 140.) The Court resolved the parties' disputes and, balancing the appropriate time allotted for the hearing against the unreasonable proposed scheduled submitted by the parties, the Court took what steps it could to manage the hearing in advance. The Court expressly noted that it "encourages the parties to streamline witness testimony as much as possible" to include limiting direct examination of certain expert witnesses at times to simply adopting the accompanying expert report; it limited opening arguments; it reserved on whether closing arguments could be presented and then ultimately denied this request; it instructed the parties to call each witness only once; it allowed for and permitted witnesses to be called out of order at Defendants' request; and it encouraged Plaintiffs to prepare any Plaintiff-candidates who were testifying to also serve as their own Rule 30(b)(6) designee-witnesses. (ECF No. 141.)

The marathon hearing that ensued lasted nearly 9 hours. It was not a model of efficiency by either side, a problem the Court noted to both sides during the proceedings. On several occasions throughout the hearing, the Court reminded the parties to manage their time wisely and make adjustments where needed to prioritize their presentations as it became obvious that the parties would not be able to fully comply with their proposed schedule in the allotted time. However, the Court, in an effort to ensure Defendants had sufficient time to respond to Plaintiffs'

proofs, extended the hearing beyond the expected time period. Ultimately, seven of the fifteen witnesses testified. The Court ultimately concluded the hearing because the courthouse was closing for the day and if the hearing continued further there would be insufficient security on staff to safely escort attendees from the building. Defendants final act was to request to nevertheless continue to present closing arguments which was denied. Overall, the Court provided Defendants with ample time to call and cross examine selected witnesses. It should be noted that neither party chose to call the plaintiff candidates to testify other than Andy Kim. Whether this was a tactical decision on the part of the parties or an error is unknown to the Court. What is known and wholly supported by the record is that Defendants could have called and examined all three plaintiff candidates as a priority during the hearing whether or not Plaintiffs elected to testify themselves in support of their motion for a preliminary injunction, especially in light of the Verified Complaint that was filed by them. Nevertheless, for reasons of their own choosing, Defendants only focused on Mr. Kim.

1. Witness Testimony: Ryan Macias (Hearing Tr. 71–158)

Ryan Macias testified by video at the Hearing. Mr. Macias has worked for nearly 20 years in election infrastructure technology and security, as well as election administration and election policies. (Hearing Tr. 73:12–14). He was the acting director of voting systems and testing and certification program under the U.S. Election Assistance Commission, the agency designed by Congress to conduct testing and certification for voting systems in federal elections. (*Id*. 73:17–74:4.) He now owns a private consulting company that provides guidance to domestic and international election management bodies. (*Id*. 74:5–11). Having reviewed Mr. Macias' education and experience, the Court finds that he is qualified to testify as an expert on election technology. Mr. Macias described the voting systems in place in New Jersey and the election management software used design ballots. (*Id*. 75:14–118:14.) He testified that New Jersey's vote-by-mail and

in-person electronic voting systems have the ability to layout a ballot in an office-block style. (*Id.* 118:11–14.) He noted that the office-block ballot design was already used in the same or similar voting systems across the county. He further opined that the office-block style was actually less complicated and therefore less time consuming to lay out. On the whole, assessing Mr. Macias' demeanor, manner in which he testified, and the substance of his testimony together with other corroborative evidence, the Court found Mr. Macias's testimony credible and assigns it substantial weight.

2. Witness Testimony: Andy Kim (Hearing Tr. 164–245)

Congressman Andy Kim testified in person at the hearing. Mr. Kim held a variety of roles within the executive branch of the federal government until he was elected as U.S. Congressman for New Jersey's Third District in 2018. He was re-elected to the same office in 2020 and 2022. Mr. Kim testified as to the reasons he filed this suit: his frustration with the current primary ballots and the effects they have on him individually and on his campaign. He also explained the timing as to when it was brought: his attempts to approach the county clerks on the ballot issue without a response, then trying to balance assembling the evidence he needed to bring strong case against bringing suit in a timely manner. He testified as to the effect that the county line has on candidates and their campaigns. (*see, .e.g, Id.* 168:16–170:2.) Based upon Mr. Kim's demeanor, manner in which he testified, and substance of his testimony in conjunction with other corroborative evidence, the Court found Mr. Kim's testimony to be credible and assigns it substantial weight.

3. Witness Testimony: David Passante (Hearing Tr. 250–280)

David Passante testified in person at the hearing. He is co-owner of a printing service that does a lot of government work, and specializes in the printing of ballots. His company has been printing ballots in New Jersey since 1983. It has been printing New Jersey county ballots since 1994. It currently prints ballots for 11 counties in New Jersey. Ten of those use bracketing. Mr.

Passante opined that if the ballot layout for the primaries were to change—due to the deadlines his staffing, training required—the result within his company would be "chaos." (Hearing Tr. 257:12–14.) He expressed doubt that it could be done in time. On cross-examination, Plaintiffs challenged Mr. Passante on bias based on his company's relationship with the county clerks and its $6 million per year revenue earned from ballot printing. They also showed him office-block ballots prepared by his company that were prepared using the ES&S system. The Court concluded by questioning Mr. Passante whether, if requested by a county clerk, his company could find a way to print office-block ballots. Tellingly, Mr. Passante responded that his company would find a way. (Hearing Tr. 282:4–283:5.) Based upon his demeanor, manner in which he testified, and conflicting and contradictory testimony, the Court finds that Mr. Passante's testimony with respect to Defendants' professed inability to deliver office-block ballots for the 2024 Primary was of low credibility, and the Court assigns it minimal weight.

4. Witness Testimony: Andrew Wilson Appel (Hearing Tr. 284–302)

Dr. Appel testified in person at the hearing. Having reviewed Dr. Appel's education and experience, the Court finds that he is qualified to testify as an expert on election technology. Plaintiffs adopted his expert report for the purposes of his direct testimony (ECF No. 1-5). His report surveyed the voting machines used in New Jersey and their related election management software. He opined that the work required to prepare office-block ballots using the current systems "will not be significantly different from the work or effort needed to prepare row-and-column ballots." (ECF No. 1-5 at 5.) On cross examination, Defendants challenged the bases for Dr. Appel's opinion with respect to particular voting systems (including the ExpressVote) and election management software. On re-direct, Plaintiffs elicited testimony that emphasized Dr. Appel's overall assessment and a fundamental premise underlying his opinion: that voting machines from manufacturers come with software that accommodates many ballot designs and

that no software or hardware updates would be required to perform office-block voting. The Court found Dr. Appel's testimony credible and assigns it substantial weight based upon his demeanor, manner in which he testified, and substance of his testimony which was corroborated by other evidence.

5. Witness Testimony: Julia Sass Rubin (Hearing Tr. 309–333)

Dr. Rubin testified in person at the hearing. Plaintiffs adopted her expert report for the purposes of her direct testimony. The Court has reviewed Dr. Rubin's education and experience (Rubin Report at 2, and Appendix B thereto), and it satisfied that she is qualified to serve as an expert in the area of public policy. The relevant substance of her testimony and her expert report and Defendants' cross-examination is discussed later in this Opinion. Based upon Dr. Rubin's demeanor, manner in which she testified, and substance of her testimony which was corroborated by other evidence presented, the Court found her testimony credible and assigns it substantial weight.

6. Witness Testimony: Christine Hanlon (Hearing Tr. 335–369)

Christine Hanlon testified in person at the hearing. She was elected Monmouth County Clerk in 2015 and has held the office since then. She described the responsibilities of her office, as well as the magnitude of the effort assorted with voting in her county. With respect to ballot changes, she expressed her concern that "there is a design process that would need to be undertaken to determine where things go, whether the equipment and software that we have could accommodate changes to the ballots that we have right now." (Hearing Tr. 358: 5–10.) Her office "would have to undertake an analysis of how these races would be laid out on a ballot" and new ballots "would take us some time to figure out where things would go." (*Id*. 359:6–20.) In sum, she related that based on communications with her ballot vendor and because her staff is untrained on office-block ballot format, she has "grave concern" about their ability to get this done "in the

very short time frame" left. (Hearing Tr. 362:17–363:6.) Although the Court does not express concern regarding Ms. Hanlon's demeanor, the Court found her testimony only moderately credible and assigns it medium weight for a number of reasons. First, for portions of her testimony she was doing little more than recounting what she had been told by third parties. Second, and more importantly, her assertions that she did not know how or if Monmouth County could administer office-block voting and her expressions of concern that they might not be able to, fell short of fully rebutting the direct testimony from Mr. Macias and Dr. Appel. Put another way, saying she was not sure it could be done does not necessarily fully respond to Plaintiffs' expert testimony that it can be done. Ms. Hanlon's testimony appeared to be based more on speculation than fact.

7. Witness Testimony: Noah Dion (Hearing Tr. 374–375)

Noah Dion testified in person at the hearing. He has been Andy Kim's campaign manager since October 13, 2023. Defendants called Mr. Dion to testify as to the timing of Mr. Kim's decision to bring this suit. Mr. Dion's testimony was compatible with Mr. Kim's testimony in this regard and corroborated a similar timeline. Defendants specifically questioned Mr. Dion on when the campaign communicated with litigation counsel and experts and when they were retained. The Court, upon assessing Mr. Dion's demeanor, manner in which he testified, and substance of his testimony together with corroborative evidence from others, finds his testimony credible and assigns it substantial weight.

VI. LEGAL STANDARD

To determine whether a preliminary injunction should issue, a court must consider "(1) whether the movant has a reasonable probability of success on the merits; (2) whether irreparable harm would result if the relief sought is not granted; (3) whether the relief would result in greater harm to the non-moving party, and (4) whether the relief is in the public interest." *Amalgamated*

Transit Union Loc. 85 v. Port Auth. of Allegheny Cnty, 39 F.4th 95, 102–103 (3d Cir. 2022) (quoting *Swartzwelder v. McNeilly*, 297 F.3d 228, 234. (3d Cir. 2002)).

The first two factors are "gateway factors" that the moving party must establish. *See Greater Phila. Chamber of Com. v. City of Phila.*, 949 F.3d 116, 133 (3d Cir. 2020). If they are established, the "court then determines in its sound discretion if all four factors, taken together, balance in favor of granting the requested preliminary relief." *Id*. (internal quotation marks omitted).

"[W]hen the preliminary injunction is directed not merely at preserving the status quo but . . . at providing mandatory relief, the burden on the moving party is particularly heavy." *Punnett v. Carter*, 621 F.2d 578, 582 (3d Cir. 1980) (citing *United States v. Spectro Foods Corp.*, 544 F.2d 1175, 1181 (3d Cir. 1976)). "[A] mandatory injunction is an 'extraordinary remedy to be employed only in the most unusual case.' " *Trinity Indus. v. Chi. Bridge & Iron Co.*, 735 F.3d 131, 139 (3d Cir. 2013) (citing *Communist Party of Ind. v. Whitcomb*, 409 U.S. 1235, 1235 (1972)). For a court to grant mandatory injunctive relief, "the moving party's 'right to relief must be indisputably clear.'" *Id.* (quoting *Communist Party of Indiana*, 409 U.S. at 1235).

VII. DISCUSSION

A. *PURCELL*

Unsurprisingly, Defendants are eager for the Court to view this suit as a last-minute election case, and exercise caution against upsetting the status quo as directed by the U.S. Supreme Court in *Purcell v. Gonzalez*, 549 U.S. 1 (2006). The problem with Defendants' position is that this case is not last-minute. It was filed 100 days before the primary election on June 4th, and well over a month before the April 5th deadline for preparing official primary election ballots for printing. On this basis alone, this case is readily distinguishable from the line of *Purcell* cases invoked by Defendants. *See, e.g., Republican Party of Pa. v. Cortés*, 218 F. Supp. 3d 396 (E.D.

Pa. 2016) (suit filed mere 18 days before election). The Court is satisfied that it has made every effort to move quickly and efficiently through the briefing and hearing process while protecting the parties' rights to present their positions.[19] The Court is likewise satisfied that it has exhausted its own resources to render a comprehensive decision with substance that is also timely in relation to the 2024 Primary, one that can and should be enforced without disrupting the upcoming election.

B. LIKELIHOOD OF SUCCESS ON THE MERITS

1. FIRST AMENDMENT

The parties largely agree that the *Anderson-Burdick* framework applies to Plaintiffs' First Amendment Claims. Indeed, because New Jersey's bracketing system regulates the voting ballots themselves as well as the "the mechanics of the electoral process," the Court finds that the Third Circuit requires the use of *Anderson-Burdick* in this instance. *Mazo v. New Jersey Sec'y of State*, 54 F.4th 124, 142–43 (3d Cir. 2022) ("*Mazo II*") *cert. denied sub nom. Mazo v. Way*, 144 S. Ct. 76 (2023) (location/timing of regulation and nature/character of regulation decide applicability of *Anderson-Burdick*).

The parties disagree, however, as to the appropriate standard of review under *Anderson-Burdick*. Plaintiffs argue for strict scrutiny because they believe the burdens on their rights are severe. (Moving Br. at 22–32). Defendants argue for rational basis review because they believe the alleged burdens on Plaintiffs' rights are minimal. The Third Circuit has distilled how to determine the appropriate level of scrutiny under *Anderson-Burdick*:

> [t]he *Anderson-Burdick* test "requires the reviewing court to (1) determine the "character and magnitude" of the burden that the challenged law imposes on constitutional rights, and (2) apply the level of scrutiny corresponding to that burden. *Burdick*, 504 U.S. at

[19] Application of the *Purcell* principle is also not so automatic as Defendants hope. As recently as March 28, 2024, one Third Circuit judge observed that the *Purcell* concerns did not apply to challenges to mail-in ballot requirements in Pennsylvania. *See Pa. State Conference of NAACP Branches v. Sec. Commonwealth of Pa.*, App. No. 23-3166 at 9 n.5 (3d Cir. 2024) (Shwartz, C.J., dissenting).

> 434, 112 S.Ct. 2059 (quoting *Anderson*, 460 U.S. at 789, 103 S.Ct. 1564). If the burden is "severe," the court must apply exacting scrutiny and decide if the law is "narrowly tailored and advance[s] a compelling state interest." *Timmons*, 520 U.S. at 358, 117 S.Ct. 1364. But if the law imposes only "reasonable, nondiscriminatory restrictions," *Anderson*, 460 U.S. at 788, 103 S.Ct. 1564, the court may use *Anderson-Burdick's* sliding scale approach under which a State need only show that its "legitimate interests . . . are sufficient to outweigh the limited burden," *Burdick*, 504 U.S. at 440, 112 S.Ct. 2059.

Mazo II, 54 F.4th at 137.

Here, Plaintiffs present argument and evidence that New Jersey's system of bracketing and ballot placement violates their First Amendment rights.

a) Burdens on Associational Rights

All Plaintiffs assert that their right to associate (and not associate) with other candidates is burdened by the bracketing system no matter their circumstance with respect to the county line. Notably, they say that if they win the endorsement of a county and appear on the county line, they are forced to appear alongside (and thereby associate with) candidates for other offices with whom they don't wish to associate. Plaintiffs cite various reasons they often would prefer not to associate with other candidates on the county line or a created bracket: differences in policy, differences in personal views, line-mates who are supporting a competing candidate, and not even knowing the other line members. (V.C. ¶¶ 140 (Kim), 154 (Schoengood), 163 (Rush); Hearing Tr. 170:20–171:8 (Kim).) In Plaintiffs' view, if they do not pursue a position on the county line or other bracket, they suffer, whether it is viewed as ceding a significant advantage to their opponents or as being punished for asserting their own right to not associate.

b) Burdens of Ballot Placement & the "Weight of the Line"

For the reasons noted above, candidates who do not win a position on the county line and do not bracket are excluded from even the opportunity to be placed in or near the first position on

the ballot.[20] Plaintiffs proffered expert witnesses to show that this imposes real-world burdens on candidates' prospects. As to ballot positioning, Plaintiffs offer Dr. Pasek's expert report.[21] His report reviews and summarizes more than four dozen studies in the literature to support the conclusion that there is a pervasive primacy effect that favors candidates in elections that appear in an early position on a ballot. (Pasek Report ¶¶ 27, 38–43.) Dr. Pasek also assesses four competing studies that called into question that primacy effect. (*Id.* ¶¶ 44–47.) For various reasons the Court finds are sound, he concludes that those competing studies are less credible. (*Id.*) On the whole, the Court finds that Dr. Pasek's report is well-reasoned and suffices to establish, for this preliminary stage of this case, that candidates placed in an early position on a ballot receive a distinct advantage.[22]

As to the effect of the county line on voting ("the weight of the line") apart from its potential for leading to early ballot placement, Plaintiffs offer Dr. Pasek and Dr. Rubin. Dr. Pasek's report describes a voting experiment he designed and conducted involving 1,393 volunteer-voters in two Congressional districts in New Jersey. (Pasek Report ¶¶ 114–157.) He draws several conclusions from his experiment, including that his voters selected candidates endorsed by a county 11.6% more frequently when the endorsed candidates appeared together on a county line than if they appeared separately in office-block format. (*Id.* ¶ 156.) Pasek finds this

---

[20] Here, there is arguably some differences in Plaintiffs' respective circumstances. As already noted, Kim is running for U.S. Senate, which is expected to be considered a pivot office, such that he would not appear far from a first ballot position. He continues to maintain that, given a choice, he would prefer to simply run for office on his own merit without associating with other candidates by appearing on any county line. Schoengood and Rush, running for U.S. Congress, clearly remain subject to the ills of ballot placement and the weight of the line.

[21] Dr. Pasek's report was filed with the Verified Complaint as Exhibit B (ECF No. 1-2) and separately admitted into evidence at the Hearing as P-9. Neither of the parties called him to testify at the Hearing.

[22] On this issue, Plaintiffs also offered the opinion of Dr. Wang who reached a similar conclusion based on the way human cognition works when faced with voting choices on a ballot and a statistical treatment of voting data.

difference "statistically significant" and concludes that it has "less than a one-in-a-million probability of appearing by chance."[23] (*Id.*)

Dr. Rubin was called to testify at the Hearing and, for the purposes of her direct testimony, Plaintiffs adopted her report. (Hearing Tr. 312:8–11; Exhibit C to VC, ECF No. 1-3.) Dr. Rubin focused her analyses on historical data. Her findings include the observation that in 35 of the 37 primary contests that took place in New Jersey between 2012 and 2022, "candidates received a larger share of the vote when they were on the county line than when they were endorsed but there was no county line. The difference in the candidate's performance ranged from -7 to 45 percentage points, with a mean of 12% points and a median of 11 percentage points." (Rubin Report at 4.) On cross-examination at the Hearing, Defendants challenged Dr. Rubin's choice of statistics and whether she had adequately accounted for other potential causes of the effects she observed. (Hearing Tr. 312:14–332:15.) In response, she emphasized that her analyses were intended to be statistically descriptive, and that she saw a pattern of the county-line having a consistent positive effect on the race results. (Hearing Tr. 317:12–19.) Having considered Dr. Pasek's report and Dr. Rubin's report and her testimony on the issue of ballot placement and the weight of the line, the Court finds that their opinions are well-reasoned and that they suffice to show, again, at this preliminary stage of this case, that the county-line provides a substantial benefit in terms of voting over and above candidates that are merely endorsed by a county. [24]

Based on the foregoing, the Court finds that Plaintiffs have shown a severe burden on their First Amendment rights. Accordingly, the Court applies exacting scrutiny to decide whether the

---

[23] On this issue, Plaintiffs again offered the opinion of Dr. Wang who reached a similar conclusion based on the way human cognition works when faced with voting choices on a ballot and a statistical treatment of voting data.

[24] On this issue, Plaintiffs also offered the opinion of Dr. Wang who reached a similar conclusion based on the way human cognition works when faced with voting choices on a ballot and a statistical treatment of voting data.

laws establishing bracketing and ballot placement are "narrowly tailored and advance a compelling state interest."

c) State Interests

Defendants maintain that the current system in 19 counties of bracketing and ballot placement furthers important State interests because it: 1) preserves other candidates' rights and the political parties' rights to associate; 2) communicates those associations of candidates to voters; 3) provides a manageable and understandable ballot; and 4) prevents voter confusion.

As to the first two considerations, Plaintiffs in this case are quick to point out that they are not disputing political parties' rights to associate by choosing their standard bearers or disputing other candidates' rights to associate by choosing common slogans. Nor are Plaintiffs disputing a state's interest in communicating these associations to voters. As the Verified Complaint makes clear, Plaintiffs do not challenge any of these endorsement efforts *even on the ballots themselves*. Plaintiffs challenge is only to the practice of the county line/bracketing and ballot placement, with its attendant infringement on their right to not associate and its outsized effects on primary elections.

As to the last two considerations—state interests in providing a manageable and understandable ballot, and ensuring an orderly election process—Defendants' position is hampered by the fact, pointed out by Plaintiffs and Dr. Pasek, that history has demonstrated otherwise insofar as one-third of all Mercer County voters were disenfranchised in the 2020 Democratic Primary Election because they voted for more than one candidate for the same office due to the current ballot systems. (V.C. ¶ 117; Pasek Report ¶ 109.) Under the circumstances, the Court concludes that the State's interests are not especially compelling.

d) Balancing the Burdens Against the Interests

Based on Plaintiffs' preliminary showing as to the burden imposed upon them, it is not clear at this stage how these burdens can be justified by the State's interests. This case is different from a previous one addressed by this Court where aggrieved candidates alleged purely legal burdens that could be measured at the motion to dismiss stage. *See Mazo v. Way*, 551 F. Supp. 3d 478, 508 n.12 (D.N.J. 2021) ("*Mazo I*"). This case is also different from another previous case addressed by this Court where aggrieved candidates needed only to allege sufficient factual burdens to survive a motion to dismiss and proceed to discovery. *See Conforti*, 2022 WL 1744774, at *17. Rather, in this case, Plaintiffs have come forward seeking emergent relief and support their application with a substantive factual record, including expert reports and credible expert and factual testimony. On the basis of that record, the Court finds that there is a sufficient likelihood that Plaintiffs will succeed on the merits of their First Amendment claims.

2. <u>ELECTIONS CLAUSE</u>

The Elections Clause of the United States Constitution provides that "[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of [choosing] Senators." U.S. Const. art. I, § 4, cl. 1. When the regulation involves the time, place, and manner of primary elections, the only question is whether the state system is preempted by federal election law on the subject. *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 832 (1995). However, when the regulation does not regulate the "time, place, or manner," courts must consider whether the regulation on its face or as applied falls outside that grant of power to the state by, for example, "dictat[ing] electoral outcomes, favor[ing] or disfavor[ing] a class of candidates, or evad[ing] important constitutional restraints. *Cook v. Gralike*, 531 U.S. 510, 523 (2001). The Supreme Court has struck down such regulations when

they "attach[ ] a concrete consequence to noncompliance" rather than informing voters about some topic. *Id*. at 524. The timing may also add to the gravity of injury, especially when it occurs "at the most crucial stage in the election process – the instant before the vote is cast." *Id*. at 525 (quoting *Anderson v. Martin*, 375 U.S. 399, 402 (1964)).

Here, as set forth above, the State conferred its power to regulate the "manner" of federal elections to the county clerks, including the Defendant County Clerks, by requiring them to design and print ballots. N.J. Stat. Ann. 19:23-26.1, 19:42-2. In Defendants' view, the Bracketing Structure is a permissible regulation on the "manner" of federal elections. On the record already reviewed, Plaintiffs' evidence is sufficient to make their showing of a likelihood they will succeed in establishing that the Bracketing Structure and ballot placement is improperly influencing primary election outcomes by virtue of the layout on the primary ballots. This would clearly exceed a State's right to regulate the "manner" of federal elections. *Cook*, 531 U.S. at 525 ("the instant before the vote is cast" is the "most crucial stage in the election process").

C. IRREPARABLE HARM

Next, the Court considers the extent to which Plaintiffs will suffer irreparable harm absent the requested relief.

"It is well-established that '[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.'" *Hohe v. Casey*, 868 F.2d 69, 72 (3d Cir. 1989) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). At least one district court, later affirmed by the Third Circuit, noted that "[f]or the purposes of this [preliminary injunction], the Court assumes that Plaintiffs have satisfied the irreparable harm prong if they can demonstrate a constitutional injury." *Democratic-Republican Org. of New Jersey v. Guadagno*, 900 F. Supp. 2d 447, 453 (D.N.J. 2012), *aff'd*, 700 F.3d 130 (3d Cir. 2012). In other instances, however, the Third Circuit has provided that "the assertion of First Amendment rights does not automatically require

a finding of irreparable injury,'" *Hohe*, 868 F.2d at 72–73, and that Plaintiffs who show a likelihood of success on the merits for their First Amendment claim are not entitled to preliminary injunctive relief unless they can show a "'real or immediate'" danger to their rights "in the near future." *Anderson v. Davila*, 125 F.3d 148, 164 (3d Cir. 1997).

The Court could find that Plaintiffs have satisfied the irreparable harm prong because it concluded that Plaintiffs met their burden of showing success on the merits as to their constitutional challenges. However, the Court additionally finds that Plaintiffs have met their burden to show they are likely to suffer "real or immediate" irreparable harm "in the near future" should the Court not grant the Motion.

From the Verified Complaint through the testimony provided at the Hearing, Plaintiffs have made their position evident as to the associational harm they face with the current ballot design. In particular, Plaintiffs explain that their associational harm is twofold. If Plaintiffs "forfeit their right to not associate with certain other candidates," they will be harmed because they will be "punished for doing so by being excluded from the preferential ballot draw and risk getting relegated to obscure portions of the ballot in Ballot Siberia and/or put themselves at a substantial disadvantage from their opponents." (V.C. ¶ 201.) Alternatively, Plaintiffs are "forced" to associate with candidates "with whom they may not want to associate and whose policies they may disagree with." (*Id.* ¶ 202.)

Defendants' arguments that the changed political landscape has eliminated Kim's associational harm is specious at best. (ECF Nos. 190–91.) First, at the Hearing, Kim testified that he won the Monmouth County convention making him the endorsed candidate in that county. (Hearing Tr. 182:7–8.) Notably, Kim won and accepted the county line in Monmouth County *before* his main opponent withdrew from the primary. Kim will share the endorsed candidate line

with a congressman who chose *not* to endorse Kim and "is not supportive of [Kim's] campaign." (*Id.* 182:9–14.) Kim faces a similar problem in Morris County too. (*Id.* 182:18–22.) Kim expressed that being on the same line with candidates that do not support him is "difficult" because it affects his campaign and voter engagement. (*Id.* 182:21–24.) Finally, Kim explained how being on the same candidate endorsed line with candidates that "are actively working against each other" is confusing to voters: "whole idea of association, you know, presents the idea that these are candidates that chose to associate with each other" yet Kim has not had formal conversations with nor does he "even know most of these candidates." (*Id.* 183:5–14.)

Not only does Kim contend that the associational harm will be eliminated if this Court grants Plaintiffs relief, Kim underscored that he "just want[s] to run for the Senate seat." (*Id.* 184:2–7.) Kim does not want "to consider, you know, dozens if not hundreds of other candidates across multiple counties" but that he "unfortunately [has to] given the system here in New Jersey." (*Id.* 184:17–21.) The Court reiterates that Kim's harms are not alleviated because his main opponent withdrew from the election. Kim's harms, like Schoengood and Rush's, are real and immediate whether or not they are on the county line or not.

Second, though Defendants disproportionately focus on Kim, the Court emphasizes that Schoengood and Rush will also face irreparable harm. Schoengood will not be on the county line in the three counties within her congressional district. (V.C. ¶¶ 151–57; ECF No. 188 at 1.) Nor will Schoengood be bracketed with any candidates, thus leaving her "vulnerable to be placed with ballot gaps in between her bracketed opponents or otherwise put out in Ballot Siberia, and/or could be either in a column by herself or stacked in a column with other candidates for the same or different offices with whom she does not want to associate." (V.C. ¶ 156.) As evidenced by Dr. Pasek's report, the impact on a candidate who fails to secure the county line or the first ballot

position is consequential. Dr. Pasek concluded that "[p]rimacy biases in New Jersey elections will always negatively impact candidates who do not bracket with a candidate for the pivot-point position, as these candidates are guaranteed to be placed in positions further to the right of (or below) colleagues who are bracketed with someone in the pivot-point position." (Pasek Report ¶ 81.)

More specifically, Dr. Pasek found that "all candidates on party-column ballots performed better when listed in the leftmost available position, with these benefits ranging from 3.9 percentage points to 27.8 percentage points across candidates." (*Id.* ¶ 144.) Even just among bracketed candidates that are not in a column by themselves, "the earlier listed candidate received an 8.2% and 11.1% benefit over chance and 16.5% and 22.2% benefit over later-listed candidates" in the districts the study was conducted in. (Moving Br. at 9 n.9; Pasek Report ¶ 143.) Dr. Pasek's report, together with the other reports and testimony, highlights the negative impact resulting from a failure to secure the county line. However, the evidence as it relates to unbracketed candidates further explains the harm that a candidate faces when they choose to remain unbracketed in exchange for exercising their right to associate. As such, unbracketed candidates like Schoengood will be harmed.

Similarly, Rush will be off the county line in two of the counties within her congressional district. (ECF No. 188 at 1.) In these two counties, Rush will also remain unbracketed and will face the same harm that Schoengood faces. In three other counties within her congressional district, Rush will be on the county line. However, in two of these districts, Rush will be bracketed with her opponents in the same column, creating the perception that Rush is associated with these candidates although she is not. [25]

[25] There is an additional concern of overvoting that occurs when candidates are stacked together in the same column in "vote for one" counties. (V.C. ¶ 117.) For example, Mercer County is a vote for one county whereby multiple

Lastly, Defendants largely challenge that any harm Plaintiffs will suffer is the product of their own delay.[26] Defendants claim that Plaintiffs "slow-walked" bringing this action and therefore "orchestrated" the existence of harm. (Hearing Tr. 55:12–19.) As previously discussed, the Court is not persuaded by Defendants' challenge for several reasons.

First, Defendants improperly frame undue delay as fatal to Plaintiffs' Motion. However, delay is only one of the various *factors* a court considers when addressing a preliminary injunction. *See Otsuka Pharm. Co. v. Torrent Pharms. Ltd.*, 99 F. Supp. 3d 461, 504 (D.N.J. 2015) (noting that delay is an "important factor bearing on the need for a preliminary injunction, particularly irreparable harm"); *Cortés*, 218 F. Supp. 3d at 404 (considering plaintiffs' unreasonable delay as part of the court's analysis of the preliminary injunction and relief sought). Therefore, the Court considers any delay as it relates to Plaintiffs irreparable harm.

Second, to the extent Defendants argue that Plaintiffs have unreasonably or unduly delayed, the Court disagrees. Defendants characterize Plaintiffs' Motion as an "eleventh-hour application" and argue that Plaintiffs "have known about New Jersey's ballot structure for years" yet they "rested on their claims until the final weeks of preparation for the Primary Election." (*Id.* at 19, 46.) Defendants contend that that Kim's "clock on applying for injunctive relief" started in September of 2023 when he decided to run for Senate. (ECF No. 191 at 2.) However, Plaintiffs' written submissions and testimony at the Hearing clarified why Plaintiffs filed the emergent application when they did.

At the Hearing, Kim explained the timeline from when he decided to run in September of 2023 to when Plaintiffs filed this action in February of 2024. Kim first explained that after

---

candidates are stacked in the same column but voters may only select one. (*Id.*) Dr. Pasek explained that in the 2020 Democratic Primary Election in Mercer County, a vote for one county, 32.4% of voters overvoted resulting in their votes being invalidated. (Pasek Report ¶ 109.)

[26] Defendants Hanlon

speaking with his senior staff, "sometime in December [2023] was the first time that [Kim] had conversations with different attorneys." (Hearing Tr. 189:7–11.) Next, Kim described some of the considerations he faced about taking legal action. Kim explained that a key other consideration he faced was whether he was "able to demonstrate a — a real and non-speculative injury, a harm done to [Kim] personally." (*Id.* 189:12–18.) When asked when, it if at all, Kim faced a concrete injury, Kim stated the following: "So the concrete injury that happened in a real and non-speculative way was on February 10th [2024] with the – with the awarding of the actual formal, official county-line in Passaic County on February 10th. That was – that was adverse to me." (*Id.* 190:5–13.) Kim expressed concern that if he brought the action any sooner than February 10th, it "would be seen as – that [Kim had] not actually been injured at that point." (*Id.* 196:10–14.) Kim also feared that if he brought an action too soon, "there could be efforts to try to dismiss or push off" because he lacked an injury. (*Id.* 196:14–16.)

Kim also testified about his understanding of preliminary injunctions and how they "[require] a very high burden of evidence and proof to be able to demonstrate." (*Id.* 189:19–23.) Consequently, Kim became familiar with the types of evidence, research, and testimony that would be required to reach the burden and to make a "successful case." (*Id.* 189:24–190:4.) Kim subsequently testified about the various research and expert reports ultimately produced and why these materials were critical to his case. Ultimately, Kim emphasized that because of the high threshold he believed was required for a preliminary injunction, Kim needed "all of the necessary research and evidence that [he] felt was necessary to reach it." (*Id.* at 196:17–23.)

Having considered Kim's testimony, and Plaintiffs' written submissions, the Court rejects Defendants' position that Plaintiffs have unduly delayed bringing this action. Plaintiffs have explained that they filed suit as soon as they believed there was a concrete injury on February 10,

2024. And Plaintiffs filed the Verified Complaint and the present Motion about two weeks later on February 26, 2024. Plaintiffs even appreciated the consequences of filing this action prematurely.[27]

Also, Plaintiffs assert that the relief sought can be accomplished in time for the 2024 Primary. (V.C. ¶ 18.) Plaintiffs explain that the action was "filed 100 days prior to the Primary Election, almost two months before vote by mail ballots are to be sent out, about one and a half months before the ballot draw, and even almost a full month prior to the petition filing deadline." (Reply at 5.) In sum, despite Defendants' arguments to the contrary, the Court finds based on the entire record before it that Plaintiffs have timely filed this Motion.

D. BALANCE OF THE HARM

Given the Court's finding that Plaintiffs have successfully met the first two prongs, it must next consider the final two factors. The third factor requires the court to "balance the parties' relative harms; that is, the potential injury to the plaintiffs without this injunction versus the potential injury to the defendant with it in place." *Issa v. Sch. Dist. of Lancaster*, 847 F.3d 121, 143 (3d Cir. 2017). At this stage, a court should also consider "the possibility of harm to other interested persons from the grant or denial of the injunction." *Reilly v. City of Harrisburg*, 858 F.3d 173, 176 (3d Cir. 2017) (internal citation and quotation marks omitted). "[W]hen considerable injury will result from either the grant or denial of a preliminary injunction, these factors to some extent cancel each other." *Del. River Port Auth. v. Transam. Trailer Transp., Inc.*, 501 F.2d 917, 924 (3d Cir. 1974).

[27] Testimony from Kim's campaign manager, Mr. Dion, further supported Kim's testimony about the timing of the action. Mr. Dion stated that as of late January 2024, "we had not made, in my summation, a final decision, because there needed to be other pieces brought together." (Hearing Tr. 380:23–381:7.)

Plaintiffs argue that, should the Court grant injunctive relief, any harm to Defendants would be minimal and would pale in comparison to the deprivation of Plaintiffs' constitutional rights. (Moving Br. at 51.) Plaintiffs assert that office-block ballots would be easy for Defendants to implement, as it is already regularly used in two New Jersey counties. (*Id.*) Not only is the required infrastructure already in place according to Plaintiffs, (Moving Br. at 52), but the two voting systems that are predominantly used in New Jersey, ES&S[28] and Dominion, have already been employing the office-block ballots in various elections throughout the state, including in some of Defendants' counties,[29] with the same software and vendors that will be used in the 2024 Primary. (Reply at 28–34 (detailing various elections that have occurred in New jersey using Office Block Structure entirely or Office Block Structure plus other structures in a hybrid format).) Plaintiffs provide the expert report and testimony of Dr. Andrew W. Appel, (Moving Br. at 51–52; V.C. ¶¶ 130–33; Appel Report at 2–6; Hearing Tr. 285:17–286:7), as well as the expert report and testimony of Ryan Macias to show that voting machines in New Jersey are capable of accommodating office-block ballots. (ECF No. 115-1; Hearing Tr. 92:11–96:19.) Furthermore, Plaintiffs provide the expert report of Edward P. Perez to show that changing a ballot's layout after the data has been entered takes just "a matter of hours," or one day at most. (Reply at 29, 35–36, Ex. C ¶ 27.) Plaintiffs emphasize that their requested relief would not eliminate counties' slogans, ability to endorse candidates, or right to associate by any constitutional means, and that the same election procedures must occur with or without a court order in preparation for the 2024 Primary. (Moving Br. at 52; Reply at 29.)

---

[28] In full, Election Systems & Software, LLC.

[29] Plaintiffs specify that some County Clerk Defendants have admitted to using office-block ballots, or incredibly deny knowledge of same. (Reply at 30, 33–34.)

Defendants, on the other hand, argue that Plaintiffs' lack of urgency in bringing the lawsuit negates any purported harm to Plaintiffs. (ECF No. 60 at 26.) As for potential harm to others, some Defendants argue that a change in the ballot design cannot be effectuated in time for the 2024 Primary,[30] while other Defendants state that imposing the change in such a short timeframe would be a significant hardship to election workers and officials. (ECF No. 16 at 5; ECF No. 26 at 2; ECF No. 44 at 9–10; ECF No. 51 at 40–41; ECF No. 61 at 49–53 (describing the 2024 Primary ballot as "particularly complex"); ECF No. 63 at 47.) Defendants provide a certification from Benjamin R. Swartz, the Principal State Certification Manager for ES&S, (ECF No. 60 at 26 (citing Swartz Aff. (ECF No. 46)); ECF No. 61 at 54 (same)), witness testimony from County Clerk Hanlon, (Hearing Tr. 358:19–364:9), and a certification plus witness testimony from David Passante, owner of Royal Printing Services, to support their arguments concerning the timeline implications of Plaintiffs' request at this stage of the election cycle. (ECF No. 53 at Ex. A; Hearing Tr. 257:12–263:5.) Additionally, Defendants assert that the change sought by Plaintiffs would cause chaos and disruption, destroying the integrity or fairness of the election. (ECF No. 26 at 1; ECF No. 50 at 25; ECF No. 51 at 41; ECF No. 59 at 17; ECF No. 60 at 24–26; ECF No. 61 at 55.) They argue that injunctive relief would not only cause voter confusion and distrust in the system (ECF Nos. 51 at 42, 65 at 15), but it would impose a burden on election officials to educate voters about the new design and potentially lead to disenfranchisement. (ECF No. 48 at 1–2; ECF No. 51 at 42; ECF No. 53 at 15; ECF No. 59 at 17; ECF No. 61 at 50, 53; ECF No. 65 at 15.) Defendants insist that injunctive relief would infringe upon the broad discretion of the Defendants

[30] Plaintiffs counter that even if revisions are necessary to the ballot, they will take a matter of hours or one day at the most to effectuate, not weeks or months. (Reply at 36.)

to design ballots in a manageable and understandable way, as well as the rights of various non-parties.[31] (ECF No. 54 at 20–21.)

Given the extensive evidence in the record, and the relative weight the Court has assigned to each witness's testimony, the Court finds that the harm Plaintiffs would suffer absent an injunction well exceeds the harm that Defendants would suffer should the Court grant the injunction. Plaintiffs have put forth credible evidence not only that their constitutional rights are violated by the present ballot design used in New Jersey, which is used in no other state in the country, *see supra* discussion of irreparable harm, but that Defendants would suffer minimal harm in implementing the ballot design requested by Plaintiffs.[32] First, Defendants' argument that they simply cannot implement the Office Block Structure is readily belied by the fact that two counties in New Jersey, Salem and Sussex, already use office-block ballots for primary elections, and that some of the other counties have used the office-block ballots for other elections, including in a school board election, nonpartisan municipal election, school board race, fire commission race, and general elections. (V.C. ¶ 55; Reply at 28–34; *see also* Appel Report at 2–6; Hearing Tr. 285:17–286:7; ECF No. 115-1; Hearing Tr. 92:11–96:19 ("[A]ll voting systems used in New Jersey have the ability to lay out ballots without the county-line style.").) Even considering the reduced timeframe in which Defendants would have to change the ballot design before the 2024 Primary, the evidence indicates that it can be done. (*See, e.g.*, Perez Decl. ¶¶ 21–23, 27.) In fact,

[31] Specifically, Defendants argue that the following rights and interests will be infringed: the state legislature's interest in organizing ballots in such a way (ECF No. 54 at 20); the right of other candidates to associate (ECF No. 54 at 20–21; ECF No. 57 at 12–13; ECF No. 60 at 26); and the fundamental right of New Jersey's political parties to associate, which is particularly concerning because they are not named as parties in the lawsuit and thus their interests are not represented, (ECF No. 53 at 14–15; ECF No. 65 at 14).
[32] The Court notes that assertions by Defendants that they lack knowledge about what it would require to implement a change in the ballot design or about how it works are not responsive to Plaintiffs' argument that the ballot design can in fact be easily changed.

the undersigned asked that exact question to Defendants' witness Passante at the Hearing, during which the following exchange occurred:

> THE COURT: So erase me from the equation and erase this entire courtroom. One of the county clerks, they decide their preference is office ballot, and they come to you and your company and say, This is how we want it done. You tell them No, get another vendor?
>
> THE WITNESS: No.
>
> THE COURT: It would be chaos or you would find a way to do it?
>
> Do you see the difference between my question and the one that these guys have been asking?
>
> THE WITNESS: Yes.
>
> THE COURT: So what do you tell your client? What do you tell the county clerk when he or she says, We want this done. We made a decision that we prefer this ballot in this county for this election. Do you say yes or no?
>
> That's my first question.
>
> THE WITNESS: Yes.
>
> THE COURT: And you find a way to do it, correct?
>
> THE WITNESS: One hundred percent, yes.

(Hearing Tr. 282:12–283:5.)[33]

The Court finds that the effort that it would take Defendants to implement Office Block Structure in their respective ballots does not pose more harm than that suffered by Plaintiffs now because of the existing structure. *See supra* discussion of irreparable harm. Moreover, the timeline for implementing the change would not require the drawn-out process that Defendants would have

[33] ECF No. 191 points to a list of "unrefuted evidence in the record" that the suggested ballot changes cannot be implemented on time; this exchange with a witness called by the Defendants, along with testimony and reports from Plaintiffs' experts, squarely refute that contention.

the Court believe; rather, the evidence suggests that it would take not nearly as long. (*See, e.g.*, Reply at Ex. C ¶ 27.)[34]

In sum, the Court finds that Plaintiffs have shown that the harm to them absent an injunction exceeds the harm Defendants and other interested persons would suffer in the face of an injunction here. Accordingly, the Court finds that this factor also weighs in favor of granting Plaintiffs' Motion.

E. PUBLIC INTEREST

Finally, the Court must weigh whether the public interest favors injunctive relief pending the outcome of this litigation. "As a practical matter, if a plaintiff demonstrates both likelihood of success on the merits and irreparable injury, it almost always will be the case that the public interest will favor the plaintiff." *Am. Tel. & Tel. Co. v. Winback & Conserve Program, Inc.*, 42 F.3d 1421, 1427 n.8 (3d Cir. 1994). The Third Circuit has recognized that "[i]n the absence of legitimate, countervailing concerns, the public interest clearly favors the protection of constitutional rights." *Council of Alt. Pol. Parties v. Hooks*, 121 F.3d 876, 883–84 (3d Cir. 1997).

Plaintiffs argue that government compliance with the Constitution "should always be in the public interest, particularly where the fundamental right to vote is at stake." (Moving Br. at 52.) They provide the expert report of Dr. Pasek to show that the current Bracketing System can be outcome-determinative even when candidates win by double-digit margins. (*Id.* at 52; V.C. ¶ 127; Pasek Report ¶ 183.) Plaintiffs urge that injunctive relief is necessary to restore the power of the people to select nominees "without unnecessary government interference" and to instill confidence in election results. (Moving Br. at 53.)

[34] To the extent Defendants argue that the state legislature will be harmed if they cannot continue to organize their ballots using the Bracketing Structure under the current statutory framework, that argument fails because it is well-settled that there is no legitimate interest in the enforcement of an unconstitutional law. *Am. Civ. L. Union v. Ashcroft*, 322 F.3d 240, 247 (3d Cir. 2003).

Defendants argue that no fundamental rights are at stake, and Plaintiffs are acting in their own interest rather than for the public interest. (ECF No. 51 at 43, 46.) Defendants assert that, rather, the following public interests are at stake[35]: an interest in allowing states to regulate their own elections absent judicial intervention, especially when intervention would require last-minute ballot changes, (ECF No. 53 at 15–16; ECF No. 60 at 27–28); an interest in allowing candidates to signal to voters their chosen political associations, (ECF No. 50 at 24; ECF No. 60 at 27; ECF No. 61 at 58–59); and an interest in the "orderly administration of elections," (ECF No. 53 at 16–17 (citing Passante Cert., ECF No. 53 at Ex. A); ECF No. 61 at 56; ECF No. 65 at 16.) Defendants additionally argue that injunctive relief should not be granted on the "eve of an election," as it would confuse voters, cause them to feel distrust, disenfranchise them, (ECF No. 51 at 45–46, 53 at 16, 60 at 28, 61 at 58, 65 at 16.) Defendants point Plaintiffs instead towards "multiple political remedies" that they can use to address their concerns, as well as the state Legislature as another option for redress. (ECF No. 53 at 15–16, 65 at 15–16, 50 at 23 n.5) Lastly, Defendants argue that current election laws have already been deemed constitutional by New Jersey state courts (ECF No. 51 at 43–45.)

Here, the Court has already found a likelihood of success on the merits for Plaintiffs as well as a showing of irreparable harm, including the likelihood of constitutional violations. *See supra*. The Court finds that the concerns expressed here by Defendants are not the "legitimate, countervailing concerns" to be favored over the protection of Plaintiffs' constitutional rights in such a situation. *Council of Alt. Pol. Parties*, 121 F.3d at 883–84. Although mindful of Defendants' various concerns, the Court finds they do not weigh more heavily than the public

---

[35] Defendants argue that the public interests at stake here require fact discovery before any injunction should be granted. (ECF No. 60 at 28.)

interest in having candidates running in the 2024 Primary presented on the ballot in a fair and equal manner that is free from unnecessary government interference. (ECF No. 192 at 4.)

Accordingly, the Court concludes that public interest favors granting Plaintiffs' motion for a preliminary injunction. *Council of Alt. Pol. Parties*, 121 F.3d at 883–84; *Am. Tel. & Tel. Co.*, 42 F.3d at 1427 n.8.

F. SECURITY

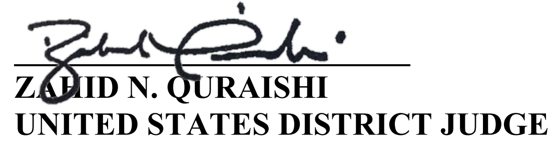
Having concluded that a preliminary injunction order should issue, the Court turns to the final consideration under Rule 65: bond. Fed. R. Civ. P. 65(c). This is not a commercial case. Plaintiffs are claiming violations of their constitutional rights. Defendants have raised no more than speculative concerns that some counties may incur million-dollar costs *if* technical obstacles force them to switch to vote-by-mail for the 2024 Primary. The Court finds that imposing a bond on Plaintiffs based on this type of speculation would constitute an unnecessary hardship on Plaintiffs. On balance, the Court therefore finds it appropriate to waive the bond requirement of Rule 65. *See Elliott v. Kiesewetter*, 98 F.3d 47, 59–60 (3d Cir. 1996); *Koons v. Platkin*, 673, F. Supp. 3d 515, 671 (D.N.J. 2023).

VIII. <u>CONCLUSION</u>

As a final note, the Court wishes to make clear that it recognizes the magnitude of its decision. The integrity of the democratic process for a primary election is at stake and the remedy Plaintiffs are seeking is extraordinary. Mandatory injunctive relief is reserved only for the most unusual cases. Plaintiffs' burden on this Motion is therefore particularly heavy. Nevertheless, the Court finds, based on this record, that Plaintiffs have met their burden and that this is the rare instance when mandatory relief is warranted.

For the reasons stated above, the Court will **GRANT** the Motion for Preliminary Injunction. Defendants' Motions in Limine will be **DENIED**. An appropriate Order will follow.

Date: March 29, 2024



ZAHID N. QURAISHI
UNITED STATES DISTRICT JUDGE

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

____

No. 24-1594

____

ANDY KIM, in his personal capacity as a candidate
for U.S. Senate;
ANDY KIM FOR NEW JERSEY;
SARAH SCHOENGOOD;
SARAH FOR NEW JERSEY; CAROLYN RUSH;
CAROLYN RUSH FOR CONGRESS

v.

CHRISTINE GIORDANO HANLON, in her official capacity
as Monmouth County Clerk;
SCOTT M. COLABELLA, in his official capacity as Ocean
County Clerk;
PAULA SOLLAMI COVELLO, in her official capacity as
Mercer County Clerk;
MARY H. MELFI, in her capacity as Hunterdon County
Clerk;
STEVE PETER, in his official capacity as Somerset County
Clerk;
HOLLY MACKEY, in her official capacity as Warren
County Clerk;
NANCY J. PINKIN, in her official capacity as Middlesex
County Clerk;

JOSEPH J. GIRALO, in his official capacity as Atlantic County Clerk;
JOHN S. HOGAN, in his official capacity as Bergen County Clerk;
JOANNE SCHWARTZ, in her official capacity as Burlington County Clerk;
JOSEPH RIPA, in his official capacity as Camden County Clerk;
RITA ROTHBERG, in her official capacity as Cape May County Clerk;
CELESTE M. RILEY, in her official capacity as Cumberland County Clerk;
CHRISTOPHER J. DURKIN, in his official capacity as Essex County Clerk;
JAMES N. HOGAN, in his official capacity as Gloucester County Clerk;
E. JUNIOR MALDONADO, in his official capacity as Hudson County Clerk;
ANN GROSSI, in her official capacity as Morris County Clerk;
DANIELLE IRELAND-IMHOF, in her official capacity as Passaic County Clerk;
JOANNE RAJOPPI, in her official capacity as Union County Clerk;
DALE CROSS, in his official capacity as Salem County Clerk;
JEFF PARROTT, in his official capacity as Sussex County Clerk;
NEW JERSEY SECRETARY OF STATE;
CAMDEN COUNTY DEMOCRATIC COMMITTEE

Camden County Democratic Committee,
Appellant

On Appeal from the United States District Court
For the District of New Jersey
(D.N.J. No. 3-24-cv-01098)
District Judge: Honorable Zahid N. Quraishi

Argued
April 12, 2024

Before: JORDAN, KRAUSE, and FREEMAN, *Circuit Judges*

(Filed: April 17, 2024)

Alyssa Lott
William M. Tambussi [**ARGUED**]
Brown & Connery
360 N. Haddon Avenue
P.O. Box 539
Westmont, NJ 08108
Counsel for Camden County Democratic Committee

Yael Bromberg
Bromberg Law
43 W. 43rd Street – Suite 32
New York, NY 10036

Flavio L. Komuves
Bret M. Pugach [**ARGUED**]
Weissman & Mintz
220 Davidson Avenue – Suite 410
Somerset, NJ 08873

Counsel for Andy Kim, Andy Kim for New Jersey, Sarah Schoengood, Sarah For New Jersey, Carolyn Rush, and Carolyn Rush For Congress

Matthew Tavares
Rainone Coughlin Minchello
555 U.S. Highway One South
Suite 440
Iselin, NJ 08830

Counsel for Paula Sollami Covello

Jennifer Borek
Daniel A. Lebersfeld
Genova Burns
494 Broad Street
Newark, NJ 07102

Counsel for Christopher J. Durkin, and Joanne Rajoppi

Neal K. Katyal
Sean M. Marotta [**ARGUED**]
Eric S. Roytman
Hogan Lovells US
555 Thirteenth Street NW
Columbia Square
Washington, DC 20004

Counsel for Amicus Curiae, Middlesex County Democratic Organization

Matthew C. Moench [**ARGUED**]
King Moench & Collins
51 Gibralter Drive
Suite 2F
Morris Plains, NJ 07950

Oliver D. Roberts
Jason B. Torchinsky
Holtzman Vogel Baran Torchinsky & Josefiak
2300 N Street NW – Suite 643-A
Washington, DC 20037
Counsel for Amicus Curiae, Laura Ali,
New Jersey Republican Chairs Association,
Morris County Republican Committee, and
Jose Arango

Scott D. Salmon
Jardim Meisner & Susser
30B Vreeland Road – Suite 100
Florham Park, NJ 07932
Counsel for Amicus Fulop for Governor

Ronald K. Chen
Rutgers University
Constitutional Litigation Clinic
123 Washington Street
Newark, NJ 07102
Counsel for Amicus Election Law Clinic
At Harvard Law School

Nuzhat J. Chowdhury
Ryan P. Haygood [**ARGUED**]
Henal Patel
New Jersey Institute for Social Justice
60 Park Place – Suite 511
Newark, NJ 07102

Micauri Vargas
Apartment 4
108 Pine Street
Montclair, NJ 07042

Counsel for Amici League of Women Voters of New Jersey, Salvation and Social Justice, New Jersey Alliance for Immigrant Justice, New Jersey Policy Perspective, AAPI New Jersey, Asian American Legal Defense and Education Fund, Asian American Advancing Justice AAJC

Angelo A. Stio, III
Troutman Pepper
301 Carnegie Center – Suite 400
Princeton, NJ 08543

Counsel for Amici Joe Cohn, Staci Berger, James Solomon, Valerie Vainerihuttle

Jeanne LoCicero
Liza F. Weisberg
American Civil Liberties Union of New Jersey
P.O. Box 32159
Newark, NJ 07102
Counsel for Amicus American Civil Liberties Union of New Jersey

---

OPINION OF THE COURT

JORDAN, *Circuit Judge*.

This is an appeal from a preliminary injunction directed at county clerks in New Jersey, the people responsible for choosing the form of election ballots in that state. Securing a local political party's endorsement is important in every primary election, but it is nowhere more important than in New Jersey, where endorsements and ballot placement on the so-called "county line" have significant electoral value. Voters must navigate complex and sometimes contradictory ballots in order to vote for candidates who are left off the county line. This structure of preferential treatment – with candidates chosen by local party leaders eligible for prime ballot placement by county clerks – favors the Democratic and Republican political parties and their leaders, which suggests why this appeal continues even after the county-clerk defendants have all withdrawn. The sole remaining appellant, the intervenor-defendant Camden County Democratic Committee (the "CCDC" or the "Committee"), is fighting to maintain the county-line-style ballots, but we are persuaded that the District Court's thorough and carefully reasoned

opinion reflects no abuse of discretion, so we will affirm the preliminary injunction.

I. BACKGROUND

New Jersey's primary election ballots are unique. Every state in the Union, except for New Jersey, uses what is called an "office-block" design for their ballots. That design groups candidates by the offices for which they are running. But New Jersey, in nineteen of its twenty-one counties,[1] groups candidates together in columns (or rows) based on the "slogan" they choose. Candidates who choose the same slogan, and thus opt to be "bracketed" together, will appear in the same column (or row). N.J. Stat. Ann. §§ 19:23-6, 19:49-2. Certain slogans are reserved and require approval to adopt – as relevant here, the slogan of the county party. *Id.* § 19:23-17. In practice, the county party allows only those candidates it has endorsed to adopt its slogan. Once candidates have chosen their slogans, they are placed in columns (or rows) from left to right (or top to bottom) alongside those in their bracket. Preferential column (or row) placement is given to bracket groups containing "pivot candidates," those candidates who are running for a specific office.[2] Those candidates who have adopted the county party's slogan typically appear in a full (or almost-full) slate of candidates known as the "county line," and because that bracket group usually contains a pivot candidate,

[1] Salem County and Sussex County currently use the office-block design for their primary election ballots.

[2] In 2024, pivot candidates are those running for a U.S. Senate seat. *See* N.J. Stat. Ann. § 19:23-26.1.

it is almost always eligible for a coveted position on the left (or top) of the ballot.

Even apart from its placement, the county line itself carries weight, as it visually signals to voters the candidates whom the county's political leadership favors and typically includes "incumbents, other highly-recognizable names, and 'party elites[.]'" (App. at 68.) Non-pivot candidates who do not obtain a spot on the county line and choose not to be bracketed with a pivot candidate are often placed in more obscure parts of the ballot to the right (or bottom) of the county line, colloquially referred to as "Ballot Siberia." (App. at 41.) Those unfavored candidates may also be stacked with their opponents or with other candidates with whom they do not wish to be associated, which to a voter would be indistinguishable from bracketing.

The following are examples of, first, a county-line ballot (D.I. 1-1 at 64), and, second, an office-block ballot (D.I. 1-1 at 61):

FORM 28
10th Congressional District
10° Distrito Congresional
Borough of Roselle
Municipio de Roselle

OFFICIAL DEMOCRATIC PRIMARY ELECTION BALLOT
BOLETA OFICIAL DEMÓCRATA DE LAS ELECCIONES PRIMARIAS
Union County, New Jersey - July 7, 2020

OFFICE TITLE	TÍTULO OFICIAL	Column / Columna **A** Democratic / Demócrata	Column / Columna **B** Democratic / Demócrata	Column / Columna **C** Democratic / Demócrata	Column / Columna **D** Democratic / Demócrata	Column / Columna **E** Democratic / Demócrata	Column / Columna **F** Democratic / Demócrata	PERSONAL CHOICE Write in and fill in oval SELECCIÓN PERSONAL Escriba y llene el óvalo
Choice for President Vote for One	**Escoger para Presidente** Vote por Uno		Joseph R. **BIDEN** 1B ○ Regular Democratic Org. of Union County		Bernie **SANDERS** 1D ○ Bernie 2020. Not Me. Us.	A VOTE HERE IS A VOTE FOR ALL UNCOMMITTED DELEGATES BELOW UN VOTO AQUÍ ES UN VOTO POR TODOS LOS DELEGADOS NO COMPROMETIDOS ABAJO 1E ○		1 ○ Write in and fill in oval / Escriba y llene el óvalo
13th District Delegates to Democratic National Convention	**Delegados del Distrito 13° a la Convención Nacional Demócrata**		A VOTE ABOVE IS A VOTE FOR ALL DELEGATES UN VOTO POR ENCIMA ES UN VOTO POR TODOS LOS DELEGADOS *Biden for President* Chris BOLLWAGE Adrian MAPP Patricia GONZALEZ June FISCHER		A VOTE ABOVE IS A VOTE FOR ALL DELEGATES UN VOTO POR ENCIMA ES UN VOTO POR TODOS LOS DELEGADOS *Bernie 2020. Not Me. Us.* Lucia DELAROCA Peter JACOB Brett M. PUGACH Patricia SMITH	A VOTE ABOVE IS A VOTE FOR ALL DELEGATES UN VOTO POR ENCIMA ES UN VOTO POR TODOS LOS DELEGADOS *UNCOMMITTED* Andrea HYATT		**NO PERSONAL CHOICE FOR DELEGATES** **NO HAY SELECCIÓN PERSONAL PARA DELEGADOS**
United States Senator 6 Year Term - Vote for One	**Senador de los Estados Unidos** Término de 6 Años - Vote por Uno	Lawrence **HAMM** 2A ○ Not Me. Us.	Cory **BOOKER** 2B ○ Regular Democratic Org. of Union County					2 ○ Write in and fill in oval / Escriba y llene el óvalo
Member of House of Representatives 2 Year Term - Vote for One	**Miembro de la Cámara de Representantes** Término de 2 Años - Vote por Uno		Donald M. **PAYNE, JR.** 3B ○ Regular Democratic Org. of Union County			Eugene D. **MAZO** 3E ○ Progressive Democratic Org. of Union County	John J. **FLORA** 3F ○ United By Our Future	3 ○ Write in and fill in oval / Escriba y llene el óvalo
Sheriff 3 Year Term - Vote for One	**Alguacil** Término de 3 Años - Vote por Uno	Jack **MOLENAAR** 4A ○ Not Me. Us.	Peter **CORVELLI** 4B ○ Regular Democratic Org. of Union County					4 ○ Write in and fill in oval / Escriba y llene el óvalo
County Clerk 5 Year Term - Vote for One	**Secretaria del Condado** Término de 5 Años - Vote por Uno	Sean M. **SMITH** 5A ○ Not Me. Us.	Joanne **RAJOPPI** 5B ○ Regular Democratic Org. of Union County					5 ○ Write in and fill in oval / Escriba y llene el óvalo
Members of Board of Chosen Freeholders 3 Year Term - Vote for Three	**Miembros de la Junta Directiva (Freeholders)** Término de 3 Años - Vote por Tres	Aissa Catherine **HEATH** 6A ○ Not Me. Us.	Christopher **HUDAK** 6B ○ Regular Democratic Org. of Union County	Brianna **ARMSTEAD** 6C ○ Democrats United For Progress				6 ○ Write in and fill in oval / Escriba y llene el óvalo
		Justin Paul **O'HEA** 7A ○ Not Me. Us.	Angela R. **GARRETSON** 7B ○ Regular Democratic Org. of Union County	Daniel **YAMAKAITIS** 7C ○ Democrats United For Progress				7 ○ Write in and fill in oval / Escriba y llene el óvalo
		Hector **MENESES, JR.** 8A ○ Not Me. Us.	Lourdes **LEON** 8B ○ Regular Democratic Org. of Union County					8 ○ Write in and fill in oval / Escriba y llene el óvalo
1st Ward Council Member 3 Year Term - Vote for One	**Miembro del Consejo Barrio 1** Término de 3 Años - Vote por Uno	Isabel **SOUSA** 9A ○ Not Me. Us.	Richard **VILLEDA** 9B ○ Regular Democratic Org. of Union County					9 ○ Write in and fill in oval / Escriba y llene el óvalo

SUSSEX COUNTY | NEW JERSEY | JULY 7, 2020

INSTRUCTIONS TO THE VOTER:

1. To vote for any candidate whose name is printed on this ballot, fill in the oval to the left of the candidate's name (from this ⬭, to this ⬬). Do not vote for more than the number of candidates to be elected to each office.

2. **USE ONLY BLACK OR BLUE BALLPOINT PEN OR A #2 PENCIL TO MARK YOUR BALLOT.**

3. To vote for a person whose name is NOT printed on this ballot, write the person's name on the blank line(s) below the proper title of office (marked "WRITE IN") AND fill in the oval to the left of the name (from this ⬭, to this ⬬).

NOTE: Failure to fill in the oval after writing in a name will void this vote.

4. Do not mark this ballot in any manner other than provided for and **do not erase.** If you spoil your ballot, return it to the County Clerk, who will provide you with a fresh ballot. If you mark your ballot in such a way that your intent is unclear, or if you vote for more than the number to be elected to an office, your vote for that office **WILL NOT BE COUNTED.**

TO PROTECT YOUR VOTE: IT IS AGAINST THE LAW FOR ANYONE EXCEPT YOU, THE VOTER, TO MARK OR INSPECT THIS BALLOT. However, a family member may assist you in doing so. If you are an incapacitated absentee voter, a person other than a family member may also assist you in doing so.

FEDERAL

PRESIDENT/DELEGATES
(Vote for One)

- ⬭ **Bernie Sanders**
  Bernie 2020. Not Me. Us.
  11th District Delegates:
  Patricia Campos Medina, Mary Gerhold, Aaron Hyndman
- ⬭ **Joseph R. Biden**
  Sussex County Democratic Organization
  11th District Delegates:
  Linda Telschow, Thomas Regnut, Kendall Lopez
- ⬭ **11th District Delegates:**
  Christine Chan, Janice J. Miller
- ⬭ ______ Write In

U.S. SENATE
Six-Year Term (Vote for One)

- ⬭ **Lawrence Hamm**
  Not Me. Us.
- ⬭ **Cory Booker**
  Sussex County Democratic Committee Organization
- ⬭ ______ Write In

HOUSE OF REPRESENTATIVES
11th CONGRESSIONAL DISTRICT
Two-Year Term (Vote for One)

- ⬭ **Mikie Sherrill**
  Sussex County Democratic Committee Organization
- ⬭ ______ Write In

COUNTY

FREEHOLDER
Three-Year Term (Vote for One)

No Petition Filed

- ⬭ ______ Write In

MUNICIPAL

FAULKNER ACT

No Municipal Offices Voted This Primary Election

SPARTA TOWNSHIP 1

Primary elections will be held in New Jersey on June 4, 2024. Congressman Andy Kim, who is running for a seat in the U.S. Senate, and Sarah Schoengood and Carolyn Rush, who are both running to represent their respective districts in the U.S. House of Representatives (collectively, the "Plaintiffs") – all three of whom are Democrats – filed a verified complaint in the District Court against clerks whose counties use the county-line format for ballots. They allege that the design is unconstitutional under the First Amendment. Specifically, they allege that the county-line ballot design infringes their Right to Vote, Right to Equal Protection, and Freedom of Association. They also allege that the design violates the Elections Clause of the Constitution. Their allegations implicate several New Jersey statutes, in particular N.J. Stat. Ann. §§ 19:23-18 (permitting candidates to be grouped, or bracketed, together on primary election ballots), 19:23-24 (authorizing county clerks to conduct a drawing to determine the order of office positions on the ballot), 19:23-26.1 (requiring that U.S. Senatorial and gubernatorial races receive the first and second ballot positions, when applicable), and 19:49-2 (requiring grouped candidates to be drawn for ballot position as a unit).

On the same day that they filed this suit, February 26, 2024, the Plaintiffs also filed a motion for a preliminary injunction forbidding the county clerks from using county-line ballots and instead requiring them to use ballots with an office-block format. The Plaintiffs served their verified complaint and motion for preliminary injunction on all New Jersey county clerks, the New Jersey Secretary of State, the New Jersey Attorney General, the New Jersey Democratic and Republican State Committees, and several Democratic and Republican county political parties, including the CCDC. The

CCDC filed a motion to intervene, which the District Court granted.

Three days after the Plaintiffs filed their verified complaint, the District Court conducted a case management teleconference, established a briefing schedule, and set an evidentiary hearing for March 18, 2024. The day before the evidentiary hearing, New Jersey's Attorney General advised the District Court in a letter with detailed legal analysis that he would not seek to intervene in the case because he had "concluded that the challenged statutes are unconstitutional[.]" (D.I. 149 at 1.)

The next day, as scheduled, the District Court conducted a nearly nine-hour "marathon" evidentiary hearing, during which seven witnesses testified. (App. at 26.) Eleven days later, the Court granted the Plaintiffs' motion for a preliminary injunction, accompanying its order with a 49-page opinion, meticulously citing the testimony and other evidence that had been adduced. Summing up what was at issue, the Court said, "[The] Plaintiffs assert that their right to associate (and not associate) with other candidates is burdened by the bracketing system" because they may not want to associate with certain other candidates due to "differences in policy, … personal views, line-mates who are supporting a competing candidate, and not even knowing the other line members." (App. at 34.) The Court also emphasized the Plaintiffs' assertions that the bracketing structure gave an unfair and unconstitutional advantage to candidates favored by party leaders.

The District Court explained that the Plaintiffs had "support[ed] their application with a substantive factual record,

including expert reports and credible expert and factual testimony." (App. at 38.) Specifically, the Court pointed to reports from Dr. Josh Pasek and Dr. Julia Sass Rubin. Dr. Pasek "review[ed] and summarize[d] more than four dozen studies" to conclude that "there is a pervasive primacy effect that favors candidates in elections that appear in an early position on a ballot." (App. at 35.) His report also described the effect on voting that the county-line ballot format generates, an effect he called the "weight of the line." (App. at 35.) The Court explained that Dr. Pasek opined that voters select U.S. House and Senate candidates "11.6% more frequently when the endorsed candidates appeared together on a county line than if they appeared separately in office-block format[,]" and that Dr. Rubin similarly concluded that there was a 12% mean benefit for candidates who were placed on the county line, compared to those who were off the line. (App. at 35-36.)

According to the District Court, the expert reports and testimony were "well-reasoned" and showed that ballot placement on the county line provided a substantial benefit that went beyond mere local party endorsement. (App. at 36.) In addition, the Court found that "candidates placed in an early position on a ballot receive a distinct advantage." (App. at 35.) For those reasons, the Court concluded that the Plaintiffs had shown a severe burden on their First Amendment rights.

It also concluded that the county clerks' expression of the State's interests – namely preserving a candidate's right to associate, to communicate those associations to voters, to provide an understandable ballot, and to prevent voter confusion – was "not especially compelling." (App. at 37.) In the Court's view, the record evidence did not support the idea

that those interests were threatened by an injunction, nor did those interests outweigh the burdens imposed by the county-line format. In fact, the Court explained, county-line ballots can confuse voters. It cited the example of a county ballot that caused almost one-third of voters in a 2020 Democratic primary election to have their votes invalidated because they voted for more than one candidate for the same elected position.[3]

The District Court also decided that, in the absence of an injunction, the Plaintiffs' First Amendment harms would be irreparable. If the Plaintiffs exercise their constitutional right to not associate with other candidates on the county line, "they will be punished for doing so by being excluded from the preferential ballot draw and risk getting relegated to obscure portions of the ballot in Ballot Siberia[.]" (App. at 40 (internal quotation marks omitted).) "Alternatively, Plaintiffs are 'forced' to associate with candidates with whom they may not want to associate and whose policies they may disagree with." (App. at 40 (internal quotation marks omitted).) Even with

---

[3] At oral argument, the CCDC responded that the 2020 Democratic primary election was an anomaly because voters were forced to use paper ballots that year instead of machines that would not have allowed them to vote for multiple candidates running for the same office. But that only underscores the District Court's point. In the only year when voters could have mistakenly voted for multiple candidates for the same office (because voting machines were not used and, accordingly, overvoting was not prevented), nearly one-third of one county's voters did so. That strongly suggests that the bracketing system is confusing to voters.

respect to Senate-candidate Kim, who will be on the county line in most counties, the Court explained that, without an injunction, there will be a forced association with other candidates on the county line who do not support him.

Balancing the harms, the District Court determined that the Plaintiffs' irreparable harm would exceed any burden on the State. The county clerks argued that changing the ballot design this soon before an upcoming primary election could not be done and that it would cause "chaos[.]" (App. at 47.) Considering all of the evidence, the Court disagreed and found instead that voting machines used in New Jersey can readily accommodate office-block ballots and that changing a ballot's layout would take a day at most. One of the defendants' own witnesses, a vendor who prints ballots, testified at the hearing that if the clerks asked him to change the ballots to the office-block style for the upcoming primary election, he would "[o]ne hundred percent" find a way to get it done. (App. at 49.) The Court also determined that the public interest favored protecting the Plaintiffs' constitutional rights.

Having thus determined that the required elements for immediate equitable relief were satisfied, the Court granted the preliminary injunction.[4] That same day, the county clerks and

---

[4] In addition, the District Court concluded that the Elections Clause was an independent basis to grant the injunction, reasoning that the county-line ballot structure exceeds a state's right to regulate the time, place, and manner of an election. We discuss this point further herein. (*Infra* at § II.B.1.b).) The Court also resolved seven motions in limine and the county clerks' arguments that the case should be dismissed for Plaintiffs' lack of standing and for failure to join

the CCDC filed an emergency motion to stay the injunction and a notice of interlocutory appeal. The Morris County Republican Committee (the "MCRC") requested confirmation that the District Court's Order applies only to the Democratic primary and not the Republican primary. In response, the Court clarified that the injunction does not apply to the Republican primary. The motion to stay was denied on April 1, 2024.

The county clerks and the CCDC then immediately filed a motion to stay in our Court. We too denied a stay. Subsequently, the county clerks moved to withdraw from the appeal, pursuant to Federal Rule of Appellate Procedure 42(b). The Plaintiffs consented, and we dismissed the clerks' appeals with prejudice. Accordingly, the CCDC is the only remaining appellant.[5]

---

required parties, all in favor of Plaintiffs. The CCDC does not raise those issues on appeal.

[5] The Middlesex County Democratic Organization filed an amicus brief in favor of the CCDC, as did the MCRC, et al. The following appeared as amici in support of the Plaintiffs: Steven Fulop's gubernatorial campaign, Fulop for Governor; the Election Law Clinic at Harvard Law School; the League of Women Voters of New Jersey, Salvation and Social Justice, New Jersey Alliance for Immigrant Justice, New Jersey Policy Perspective, AAPI New Jersey, Asian American Legal Defense and Education Fund, Asian Americans Advancing Justice | AAJC; the ACLU of New Jersey; and New Jersey Democratic candidates Joe Cohn, Staci Berger, James Solomon, Valerie Vainieri Huttle.

II. DISCUSSION[6]

The mandatory injunction entered by the District Court compels New Jersey county clerks to use an office-block design for Democratic ballots in the June 4, 2024, primary election. The CCDC, not the clerks, now challenges that injunction, arguing it violates the Committee's First Amendment associational rights. Before reviewing the merits of the injunction, we first consider whether the issues are justiciable and whether the CCDC has standing to assert interests belonging to the State of New Jersey.

A. Justiciability

1. The Political Question Doctrine Is Inapplicable.

No party here or below raised the issue of justiciability of these claims and whether the political question doctrine precludes them. One of the amici, however, the MCRC, argues that the Plaintiffs are asking us to "use [our] own political judgment to alter well-established New Jersey balloting processes[,]" which it says is foreclosed by the political question doctrine. (MCRC Amicus Br. at 12.) "Although an

[6] The District Court had subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343. We have jurisdiction pursuant to 28 U.S.C. § 1292(a)(1). "We employ a tripartite standard of review for … preliminary injunctions. We review the District Court's findings of fact for clear error. Legal conclusions are assessed de novo. The ultimate decision to grant or deny the injunction is reviewed for abuse of discretion." *Ramsay v. Nat'l Bd. of Med. Examiners*, 968 F.3d 251, 256 n.5 (3d Cir. 2020).

amicus brief can be helpful in elaborating issues properly presented by the parties, it is normally not a method for injecting new issues into an appeal," and, if only raised by amici, such issues are normally not considered on appeal. *N.J. Retail Merchs. Ass'n v. Sidamon-Eristoff*, 669 F.3d 374, 383 n.2 (3d Cir. 2012). This political question argument, however, implicates our subject matter jurisdiction and so cannot be waived or forfeited. *Gonzalez v. Thaler*, 565 U.S. 134, 141 (2012). We therefore address it.

In *Rucho v. Common Cause*, the Supreme Court instructed that "[f]ederal courts can address only questions 'historically viewed as capable of resolution through the judicial process.'" 139 S. Ct. 2484, 2493-94 (2019) (quoting *Flast v. Cohen*, 392 U.S. 83, 95 (1968)). That means "[s]ometimes, … 'the judicial department has no business entertaining the claim of unlawfulness – because the question is entrusted to one of the political branches or involves no judicially enforceable rights.' In such a case the claim is said to present a 'political question' and to be nonjusticiable[.]" *Id.* at 2494 (first quoting *Vieth v. Jubelirer*, 541 U.S. 267, 277 (2004) (plurality opinion); and then quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962)). The test is whether the claim is "of [a] *legal* right, resolvable according to *legal* principles, or [a] political question[] that must find [its] resolution elsewhere." *Id.* at 2494, 2496 (emphasis in original) (holding that questions of partisan gerrymandering are entrusted to the political branches, not courts, and that such claims lack "judicially discoverable and manageable standards" for court resolution). In this case, the constitutional questions can be resolved by resorting to settled First Amendment legal principles.

Courts often decide ballot-design cases, almost universally agreeing that such cases pose judicial questions that can be resolved through application of judicially manageable standards, such as the standards laid out in *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick v. Takushi*, 504 U.S. 428 (1992) (hereinafter, the "*Anderson-Burdick* framework").[7] The political question doctrine is therefore inapplicable here and the issues presented are justiciable.

---

[7] *See, e.g.*, *Pavek v. Simon*, 967 F.3d 905, 907 (8th Cir. 2020) (rejecting justiciability concerns and concluding, "We have adjudicated the merits of such claims before and have comfortably employed judicially manageable standards in doing so"); *Nelson v. Warner*, 12 F.4th 376, 386-87 (4th Cir. 2021) ("[T]he political question doctrine does not bar [the court] from considering the plaintiffs' ballot-order challenges. … Nor does *Rucho* [*v. Common Cause*, 139 S. Ct. 2484 (2021),] call into question use of the *Anderson/Burdick* framework[,]" as it applies only to partisan gerrymandering); *Mecinas v. Hobbs*, 30 F.4th 890, 901-02 (9th Cir. 2022) (same and collecting cases); *but cf. Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1260 (11th Cir. 2020) (holding that complaints of *partisan* advantage from ballot order presents a nonjusticiable question following *Rucho*). The Supreme Court has also summarily affirmed a three-judge district court panel enjoining use of an incumbent-weighted ballot, despite there being an objection based on the political question doctrine. *Powell v. Mann*, 398 U.S. 955 (1970), *aff'g*, 314 F. Supp. 677 (N.D. Ill. 1969).

2. The CCDC is Not Asserting the State's Interests as Its Own, But Vindicating Its Own Rights.

The Plaintiffs argue that the CCDC, as an intervenor, "cannot stand in the shoes of state actors, to assert state and government interests." (Reply Br. at 48.) A party "generally must assert [its] own legal rights and interests, and cannot rest [its] claim to relief on the legal rights or interests of third parties." *Warth v. Seldin*, 422 U.S. 490, 499 (1975); *see also Kowalski v. Tesmer*, 543 U.S. 125, 130 (2004) (limiting third-party standing to parties with a "close" relationship and when there is a "hindrance" to the right-possessor's "ability to protect his own interests"). But in bringing this appeal, the CCDC does not simply rely on harms to New Jersey; it frankly asserts that it has "different interests" than the county clerks. (Reply Br. at 24.)

The CCDC instead is appealing to address alleged infringements of its own constitutional rights that result from the District Court's injunction, including what it claims are "the right to not only endorse and identify candidates that share [political parties'] ideologies and preferences, but [also] to group the candidates in a manner that informs voters of the individuals who constitute the association to advance their shared interests[.]" (Opening Br. at 19.) Accordingly, the CCDC is not simply relying on the State's interests to gain relief.[8]

---

[8] The CCDC's appeal is thus distinguishable from cases like *Hollingsworth v. Perry*, where the Supreme Court declined to uphold "the standing of a private party [without an independent injury] to defend the constitutionality of a state

Because all of the county clerks are no longer involved in this appeal,[9] the CCDC necessarily stands alone to defend the constitutionality of the county-line ballot practice in New Jersey, and it does so in order to vindicate its own rights. Therefore, as the parties all agree, because the question presented concerns state election law, we are obligated to apply the *Anderson-Burdick* analytical framework, as directed by the Supreme Court.

B. The Preliminary Injunction Standard Is Met

"[A] mandatory injunction is an extraordinary remedy that is only granted sparingly by the courts." *Trinity Indus.,*

---

statute when state officials [had] chosen not to." 570 U.S. 693, 707-09, 715 (2013). In contrast to *Hollingsworth*, the CCDC has alleged its own injury, and "an intervenor … ha[s] standing to appeal an adverse judgment, even if the state declines to appeal it, if the intervenor can independently demonstrate that he fulfills the requirements of Article III." *Cherry Hill Vineyards, LLC v. Lilly*, 553 F.3d 423, 430 (6th Cir. 2008); *see Associated Builders & Contractors v. Perry*, 16 F.3d 688, 694 (6th Cir. 1994) (Merritt, C.J., concurring in the result) (citing a number of "famous cases [to] demonstrate that two private parties are fully entitled to litigate the constitutionality or other validity of state statutes").

[9] New Jersey's interests were initially voiced by the county clerks – all nineteen of which have withdrawn their appeal. Additionally, as noted earlier, the New Jersey Attorney General has refused to defend the ballot-ordering statutes, as indicated in his letter declining to intervene before the District Court.

Inc. v. Chi. Bridge & Iron Co., 735 F.3d 131, 139 (3d Cir. 2013). To obtain any preliminary injunction, a plaintiff must show (1) he will likely succeed on the merits; (2) he will likely suffer irreparable injury; (3) the balance of equities favors him; and (4) the injunction serves the public interest. *Schrader v. Dist. Att'y of York Cnty.*, 74 F.4th 120, 126 (3d Cir. 2023). The first two prongs are "gateway factors," and we typically only consider "the remaining two" if "these gateway factors are met[.]" *Reilly v. City of Harrisburg*, 858 F.3d 173, 179 (3d Cir. 2017). And over and above the showing required to maintain the status quo, to obtain the mandatory injunctive relief sought here, a plaintiff must "show a substantial likelihood of success on the merits and that [one's] right to relief is indisputably clear[.]" *Hope v. Warden York Cnty. Prison*, 972 F.3d 310, 320 (3d Cir. 2020) (cleaned up).

1. The Plaintiffs Have Demonstrated a Substantial Likelihood of Success on the Merits.

a) First Amendment

The Plaintiffs have a substantial likelihood of success on the merits of their First Amendment claims. Because state election laws inevitably burden some fundamental rights, the Supreme Court has, in the *Anderson-Burdick* framework, "crafted a unique test for 'constitutional challenges to specific provisions of a State's election laws.'" *Mazo*, 54 F.4th at 137 (cleaned up) (quoting *Anderson*, 460 U.S. at 789). The test called for in that framework weighs the burden placed upon a plaintiff's rights against the state's interest in regulating elections. *Id.* at 145. If the burden on the plaintiff's rights is "severe," we apply strict scrutiny. *Id.* (quoting *Crawford v.*

Marion Cnty. Election Bd., 553 U.S. 181, 205 (2008) (Scalia, J., concurring)). If, however, the state's regulations just impose "reasonable, nondiscriminatory restrictions" we need only determine whether the state's "legitimate interests ... are sufficient to outweigh the limited burden[.]" *Id.* at 137 (quoting *Anderson*, 460 U.S. at 788 and then *Burdick*, 504 U.S. at 440). "Evidence is key to the balancing of interests at the heart of the *Anderson-Burdick* framework." *Id.* at 152. A plaintiff must substantiate his or her alleged harm, because we will not find a state regulation unconstitutional based upon "'hypothetical' or 'imaginary' cases." *Id.* (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008)).

The District Court found that the Plaintiffs here suffer two forms of harm. First, candidates who are running for a pivot point office but do not wish to associate with a county line, such as Senate-candidate Kim on the Camden County ballot, suffer a distinct electoral disadvantage as a result of that choice. As alluded to earlier (*see supra* at § I), Dr. Pasek's expert report, which the District Court credited as "well-reasoned," explained that "voters selected candidates endorsed by a county 11.6% more frequently when the endorsed candidates appeared together on a county line than if they appeared separately in office-block format." (App. at 35.) And Dr. Rubin's report, which the Court similarly credited, added that "in 35 of the 37 primary contests that took place in New Jersey between 2012 and 2022, candidates received a larger share of the vote when they were on the county line than when they were endorsed but there was no county line. The difference in the candidate's performance ranged from -7 to 45 percentage points, with a mean of 12% points and a median of 11 percentage points." (App. at 36

(internal quotation marks omitted).) Thus, candidates like Kim are forced to choose between either associating with candidates they may not wish to associate with or suffering material disadvantages in the election.

Candidates who are running for other offices, such as congressional candidates Schoengood and Rush, face a different type of harm. To have any chance of being placed in the first column or row of the ballot, they must accept being bracketed with a candidate running for a pivot point office. If they are unable to do that, or choose not to, they may be relegated to Ballot Siberia and perhaps even stacked in the same column as their opponents. This too puts them at a distinct electoral disadvantage. As Dr. Pasek explained, "primacy biases in New Jersey elections will always negatively impact candidates who do not bracket with a candidate for the pivot-point position, as these candidates are guaranteed to be placed in positions further to the right of (or below) colleagues who are bracketed with someone in the pivot-point position." (App. at 42 (cleaned up).) Such placement matters because, according to Dr. Pasek, "all candidates on party-column ballots performed better when listed in the leftmost available position, with these benefits ranging from 3.9 percentage points to 27.8 percentage points across candidates." (App. at 42.) The District Court found that evidence to be credible, and we discern no clear error in its findings.[10]

---

[10] At oral argument, the CCDC asserted that the District Court clearly erred in its factual findings because it did not provide the CCDC with enough time to rebut the Plaintiffs' expert findings, producing an inherently unreliable record. We disagree. At its core, the CCDC's argument is that the record

The question then becomes the severity of the burden upon the Plaintiffs' rights. A burden is "severe" and "will be 'especially difficult for the State to justify'" where the challenged regulation "limit[s] political participation by an identifiable political group whose members share a particular viewpoint, associational preference, or economic status[.]" *Mazo*, 54 F.4th at 146 (quoting *Anderson*, 460 U.S. at 793). Discrimination may thus be based on viewpoint,[11] or

---

so strongly favors the Plaintiffs because the CCDC had insufficient time to prepare, because the District Court did not grant its motion to intervene until shortly before the evidentiary hearing and then limited the preliminary injunction hearing to nine hours on a single day. But the CCDC was served notice 20 days before the hearing, which provided it with ample time to retain its own experts or at least develop a record showing it had tried. And the District Court's decision to limit the evidentiary hearing to nine hours is a discretionary matter (as even the CCDC acknowledged at argument), and, on review, we perceive no abuse of discretion. We note the irony that the CCDC argues that it should have been given more time while simultaneously arguing under *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam), that there was no time to lose in ruling on the Plaintiffs' application for an injunction.

[11] Discriminatory election laws can take different forms. Because Plaintiffs claim that New Jersey's ballot display violates their First Amendment right of free association, we focus on that right here. We note, however, that amicus, the American Civil Liberties Union of New Jersey, argues that "[c]ounty clerks in New Jersey, through non-neutral primary ballot design procedures, unconstitutionally engage in viewpoint-based discrimination." (ACLU Amicus Br. at 12.)

on "restrictions [that] operate as a mechanism to exclude certain classes of candidates from the electoral process." *Id.* In the latter case, the key "inquiry is whether the challenged restriction unfairly or unnecessarily burdens 'the availability of political opportunity.'" *Id.* (quoting *Anderson*, 460 U.S. at 793). "[B]urdens that apply to all voters, parties, or candidates are less likely to be severe[,]" *id.* at 146, and "burdens are not severe if they are ordinary and widespread[,]" *id.* at 152 (internal quotation marks and citations omitted). Severe burdens are lessened if the state "provide[s] alternative methods for the exercise of burdened rights." *Id.* at 151.

The county-line system discriminates based upon the candidates' associational choices and policy positions. Again, according to factual findings by the District Court, that system forces candidates to choose between associating with candidates with whom they may not wish to associate or facing "Ballot Siberia." It favors candidates whose views most align with the party bosses'. *See id.* at 147 n.39 (a ballot practice is severe if it "favor[s] certain candidates or outcomes"). That, coupled with record evidence that bracketing and primacy significantly impact election results, makes the burden on plaintiffs' rights severe.[12] While candidates are not completely

---

Viewed in that light, the bracketing and ballot placement system would also clearly be constitutionally problematic.

[12] Some New Jersey state cases have upheld the county-line ballot system. *See Schundler v. Donovan*, 872 A.2d 1092, 1100 (N.J. App. Div.) (generally upholding the constitutionality of the bracketing system), *aff'd,* 874 A.2d 506 (N.J. 2005); *Quaremba v. Allan*, 334 A.2d 321, 330 (N.J. 1975) (upholding New Jersey laws underlying the county line

excluded from the ballot and so can garner votes, the discriminatory nature of the county-line system requires that the state legislation satisfy heightened scrutiny.

To be sure, a ballot-placement scheme that utilizes a lottery or applies to all parties equally will likely not, by itself, place a severe burden upon candidates. *See, e.g.*, *Libertarian Party of Va. v. Alcorn*, 826 F.3d 708, 717 (4th Cir. 2016) (upholding ballot law that was "facially neutral and nondiscriminatory"); *Democratic-Republican Org. of New Jersey v. Guadagno*, 900 F. Supp. 2d 447, 456 (D.N.J.), *aff'd*,

---

system). But we owe no deference to a state court's interpretation of the United States Constitution. *United States v. Bedford*, 519 F.2d 650, 654 n.3 (3d Cir. 1975) ("It is a recognized principle that a federal court is not bound by a state court's interpretation of federal laws or of a state statute under misapprehension of federal law."). And it is not insignificant that the New Jersey Attorney General has opted in this case to forego any defense of the statutes allowing the county-line ballots. Indeed, his letter to the District Court constitutes a ringing condemnation of those statutes, given the factual record presented here. (*See* D.I. 149 at 1 (declining to intervene in the case because "[i]n light of the evidentiary record, … the challenged statutes are unconstitutional[.]"); *id.* at 2 (explaining that he "has not identified reliable empirical evidence countering this [case's] record evidence" and that he lacks "a basis for intervening to defend [the statutes'] constitutionality"); *id.* at 4 ("This is an exceptional case, justifying the Attorney General's exceptionally rare decision not to defend the constitutionality of the challenged statutes.").)

700 F.3d 130 (3d Cir. 2012) (upholding an election law that "imposes only a minimal nondiscriminatory burden on minor parties"). But the record before us supports the District Court's ruling. It shows that the county-line system is discriminatory – it picks winners and punishes those who are not endorsed or, because of their political views, want to disassociate from certain endorsed candidates. Those disfavored candidates are put in undesirable ballot positions and, by random coupling, can end up paired with potentially objectionable candidates. Those outcomes amount to a severe burden on the Plaintiffs' rights.

The CCDC argues that a regulation that is merely about ballot placement, rather than ballot access, does not impose a severe burden. But we don't just ask whether a candidate's name physically appears on the ballot. "The inquiry is whether the challenged restriction unfairly or unnecessarily burdens 'the availability of political opportunity.'" *Mazo*, 54 F.4th at 146 (quoting *Anderson*, 460 U.S. at 793).

The CCDC contends that the "primacy" effect is a wash because first position on the ballot is randomly assigned, and pivot-point candidates may obtain the coveted first spot even if they do not obtain the county-line endorsement. (Opening Br. at 26.) That, however, is only true of candidates for the U.S. Senate or for Governor. It ignores Schoengood and Rush, running for U.S. Congress, who are excluded from the first position unless they appear on the county line or bracket with an unendorsed Senate candidate.

The state, no doubt, has protectable interests in regulating elections, and, before the District Court, the county clerks suggested four. They asserted as facts that the current

system (1) preserves candidates' political parties' rights to associate; (2) communicates candidates' associations to voters; (3) provides a manageable and understandable ballot; and (4) prevents voter confusion. The CCDC argues for the constitutionality of the county-line ballot framework, advancing essentially the same state interests articulated earlier by the county clerks. Even if those factual assertions were true, however,[13] the record does not demonstrate that the county line system is "narrowly tailored [to] advance [those] compelling state interest[s]." *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997). As outlined by the District Court, parties and candidates have plenty of other ways to express their associations, and forty-nine other states have managed to provide manageable, understandable, and unconfusing ballots, as have two counties in New Jersey. *See Eu v. S.F. Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 226 (1989) (rejecting a compelling interest when the state "is virtually the only State that has determined" to conduct its elections a certain way).

The CCDC also asserts that its own First Amendment associational rights are harmed by the injunction. It argues that political organizations have "the right to not only endorse and identify candidates that share their ideologies and preferences, but to group the candidates in a manner that informs voters of the individuals who constitute the association to advance their shared interests[.]" (Opening Br. at 19.) In *Timmons*,

---

[13] There is ample reason to believe the assertions are not entirely true. For example, the District Court took evidence and concluded that the county-line ballots are not understandable and that they can cause rather than prevent voter confusion. Those findings are not clearly erroneous.

however, the Supreme Court rejected the idea that parties have a constitutional right "to use the ballot itself to send a particularized message, to its candidate and to the voters, about the nature of its support for the candidate." 520 U.S. at 363. Here, nothing in the preliminary injunction prohibits the CCDC from including county parties' slogans on the ballot, endorsing candidates, communicating those endorsements, or associating by any other constitutional means. The injunction simply means that the CCDC does not get to bracket its preferred candidates together on the ballot. "[T]he First Amendment does not give political parties a right to have their nominees designated as such on the ballot." *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 453 n.7 (2008). As the CCDC's First Amendment rights are not meaningfully harmed by the injunction, the burdens on the Plaintiffs' competing First Amendment rights outweigh any of them. Like the state law in *Timmons*, the preliminary injunction "do[es] not restrict the ability of the [CCDC] and its members to endorse, support, or vote for anyone they like." 520 U.S. at 363.

Based on the record developed in the District Court, there is a very substantial likelihood that the Plaintiffs will succeed on the merits of their First Amendment claims under the *Anderson-Burdick* framework. Even if that were a closer call, however, we would uphold the District Court's order. *See Ashcroft v. ACLU*, 542 U.S. 656, 664-65 (2004) (holding that if a constitutional question underlying a preliminary injunction "is close … we should uphold the injunction and remand for trial on the merits").

b) *Elections Clause*

We would also uphold the order because New Jersey's county-line ballots, as the District Court held, are invalid under the Elections Clause, U.S. Const. art. I, § 4, cl. 1. When a state election law exceeds the state's authority to regulate "[t]he Times, Places, and Manner of holding Elections" for United States Senator and House Representative, *id.*, it is unconstitutional, regardless of the burden it places upon the parties' rights. *See Mazo v. N.J. Sec'y of State*, 54 F.4th 124, 140 n.14 (3d Cir. 2022) ("Because such laws fall outside of State's constitutional authority, they do not enjoy the deference afforded by the *Anderson-Burdick* balancing test."). A state election law exceeds the state's authority to regulate the "Times, Places, and Manner" boundaries when it "dictate[s] electoral outcomes," or "favor[s] or disfavor[s] a class of candidates," especially when the "adverse [ballot practice] handicap[s] candidates 'at the most crucial stage in the election process – the instant before the vote is cast.'" *Cook v. Gralike*, 531 U.S. 510, 523, 525 (2001) (quoting *Anderson v. Martin*, 375 U.S. 399, 402 (1964)).

The District Court found that the county-line form of ballot appears to do just that. As it explained, it does not merely regulate "the numerous requirements … ensuring that elections are fair and honest, and that some sort of order, rather than chaos, is to accompany the democratic process"; it puts a thumb on the scale for preferred candidates, impacting elections outcomes "before the vote is cast." *Id.* at 524-25 (internal quotation marks omitted). Thus, it is likely unconstitutional. At oral argument, counsel for the CCDC acknowledged that "if we conclude that the District Court's findings are not clearly erroneous … we then have a violation

of the Elections Clause per se." (Oral Arg. 46:43-56.) That is fatal to the CCDC's appeal because, as we have explained, the District Court's factual findings are not clearly erroneous. Based on those factual findings, the Court reasonably concluded that New Jersey's bracketing and ballot placement system disfavors a class of candidates.

2. The Plaintiffs Will Suffer Irreparable Harm Without an Injunction.

"The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). More so here, as the status quo deprives the Plaintiffs – especially Schoengood and Rush – of a fair chance to win the election, a harm "where monetary damages" are "inadequate." *Hohe v. Casey*, 868 F.2d 69, 73 (3d Cir. 1989). Finally, the Plaintiffs' rights not to associate with objectionable candidates, *see Cal. Democratic Party v. Jones*, 530 U.S. 567, 574 (2000), are burdened when they must choose between that and an unwelcome ballot position.

3. The Balance of Harms and The Public Interest Also Favor Plaintiffs.

The third and fourth injunction factors favor the Plaintiffs as well. As discussed earlier, any harm to the state's or the CCDC's interests is outweighed by the burdens on the Plaintiffs' associational rights. And any logistical burden the county clerks face in changing the ballots appears to be entirely manageable, as evidenced by the District Court's findings and the fact that all of the clerks have abandoned this appeal. Looking at the final factor of the traditional preliminary

injunction test, the answer is clear: remedying an unconstitutional practice is always in the public interest. *Schrader*, 74 F.4th at 128.

C. The *Purcell* Doctrine Does Not Compel a Contrary Result

On appeal, the CCDC adopts the county clerks' argument that the District Court erred under *Purcell v. Gonzalez* because it imposed an injunction too close to an election. "[F]ederal courts should ordinarily not alter the election rules on the eve of an election." *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 424 (2020) (per curiam) (citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam), *Frank v. Walker*, 574 U.S. 929 (2014), and *Veasey* v. *Perry*, 574 U.S. 951 (2014)). But *Purcell* is a consideration, not a prohibition, *see, e.g.*, *Democratic Nat'l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurring in denial of application to vacate stay), and it is just one among other "considerations specific to election cases" that we must weigh for injunctive relief. The Supreme Court has said that we must weigh "considerations specific to election cases[,]" in addition to the traditional considerations for injunctive relief. *Purcell*, 549 U.S. at 4. That caution is certainly sound because "[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls[,]" and "[a]s an election draws closer, that risk will increase." *Id.* at 4-5. The focus of the *Purcell* principle, then, is on avoiding election issues that could lead to voter confusion shortly before an election.

In this case, however, the District Court's order would reduce, if not eliminate voter confusion and, for the reasons previously explained, the arguments made by the CCDC and its amicus, the MCRC, appear contrary to the record and based on nothing but speculation. The MCRC argues the change "will generate extensive voter confusion" because it will "deprive[] voters of expected information on their ballots." (MCRC Amicus Br. at 10.) No support is offered for that claim. Based on the District Court's factual findings – and unlike other cases in which *Purcell* is typically applied – implementing office-block style ballots does not impact voters' ability or plans for voting and would actually alleviate some ballot confusion. Further, as every one of the county clerks has abandoned this appeal, MCRC's other argument, that "[t]here is simply not enough time to properly implement such a significant change[,]" does not hold water.[14] (MCRC Amicus Br. at 11.)

---

[14] In addition, the Plaintiffs point out that the county clerks "are well underway in designing office-block ballots" and "have apparently received confirmation from their voting system vendors … that they can in fact design office-block ballots with minimal disruption." (Answering Br. at 47.) Besides, we do not view this as a last-minute election case. The Plaintiffs moved with the appropriate alacrity, bringing this suit over 100 days before the primary election and over a month before the ballot-printing deadline. And as the Plaintiffs correctly surmised, an earlier filing (perhaps before the announcement of official endorsements) would have raised the specter of the defendants raising a ripeness challenge.

Here again, the District Court's factual findings undermine the MCRC's assertions. The Court said that the county clerks could implement the necessary changes given the time available, and that finding is entitled to deference.

III. CONCLUSION

In sum, we will affirm the District Court's order granting the preliminary injunction because its findings of fact are substantiated, its conclusions of law are sound, and its "ultimate decision" granting the injunction presents no abuse of discretion. *Lara v. Comm'r Pa. State Police*, 91 F.4th 122, 128 n.5 (3d Cir. 2024).

133 S.Ct. 2612
Supreme Court of the United States

SHELBY COUNTY, ALABAMA, Petitioner
v.
Eric H. HOLDER, Jr., Attorney General, et al.

No. 12–96
|
Argued Feb. 27, 2013.
|
Decided June 25, 2013.

Synopsis
Background: County brought declaratory judgment action against United States Attorney General, seeking determination that Voting Rights Act's coverage formula and preclearance requirement, under which covered jurisdictions were required to demonstrate that proposed voting law changes were not discriminatory, was unconstitutional. United States and civil rights organization intervened. After intervenors' motion for additional discovery was denied, 270 F.R.D. 16, parties cross-moved for summary judgment. The United States District Court for the District of Columbia, John D. Bates, J., 811 F.Supp.2d 424, entered summary judgment for Attorney General. County appealed. The United States Court of Appeals for the District of Columbia Circuit, Tatel, Circuit Judge, 679 F.3d 848, affirmed. Certiorari was granted.

The Supreme Court, Chief Justice Roberts, held that Voting Rights Act provision setting forth coverage formula was unconstitutional.

Reversed.

Justice Thomas filed concurring opinion.

Justice Ginsburg filed dissenting opinion in which Justices Breyer, Sotomayor, and Kagan joined.

West Codenotes

Held Unconstitutional
42 U.S.C.A. § 1973b(b), transferred to 52 U.S.C.A. § 10303

****2615** *Syllabus*[*]

***529** The Voting Rights Act of 1965 was enacted to address entrenched racial discrimination in voting, "an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution." *South Carolina v. Katzenbach,* 383 U.S. 301, 309, 86 S.Ct. 803, 15 L.Ed.2d 769. Section 2 of the Act, which bans any "standard, practice, or procedure" that "results in a denial or abridgement of the right of any citizen ... to vote on account of race or color," 42 U.S.C. § 1973(a), applies nationwide, is permanent, and is not at issue in this case. Other sections apply only to some parts of the country. Section 4 of the Act provides the "coverage formula," defining the " covered jurisdictions"

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

as States or political subdivisions that maintained tests or devices as prerequisites to voting, and had low voter registration or turnout, in the 1960s and early 1970s. § 1973b(b). In those covered jurisdictions, § 5 of the Act provides that no change in voting procedures can take effect until approved by specified federal authorities in Washington, D.C. § 1973c(a). Such approval is known as "preclearance."

The coverage formula and preclearance requirement were initially set to expire after five years, but the Act has been reauthorized several times. In 2006, the Act was reauthorized for an additional 25 years, but the coverage formula was not changed. Coverage still turned on whether a jurisdiction had a voting test in the 1960s or 1970s, and had low voter registration or turnout at that time. Shortly after the 2006 reauthorization, a Texas utility district sought to bail out from the Act's coverage and, in the alternative, challenged the Act's constitutionality. This Court resolved the challenge on statutory grounds, but expressed serious doubts about the Act's continued constitutionality. See *Northwest Austin Municipal Util. Dist. No. One v. Holder,* 557 U.S. 193, 129 S.Ct. 2504, 174 L.Ed.2d 140.

Petitioner Shelby County, in the covered jurisdiction of Alabama, sued the Attorney General in Federal District Court in Washington, D.C., seeking a declaratory judgment that sections 4(b) and 5 are facially unconstitutional, as well as a permanent injunction against their enforcement. The District Court upheld the Act, finding that the evidence before Congress in 2006 was sufficient to justify reauthorizing § 5 and continuing ***530** § 4(b)'s coverage formula. The D.C. Circuit affirmed. After surveying the evidence in the record, that court accepted Congress's conclusion that § 2 litigation remained inadequate in the covered jurisdictions to protect the rights of minority voters, that § 5 was therefore still necessary, and that the coverage formula continued to pass constitutional muster.

Held : Section 4 of the Voting Rights Act is unconstitutional; its formula can no longer be used as a basis for subjecting jurisdictions to preclearance. Pp. 2622 – 2628.

(a) In *Northwest Austin*, this Court noted that the Voting Rights Act "imposes current burdens and must be justified by current needs" and concluded that "a departure ****2616** from the fundamental principle of equal sovereignty requires a showing that a statute's disparate geographic coverage is sufficiently related to the problem that it targets." 557 U.S., at 203, 129 S.Ct. 2504. These basic principles guide review of the question presented here. Pp. 2622 – 2627.

(1) State legislation may not contravene federal law. States retain broad autonomy, however, in structuring their governments and pursuing legislative objectives. Indeed, the Tenth Amendment reserves to the States all powers not specifically granted to the Federal Government, including "the power to regulate elections." *Gregory v. Ashcroft,* 501 U.S. 452, 461–462, 111 S.Ct. 2395, 115 L.Ed.2d 410. There is also a "fundamental principle of equal sovereignty" among the States, which is highly pertinent in assessing disparate treatment of States. *Northwest Austin, supra,* at 203, 129 S.Ct. 2504.

The Voting Rights Act sharply departs from these basic principles. It requires States to beseech the Federal Government for permission to implement laws that they would otherwise have the right to enact and execute on their own. And despite the tradition of equal sovereignty, the Act applies to only nine States (and additional counties). That is why, in 1966, this Court described the Act as "stringent" and "potent," *Katzenbach,* 383 U.S., at 308, 315, 337, 86 S.Ct. 803. The Court nonetheless upheld the Act, concluding that such an "uncommon exercise of congressional power" could be justified by "exceptional conditions." *Id.,* at 334, 86 S.Ct. 803. Pp. 2622 – 2625.

(2) In 1966, these departures were justified by the "blight of racial discrimination in voting" that had "infected the electoral process in parts of our country for nearly a century," *Katzenbach,* 383 U.S., at 308, 86 S.Ct. 803. At the time, the coverage formula—the means of linking the exercise of the unprecedented authority with the problem that warranted it—made sense. The Act was limited to areas where Congress found "evidence of actual voting discrimination," and the covered jurisdictions shared two characteristics: "the use of tests and devices for voter registration, and a voting rate in the 1964 presidential election at least 12 points ***531** below the national average." *Id.,* at 330, 86 S.Ct. 803. The Court explained that "[t]ests and devices are relevant to voting discrimination because of their long history as a tool for perpetrating the evil; a low voting rate is pertinent

for the obvious reason that widespread disenfranchisement must inevitably affect the number of actual voters." *Ibid.* The Court therefore concluded that "the coverage formula [was] rational in both practice and theory." *Ibid.* Pp. 2624 – 2625.

(3) Nearly 50 years later, things have changed dramatically. Largely because of the Voting Rights Act, "[v]oter turnout and registration rates" in covered jurisdictions "now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels." *Northwest Austin, supra,* at 202, 129 S.Ct. 2504. The tests and devices that blocked ballot access have been forbidden nationwide for over 40 years**.** Yet the Act has not eased § 5's restrictions or narrowed the scope of § 4's coverage formula along the way. Instead those extraordinary and unprecedented features have been reauthorized as if nothing has changed, and they have grown even stronger. Because § 5 applies only to those jurisdictions singled out by § 4, the Court turns to consider that provision. Pp. 2625 – 2627.

(b) Section 4's formula is unconstitutional in light of current conditions. Pp. 2627 – 2631.

****2617** (1) In 1966, the coverage formula was "rational in both practice and theory." *Katzenbach, supra,* at 330, 86 S.Ct. 803. It looked to cause (discriminatory tests) and effect (low voter registration and turnout), and tailored the remedy (preclearance) to those jurisdictions exhibiting both. By 2009, however, the "coverage formula raise[d] serious constitutional questions." *Northwest Austin, supra,* at 204, 129 S.Ct. 2504. Coverage today is based on decades-old data and eradicated practices. The formula captures States by reference to literacy tests and low voter registration and turnout in the 1960s and early 1970s. But such tests have been banned for over 40 years. And voter registration and turnout numbers in covered States have risen dramatically. In 1965, the States could be divided into those with a recent history of voting tests and low voter registration and turnout and those without those characteristics. Congress based its coverage formula on that distinction. Today the Nation is no longer divided along those lines, yet the Voting Rights Act continues to treat it as if it were. Pp. 2627 – 2628.

(2) The Government attempts to defend the formula on grounds that it is "reverse-engineered"—Congress identified the jurisdictions to be covered and *then* came up with criteria to describe them. *Katzenbach* did not sanction such an approach, reasoning instead that the coverage formula was rational because the "formula ... was relevant to the problem." 383 U.S., at 329, 330, 86 S.Ct. 803. The Government has a fallback ***532** argument—because the formula was relevant in 1965, its continued use is permissible so long as any discrimination remains in the States identified in 1965. But this does not look to "current political conditions," *Northwest Austin, supra,* at 203, 129 S.Ct. 2504, instead relying on a comparison between the States in 1965. But history did not end in 1965. In assessing the "current need[ ]" for a preclearance system treating States differently from one another today, history since 1965 cannot be ignored. The Fifteenth Amendment is not designed to punish for the past; its purpose is to ensure a better future. To serve that purpose, Congress—if it is to divide the States—must identify those jurisdictions to be singled out on a basis that makes sense in light of current conditions. Pp. 2627 – 2629.

(3) Respondents also rely heavily on data from the record compiled by Congress before reauthorizing the Act. Regardless of how one looks at that record, no one can fairly say that it shows anything approaching the "pervasive," "flagrant," "widespread," and "rampant" discrimination that clearly distinguished the covered jurisdictions from the rest of the Nation in 1965. *Katzenbach, supra,* at 308, 315, 331, 86 S.Ct. 803. But a more fundamental problem remains: Congress did not use that record to fashion a coverage formula grounded in current conditions. It instead re-enacted a formula based on 40–year–old facts having no logical relation to the present day. Pp. 2629 – 2630.

679 F.3d 848, reversed.

ROBERTS, C.J., delivered the opinion of the Court, in which SCALIA, KENNEDY, THOMAS, and ALITO, JJ., joined. THOMAS, J., filed a concurring opinion. GINSBURG, J., filed a dissenting opinion, in which BREYER, SOTOMAYOR, and KAGAN, JJ., joined.

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

Attorneys and Law Firms

Bert W. Rein, for Petitioner.

Donald B. Verrilli, Jr., Solicitor General, for Federal Respondent.

Debo P. Adegbile, for Respondents Bobby Pierson, et al.

****2618** Frank C. Ellis, Jr., Wallace, Ellis, Fowler, Head & Justice, Columbiana, AL, Bert W. Rein, William S. Consovoy, Thomas R. McCarthy, Brendan J. Morrissey, Wiley Rein LLP, Washington, DC, for Petitioner.

Kim Keenan, Victor L. Goode, Baltimore, MD, Arthur B. Spitzer, Washington, D.C., David I. Schoen, Montgomery, AL, M. Laughlin McDonald, Nancy G. Abudu, Atlanta, GA, Steven R. Shapiro, New York, NY, for Respondent–Intervenors Bobby Pierson, Willie Goldsmith, Sr., Mary Paxton–Lee, Kenneth Dukes, and Alabama State Conference of the National Association for the Advancement of Colored People.

Sherrilyn Ifill, Director–Counsel, Debo P. Adegbile, Elise C. Boddie, Ryan P. Haygood, Dale E. Ho, Natasha M. Korgaonkar, Leah C. Aden, NAACP Legal Defense & Educational Fund, Inc., New York, NY, Joshua Civin, NAACP Legal Defense & Educational Fund, Inc., Washington, DC, Of Counsel: Samuel Spital, William J. Honan, Harold Barry Vasios, Marisa Marinelli, Robert J. Burns, Holland & Knight LLP, New York, NY, for Respondent–Intervenors Earl Cunningham, Harry Jones, Albert Jones, Ernest Montgomery, Anthony Vines, and William Walker.

Donald B. Verrilli, Jr., Solicitor General, Thomas E. Perez, Assistant Attorney General, Sri Srinivasan, Deputy Solicitor General, Sarah E. Harrington, Assistant to the Solicitor General, Diana K. Flynn, Erin H. Flynn, Attorneys, Department of Justice, Washington, D.C., for Federal Respondent.

Jon M. Greenbaum, Robert A. Kengle, Mark A. Posner, Maura Eileen O'Connor, Washington, D.C., John M. Nonna, Patton Boggs LLP, New York, NY, for Respondent–Intervenor Bobby Lee Harris.

Opinion

Chief Justice ROBERTS delivered the opinion of the Court.

***534** The Voting Rights Act of 1965 employed extraordinary measures to address an extraordinary problem. Section 5 ***535** of the Act required States to obtain federal permission before enacting any law related to voting—a drastic departure from basic principles of federalism. And § 4 of the Act applied that requirement only to some States—an equally dramatic departure from the principle that all States enjoy equal sovereignty. This was strong medicine, but Congress determined it was needed to address entrenched racial discrimination in voting, "an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution." *South Carolina v. Katzenbach,* 383 U.S. 301, 309, 86 S.Ct. 803, 15 L.Ed.2d 769 (1966). As we explained in upholding the law, "exceptional conditions can justify legislative measures not otherwise appropriate." *Id.,* at 334, 86 S.Ct. 803. Reflecting the unprecedented nature of these measures, they were scheduled to expire after five years. See Voting Rights Act of 1965, § 4(a), 79 Stat. 438.

Nearly 50 years later, they are still in effect; indeed, they have been made more stringent, and are now scheduled to last until 2031. There is no denying, however, that the conditions that originally justified these measures no longer characterize voting in the covered jurisdictions. By 2009, "the racial gap in voter registration and turnout [was] lower in the States originally ****2619** covered by § 5 than it [was] nationwide." *Northwest Austin Municipal Util. Dist. No. One v. Holder,* 557 U.S. 193, 203–204, 129 S.Ct. 2504, 174 L.Ed.2d 140 (2009). Since that time, Census Bureau data indicate that African–American voter turnout has come to exceed white voter turnout in five of the six States originally covered by § 5, with a gap in the sixth State of less than one half of one percent. See Dept. of Commerce, Census Bureau, Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States (Nov. 2012) (Table 4b).

***536** At the same time, voting discrimination still exists; no one doubts that. The question is whether the Act's extraordinary measures, including its disparate treatment of the States, continue to satisfy constitutional requirements. As we put it a short time ago, "the Act imposes current burdens and must be justified by current needs." *Northwest Austin,* 557 U.S., at 203, 129 S.Ct. 2504.

I

A

The Fifteenth Amendment was ratified in 1870, in the wake of the Civil War. It provides that "[t]he 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," and it gives Congress the "power to enforce this article by appropriate legislation."

"The first century of congressional enforcement of the Amendment, however, can only be regarded as a failure." *Id.,* at 197, 129 S.Ct. 2504. In the 1890s, Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia began to enact literacy tests for voter registration and to employ other methods designed to prevent African–Americans from voting. *Katzenbach,* 383 U.S., at 310, 86 S.Ct. 803. Congress passed statutes outlawing some of these practices and facilitating litigation against them, but litigation remained slow and expensive, and the States came up with new ways to discriminate as soon as existing ones were struck down. Voter registration of African–Americans barely improved. *Id.,* at 313–314, 86 S.Ct. 803.

Inspired to action by the civil rights movement, Congress responded in 1965 with the Voting Rights Act. Section 2 was enacted to forbid, in all 50 States, any "standard, practice, or procedure ... imposed or applied ... to deny or abridge the right of any citizen of the United States to vote on account of race or color." 79 Stat. 437. The current ***537** version forbids any " standard, practice, or procedure" that "results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." 42 U.S.C. § 1973(a). Both the Federal Government and individuals have sued to enforce § 2, see, *e.g., Johnson v. De Grandy,* 512 U.S. 997, 114 S.Ct. 2647, 129 L.Ed.2d 775 (1994), and injunctive relief is available in appropriate cases to block voting laws from going into effect, see 42 U.S.C. § 1973j(d). Section 2 is permanent, applies nationwide, and is not at issue in this case.

Other sections targeted only some parts of the country. At the time of the Act's passage, these "covered" jurisdictions were those States or political subdivisions that had 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. § 4(b), 79 Stat. 438. Such tests or devices included literacy and knowledge tests, good moral character requirements, the need for vouchers from registered voters, and the like. § 4(c), *id*., at 438–439. A ****2620** covered jurisdiction could "bail out" of coverage if it had not used a test or device in the preceding five years "for the purpose or with the effect of denying or abridging the right to vote on account of race or color." § 4(a), *id.,* at 438. In 1965, the covered States included Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia. The additional covered subdivisions included 39 counties in North Carolina and one in Arizona. See 28 C.F.R. pt. 51, App. (2012).

In those jurisdictions, § 4 of the Act banned all such tests or devices. § 4(a), 79 Stat. 438. Section 5 provided that no change in voting procedures could take effect until it was approved by federal authorities in Washington, D.C.—either the Attorney General or a court of three judges. *Id.,* at 439. A jurisdiction could obtain such "preclearance" only by proving that the change had neither "the purpose [nor] the effect of denying or abridging the right to vote on account of race or color." *Ibid.*

***538** Sections 4 and 5 were intended to be temporary; they were set to expire after five years. See § 4(a), *id.,* at 438; *Northwest Austin, supra,* at 199, 129 S.Ct. 2504. In *South Carolina v. Katzenbach,* we upheld the 1965 Act against constitutional challenge, explaining that it was justified to address "voting discrimination where it persists on a pervasive scale." 383 U.S., at 308, 86 S.Ct. 803.

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

In 1970, Congress reauthorized the Act for another five years, and extended the coverage formula in § 4(b) to jurisdictions that had a voting test and less than 50 percent voter registration or turnout as of 1968. Voting Rights Act Amendments of 1970, §§ 3–4, 84 Stat. 315. That swept in several counties in California, New Hampshire, and New York. See 28 C.F.R. pt. 51, App. Congress also extended the ban in § 4(a) on tests and devices nationwide. § 6, 84 Stat. 315.

In 1975, Congress reauthorized the Act for seven more years, and extended its coverage to jurisdictions that had a voting test and less than 50 percent voter registration or turnout as of 1972. Voting Rights Act Amendments of 1975, §§ 101, 202, 89 Stat. 400, 401. Congress also amended the definition of "test or device" to include the practice of providing English-only voting materials in places where over five percent of voting-age citizens spoke a single language other than English. § 203, *id.,* at 401–402. As a result of these amendments, the States of Alaska, Arizona, and Texas, as well as several counties in California, Florida, Michigan, New York, North Carolina, and South Dakota, became covered jurisdictions. See 28 C.F.R. pt. 51, App. Congress correspondingly amended sections 2 and 5 to forbid voting discrimination on the basis of membership in a language minority group, in addition to discrimination on the basis of race or color. §§ 203, 206, 89 Stat. 401, 402. Finally, Congress made the nationwide ban on tests and devices permanent. § 102, *id.*, at 400.

In 1982, Congress reauthorized the Act for 25 years, but did not alter its coverage formula. See Voting Rights Act ***539** Amendments, 96 Stat. 131. Congress did, however, amend the bailout provisions, allowing political subdivisions of covered jurisdictions to bail out. Among other prerequisites for bailout, jurisdictions and their subdivisions must not have used a forbidden test or device, failed to receive preclearance, or lost a § 2 suit, in the ten years prior to seeking bailout. § 2, *id.,* at 131–133.

We upheld each of these reauthorizations against constitutional challenge. See *Georgia v. United States,* 411 U.S. 526, 93 S.Ct. 1702, 36 L.Ed.2d 472 (1973); ****2621** *City of Rome v. United States,* 446 U.S. 156, 100 S.Ct. 1548, 64 L.Ed.2d 119 (1980); *Lopez v. Monterey County,* 525 U.S. 266, 119 S.Ct. 693, 142 L.Ed.2d 728 (1999).

In 2006, Congress again reauthorized the Voting Rights Act for 25 years, again without change to its coverage formula. Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act, 120 Stat. 577. Congress also amended § 5 to prohibit more conduct than before. § 5, *id.,* at 580–581; see *Reno v. Bossier Parish School Bd.,* 528 U.S. 320, 341, 120 S.Ct. 866, 145 L.Ed.2d 845 (2000) (*Bossier II*); *Georgia v. Ashcroft,* 539 U.S. 461, 479, 123 S.Ct. 2498, 156 L.Ed.2d 428 (2003). Section 5 now forbids voting changes with "any discriminatory purpose" as well as voting changes that diminish the ability of citizens, on account of race, color, or language minority status, "to elect their preferred candidates of choice." 42 U.S.C. §§ 1973c(b)-(d).

Shortly after this reauthorization, a Texas utility district brought suit, seeking to bail out from the Act's coverage and, in the alternative, challenging the Act's constitutionality. See *Northwest Austin,* 557 U.S., at 200–201, 129 S.Ct. 2504. A three-judge District Court explained that only a State or political subdivision was eligible to seek bailout under the statute, and concluded that the utility district was not a political subdivision, a term that encompassed only "counties, parishes, and voter-registering subunits." *Northwest Austin Municipal Util. Dist. No. One v. Mukasey,* 573 F.Supp.2d 221, 232 (D.D.C.2008). The District Court also rejected the constitutional challenge. *Id.,* at 283.

***540** We reversed. We explained that " 'normally the Court will not decide a constitutional question if there is some other ground upon which to dispose of the case.' " *Northwest Austin, supra,* at 205, 129 S.Ct. 2504 (quoting *Escambia County v. McMillan,* 466 U.S. 48, 51, 104 S.Ct. 1577, 80 L.Ed.2d 36 (1984) (*per curiam*)). Concluding that "underlying constitutional concerns," among other things, "compel[led] a broader reading of the bailout provision," we construed the statute to allow the utility district to seek bailout. *Northwest Austin,* 557 U.S., at 207, 129 S.Ct. 2504. In doing so we expressed serious doubts about the Act's continued constitutionality.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

We explained that § 5 "imposes substantial federalism costs" and "differentiates between the States, despite our historic tradition that all the States enjoy equal sovereignty." *Id.,* at 202, 203, 129 S.Ct. 2504 (internal quotation marks omitted). We also noted that "[t]hings have changed in the South. Voter turnout and registration rates now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels." *Id.,* at 202, 129 S.Ct. 2504. Finally, we questioned whether the problems that § 5 meant to address were still "concentrated in the jurisdictions singled out for preclearance." *Id.,* at 203, 129 S.Ct. 2504.

Eight Members of the Court subscribed to these views, and the remaining Member would have held the Act unconstitutional. Ultimately, however, the Court's construction of the bailout provision left the constitutional issues for another day.

B

Shelby County is located in Alabama, a covered jurisdiction. It has not sought bailout, as the Attorney General has recently objected to voting changes proposed from within the county. See App. 87a–92a. Instead, in 2010, the county sued the Attorney General in Federal District Court in Washington, D.C., seeking a declaratory judgment that sections 4(b) and 5 ****2622** of the Voting Rights Act are facially unconstitutional, as well as a permanent injunction against their ***541** enforcement. The District Court ruled against the county and upheld the Act. 811 F.Supp.2d 424, 508 (2011). The court found that the evidence before Congress in 2006 was sufficient to justify reauthorizing § 5 and continuing the § 4(b) coverage formula.

The Court of Appeals for the D.C. Circuit affirmed. In assessing § 5, the D.C. Circuit considered six primary categories of evidence: Attorney General objections to voting changes, Attorney General requests for more information regarding voting changes, successful § 2 suits in covered jurisdictions, the dispatching of federal observers to monitor elections in covered jurisdictions, § 5 preclearance suits involving covered jurisdictions, and the deterrent effect of § 5. See 679 F.3d 848, 862–863 (2012). After extensive analysis of the record, the court accepted Congress's conclusion that § 2 litigation remained inadequate in the covered jurisdictions to protect the rights of minority voters, and that § 5 was therefore still necessary. *Id.,* at 873.

Turning to § 4, the D.C. Circuit noted that the evidence for singling out the covered jurisdictions was "less robust" and that the issue presented "a close question." *Id.,* at 879. But the court looked to data comparing the number of successful § 2 suits in the different parts of the country. Coupling that evidence with the deterrent effect of § 5, the court concluded that the statute continued "to single out the jurisdictions in which discrimination is concentrated," and thus held that the coverage formula passed constitutional muster. *Id.,* at 883.

Judge Williams dissented. He found "no positive correlation between inclusion in § 4(b)'s coverage formula and low black registration or turnout." *Id.,* at 891. Rather, to the extent there was any correlation, it actually went the other way: "condemnation under § 4(b) is a marker of *higher* black registration and turnout." *Ibid.* (emphasis added). Judge Williams also found that "[c]overed jurisdictions have *far more* black officeholders as a proportion of the black ***542** population than do uncovered ones." *Id.,* at 892. As to the evidence of successful § 2 suits, Judge Williams disaggregated the reported cases by State, and concluded that "[t]he five worst uncovered jurisdictions ... have worse records than eight of the covered jurisdictions." *Id.,* at 897. He also noted that two covered jurisdictions—Arizona and Alaska—had not had any successful reported § 2 suit brought against them during the entire 24 years covered by the data. *Ibid.* Judge Williams would have held the coverage formula of § 4(b) "irrational" and unconstitutional. *Id.,* at 885.

We granted certiorari. 568 U.S. ––––, 133 S.Ct. 594, 184 L.Ed.2d 389 (2012).

II

In *Northwest Austin,* we stated that "the Act imposes current burdens and must be justified by current needs." 557 U.S., at 203, 129 S.Ct. 2504. And we concluded that "a departure from the fundamental principle of equal sovereignty requires a showing that a statute's disparate geographic coverage is sufficiently related to the problem that it targets." *Ibid.* These basic principles guide our review of the question before us.[1]

****2623** A

The Constitution and laws of the United States are "the supreme Law of the Land." U.S. Const., Art. VI, cl. 2. State legislation may not contravene federal law. The Federal Government does not, however, have a general right to review and veto state enactments before they go into effect. A proposal to grant such authority to "negative" state laws was considered at the Constitutional Convention, but rejected in favor of allowing state laws to take effect, subject to later challenge under the Supremacy Clause. See 1 ***543** Records of the Federal Convention of 1787, pp. 21, 164–168 (M. Farrand ed. 1911); 2 *id.,* at 27–29, 390–392.

Outside the strictures of the Supremacy Clause, States retain broad autonomy in structuring their governments and pursuing legislative objectives. Indeed, the Constitution provides that all powers not specifically granted to the Federal Government are reserved to the States or citizens. Amdt. 10. This "allocation of powers in our federal system preserves the integrity, dignity, and residual sovereignty of the States." *Bond v. United States,* 564 U.S. ——, ——, 131 S.Ct. 2355, 2364, 180 L.Ed.2d 269 (2011). But the federal balance "is not just an end in itself: Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power." *Ibid.* (internal quotation marks omitted).

More specifically, " 'the Framers of the Constitution intended the States to keep for themselves, as provided in the Tenth Amendment, the power to regulate elections.' " *Gregory v. Ashcroft,* 501 U.S. 452, 461–462, 111 S.Ct. 2395, 115 L.Ed.2d 410 (1991) (quoting *Sugarman v. Dougall,* 413 U.S. 634, 647, 93 S.Ct. 2842, 37 L.Ed.2d 853 (1973); some internal quotation marks omitted). Of course, the Federal Government retains significant control over federal elections. For instance, the Constitution authorizes Congress to establish the time and manner for electing Senators and Representatives. Art. I, § 4, cl. 1; see also *Arizona v. Inter Tribal Council of Ariz., Inc.,* ––– U.S., at –––– – ––––, 133 S.Ct., at 2253 – 2254. But States have "broad powers to determine the conditions under which the right of suffrage may be exercised." *Carrington v. Rash,* 380 U.S. 89, 91, 85 S.Ct. 775, 13 L.Ed.2d 675 (1965) (internal quotation marks omitted); see also *Arizona, ante,* at ––– U.S., at –––– – ––––, 133 S.Ct., at 2257 – 2259. And "[e]ach State has the power to prescribe the qualifications of its officers and the manner in which they shall be chosen." *Boyd v. Nebraska ex rel. Thayer,* 143 U.S. 135, 161, 12 S.Ct. 375, 36 L.Ed. 103 (1892). Drawing lines for congressional districts is likewise "primarily the duty and responsibility of the State." *Perry v. Perez,* 565 U.S. ——, ——, 132 S.Ct. 934, 940, 181 L.Ed.2d 900 (2012) (*per curiam*) (internal quotation marks omitted).

***544** Not only do States retain sovereignty under the Constitution, there is also a "fundamental principle of *equal* sovereignty" among the States. *Northwest Austin, supra,* at 203, 129 S.Ct. 2504 (citing *United States v. Louisiana,* 363 U.S. 1, 16, 80 S.Ct. 961, 4 L.Ed.2d 1025 (1960); *Lessee of Pollard v. Hagan,* 3 How. 212, 223, 11 L.Ed. 565 (1845); and *Texas v. White,* 7 Wall. 700, 725–726, 19 L.Ed. 227 (1869); emphasis added). Over a hundred years ago, this Court explained that our Nation "was and is a union of States, equal in power, dignity and authority." *Coyle v. Smith,* 221 U.S. 559, 567, 31 S.Ct. 688, 55 L.Ed. 853 (1911). Indeed, "the constitutional equality of the States is essential to the harmonious operation of the scheme upon which the Republic was organized." *Id.,* at 580, 31 S.Ct. 688. *Coyle* concerned the admission of new States, and *Katzenbach* rejected the notion that the principle ****2624** operated as a *bar* on differential treatment outside that context. 383 U.S., at 328–329, 86 S.Ct. 803. At the same time, as we made clear in *Northwest Austin,* the fundamental principle of equal sovereignty remains highly pertinent in assessing subsequent disparate treatment of States. 557 U.S., at 203, 129 S.Ct. 2504.

The Voting Rights Act sharply departs from these basic principles. It suspends "*all* changes to state election law—however innocuous—until they have been precleared by federal authorities in Washington, D.C." *Id.,* at 202, 129 S.Ct. 2504. States must beseech the Federal Government for permission to implement laws that they would otherwise have the right to enact and execute

on their own, subject of course to any injunction in a § 2 action. The Attorney General has 60 days to object to a preclearance request, longer if he requests more information. See 28 C.F.R. §§ 51.9, 51.37. If a State seeks preclearance from a three-judge court, the process can take years.

And despite the tradition of equal sovereignty, the Act applies to only nine States (and several additional counties). While one State waits months or years and expends funds to implement a validly enacted law, its neighbor can typically put the same law into effect immediately, through the normal ***545** legislative process. Even if a noncovered jurisdiction is sued, there are important differences between those proceedings and preclearance proceedings; the preclearance proceeding "not only switches the burden of proof to the supplicant jurisdiction, but also applies substantive standards quite different from those governing the rest of the nation." 679 F.3d, at 884 (Williams, J., dissenting) (case below).

All this explains why, when we first upheld the Act in 1966, we described it as "stringent" and "potent." *Katzenbach,* 383 U.S., at 308, 315, 337, 86 S.Ct. 803. We recognized that it "may have been an uncommon exercise of congressional power," but concluded that "legislative measures not otherwise appropriate" could be justified by "exceptional conditions." *Id.,* at 334, 86 S.Ct. 803. We have since noted that the Act "authorizes federal intrusion into sensitive areas of state and local policymaking," *Lopez,* 525 U.S., at 282, 119 S.Ct. 693, and represents an "extraordinary departure from the traditional course of relations between the States and the Federal Government," *Presley v. Etowah County Comm'n,* 502 U.S. 491, 500–501, 112 S.Ct. 820, 117 L.Ed.2d 51 (1992). As we reiterated in *Northwest Austin,* the Act constitutes "extraordinary legislation otherwise unfamiliar to our federal system." 557 U.S., at 211, 129 S.Ct. 2504.

B

In 1966, we found these departures from the basic features of our system of government justified. The "blight of racial discrimination in voting" had "infected the electoral process in parts of our country for nearly a century." *Katzenbach,* 383 U.S., at 308, 86 S.Ct. 803. Several States had enacted a variety of requirements and tests "specifically designed to prevent" African–Americans from voting. *Id.,* at 310, 86 S.Ct. 803. Case-by-case litigation had proved inadequate to prevent such racial discrimination in voting, in part because States "merely switched to discriminatory devices not covered by the federal decrees," "enacted difficult new tests," or simply "defied and evaded court orders." *Id.,* at 314, 86 S.Ct. 803. Shortly before ***546** enactment of the Voting Rights Act, only 19.4 percent of African–Americans of voting age were registered to vote in Alabama, only 31.8 percent in Louisiana, and only 6.4 percent in Mississippi. *Id.,* at 313, 86 S.Ct. 803. Those figures were roughly ****2625** 50 percentage points or more below the figures for whites. *Ibid.*

In short, we concluded that "[u]nder the compulsion of these unique circumstances, Congress responded in a permissibly decisive manner." *Id.,* at 334, 335, 86 S.Ct. 803. We also noted then and have emphasized since that this extraordinary legislation was intended to be temporary, set to expire after five years. *Id.,* at 333, 86 S.Ct. 803; *Northwest Austin, supra,* at 199, 129 S.Ct. 2504.

At the time, the coverage formula—the means of linking the exercise of the unprecedented authority with the problem that warranted it—made sense. We found that "Congress chose to limit its attention to the geographic areas where immediate action seemed necessary." *Katzenbach,* 383 U.S., at 328, 86 S.Ct. 803. The areas where Congress found "evidence of actual voting discrimination" shared two characteristics: "the use of tests and devices for voter registration, and a voting rate in the 1964 presidential election at least 12 points below the national average." *Id.,* at 330, 86 S.Ct. 803. We explained that "[t]ests and devices are relevant to voting discrimination because of their long history as a tool for perpetrating the evil; a low voting rate is pertinent for the obvious reason that widespread disenfranchisement must inevitably affect the number of actual voters." *Ibid.* We therefore concluded that "the coverage formula [was] rational in both practice and theory." *Ibid.* It accurately reflected those jurisdictions uniquely characterized by voting discrimination "on a pervasive scale," linking coverage to the devices used to effectuate discrimination and to the resulting disenfranchisement. *Id.,* at 308, 86 S.Ct. 803. The formula ensured that the "stringent remedies [were] aimed at areas where voting discrimination ha[d] been most flagrant." *Id.,* at 315, 86 S.Ct. 803.

***547** C

Nearly 50 years later, things have changed dramatically. Shelby County contends that the preclearance requirement, even without regard to its disparate coverage, is now unconstitutional. Its arguments have a good deal of force. In the covered jurisdictions, "[v]oter turnout and registration rates now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels." *Northwest Austin,* 557 U.S., at 202, 129 S.Ct. 2504. The tests and devices that blocked access to the ballot have been forbidden nationwide for over 40 years. See § 6, 84 Stat. 315; § 102, 89 Stat. 400.

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." § 2(b)(1), 120 Stat. 577. The House Report elaborated that "the number of African–Americans who are registered and who turn out to cast ballots has increased significantly over the last 40 years, particularly since 1982," and noted that "[i]n some circumstances, minorities register to vote and cast ballots at levels that surpass those of white voters." H.R.Rep. 109–478, at 12 (2006), 2006 U.S.C.C.A.N. 618, 627. That Report also explained that there have been "significant increases in the number of African–Americans serving in elected offices"; more specifically, there has been approximately a 1,000 percent increase since 1965 in the number of African–American elected officials in the six States originally covered by the Voting Rights Act. *Id.,* at 18.

****2626** The following chart, compiled from the Senate and House Reports, compares voter registration numbers from 1965 to those from 2004 in the six originally covered States. These ***548** are the numbers that were before Congress when it reauthorized the Act in 2006:

	1965			2004		
	White	Black	Gap	White	Black	Gap
Alabama	69.2	19.3	49.9	73.8	72.9	0.9
Georgia	62.[6]	27.4	35.2	63.5	64.2	-0.7
Louisiana	80.5	31.6	48.9	75.1	71.1	4.0
Mississippi	69.9	6.7	63.2	72.3	76.1	-3.8
South Carolina	75.7	37.3	38.4	74.4	71.1	3.3
Virginia	61.1	38.3	22.8	68.2	57.4	10.8

See S.Rep. No. 109–295, p. 11 (2006); H.R.Rep. No. 109–478, at 12. The 2004 figures come from the Census Bureau. Census Bureau data from the most recent election indicate that African–American voter turnout exceeded white voter turnout in five of the six States originally covered by § 5, with a gap in the sixth State of less than one half of one percent. See Dept. of Commerce, Census Bureau, Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States (Table 4b). The preclearance statistics are also illuminating. In the first decade after enactment of § 5, the Attorney General objected to 14.2 percent of proposed voting changes. H. R Rep. No. 109–478, at 22. In the last decade before reenactment, the Attorney General objected to a mere 0.16 percent. S.Rep. No. 109–295, at 13.

There is no doubt that these improvements are in large part *because of* the Voting Rights Act. The Act has proved immensely successful at redressing racial discrimination and integrating the voting process. See § 2(b)(1), 120 Stat. 577. During the "Freedom Summer" of 1964, in Philadelphia, Mississippi, three men were murdered while working in the area to register African–American voters. See ***549** *United States v. Price,* 383 U.S. 787, 790, 86 S.Ct. 1152, 16 L.Ed.2d 267 (1966). On

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

"Bloody Sunday" in 1965, in Selma, Alabama, police beat and used tear gas against hundreds marching in support of African–American enfranchisement. See *Northwest Austin, supra,* at 220, n. 3, 129 S.Ct. 2504 (THOMAS, J., concurring in judgment in part and dissenting in part). Today both of those towns are governed by African–American mayors. Problems remain in these States and others, but there is no denying that, due to the Voting Rights Act, our Nation has made great strides.

Yet the Act has not eased the restrictions in § 5 or narrowed the scope of the coverage formula in § 4(b) along the way. Those extraordinary and unprecedented features were reauthorized—as if nothing had changed. In fact, the Act's unusual remedies have grown even stronger. When Congress reauthorized the Act in 2006, it did so for another 25 years on top of the previous 40—a far cry from the initial five-year period. See 42 U.S.C. § 1973b(a)(8). Congress also expanded the prohibitions in § 5. We had previously interpreted § 5 to prohibit only those redistricting plans that would have the purpose or effect of worsening the position of minority groups. See *Bossier II,* 528 U.S., at 324, 335–336, 120 S.Ct. 866. In 2006, Congress amended § 5 to prohibit laws that could have favored such groups ****2627** but did not do so because of a discriminatory purpose, see 42 U.S.C. § 1973c(c), even though we had stated that such broadening of § 5 coverage would "exacerbate the substantial federalism costs that the preclearance procedure already exacts, perhaps to the extent of raising concerns about § 5's constitutionality," *Bossier II, supra,* at 336, 120 S.Ct. 866 (citation and internal quotation marks omitted). In addition, Congress expanded § 5 to prohibit any voting law "that has the purpose of or will have the effect of diminishing the ability of any citizens of the United States," on account of race, color, or language minority status, "to elect their preferred candidates of choice." § 1973c(b). In light of those two amendments, the bar that covered jurisdictions ***550** must clear has been raised even as the conditions justifying that requirement have dramatically improved.

We have also previously highlighted the concern that "the preclearance requirements in one State [might] be unconstitutional in another." *Northwest Austin,* 557 U.S., at 203, 129 S.Ct. 2504; see *Georgia v. Ashcroft,* 539 U.S., at 491, 123 S.Ct. 2498 (KENNEDY, J., concurring) ("considerations of race that would doom a redistricting plan under the Fourteenth Amendment or § 2 [of the Voting Rights Act] seem to be what save it under § 5"). Nothing has happened since to alleviate this troubling concern about the current application of § 5.

Respondents do not deny that there have been improvements on the ground, but argue that much of this can be attributed to the deterrent effect of § 5, which dissuades covered jurisdictions from engaging in discrimination that they would resume should § 5 be struck down. Under this theory, however, § 5 would be effectively immune from scrutiny; no matter how "clean" the record of covered jurisdictions, the argument could always be made that it was deterrence that accounted for the good behavior.

The provisions of § 5 apply only to those jurisdictions singled out by § 4. We now consider whether that coverage formula is constitutional in light of current conditions.

III

A

When upholding the constitutionality of the coverage formula in 1966, we concluded that it was "rational in both practice and theory." *Katzenbach,* 383 U.S., at 330, 86 S.Ct. 803. The formula looked to cause (discriminatory tests) and effect (low voter registration and turnout), and tailored the remedy (preclearance) to those jurisdictions exhibiting both.

By 2009, however, we concluded that the "coverage formula raise[d] serious constitutional questions." *Northwest Austin,* 557 U.S., at 204, 129 S.Ct. 2504. As we explained, a statute's "current burdens" must be justified by "current needs," and ***551** any "disparate geographic coverage" must be " sufficiently related to the problem that it targets." *Id.,* at 203, 129 S.Ct. 2504. The coverage formula met that test in 1965, but no longer does so.

Coverage today is based on decades-old data and eradicated practices. The formula captures States by reference to literacy tests and low voter registration and turnout in the 1960s and early 1970s. But such tests have been banned nationwide for over 40 years. § 6, 84 Stat. 315; § 102, 89 Stat. 400. And voter registration and turnout numbers in the covered States have risen dramatically in the years since. H.R.Rep. No. 109–478, at 12. Racial disparity in those numbers was compelling evidence justifying the preclearance remedy and the coverage formula. See, *e.g.,* ****2628** *Katzenbach, supra,* at 313, 329–330, 86 S.Ct. 803. There is no longer such a disparity.

In 1965, the States could be divided into two groups: those with a recent history of voting tests and low voter registration and turnout, and those without those characteristics. Congress based its coverage formula on that distinction. Today the Nation is no longer divided along those lines, yet the Voting Rights Act continues to treat it as if it were.

B

The Government's defense of the formula is limited. First, the Government contends that the formula is "reverse-engineered": Congress identified the jurisdictions to be covered and *then* came up with criteria to describe them. Brief for Federal Respondent 48–49. Under that reasoning, there need not be any logical relationship between the criteria in the formula and the reason for coverage; all that is necessary is that the formula happen to capture the jurisdictions Congress wanted to single out.

The Government suggests that *Katzenbach* sanctioned such an approach, but the analysis in *Katzenbach* was quite different. *Katzenbach* reasoned that the coverage formula was rational because the "formula ... was relevant to the ***552** problem": "Tests and devices are relevant to voting discrimination because of their long history as a tool for perpetrating the evil; a low voting rate is pertinent for the obvious reason that widespread disenfranchisement must inevitably affect the number of actual voters." 383 U.S., at 329, 330, 86 S.Ct. 803.

Here, by contrast, the Government's reverse-engineering argument does not even attempt to demonstrate the continued relevance of the formula to the problem it targets. And in the context of a decision as significant as this one—subjecting a disfavored subset of States to "extraordinary legislation otherwise unfamiliar to our federal system," *Northwest Austin, supra,* at 211, 129 S.Ct. 2504—that failure to establish even relevance is fatal.

The Government falls back to the argument that because the formula was relevant in 1965, its continued use is permissible so long as any discrimination remains in the States Congress identified back then—regardless of how that discrimination compares to discrimination in States unburdened by coverage. Brief for Federal Respondent 49–50. This argument does not look to "current political conditions," *Northwest Austin, supra,* at 203, 129 S.Ct. 2504, but instead relies on a comparison between the States in 1965. That comparison reflected the different histories of the North and South. It was in the South that slavery was upheld by law until uprooted by the Civil War, that the reign of Jim Crow denied African–Americans the most basic freedoms, and that state and local governments worked tirelessly to disenfranchise citizens on the basis of race. The Court invoked that history—rightly so—in sustaining the disparate coverage of the Voting Rights Act in 1966. See *Katzenbach, supra,* at 308, 86 S.Ct. 803 ("The constitutional propriety of the Voting Rights Act of 1965 must be judged with reference to the historical experience which it reflects.").

But history did not end in 1965. By the time the Act was reauthorized in 2006, there had been 40 more years of it. In assessing the "current need [ ]" for a preclearance system ***553** that treats States differently from one another today, that history cannot be ignored. During that time, largely because of the Voting Rights Act, voting tests were abolished, disparities in voter registration and turnout due to race were erased, and African–Americans attained political office in record numbers. And yet the coverage formula that Congress ****2629** reauthorized in 2006 ignores these developments, keeping the focus on decades-old data relevant to decades-old problems, rather than current data reflecting current needs.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

The Fifteenth Amendment commands that the right to vote shall not be denied or abridged on account of race or color, and it gives Congress the power to enforce that command. The Amendment is not designed to punish for the past; its purpose is to ensure a better future. See *Rice v. Cayetano,* 528 U.S. 495, 512, 120 S.Ct. 1044, 145 L.Ed.2d 1007 (2000) ("Consistent with the design of the Constitution, the [Fifteenth] Amendment is cast in fundamental terms, terms transcending the particular controversy which was the immediate impetus for its enactment."). To serve that purpose, Congress—if it is to divide the States —must identify those jurisdictions to be singled out on a basis that makes sense in light of current conditions. It cannot rely simply on the past. We made that clear in *Northwest Austin,* and we make it clear again today.

C

In defending the coverage formula, the Government, the intervenors, and the dissent also rely heavily on data from the record that they claim justify disparate coverage. Congress compiled thousands of pages of evidence before reauthorizing the Voting Rights Act. The court below and the parties have debated what that record shows—they have gone back and forth about whether to compare covered to noncovered jurisdictions as blocks, how to disaggregate the data State by State, how to weigh § 2 cases as evidence of ongoing discrimination, and whether to consider evidence not before Congress, among other issues. Compare, *e.g.,* ***554** 679 F.3d, at 873–883 (case below), with *id.,* at 889–902 (Williams, J., dissenting). Regardless of how to look at the record, however, no one can fairly say that it shows anything approaching the "pervasive," "flagrant," "widespread," and "rampant" discrimination that faced Congress in 1965, and that clearly distinguished the covered jurisdictions from the rest of the Nation at that time. *Katzenbach, supra,* at 308, 315, 331, 86 S.Ct. 803; *Northwest Austin,* 557 U.S., at 201, 129 S.Ct. 2504.

But a more fundamental problem remains: Congress did not use the record it compiled to shape a coverage formula grounded in current conditions. It instead reenacted a formula based on 40–year–old facts having no logical relation to the present day. The dissent relies on "second-generation barriers," which are not impediments to the casting of ballots, but rather electoral arrangements that affect the weight of minority votes. That does not cure the problem. Viewing the preclearance requirements as targeting such efforts simply highlights the irrationality of continued reliance on the § 4 coverage formula, which is based on voting tests and access to the ballot, not vote dilution. We cannot pretend that we are reviewing an updated statute, or try our hand at updating the statute ourselves, based on the new record compiled by Congress. Contrary to the dissent's contention, see *post,* at 2644, we are not ignoring the record; we are simply recognizing that it played no role in shaping the statutory formula before us today.

The dissent also turns to the record to argue that, in light of voting discrimination in Shelby County, the county cannot complain about the provisions that subject it to preclearance. *Post,* at 2644 – 2648. But that is like saying that a driver pulled over pursuant to a policy of stopping all redheads cannot complain about that policy, if it turns out his license has expired. Shelby ****2630** County's claim is that the coverage formula here is unconstitutional in all its applications, because of how it selects the jurisdictions subjected to preclearance. The ***555** county was selected based on that formula, and may challenge it in court.

D

The dissent proceeds from a flawed premise. It quotes the famous sentence from *McCulloch v. Maryland,* 4 Wheat. 316, 421, 4 L.Ed. 579 (1819), with the following emphasis: "Let the end be legitimate, let it be within the scope of the constitution, and *all means which are appropriate, which are plainly adapted to that end,* which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." *Post,* at 2637 (emphasis in dissent). But this case is about a part of the sentence that the dissent does not emphasize—the part that asks whether a legislative means is "consist[ent] with the letter and spirit of the constitution." The dissent states that "[i]t cannot tenably be maintained" that this is an issue with regard to the Voting Rights Act, *post,* at 2637, but four years ago, in an opinion joined by two of today's dissenters, the Court expressly stated that "[t]he Act's preclearance requirement and its coverage formula raise serious constitutional questions." *Northwest Austin, supra,* at 204, 129 S.Ct. 2504. The dissent does not explain how those "serious constitutional questions" became untenable in four short years.

The dissent treats the Act as if it were just like any other piece of legislation, but this Court has made clear from the beginning that the Voting Rights Act is far from ordinary. At the risk of repetition, *Katzenbach* indicated that the Act was "uncommon" and "not otherwise appropriate," but was justified by "exceptional" and "unique" conditions. 383 U.S., at 334, 335, 86 S.Ct. 803. Multiple decisions since have reaffirmed the Act's "extraordinary" nature. See, *e.g., Northwest Austin, supra,* at 211, 129 S.Ct. 2504. Yet the dissent goes so far as to suggest instead that the preclearance requirement and disparate treatment of the States should be upheld into the future "unless there [is] no or almost no evidence of unconstitutional action by States." *Post,* at 2650.

***556** In other ways as well, the dissent analyzes the question presented as if our decision in *Northwest Austin* never happened. For example, the dissent refuses to consider the principle of equal sovereignty, despite *Northwest Austin* 's emphasis on its significance. *Northwest Austin* also emphasized the "dramatic" progress since 1965, 557 U.S., at 201, 129 S.Ct. 2504, but the dissent describes current levels of discrimination as " flagrant," "widespread," and "pervasive," *post,* at 2636, 2641 (internal quotation marks omitted). Despite the fact that *Northwest Austin* requires an Act's "disparate geographic coverage" to be "sufficiently related" to its targeted problems, 557 U.S., at 203, 129 S.Ct. 2504, the dissent maintains that an Act's limited coverage actually eases Congress's burdens, and suggests that a fortuitous relationship should suffice. Although *Northwest Austin* stated definitively that "current burdens" must be justified by "current needs," *ibid.*, the dissent argues that the coverage formula can be justified by history, and that the required showing can be weaker on reenactment than when the law was first passed.

There is no valid reason to insulate the coverage formula from review merely because it was previously enacted 40 years ago. If Congress had started from scratch in 2006, it plainly could not have enacted the present coverage formula. It would have been irrational for Congress to distinguish ****2631** between States in such a fundamental way based on 40–year–old data, when today's statistics tell an entirely different story. And it would have been irrational to base coverage on the use of voting tests 40 years ago, when such tests have been illegal since that time. But that is exactly what Congress has done.

* * *

Striking down an Act of Congress "is the gravest and most delicate duty that this Court is called on to perform." *Blodgett v. Holden,* 275 U.S. 142, 148, 48 S.Ct. 105, 72 L.Ed. 206 (1927) (Holmes, J., concurring). We do not do so lightly. That is why, in 2009, we took care to avoid ruling on the constitutionality of the ***557** Voting Rights Act when asked to do so, and instead resolved the case then before us on statutory grounds. But in issuing that decision, we expressed our broader concerns about the constitutionality of the Act. Congress could have updated the coverage formula at that time, but did not do so. Its failure to act leaves us today with no choice but to declare § 4(b) unconstitutional. The formula in that section can no longer be used as a basis for subjecting jurisdictions to preclearance.

Our decision in no way affects the permanent, nationwide ban on racial discrimination in voting found in § 2. We issue no holding on § 5 itself, only on the coverage formula. Congress may draft another formula based on current conditions. Such a formula is an initial prerequisite to a determination that exceptional conditions still exist justifying such an "extraordinary departure from the traditional course of relations between the States and the Federal Government." *Presley,* 502 U.S., at 500–501, 112 S.Ct. 820. Our country has changed, and while any racial discrimination in voting is too much, Congress must ensure that the legislation it passes to remedy that problem speaks to current conditions.

The judgment of the Court of Appeals is reversed.

It is so ordered.

Justice THOMAS, concurring.
I join the Court's opinion in full but write separately to explain that I would find § 5 of the Voting Rights Act unconstitutional as well. The Court's opinion sets forth the reasons.

"The Voting Rights Act of 1965 employed extraordinary measures to address an extraordinary problem." *Ante,* at 2618. In the face of "unremitting and ingenious defiance" of citizens' constitutionally protected right to vote, § 5 was necessary to give effect to the Fifteenth Amendment in particular regions of the country. *South Carolina v. Katzenbach,* 383 U.S. 301, 309, 86 S.Ct. 803, 15 L.Ed.2d 769 (1966). Though § 5's preclearance ***558** requirement represented a "shar[p] depart[ure]" from "basic principles" of federalism and the equal sovereignty of the States, *ante,* at 2622, 2623, the Court upheld the measure against early constitutional challenges because it was necessary at the time to address "voting discrimination where it persist[ed] on a pervasive scale." *Katzenbach, supra,* at 308, 86 S.Ct. 803.

Today, our Nation has changed. "[T]he conditions that originally justified [§ 5] no longer characterize voting in the covered jurisdictions." *Ante,* at 2618. As the Court explains: " '[V]oter turnout and registration rates now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels.' " *Ante,* at 2625 (quoting ****2632** *Northwest Austin Municipal Util. Dist. No. One v. Holder,* 557 U.S. 193, 202, 129 S.Ct. 2504, 174 L.Ed.2d 140 (2009)).

In spite of these improvements, however, Congress *increased* the already significant burdens of § 5. Following its reenactment in 2006, the Voting Rights Act was amended to "prohibit more conduct than before." *Ante,* at 2621. "Section 5 now forbids voting changes with 'any discriminatory purpose' as well as voting changes that diminish the ability of citizens, on account of race, color, or language minority status, 'to elect their preferred candidates of choice.' " *Ante,* at 2621. While the pre–2006 version of the Act went well beyond protection guaranteed under the Constitution, see *Reno v. Bossier Parish School Bd.,* 520 U.S. 471, 480–482, 117 S.Ct. 1491, 137 L.Ed.2d 730 (1997), it now goes even further.

It is, thus, quite fitting that the Court repeatedly points out that this legislation is "extraordinary" and "unprecedented" and recognizes the significant constitutional problems created by Congress' decision to raise "the bar that covered jurisdictions must clear," even as "the conditions justifying that requirement have dramatically improved." *Ante,* at 2627. However one aggregates the data compiled by Congress, it cannot justify the considerable burdens created by § 5. As the Court aptly notes: "[N]o one can fairly say that [the record] shows anything approaching the 'pervasive,' 'flagrant,' 'widespread,' and 'rampant' discrimination ***559** that faced Congress in 1965, and that clearly distinguished the covered jurisdictions from the rest of the Nation at that time." *Ante,* at 2629. Indeed, circumstances in the covered jurisdictions can no longer be characterized as "exceptional" or "unique." "The extensive pattern of discrimination that led the Court to previously uphold § 5 as enforcing the Fifteenth Amendment no longer exists." *Northwest Austin, supra,* at 226, 129 S.Ct. 2504 (THOMAS, J., concurring in judgment in part and dissenting in part). Section 5 is, thus, unconstitutional.

While the Court claims to "issue no holding on § 5 itself," *ante,* at 2631, its own opinion compellingly demonstrates that Congress has failed to justify " 'current burdens' " with a record demonstrating " 'current needs.' " See *ante,* at 2622 (quoting *Northwest Austin, supra,* at 203, 129 S.Ct. 2504). By leaving the inevitable conclusion unstated, the Court needlessly prolongs the demise of that provision. For the reasons stated in the Court's opinion, I would find § 5 unconstitutional.

Justice GINSBURG, with whom Justice BREYER, Justice SOTOMAYOR, and Justice KAGAN join, dissenting.

In the Court's view, the very success of § 5 of the Voting Rights Act demands its dormancy. Congress was of another mind. Recognizing that large progress has been made, Congress determined, based on a voluminous record, that the scourge of discrimination was not yet extirpated. The question this case presents is who decides whether, as currently operative, § 5 remains justifiable,[1] this Court, or a Congress charged with the obligation to enforce the post-Civil War Amendments "by appropriate legislation." With overwhelming support in both Houses, Congress concluded that, for two prime reasons, § 5 should continue in force, unabated. First, continuance would facilitate completion of the impressive gains thus far made; and second, continuance would ***560** guard against backsliding. Those assessments were well within Congress' province to make and ****2633** should elicit this Court's unstinting approbation.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

I

"[V]oting discrimination still exists; no one doubts that." *Ante,* at 2619. But the Court today terminates the remedy that proved to be best suited to block that discrimination. The Voting Rights Act of 1965 (VRA) has worked to combat voting discrimination where other remedies had been tried and failed. Particularly effective is the VRA's requirement of federal preclearance for all changes to voting laws in the regions of the country with the most aggravated records of rank discrimination against minority voting rights.

A century after the Fourteenth and Fifteenth Amendments guaranteed citizens the right to vote free of discrimination on the basis of race, the "blight of racial discrimination in voting" continued to "infec[t] the electoral process in parts of our country." *South Carolina v. Katzenbach,* 383 U.S. 301, 308, 86 S.Ct. 803, 15 L.Ed.2d 769 (1966). Early attempts to cope with this vile infection resembled battling the Hydra. Whenever one form of voting discrimination was identified and prohibited, others sprang up in its place. This Court repeatedly encountered the remarkable "variety and persistence" of laws disenfranchising minority citizens. *Id.,* at 311, 86 S.Ct. 803. To take just one example, the Court, in 1927, held unconstitutional a Texas law barring black voters from participating in primary elections, *Nixon v. Herndon,* 273 U.S. 536, 541, 47 S.Ct. 446, 71 L.Ed. 759; in 1944, the Court struck down a "reenacted" and slightly altered version of the same law, *Smith v. Allwright,* 321 U.S. 649, 658, 64 S.Ct. 757, 88 L.Ed. 987; and in 1953, the Court once again confronted an attempt by Texas to "circumven[t]" the Fifteenth Amendment by adopting yet another variant of the all-white primary, *Terry v. Adams,* 345 U.S. 461, 469, 73 S.Ct. 809, 97 L.Ed. 1152.

***561** During this era, the Court recognized that discrimination against minority voters was a quintessentially political problem requiring a political solution. As Justice Holmes explained: If "the great mass of the white population intends to keep the blacks from voting," "relief from [that] great political wrong, if done, as alleged, by the people of a State and the State itself, must be given by them or by the legislative and political department of the government of the United States." *Giles v. Harris,* 189 U.S. 475, 488, 23 S.Ct. 639, 47 L.Ed. 909 (1903).

Congress learned from experience that laws targeting particular electoral practices or enabling case-by-case litigation were inadequate to the task. In the Civil Rights Acts of 1957, 1960, and 1964, Congress authorized and then expanded the power of "the Attorney General to seek injunctions against public and private interference with the right to vote on racial grounds." *Katzenbach,* 383 U.S., at 313, 86 S.Ct. 803. But circumstances reduced the ameliorative potential of these legislative Acts:

> "Voting suits are unusually onerous to prepare, sometimes requiring as many as 6,000 man-hours spent combing through registration records in preparation for trial. Litigation has been exceedingly slow, in part because of the ample opportunities for delay afforded voting officials and others involved in the proceedings. Even when favorable decisions have finally been obtained, some of the States affected have merely switched to discriminatory devices not covered by the federal decrees or have enacted difficult new tests designed to prolong the existing disparity between white and Negro registration. Alternatively, certain local officials have defied ****2634** and evaded court orders or have simply closed their registration offices to freeze the voting rolls." *Id.,* at 314, 86 S.Ct. 803 (footnote omitted).

Patently, a new approach was needed.

***562** Answering that need, the Voting Rights Act became one of the most consequential, efficacious, and amply justified exercises of federal legislative power in our Nation's history. Requiring federal preclearance of changes in voting laws in the covered jurisdictions—those States and localities where opposition to the Constitution's commands were most virulent—the VRA provided a fit solution for minority voters as well as for States. Under the preclearance regime established by § 5 of the VRA, covered jurisdictions must submit proposed changes in voting laws or procedures to the Department of Justice (DOJ), which has 60 days to respond to the changes. 79 Stat. 439, codified at 42 U.S.C. § 1973c(a). A change will be approved unless DOJ finds it has "the purpose [or] ... the effect of denying or abridging the right to vote on account of race or color." *Ibid.* In the alternative, the covered jurisdiction may seek approval by a three-judge District Court in the District of Columbia.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

After a century's failure to fulfill the promise of the Fourteenth and Fifteenth Amendments, passage of the VRA finally led to signal improvement on this front. "The Justice Department estimated that in the five years after [the VRA's] passage, almost as many blacks registered [to vote] in Alabama, Mississippi, Georgia, Louisiana, North Carolina, and South Carolina as in the entire century before 1965." Davidson, The Voting Rights Act: A Brief History, in Controversies in Minority Voting 7, 21 (B. Grofman & C. Davidson eds. 1992). And in assessing the overall effects of the VRA in 2006, Congress found 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. This progress is the direct result of the Voting Rights Act of 1965." Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and ***563** Amendments Act of 2006 (hereinafter 2006 Reauthorization), § 2(b) (1), 120 Stat. 577. On that matter of cause and effects there can be no genuine doubt.

Although the VRA wrought dramatic changes in the realization of minority voting rights, the Act, to date, surely has not eliminated all vestiges of discrimination against the exercise of the franchise by minority citizens. Jurisdictions covered by the preclearance requirement continued to submit, in large numbers, proposed changes to voting laws that the Attorney General declined to approve, auguring that barriers to minority voting would quickly resurface were the preclearance remedy eliminated. *City of Rome v. United States,* 446 U.S. 156, 181, 100 S.Ct. 1548, 64 L.Ed.2d 119 (1980). Congress also found that as "registration and voting of minority citizens increas[ed], other measures may be resorted to which would dilute increasing minority voting strength." *Ibid.* (quoting H.R.Rep. No. 94–196, p. 10 (1975)). See also *Shaw v. Reno,* 509 U.S. 630, 640, 113 S.Ct. 2816, 125 L.Ed.2d 511 (1993) ("[I]t soon became apparent that guaranteeing equal access to the polls would not suffice to root out other racially discriminatory voting practices" such as voting dilution). Efforts to reduce the impact of minority votes, in contrast to direct attempts to block access to the ballot, are aptly described as "second-generation barriers" to minority voting.

****2635** Second-generation barriers come in various forms. One of the blockages is racial gerrymandering, the redrawing of legislative districts in an "effort to segregate the races for purposes of voting." *Id.,* at 642, 113 S.Ct. 2816. Another is adoption of a system of at-large voting in lieu of district-by-district voting in a city with a sizable black minority. By switching to at-large voting, the overall majority could control the election of each city council member, effectively eliminating the potency of the minority's votes. Grofman & Davidson, The Effect of Municipal Election Structure on Black Representation in Eight Southern States, in Quiet Revolution in the ***564** South 301, 319 (C. Davidson & B. Grofman eds. 1994) (hereinafter Quiet Revolution). A similar effect could be achieved if the city engaged in discriminatory annexation by incorporating majority-white areas into city limits, thereby decreasing the effect of VRA-occasioned increases in black voting. Whatever the device employed, this Court has long recognized that vote dilution, when adopted with a discriminatory purpose, cuts down the right to vote as certainly as denial of access to the ballot. *Shaw,* 509 U.S., at 640–641, 113 S.Ct. 2816; *Allen v. State Bd. of Elections,* 393 U.S. 544, 569, 89 S.Ct. 817, 22 L.Ed.2d 1 (1969); *Reynolds v. Sims,* 377 U.S. 533, 555, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964). See also H.R.Rep. No. 109–478, p. 6 (2006) (although "[d]iscrimination today is more subtle than the visible methods used in 1965," "the effect and results are the same, namely a diminishing of the minority community's ability to fully participate in the electoral process and to elect their preferred candidates").

In response to evidence of these substituted barriers, Congress reauthorized the VRA for five years in 1970, for seven years in 1975, and for 25 years in 1982. *Ante,* at 2620 – 2621. Each time, this Court upheld the reauthorization as a valid exercise of congressional power. *Ante,* at 2620. As the 1982 reauthorization approached its 2007 expiration date, Congress again considered whether the VRA's preclearance mechanism remained an appropriate response to the problem of voting discrimination in covered jurisdictions.

Congress did not take this task lightly. Quite the opposite. The 109th Congress that took responsibility for the renewal started early and conscientiously. In October 2005, the House began extensive hearings, which continued into November and resumed in March 2006. S.Rep. No. 109–295, p. 2 (2006). In April 2006, the Senate followed suit, with hearings of its own. *Ibid.* In May 2006, the bills that became the VRA's reauthorization were introduced in both Houses. *Ibid.* The House held further hearings of considerable length, as did the Senate, which continued to hold hearings into June and July. H.R. Rep. 109–478, at 5; ***565** S. Rep. 109–295, at 3–4. In mid-July, the House considered and rejected four amendments, then passed the reauthorization by

a vote of 390 yeas to 33 nays. 152 Cong. Rec. H5207 (July 13, 2006); Persily, The Promise and Pitfalls of the New Voting Rights Act, 117 Yale L.J. 174, 182–183 (2007) (hereinafter Persily). The bill was read and debated in the Senate, where it passed by a vote of 98 to 0. 152 Cong. Rec. S8012 (July 20, 2006). President Bush signed it a week later, on July 27, 2006, recognizing the need for "further work ... in the fight against injustice," and calling the reauthorization "an example of our continued commitment to a united America where every person is valued and treated with dignity and respect." 152 Cong. Rec. S8781 (Aug. 3, 2006).

In the long course of the legislative process, Congress "amassed a sizable record." **2636 *Northwest Austin Municipal Util. Dist. No. One v. Holder,* 557 U.S. 193, 205, 129 S.Ct. 2504, 174 L.Ed.2d 140 (2009). See also 679 F.3d 848, 865–873 (C.A.D.C.2012) (describing the "extensive record" supporting Congress' determination that "serious and widespread intentional discrimination persisted in covered jurisdictions"). The House and Senate Judiciary Committees held 21 hearings, heard from scores of witnesses, received a number of investigative reports and other written documentation of continuing discrimination in covered jurisdictions. In all, the legislative record Congress compiled filled more than 15,000 pages. H.R. Rep. 109–478, at 5, 11–12; S. Rep. 109–295, at 2–4, 15. The compilation presents countless "examples of flagrant racial discrimination" since the last reauthorization; Congress also brought to light systematic evidence that "intentional racial discrimination in voting remains so serious and widespread in covered jurisdictions that section 5 preclearance is still needed." 679 F.3d, at 866.

After considering the full legislative record, Congress made the following findings: The VRA has directly caused significant progress in eliminating first-generation barriers to ballot access, leading to a marked increase in minority *566 voter registration and turnout and the number of minority elected officials. 2006 Reauthorization § 2(b)(1). But despite this progress, "second generation barriers constructed to prevent minority voters from fully participating in the electoral process" continued to exist, as well as racially polarized voting in the covered jurisdictions, which increased the political vulnerability of racial and language minorities in those jurisdictions. §§ 2(b)(2)-(3), 120 Stat. 577. Extensive "[e]vidence of continued discrimination," Congress concluded, "clearly show[ed] the continued need for Federal oversight" in covered jurisdictions. §§ 2(b)(4)-(5), *id.,* at 577–578. The overall record demonstrated to the federal lawmakers that, "without the continuation of the Voting Rights Act of 1965 protections, racial and language minority citizens will be deprived of the opportunity to exercise their right to vote, or will have their votes diluted, undermining the significant gains made by minorities in the last 40 years." § 2(b)(9), *id.,* at 578.

Based on these findings, Congress reauthorized preclearance for another 25 years, while also undertaking to reconsider the extension after 15 years to ensure that the provision was still necessary and effective. 42 U.S.C. § 1973b(a)(7), (8) (2006 ed., Supp. V). The question before the Court is whether Congress had the authority under the Constitution to act as it did.

II

In answering this question, the Court does not write on a clean slate. It is well established that Congress' judgment regarding exercise of its power to enforce the Fourteenth and Fifteenth Amendments warrants substantial deference. The VRA addresses the combination of race discrimination and the right to vote, which is "preservative of all rights." *Yick Wo v. Hopkins,* 118 U.S. 356, 370, 6 S.Ct. 1064, 30 L.Ed. 220 (1886). When confronting the most constitutionally invidious form of discrimination, and the most fundamental right in our democratic system, Congress' power to act is at its height.

*567 The basis for this deference is firmly rooted in both constitutional text and precedent. The Fifteenth Amendment, which targets precisely and only racial discrimination in voting rights, states that, in this domain, "Congress shall have power to enforce this article by appropriate legislation."[2] In choosing this language, the **2637 Amendment's framers invoked Chief Justice Marshall's formulation of the scope of Congress' powers under the Necessary and Proper Clause:

> "Let the end be legitimate, let it be within the scope of the constitution, and *all means which are appropriate, which are plainly adapted to that end,* which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." *McCulloch v. Maryland,* 4 Wheat. 316, 421, 4 L.Ed. 579 (1819) (emphasis added).

It cannot tenably be maintained that the VRA, an Act of Congress adopted to shield the right to vote from racial discrimination, is inconsistent with the letter or spirit of the Fifteenth Amendment, or any provision of the Constitution read in light of the Civil War Amendments. Nowhere in today's opinion, or in *Northwest Austin,*[3] is there clear recognition of the transformative effect the Fifteenth Amendment aimed to achieve. Notably, "the Founders' first successful amendment told Congress that it could 'make no law' over a ***568** certain domain"; in contrast, the Civil War Amendments used " language [that] authorized transformative new federal statutes to uproot all vestiges of unfreedom and inequality" and provided "sweeping enforcement powers ... to enact 'appropriate' legislation targeting state abuses." A. Amar, America's Constitution: A Biography 361, 363, 399 (2005). See also McConnell, Institutions and Interpretation: A Critique of *City of Boerne v. Flores,* 111 Harv. L.Rev. 153, 182 (1997) (quoting Civil War-era framer that "the remedy for the violation of the fourteenth and fifteenth amendments was expressly not left to the courts. The remedy was legislative.").

The stated purpose of the Civil War Amendments was to arm Congress with the power and authority to protect all persons within the Nation from violations of their rights by the States. In exercising that power, then, Congress may use "all means which are appropriate, which are plainly adapted" to the constitutional ends declared by these Amendments. *McCulloch,* 4 Wheat., at 421. So when Congress acts to enforce the right to vote free from racial discrimination, we ask not whether Congress has chosen the means most wise, but whether Congress has rationally selected means appropriate to a legitimate end. "It is not for us to review the congressional resolution of [the need for its chosen remedy]. It is enough that we be able to perceive a basis upon which the Congress might resolve the conflict as it did." *Katzenbach v. Morgan,* 384 U.S. 641, 653, 86 S.Ct. 1717, 16 L.Ed.2d 828 (1966).

Until today, in considering the constitutionality of the VRA, the Court has accorded Congress the full measure of respect its ****2638** judgments in this domain should garner. *South Carolina v. Katzenbach* supplies the standard of review: "As against the reserved powers of the States, Congress may use any rational means to effectuate the constitutional prohibition of racial discrimination in voting." 383 U.S., at 324, 86 S.Ct. 803. Faced with subsequent reauthorizations of the VRA, the ***569** Court has reaffirmed this standard. *E.g., City of Rome,* 446 U.S., at 178, 100 S.Ct. 1548. Today's Court does not purport to alter settled precedent establishing that the dispositive question is whether Congress has employed "rational means."

For three reasons, legislation *re*authorizing an existing statute is especially likely to satisfy the minimal requirements of the rational-basis test. First, when reauthorization is at issue, Congress has already assembled a legislative record justifying the initial legislation. Congress is entitled to consider that preexisting record as well as the record before it at the time of the vote on reauthorization. This is especially true where, as here, the Court has repeatedly affirmed the statute's constitutionality and Congress has adhered to the very model the Court has upheld. See *id.,* at 174, 100 S.Ct. 1548 ("The appellants are asking us to do nothing less than overrule our decision in *South Carolina v. Katzenbach* ..., in which we upheld the constitutionality of the Act."); *Lopez v. Monterey County,* 525 U.S. 266, 283, 119 S.Ct. 693, 142 L.Ed.2d 728 (1999) (similar).

Second, the very fact that reauthorization is necessary arises because Congress has built a temporal limitation into the Act. It has pledged to review, after a span of years (first 15, then 25) and in light of contemporary evidence, the continued need for the VRA. Cf. *Grutter v. Bollinger,* 539 U.S. 306, 343, 123 S.Ct. 2325, 156 L.Ed.2d 304 (2003) (anticipating, but not guaranteeing, that, in 25 years, "the use of racial preferences [in higher education] will no longer be necessary").

Third, a reviewing court should expect the record supporting reauthorization to be less stark than the record originally made. Demand for a record of violations equivalent to the one earlier made would expose Congress to a catch–22. If the statute was working, there would be less evidence of discrimination, so opponents might argue that Congress should not be allowed to renew the statute. In contrast, if the statute was not working, there would be plenty of evidence of discrimination, but scant reason to renew a failed regulatory regime. See Persily 193–194.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

***570** This is not to suggest that congressional power in this area is limitless. It is this Court's responsibility to ensure that Congress has used appropriate means. The question meet for judicial review is whether the chosen means are "adapted to carry out the objects the amendments have in view." *Ex parte Virginia,* 100 U.S. 339, 346, 25 L.Ed. 676 (1880). The Court's role, then, is not to substitute its judgment for that of Congress, but to determine whether the legislative record sufficed to show that "Congress could rationally have determined that [its chosen] provisions were appropriate methods." *City of Rome,* 446 U.S., at 176–177, 100 S.Ct. 1548.

In summary, the Constitution vests broad power in Congress to protect the right to vote, and in particular to combat racial discrimination in voting. This Court has repeatedly reaffirmed Congress' prerogative to use any rational means in exercise of its power in this area. And both precedent and logic dictate that the rational-means test should be easier to satisfy, and the burden on the statute's challenger should be higher, when what is at issue is the reauthorization of a remedy that the Court has previously affirmed, and that Congress found, from contemporary evidence, ****2639** to be working to advance the legislature's legitimate objective.

III

The 2006 reauthorization of the Voting Rights Act fully satisfies the standard stated in *McCulloch,* 4 Wheat., at 421: Congress may choose any means "appropriate" and "plainly adapted to" a legitimate constitutional end. As we shall see, it is implausible to suggest otherwise.

A

I begin with the evidence on which Congress based its decision to continue the preclearance remedy. The surest way to evaluate whether that remedy remains in order is to see if preclearance is still effectively preventing discriminatory changes to voting laws. See *City of Rome,* 446 U.S., at 181, 100 S.Ct. 1548 (identifying "information on the number and types of ***571** submissions made by covered jurisdictions and the number and nature of objections interposed by the Attorney General" as a primary basis for upholding the 1975 reauthorization). On that score, the record before Congress was huge. In fact, Congress found there were *more* DOJ objections between 1982 and 2004 (626) than there were between 1965 and the 1982 reauthorization (490). 1 Voting Rights Act: Evidence of Continued Need, Hearing before the Subcommittee on the Constitution of the House Committee on the Judiciary, 109th Cong., 2d Sess., p. 172 (2006) (hereinafter Evidence of Continued Need).

All told, between 1982 and 2006, DOJ objections blocked over 700 voting changes based on a determination that the changes were discriminatory. H.R.Rep. No. 109–478, at 21. Congress found that the majority of DOJ objections included findings of discriminatory intent, see 679 F.3d, at 867, and that the changes blocked by preclearance were "calculated decisions to keep minority voters from fully participating in the political process." H.R. Rep. 109–478, at 21 (2006), 2006 U.S.C.C.A.N. 618, 631. On top of that, over the same time period the DOJ and private plaintiffs succeeded in more than 100 actions to enforce the § 5 preclearance requirements. 1 Evidence of Continued Need 186, 250.

In addition to blocking proposed voting changes through preclearance, DOJ may request more information from a jurisdiction proposing a change. In turn, the jurisdiction may modify or withdraw the proposed change. The number of such modifications or withdrawals provides an indication of how many discriminatory proposals are deterred without need for formal objection. Congress received evidence that more than 800 proposed changes were altered or withdrawn since the last reauthorization in 1982. H.R.Rep. No. 109–478, at 40–41.[4] Congress also received empirical studies ***572** finding that DOJ's requests for more information had a significant effect on the degree to which covered ****2640** jurisdictions "compl[ied] with their obligatio[n]" to protect minority voting rights. 2 Evidence of Continued Need 2555.

Congress also received evidence that litigation under § 2 of the VRA was an inadequate substitute for preclearance in the covered jurisdictions. Litigation occurs only after the fact, when the illegal voting scheme has already been put in place and individuals have been elected pursuant to it, thereby gaining the advantages of incumbency. 1 Evidence of Continued Need 97. An illegal scheme might be in place for several election cycles before a § 2 plaintiff can gather sufficient evidence to challenge it. 1 Voting Rights Act: Section 5 of the Act—History, Scope, and Purpose: Hearing before the Subcommittee on the Constitution of the House Committee on the Judiciary, 109th Cong., 1st Sess., p. 92 (2005) (hereinafter Section 5 Hearing). And litigation places a heavy financial burden on minority voters. See *id.,* at 84. Congress also received evidence that preclearance lessened the litigation burden on covered jurisdictions themselves, because the preclearance process is far less costly than defending against a § 2 claim, and clearance by DOJ substantially reduces the likelihood that a § 2 claim will be mounted. Reauthorizing the Voting Rights Act's Temporary Provisions: Policy Perspectives and Views From the Field: Hearing before the Subcommittee on the Constitution, Civil Rights and Property Rights of the Senate Committee on the Judiciary, 109th Cong., 2d Sess., ***573** pp. 13, 120–121 (2006). See also Brief for States of New York, California, Mississippi, and North Carolina as *Amici Curiae* 8–9 (Section 5 "reduc[es] the likelihood that a jurisdiction will face costly and protracted Section 2 litigation").

The number of discriminatory changes blocked or deterred by the preclearance requirement suggests that the state of voting rights in the covered jurisdictions would have been significantly different absent this remedy. Surveying the type of changes stopped by the preclearance procedure conveys a sense of the extent to which § 5 continues to protect minority voting rights. Set out below are characteristic examples of changes blocked in the years leading up to the 2006 reauthorization:

• In 1995, Mississippi sought to reenact a dual voter registration system, "which was initially enacted in 1892 to disenfranchise Black voters," and for that reason, was struck down by a federal court in 1987. H.R.Rep. No. 109–478, at 39.

• Following the 2000 census, the City of Albany, Georgia, proposed a redistricting plan that DOJ found to be "designed with the purpose to limit and retrogress the increased black voting strength ... in the city as a whole." *Id.,* at 37 (internal quotation marks omitted).

• In 2001, the mayor and all-white five-member Board of Aldermen of Kilmichael, Mississippi, abruptly canceled the town's election after "an unprecedented number" of African–American candidates announced they were running for office. DOJ required an election, and the town elected its first black mayor and three black aldermen. *Id.,* at 36–37.

• In 2006, this Court found that Texas' attempt to redraw a congressional district to reduce the strength of Latino voters bore "the mark of intentional discrimination that could give rise to an equal protection violation," and ordered the district redrawn in compliance with the VRA. ***574** *League of United Latin American Citizens v. Perry,* 548 U.S. 399, 440 [126 S.Ct. 2594, 165 L.Ed.2d 609] (2006). In response, ****2641** Texas sought to undermine this Court's order by curtailing early voting in the district, but was blocked by an action to enforce the § 5 preclearance requirement. See Order in *League of United Latin American Citizens v. Texas,* No. 06–cv–1046 (WD Tex.), Doc. 8.

• In 2003, after African–Americans won a majority of the seats on the school board for the first time in history, Charleston County, South Carolina, proposed an at-large voting mechanism for the board. The proposal, made without consulting any of the African–American members of the school board, was found to be an " 'exact replica' " of an earlier voting scheme that, a federal court had determined, violated the VRA. 811 F.Supp.2d 424, 483 (D.D.C.2011). See also S.Rep. No. 109–295, at 309. DOJ invoked § 5 to block the proposal.

• In 1993, the City of Millen, Georgia, proposed to delay the election in a majority-black district by two years, leaving that district without representation on the city council while the neighboring majority-white district would have three representatives. 1 Section 5 Hearing 744. DOJ blocked the proposal. The county then sought to move a polling place from a predominantly black neighborhood in the city to an inaccessible location in a predominantly white neighborhood outside city limits. *Id.,* at 816.

- In 2004, Waller County, Texas, threatened to prosecute two black students after they announced their intention to run for office. The county then attempted to reduce the availability of early voting in that election at polling places near a historically black university. 679 F.3d, at 865–866.

- In 1990, Dallas County, Alabama, whose county seat is the City of Selma, sought to purge its voter rolls of many black voters. DOJ rejected the purge as discriminatory, ***575** noting that it would have disqualified many citizens from voting "simply because they failed to pick up or return a voter update form, when there was no valid requirement that they do so." 1 Section 5 Hearing 356.

These examples, and scores more like them, fill the pages of the legislative record. The evidence was indeed sufficient to support Congress' conclusion that "racial discrimination in voting in covered jurisdictions [remained] serious and pervasive." 679 F.3d, at 865.[5]

Congress further received evidence indicating that formal requests of the kind set out above represented only the tip of the iceberg. There was what one commentator described as an "avalanche of case studies of voting rights violations in the covered jurisdictions," ranging from "outright intimidation and violence against minority voters" to "more subtle forms of voting rights deprivations." Persily 202 ****2642** (footnote omitted). This evidence gave Congress ever more reason to conclude that the time had not yet come for relaxed vigilance against the scourge of race discrimination in voting.

True, conditions in the South have impressively improved since passage of the Voting Rights Act. Congress noted this improvement and found that the VRA was the driving force behind it. 2006 Reauthorization § 2(b)(1). But Congress also found that voting discrimination had evolved into ***576** subtler second-generation barriers, and that eliminating preclearance would risk loss of the gains that had been made. §§ 2(b)(2), (9). Concerns of this order, the Court previously found, gave Congress adequate cause to reauthorize the VRA. *City of Rome,* 446 U.S., at 180–182, 100 S.Ct. 1548 (congressional reauthorization of the preclearance requirement was justified based on "the number and nature of objections interposed by the Attorney General" since the prior reauthorization; extension was "necessary to preserve the limited and fragile achievements of the Act and to promote further amelioration of voting discrimination") (internal quotation marks omitted). Facing such evidence then, the Court expressly rejected the argument that disparities in voter turnout and number of elected officials were the only metrics capable of justifying reauthorization of the VRA. *Ibid.*

B

I turn next to the evidence on which Congress based its decision to reauthorize the coverage formula in § 4(b). Because Congress did not alter the coverage formula, the same jurisdictions previously subject to preclearance continue to be covered by this remedy. The evidence just described, of preclearance's continuing efficacy in blocking constitutional violations in the covered jurisdictions, itself grounded Congress' conclusion that the remedy should be retained for those jurisdictions.

There is no question, moreover, that the covered jurisdictions have a unique history of problems with racial discrimination in voting. *Ante,* at 2624 – 2625. Consideration of this long history, still in living memory, was altogether appropriate. The Court criticizes Congress for failing to recognize that "history did not end in 1965." *Ante,* at 2628. But the Court ignores that "what's past is prologue." W. Shakespeare, The Tempest, act 2, sc. 1. And "[t]hose who cannot remember the past are condemned to repeat it." 1 G. Santayana, The Life of Reason 284 (1905). Congress was ***577** especially mindful of the need to reinforce the gains already made and to prevent backsliding. 2006 Reauthorization § 2(b)(9).

Of particular importance, even after 40 years and thousands of discriminatory changes blocked by preclearance, conditions in the covered jurisdictions demonstrated that the formula was still justified by "current needs." *Northwest Austin,* 557 U.S., at 203, 129 S.Ct. 2504.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

Congress learned of these conditions through a report, known as the Katz study, that looked at § 2 suits between 1982 and 2004. To Examine the Impact and Effectiveness of the Voting Rights Act: Hearing before the Subcommittee on the Constitution of the House Committee on the Judiciary, 109th Cong., 1st Sess., pp. 964–1124 (2005) (hereinafter Impact and Effectiveness). Because the private right of action authorized by § 2 of the VRA applies nationwide, a comparison of § 2 lawsuits in covered and noncovered jurisdictions provides an appropriate yardstick for measuring differences between covered and noncovered jurisdictions. If differences in the risk of voting discrimination between covered and noncovered jurisdictions had disappeared, one would ****2643** expect that the rate of successful § 2 lawsuits would be roughly the same in both areas.[6] The study's findings, however, indicated that racial discrimination in voting remains "concentrated in the jurisdictions singled out for preclearance." *Northwest Austin,* 557 U.S., at 203, 129 S.Ct. 2504.

Although covered jurisdictions account for less than 25 percent of the country's population, the Katz study revealed that they accounted for 56 percent of successful § 2 litigation since 1982. Impact and Effectiveness 974. Controlling for population, there were nearly *four* times as many successful § 2 cases in covered jurisdictions as there were in noncovered ***578** jurisdictions. 679 F.3d, at 874. The Katz study further found that § 2 lawsuits are more likely to succeed when they are filed in covered jurisdictions than in noncovered jurisdictions. Impact and Effectiveness 974. From these findings—ignored by the Court—Congress reasonably concluded that the coverage formula continues to identify the jurisdictions of greatest concern.

The evidence before Congress, furthermore, indicated that voting in the covered jurisdictions was more racially polarized than elsewhere in the country. H.R.Rep. No. 109–478, at 34–35. While racially polarized voting alone does not signal a constitutional violation, it is a factor that increases the vulnerability of racial minorities to discriminatory changes in voting law. The reason is twofold. First, racial polarization means that racial minorities are at risk of being systematically outvoted and having their interests underrepresented in legislatures. Second, "when political preferences fall along racial lines, the natural inclinations of incumbents and ruling parties to entrench themselves have predictable racial effects. Under circumstances of severe racial polarization, efforts to gain political advantage translate into race-specific disadvantages." Ansolabehere, Persily, & Stewart, Regional Differences in Racial Polarization in the 2012 Presidential Election: Implications for the Constitutionality of Section 5 of the Voting Rights Act, 126 Harv. L.Rev. Forum 205, 209 (2013).

In other words, a governing political coalition has an incentive to prevent changes in the existing balance of voting power. When voting is racially polarized, efforts by the ruling party to pursue that incentive "will inevitably discriminate against a racial group." *Ibid.* Just as buildings in California have a greater need to be earthquake-proofed, places where there is greater racial polarization in voting have a greater need for prophylactic measures to prevent purposeful race discrimination. This point was understood by Congress and is well recognized in the academic ***579** literature. See 2006 Reauthorization § 2(b)(3), 120 Stat. 577 ("The continued evidence of racially polarized voting in each of the jurisdictions covered by the [preclearance requirement] demonstrates that racial and language minorities remain politically vulnerable"); H.R.Rep. No. 109–478, at 35 (2006), 2006 U.S.C.C.A.N. 618; Davidson, The Recent Evolution of Voting Rights Law Affecting Racial and Language Minorities, in Quiet Revolution 21, 22.

The case for retaining a coverage formula that met needs on the ground was therefore solid. Congress might have been charged with rigidity had it afforded covered ****2644** jurisdictions no way out or ignored jurisdictions that needed superintendence. Congress, however, responded to this concern. Critical components of the congressional design are the statutory provisions allowing jurisdictions to "bail out" of preclearance, and for court-ordered "bail ins." See *Northwest Austin,* 557 U.S., at 199, 129 S.Ct. 2504. The VRA permits a jurisdiction to bail out by showing that it has complied with the Act for ten years, and has engaged in efforts to eliminate intimidation and harassment of voters. 42 U.S.C. § 1973b(a) (2006 ed. and Supp. V). It also authorizes a court to subject a noncovered jurisdiction to federal preclearance upon finding that violations of the Fourteenth and Fifteenth Amendments have occurred there. § 1973a(c) (2006 ed.).

Congress was satisfied that the VRA's bailout mechanism provided an effective means of adjusting the VRA's coverage over time. H.R.Rep. No. 109–478, at 25 (the success of bailout "illustrates that: (1) covered status is neither permanent nor over-broad;

and (2) covered status has been and continues to be within the control of the jurisdiction such that those jurisdictions that have a genuinely clean record and want to terminate coverage have the ability to do so"). Nearly 200 jurisdictions have successfully bailed out of the preclearance requirement, and DOJ has consented to every bailout application filed by an eligible jurisdiction since the current bailout procedure became effective in 1984. Brief for Federal Respondent 54. The bail-in mechanism has also ***580** worked. Several jurisdictions have been subject to federal preclearance by court orders, including the States of New Mexico and Arkansas. App. to Brief for Federal Respondent 1a–3a.

This experience exposes the inaccuracy of the Court's portrayal of the Act as static, unchanged since 1965. Congress designed the VRA to be a dynamic statute, capable of adjusting to changing conditions. True, many covered jurisdictions have not been able to bail out due to recent acts of noncompliance with the VRA, but that truth reinforces the congressional judgment that these jurisdictions were rightfully subject to preclearance, and ought to remain under that regime.

IV

Congress approached the 2006 reauthorization of the VRA with great care and seriousness. The same cannot be said of the Court's opinion today. The Court makes no genuine attempt to engage with the massive legislative record that Congress assembled. Instead, it relies on increases in voter registration and turnout as if that were the whole story. See *supra,* at 2641 – 2642. Without even identifying a standard of review, the Court dismissively brushes off arguments based on "data from the record," and declines to enter the "debat [e about] what [the] record shows." *Ante,* at 2629. One would expect more from an opinion striking at the heart of the Nation's signal piece of civil-rights legislation.

I note the most disturbing lapses. First, by what right, given its usual restraint, does the Court even address Shelby County's facial challenge to the VRA? Second, the Court veers away from controlling precedent regarding the "equal sovereignty" doctrine without even acknowledging that it is doing so. Third, hardly showing the respect ordinarily paid when Congress acts to implement the Civil War Amendments, and as just stressed, the Court does not even deign to grapple with the legislative record.

***581** A

Shelby County launched a purely facial challenge to the VRA's 2006 reauthorization. ****2645** "A facial challenge to a legislative Act," the Court has other times said, "is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." *United States v. Salerno,* 481 U.S. 739, 745, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987).

"[U]nder our constitutional system[,] courts are not roving commissions assigned to pass judgment on the validity of the Nation's laws." *Broadrick v. Oklahoma,* 413 U.S. 601, 610–611, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973). Instead, the "judicial Power" is limited to deciding particular "Cases" and "Controversies." U.S. Const., Art. III, § 2. "Embedded in the traditional rules governing constitutional adjudication is the principle that a person to whom a statute may constitutionally be applied will not be heard to challenge that statute on the ground that it may conceivably be applied unconstitutionally to others, in other situations not before the Court." *Broadrick,* 413 U.S., at 610, 93 S.Ct. 2908. Yet the Court's opinion in this case contains not a word explaining why Congress lacks the power to subject to preclearance the particular plaintiff that initiated this lawsuit—Shelby County, Alabama. The reason for the Court's silence is apparent, for as applied to Shelby County, the VRA's preclearance requirement is hardly contestable.

Alabama is home to Selma, site of the "Bloody Sunday" beatings of civil-rights demonstrators that served as the catalyst for the VRA's enactment. Following those events, Martin Luther King, Jr., led a march from Selma to Montgomery, Alabama's capital, where he called for passage of the VRA. If the Act passed, he foresaw, progress could be made even in Alabama, but there had to be a steadfast national commitment to see the task through to completion. In King's words, "the arc of the moral universe

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

is long, but it bends toward justice." G. May, Bending Toward Justice: ***582** The Voting Rights Act and the Transformation of American Democracy 144 (2013).

History has proved King right. Although circumstances in Alabama have changed, serious concerns remain. Between 1982 and 2005, Alabama had one of the highest rates of successful § 2 suits, second only to its VRA-covered neighbor Mississippi. 679 F.3d, at 897 (Williams, J., dissenting). In other words, even while subject to the restraining effect of § 5, Alabama was found to have "deni[ed] or abridge[d]" voting rights "on account of race or color" more frequently than nearly all other States in the Union. 42 U.S.C. § 1973(a). This fact prompted the dissenting judge below to concede that "a more narrowly tailored coverage formula" capturing Alabama and a handful of other jurisdictions with an established track record of racial discrimination in voting "might be defensible." 679 F.3d, at 897 (opinion of Williams, J.). That is an understatement. Alabama's sorry history of § 2 violations alone provides sufficient justification for Congress' determination in 2006 that the State should remain subject to § 5's preclearance requirement.[7]

****2646** A few examples suffice to demonstrate that, at least in Alabama, the "current burdens" imposed by § 5's preclearance requirement are "justified by current needs." *Northwest Austin,* 557 U.S., at 203, 129 S.Ct. 2504. In the interim between the VRA's 1982 and 2006 reauthorizations, this Court twice confronted purposeful racial discrimination in Alabama. In *Pleasant Grove v. United States,* 479 U.S. 462, 107 S.Ct. 794, 93 L.Ed.2d 866 (1987), the Court held that Pleasant Grove—a city in Jefferson County, Shelby County's neighbor—engaged in purposeful ***583** discrimination by annexing all-white areas while rejecting the annexation request of an adjacent black neighborhood. The city had "shown unambiguous opposition to racial integration, both before and after the passage of the federal civil rights laws," and its strategic annexations appeared to be an attempt "to provide for the growth of a monolithic white voting block" for "the impermissible purpose of minimizing future black voting strength." *Id.,* at 465, 471–472, 107 S.Ct. 794.

Two years before *Pleasant Grove,* the Court in *Hunter v. Underwood,* 471 U.S. 222, 105 S.Ct. 1916, 85 L.Ed.2d 222 (1985), struck down a provision of the Alabama Constitution that prohibited individuals convicted of misdemeanor offenses "involving moral turpitude" from voting. *Id.,* at 223, 105 S.Ct. 1916 (internal quotation marks omitted). The provision violated the Fourteenth Amendment's Equal Protection Clause, the Court unanimously concluded, because "its original enactment was motivated by a desire to discriminate against blacks on account of race[,] and the [provision] continues to this day to have that effect." *Id.,* at 233, 105 S.Ct. 1916.

Pleasant Grove and *Hunter* were not anomalies. In 1986, a Federal District Judge concluded that the at-large election systems in several Alabama counties violated § 2. *Dillard v. Crenshaw Cty.,* 640 F.Supp. 1347, 1354–1363 (M.D.Ala.1986). Summarizing its findings, the court stated that "[f]rom the late 1800's through the present, [Alabama] has consistently erected barriers to keep black persons from full and equal participation in the social, economic, and political life of the state." *Id.,* at 1360.

The *Dillard* litigation ultimately expanded to include 183 cities, counties, and school boards employing discriminatory at-large election systems. *Dillard v. Baldwin Cty. Bd. of Ed.,* 686 F.Supp. 1459, 1461 (M.D.Ala.1988). One of those defendants was Shelby County, which eventually signed a consent decree to resolve the claims against it. See *Dillard v. Crenshaw Cty.,* 748 F.Supp. 819 (M.D.Ala.1990).

Although the *Dillard* litigation resulted in overhauls of numerous electoral systems tainted by racial discrimination, concerns about backsliding persist. In 2008, for example, ***584** the city of Calera, located in Shelby County, requested preclearance of a redistricting plan that "would have eliminated the city's sole majority-black district, which had been created pursuant to the consent decree in *Dillard.*" 811 F.Supp.2d 424, 443 (D.D.C.2011). Although DOJ objected to the plan, Calera forged ahead with elections based on the unprecleared voting changes, resulting in the defeat of the incumbent African–American councilman who represented the former majority-black district. *Ibid.* The city's defiance required DOJ to bring a § 5 enforcement action that ultimately yielded appropriate redress, including restoration of the majority-black district. *Ibid.;* Brief for Respondent–Intervenors Earl Cunningham et al. 20.

A recent FBI investigation provides a further window into the persistence of racial discrimination in state politics. See **2647 *United States v. McGregor,* 824 F.Supp.2d 1339, 1344–1348 (M.D.Ala.2011). Recording devices worn by state legislators cooperating with the FBI's investigation captured conversations between members of the state legislature and their political allies. The recorded conversations are shocking. Members of the state Senate derisively refer to African–Americans as "Aborigines" and talk openly of their aim to quash a particular gambling-related referendum because the referendum, if placed on the ballot, might increase African–American voter turnout. *Id.,* at 1345–1346 (internal quotation marks omitted). See also *id.,* at 1345 (legislators and their allies expressed concern that if the referendum were placed on the ballot, " '[e]very black, every illiterate' would be 'bused [to the polls] on HUD financed buses' "). These conversations occurred not in the 1870's, or even in the 1960's, they took place in 2010. *Id.,* at 1344–1345. The District Judge presiding over the criminal trial at which the recorded conversations were introduced commented that the "recordings represent compelling evidence that political exclusion through racism remains a real and enduring problem" in Alabama. *585 *Id.,* at 1347. Racist sentiments, the judge observed, "remain regrettably entrenched in the high echelons of state government." *Ibid.*

These recent episodes forcefully demonstrate that § 5's preclearance requirement is constitutional as applied to Alabama and its political subdivisions.[8] And under our case law, that conclusion should suffice to resolve this case. See *United States v. Raines,* 362 U.S. 17, 24–25, 80 S.Ct. 519, 4 L.Ed.2d 524 (1960) ("[I]f the complaint here called for an application of the statute clearly constitutional under the Fifteenth Amendment, that should have been an end to the question of constitutionality."). See also *Nevada Dept. of Human Resources v. Hibbs,* 538 U.S. 721, 743, 123 S.Ct. 1972, 155 L.Ed.2d 953 (2003) (SCALIA, J., dissenting) (where, as here, a state or local government raises a facial challenge to a federal statute on the ground that it exceeds Congress' enforcement powers under the Civil War Amendments, the challenge fails if the opposing party is able to show that the statute "could constitutionally be applied to *some* jurisdictions").

This Court has consistently rejected constitutional challenges to legislation enacted pursuant to Congress' enforcement powers under the Civil War Amendments upon finding that the legislation was constitutional as applied to the particular set of circumstances before the Court. See *United States v. Georgia,* 546 U.S. 151, 159, 126 S.Ct. 877, 163 L.Ed.2d 650 (2006) (Title II of the Americans with Disabilities Act of 1990 (ADA) validly abrogates state sovereign immunity "insofar as [it] creates a private cause of action ... for conduct that *actually* violates the Fourteenth Amendment"); *Tennessee v. Lane,* 541 U.S. 509, 530–534, 124 S.Ct. 1978, 158 L.Ed.2d 820 (2004) (Title II of the ADA is constitutional "as it applies to the class of cases implicating the fundamental right of access to the courts"); *586 *Raines,* 362 U.S., at 24–26, 80 S.Ct. 519 (federal statute proscribing deprivations of the right to vote based on race was constitutional as applied to the state officials before the Court, even if it could not constitutionally be applied to other parties). A similar approach is warranted here.[9]

**2648 The VRA's exceptionally broad severability provision makes it particularly inappropriate for the Court to allow Shelby County to mount a facial challenge to §§ 4(b) and 5 of the VRA, even though application of those provisions to the county falls well within the bounds of Congress' legislative authority. The severability provision states:

> "If any provision of [this Act] or the application thereof to any person or circumstances is held invalid, the remainder of [the Act] and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby." 42 U.S.C. § 1973p.

In other words, even if the VRA could not constitutionally be applied to certain States—*e.g.,* Arizona and Alaska, see *ante,* at 2622 —§ 1973p calls for those unconstitutional applications to be severed, leaving the Act in place for juris-dictions as to which its application does not transgress constitutional limits.

Nevertheless, the Court suggests that limiting the jurisdictional scope of the VRA in an appropriate case would be "to try our hand at updating the statute." *Ante,* at 2629. *587 Just last Term, however, the Court rejected this very argument when addressing a materially identical severability provision, explaining that such a provision is "Congress' explicit textual instruction to leave unaffected the remainder of [the Act]" if any particular " application is unconstitutional." *National Federation of Independent Business v. Sebelius,* 567 U.S. ––––, ––––, 132 S.Ct. 2566, 2639, 183 L.Ed.2d 450 (2012) (plurality opinion) (internal quotation marks omitted); *id.,* at ––––, 132 S.Ct., at 2641–2642 (GINSBURG, J., concurring in part, concurring in

judgment in part, and dissenting in part) (slip op., at 60) (agreeing with the plurality's severability analysis). See also *Raines,* 362 U.S., at 23, 80 S.Ct. 519 (a statute capable of some constitutional applications may nonetheless be susceptible to a facial challenge only in "that rarest of cases where this Court can justifiably think itself able confidently to discern that Congress would not have desired its legislation to stand at all unless it could validly stand in its every application"). Leaping to resolve Shelby County's facial challenge without considering whether application of the VRA to Shelby County is constitutional, or even addressing the VRA's severability provision, the Court's opinion can hardly be described as an exemplar of restrained and moderate decisionmaking. Quite the opposite. Hubris is a fit word for today's demolition of the VRA.

B

The Court stops any application of § 5 by holding that § 4(b)'s coverage formula is unconstitutional. It pins this result, in large measure, to "the fundamental principle of equal sovereignty." *Ante,* at 2623 – 2624, 2630. In *Katzenbach,* however, the Court held, in no uncertain terms, that the principle "*applies only to the terms upon which States are admitted to the Union,* and not to the remedies for local evils which have subsequently appeared." 383 U.S., at 328–329, 86 S.Ct. 803 (emphasis added).

****2649** *Katzenbach,* the Court acknowledges, "rejected the notion that the [equal sovereignty] principle operate[s] as a bar on ***588** differential treatment outside [the] context [of the admission of new States]." *Ante,* at 2623 – 2624 (citing 383 U.S., at 328–329, 86 S.Ct. 803) (emphasis omitted). But the Court clouds that once clear understanding by citing dictum from *Northwest Austin* to convey that the principle of equal sovereignty "remains highly pertinent in assessing subsequent disparate treatment of States." *Ante,* at 2624 (citing 557 U.S., at 203, 129 S.Ct. 2504). See also *ante,* at 2630 (relying on *Northwest Austin* 's "emphasis on [the] significance" of the equal-sovereignty principle). If the Court is suggesting that dictum in *Northwest Austin* silently overruled *Katzenbach* 's limitation of the equal sovereignty doctrine to "the admission of new States," the suggestion is untenable. *Northwest Austin* cited *Katzenbach* 's holding in the course of *declining to decide* whether the VRA was constitutional or even what standard of review applied to the question. 557 U.S., at 203–204, 129 S.Ct. 2504. In today's decision, the Court ratchets up what was pure dictum in *Northwest Austin,* attributing breadth to the equal sovereignty principle in flat contradiction of *Katzenbach.* The Court does so with nary an explanation of why it finds *Katzenbach* wrong, let alone any discussion of whether *stare decisis* nonetheless counsels adherence to *Katzenbach* 's ruling on the limited "significance" of the equal sovereignty principle.

Today's unprecedented extension of the equal sovereignty principle outside its proper domain—the admission of new States—is capable of much mischief. Federal statutes that treat States disparately are hardly novelties. See, *e.g.,* 28 U.S.C. § 3704 (no State may operate or permit a sports-related gambling scheme, unless that State conducted such a scheme "at any time during the period beginning January 1, 1976, and ending August 31, 1990"); 26 U.S.C. § 142(*l*) (EPA required to locate green building project in a State meeting specified population criteria); 42 U.S.C. § 3796bb (at least 50 percent of rural drug enforcement assistance funding must be allocated to States with "a population density of fifty-two or fewer persons per ***589** square mile or a State in which the largest county has fewer than one hundred and fifty thousand people, based on the decennial census of 1990 through fiscal year 1997"); §§ 13925, 13971 (similar population criteria for funding to combat rural domestic violence); § 10136 (specifying rules applicable to Nevada's Yucca Mountain nuclear waste site, and providing that " [n]o State, other than the State of Nevada, may receive financial assistance under this subsection after December 22, 1987"). Do such provisions remain safe given the Court's expansion of equal sovereignty's sway?

Of gravest concern, Congress relied on our pathmarking *Katzenbach* decision in each reauthorization of the VRA. It had every reason to believe that the Act's limited geographical scope would weigh in favor of, not against, the Act's constitutionality. See, *e.g., United States v. Morrison,* 529 U.S. 598, 626–627, 120 S.Ct. 1740, 146 L.Ed.2d 658 (2000) (confining preclearance regime to States with a record of discrimination bolstered the VRA's constitutionality). Congress could hardly have foreseen that the VRA's limited geographic reach would render the Act constitutionally suspect. See Persily 195 ("[S]upporters of the Act sought to develop an evidentiary record for the principal purpose of explaining why the covered jurisdictions should remain covered, rather than justifying the coverage of certain jurisdictions but not others.").

In the Court's conception, it appears, defenders of the VRA could not prevail ****2650** upon showing what the record overwhelmingly bears out, *i.e.,* that there is a need for continuing the preclearance regime in covered States. In addition, the defenders would have to disprove the existence of a comparable need elsewhere. See Tr. of Oral Arg. 61–62 (suggesting that proof of egregious episodes of racial discrimination in covered jurisdictions would not suffice to carry the day for the VRA, unless such episodes are shown to be absent elsewhere). I am aware of no precedent for imposing such a double burden on defenders of legislation.

***590** C

The Court has time and again declined to upset legislation of this genre unless there was no or almost no evidence of unconstitutional action by States. See, *e.g., City of Boerne v. Flores,* 521 U.S. 507, 530, 117 S.Ct. 2157, 138 L.Ed.2d 624 (1997) (legislative record "mention[ed] no episodes [of the kind the legislation aimed to check] occurring in the past 40 years"). No such claim can be made about the congressional record for the 2006 VRA reauthorization. Given a record replete with examples of denial or abridgment of a paramount federal right, the Court should have left the matter where it belongs: in Congress' bailiwick.

Instead, the Court strikes § 4(b)'s coverage provision because, in its view, the provision is not based on "current conditions." *Ante,* at 2627. It discounts, however, that one such condition was the preclearance remedy in place in the covered jurisdictions, a remedy Congress designed both to catch discrimination before it causes harm, and to guard against return to old ways. 2006 Reauthorization § 2(b)(3), (9). Volumes of evidence supported Congress' determination that the prospect of retrogression was real. Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.

But, the Court insists, the coverage formula is no good; it is based on "decades-old data and eradicated practices." *Ante,* at 2627. Even if the legislative record shows, as engaging with it would reveal, that the formula accurately identifies the jurisdictions with the worst conditions of voting discrimination, that is of no moment, as the Court sees it. Congress, the Court decrees, must "star[t] from scratch." *Ante,* at 2630. I do not see why that should be so.

Congress' chore was different in 1965 than it was in 2006. In 1965, there were a "small number of States ... which in most instances were familiar to Congress by name," on which Congress fixed its attention. ***591** *Katzenbach,* 383 U.S., at 328, 86 S.Ct. 803. In drafting the coverage formula, " Congress began work with reliable evidence of actual voting discrimination in a great majority of the States" it sought to target. *Id.,* at 329, 86 S.Ct. 803. "The formula [Congress] eventually evolved to describe these areas" also captured a few States that had not been the subject of congressional factfinding. *Ibid.* Nevertheless, the Court upheld the formula in its entirety, finding it fair "to infer a significant danger of the evil" in all places the formula covered. *Ibid.*

The situation Congress faced in 2006, when it took up *re* authorization of the coverage formula, was not the same. By then, the formula had been in effect for many years, and *all* of the jurisdictions covered by it were "familiar to Congress by name." *Id.,* at 328, 86 S.Ct. 803. The question before Congress: Was there still a sufficient basis to support continued application of the preclearance remedy in each of those already-identified places? There was at that point no chance that the ****2651** formula might inadvertently sweep in new areas that were not the subject of congressional findings. And Congress could determine from the record whether the jurisdictions captured by the coverage formula still belonged under the preclearance regime. If they did, there was no need to alter the formula. That is why the Court, in addressing prior reauthorizations of the VRA, did not question the continuing "relevance" of the formula.

Consider once again the components of the record before Congress in 2006. The coverage provision identified a known list of places with an undisputed history of serious problems with racial discrimination in voting. Recent evidence relating to Alabama and its counties was there for all to see. Multiple Supreme Court decisions had upheld the coverage provision, most recently in 1999. There was extensive evidence that, due to the preclearance mechanism, conditions in the covered jurisdictions had

notably improved. And there was evidence that preclearance was still having a substantial real-world effect, having stopped hundreds of ***592** discriminatory voting changes in the covered jurisdictions since the last reauthorization. In addition, there was evidence that racial polarization in voting was higher in covered jurisdictions than elsewhere, increasing the vulnerability of minority citizens in those jurisdictions. And countless witnesses, reports, and case studies documented continuing problems with voting discrimination in those jurisdictions. In light of this record, Congress had more than a reasonable basis to conclude that the existing coverage formula was not out of sync with conditions on the ground in covered areas. And certainly Shelby County was no candidate for release through the mechanism Congress provided. See *supra,* at 2643 – 2645, 2646 – 2647.

The Court holds § 4(b) invalid on the ground that it is "irrational to base coverage on the use of voting tests 40 years ago, when such tests have been illegal since that time." *Ante,* at 2631. But the Court disregards what Congress set about to do in enacting the VRA. That extraordinary legislation scarcely stopped at the particular tests and devices that happened to exist in 1965. The grand aim of the Act is to secure to all in our polity equal citizenship stature, a voice in our democracy undiluted by race. As the record for the 2006 reauthorization makes abundantly clear, second-generation barriers to minority voting rights have emerged in the covered jurisdictions as attempted *substitutes* for the first-generation barriers that originally triggered preclearance in those jurisdictions. See *supra,* at 2634 – 2635, 2636, 2640 – 2641.

The sad irony of today's decision lies in its utter failure to grasp why the VRA has proven effective. The Court appears to believe that the VRA's success in eliminating the specific devices extant in 1965 means that preclearance is no longer needed. *Ante,* at 2629 – 2630, 2630 – 2631. With that belief, and the argument derived from it, history repeats itself. The same assumption—that the problem could be solved when particular methods of voting discrimination are ***593** identified and eliminated—was indulged and proved wrong repeatedly prior to the VRA's enactment. Unlike prior statutes, which singled out particular tests or devices, the VRA is grounded in Congress' recognition of the "variety and persistence" of measures designed to impair minority voting rights. *Katzenbach,* 383 U.S., at 311, 86 S.Ct. 803; *supra,* at 2633. In truth, the evolution of voting discrimination into more subtle second-generation barriers is powerful evidence that a remedy as effective as preclearance remains vital to protect minority voting rights and prevent backsliding.

Beyond question, the VRA is no ordinary legislation. It is extraordinary because ****2652** Congress embarked on a mission long delayed and of extraordinary importance: to realize the purpose and promise of the Fifteenth Amendment. For a half century, a concerted effort has been made to end racial discrimination in voting. Thanks to the Voting Rights Act, progress once the subject of a dream has been achieved and continues to be made.

The record supporting the 2006 reauthorization of the VRA is also extraordinary. It was described by the Chairman of the House Judiciary Committee as "one of the most extensive considerations of any piece of legislation that the United States Congress has dealt with in the 27 & half; years" he had served in the House. 152 Cong. Rec. H5143 (July 13, 2006) (statement of Rep. Sensenbrenner). After exhaustive evidence-gathering and deliberative process, Congress reauthorized the VRA, including the coverage provision, with overwhelming bipartisan support. It was the judgment of Congress that "40 years has not been a sufficient amount of time to eliminate the vestiges of discrimination following nearly 100 years of disregard for the dictates of the 15th amendment and to ensure that the right of all citizens to vote is protected as guaranteed by the Constitution." 2006 Reauthorization § 2(b)(7), 120 Stat. 577. That determination of the body empowered to enforce the Civil War Amendments "by appropriate legislation" merits this Court's ***594** utmost respect. In my judgment, the Court errs egregiously by overriding Congress' decision.

* * *

For the reasons stated, I would affirm the judgment of the Court of Appeals.

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

All Citations

570 U.S. 529, 133 S.Ct. 2612, 186 L.Ed.2d 651, 81 USLW 4572, 13 Cal. Daily Op. Serv. 6569, 2013 Daily Journal D.A.R. 8199, 24 Fla. L. Weekly Fed. S 407

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.,* 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

1 Both the Fourteenth and Fifteenth Amendments were at issue in *Northwest Austin,* see Juris. Statement i, and Brief for Federal Appellee 29–30, in *Northwest Austin Municipal Util. Dist. No. One v. Holder,* O.T. 2008, No. 08–322, and accordingly *Northwest Austin* guides our review under both Amendments in this case.

1 The Court purports to declare unconstitutional only the coverage formula set out in § 4(b). See *ante,* at 2631. But without that formula, § 5 is immobilized.

2 The Constitution uses the words "right to vote" in five separate places: the Fourteenth, Fifteenth, Nineteenth, Twenty–Fourth, and Twenty–Sixth Amendments. Each of these Amendments contains the same broad empowerment of Congress to enact "appropriate legislation" to enforce the protected right. The implication is unmistakable: Under our constitutional structure, Congress holds the lead rein in making the right to vote equally real for all U.S. citizens. These Amendments are in line with the special role assigned to Congress in protecting the integrity of the democratic process in federal elections. U.S. Const., Art. I, § 4 ("[T]he Congress may at any time by Law make or alter" regulations concerning the "Times, Places and Manner of holding Elections for Senators and Representatives."); *Arizona v. Inter Tribal Council of Ariz., Inc.,* ––– U.S., ––––, –––– – ––––, 133 S.Ct. 2247, –––– – ––––, 186L.Ed.2d 239 (2013).

3 Acknowledging the existence of "serious constitutional questions," see *ante,* at 2630 (internal quotation marks omitted), does not suggest how those questions should be answered.

4 This number includes only changes actually proposed. Congress also received evidence that many covered jurisdictions engaged in an "informal consultation process" with DOJ before formally submitting a proposal, so that the deterrent effect of preclearance was far broader than the formal submissions alone suggest. The Continuing Need for Section 5 Pre–Clearance: Hearing before the Senate Committee on the Judiciary, 109th Cong., 2d Sess., pp. 53–54 (2006). All agree that an unsupported assertion about "deterrence" would not be sufficient to justify keeping a remedy in place in perpetuity. See *ante,* at 2627. But it was certainly reasonable for Congress to consider the testimony of witnesses who had worked with officials in covered jurisdictions and observed a real-world deterrent effect.

5 For an illustration postdating the 2006 reauthorization, see *South Carolina v. United States,* 898 F.Supp.2d 30 (D.D.C.2012), which involved a South Carolina voter-identification law enacted in 2011. Concerned that the law would burden minority voters, DOJ brought a § 5 enforcement action to block the law's implementation. In the course of the litigation, South Carolina officials agreed to binding interpretations that made it "far easier than some might have expected or feared" for South Carolina citizens to vote. *Id.,* at 37. A three-judge panel precleared the law after adopting both interpretations as an express "condition of preclearance." *Id.,* at 37–38. Two of the judges commented that the case demonstrated "the continuing utility of Section 5 of the Voting Rights Act in deterring problematic, and hence encouraging non-discriminatory, changes in state and local voting laws." *Id.,* at 54 (opinion of Bates, J.).

6 Because preclearance occurs only in covered jurisdictions and can be expected to stop the most obviously objectionable measures, one would expect a *lower* rate of successful § 2 lawsuits in those jurisdictions if the risk of voting discrimination there were the same as elsewhere in the country.

7 This lawsuit was filed by Shelby County, a political subdivision of Alabama, rather than by the State itself. Nevertheless, it is appropriate to judge Shelby County's constitutional challenge in light of instances of discrimination statewide because Shelby County is subject to § 5's preclearance requirement by virtue of *Alabama's* designation as a covered jurisdiction under § 4(b) of the VRA. See *ante,* at 2621 – 2622. In any event, Shelby County's recent record of employing an at-large electoral system tainted by intentional racial discrimination is by itself sufficient to justify subjecting the county to § 5's preclearance mandate. See *infra,* at 2646.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

8 Congress continued preclearance over Alabama, including Shelby County, *after* considering evidence of current barriers there to minority voting clout. Shelby County, thus, is no "redhead" caught up in an arbitrary scheme. See *ante,* at 2629.

9 The Court does not contest that Alabama's history of racial discrimination provides a sufficient basis for Congress to require Alabama and its political subdivisions to preclear electoral changes. Nevertheless, the Court asserts that Shelby County may prevail on its facial challenge to § 4's coverage formula because it is subject to § 5's preclearance requirement by virtue of that formula. See *ante,* at 2630 ("The county was selected [for preclearance] based on th[e] [coverage] formula."). This misses the reality that Congress decided to subject Alabama to preclearance based on evidence of continuing constitutional violations in that State. See *supra,* at 2647, n. 8.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 10101
Formerly cited as 42 USCA § 1971

§ 10101. Voting rights

Currentness

(a) Race, color, or previous condition not to affect right to vote; uniform standards for voting qualifications; errors or omissions from papers; literacy tests; agreements between Attorney General and State or local authorities; definitions

(1) All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

(2) No person acting under color of law shall--

(A) in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote;

(B) deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election; or

(C) employ any literacy test as a qualification for voting in any election unless (i) such test is administered to each individual and is conducted wholly in writing, and (ii) a certified copy of the test and of the answers given by the individual is furnished to him within twenty-five days of the submission of his request made within the period of time during which records and papers are required to be retained and preserved pursuant to Title III of the Civil Rights Act of 1960: *Provided, however*, That the Attorney General may enter into agreements with appropriate State or local authorities that preparation, conduct, and maintenance of such tests in accordance with the provisions of applicable State or local law, including such special provisions as are necessary in the preparation, conduct, and maintenance of such tests for persons who are blind or otherwise physically handicapped, meet the purposes of this subparagraph and constitute compliance therewith.

(3) For purposes of this subsection--

(A) the term “vote” shall have the same meaning as in subsection (e) of this section;

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(B) the phrase “literacy test” includes any test of the ability to read, write, understand, or interpret any matter.

(b) Intimidation, threats, or coercion

No person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

(c) Preventive relief; injunction; rebuttable literacy presumption; liability of United States for costs; State as party defendant

Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b), the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. If in any such proceeding literacy is a relevant fact there shall be a rebuttable presumption that any person who has not been adjudged an incompetent and who has completed the sixth grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico where instruction is carried on predominantly in the English language, possesses sufficient literacy, comprehension, and intelligence to vote in any election. In any proceeding hereunder the United States shall be liable for costs the same as a private person. Whenever, in a proceeding instituted under this subsection any official of a State or subdivision thereof is alleged to have committed any act or practice constituting a deprivation of any right or privilege secured by subsection (a), the act or practice shall also be deemed that of the State and the State may be joined as a party defendant and, if, prior to the institution of such proceeding, such official has resigned or has been relieved of his office and no successor has assumed such office, the proceeding may be instituted against the State.

(d) Jurisdiction; exhaustion of other remedies

The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law.

(e) Order qualifying person to vote; application; hearing; voting referees; transmittal of report and order; certificate of qualification; definitions

In any proceeding instituted pursuant to subsection (c) in the event the court finds that any person has been deprived on account of race or color of any right or privilege secured by subsection (a), the court shall upon request of the Attorney General and after each party has been given notice and the opportunity to be heard make a finding whether such deprivation was or is pursuant to a pattern or practice. If the court finds such pattern or practice, any person of such race or color resident within the affected area shall, for one year and thereafter until the court subsequently finds that such pattern or practice has ceased, be entitled, upon his application therefor, to an order declaring him qualified to vote, upon proof that at any election or elections (1) he is qualified under State law to vote, and (2) he has since such finding by the court been (a) deprived of or denied under color of law the opportunity to register to vote or otherwise to qualify to vote, or (b) found not qualified to vote by any person acting under color

of law. Such order shall be effective as to any election held within the longest period for which such applicant could have been registered or otherwise qualified under State law at which the applicant's qualifications would under State law entitle him to vote.

Notwithstanding any inconsistent provision of State law or the action of any State officer or court, an applicant so declared qualified to vote shall be permitted to vote in any such election. The Attorney General shall cause to be transmitted certified copies of such order to the appropriate election officers. The refusal by any such officer with notice of such order to permit any person so declared qualified to vote to vote at an appropriate election shall constitute contempt of court.

An application for an order pursuant to this subsection shall be heard within ten days, and the execution of any order disposing of such application shall not be stayed if the effect of such stay would be to delay the effectiveness of the order beyond the date of any election at which the applicant would otherwise be enabled to vote.

The court may appoint one or more persons who are qualified voters in the judicial district, to be known as voting referees, who shall subscribe to the oath of office required by section 3331 of Title 5, to serve for such period as the court shall determine, to receive such applications and to take evidence and report to the court findings as to whether or not at any election or elections (1) any such applicant is qualified under State law to vote, and (2) he has since the finding by the court heretofore specified been (a) deprived of or denied under color of law the opportunity to register to vote or otherwise to qualify to vote, or (b) found not qualified to vote by any person acting under color of law. In a proceeding before a voting referee, the applicant shall be heard ex parte at such times and places as the court shall direct. His statement under oath shall be prima facie evidence as to his age, residence, and his prior efforts to register or otherwise qualify to vote. Where proof of literacy or an understanding of other subjects is required by valid provisions of State law, the answer of the applicant, if written, shall be included in such report to the court; if oral, it shall be taken down stenographically and a transcription included in such report to the court.

Upon receipt of such report, the court shall cause the Attorney General to transmit a copy thereof to the State attorney general and to each party to such proceeding together with an order to show cause within ten days, or such shorter time as the court may fix, why an order of the court should not be entered in accordance with such report. Upon the expiration of such period, such order shall be entered unless prior to that time there has been filed with the court and served upon all parties a statement of exceptions to such report. Exceptions as to matters of fact shall be considered only if supported by a duly verified copy of a public record or by affidavit of persons having personal knowledge of such facts or by statements or matters contained in such report; those relating to matters of law shall be supported by an appropriate memorandum of law. The issues of fact and law raised by such exceptions shall be determined by the court or, if the due and speedy administration of justice requires, they may be referred to the voting referee to determine in accordance with procedures prescribed by the court. A hearing as to an issue of fact shall be held only in the event that the proof in support of the exception disclose the existence of a genuine issue of material fact. The applicant's literacy and understanding of other subjects shall be determined solely on the basis of answers included in the report of the voting referee.

The court, or at its direction the voting referee, shall issue to each applicant so declared qualified a certificate identifying the holder thereof as a person so qualified.

Any voting referee appointed by the court pursuant to this subsection shall to the extent not inconsistent herewith have all the powers conferred upon a master by rule 53(c) of the Federal Rules of Civil Procedure. The compensation to be allowed to any persons appointed by the court pursuant to this subsection shall be fixed by the court and shall be payable by the United States.

Applications pursuant to this subsection shall be determined expeditiously. In the case of any application filed twenty or more days prior to an election which is undetermined by the time of such election, the court shall issue an order authorizing the applicant to vote provisionally: *Provided, however*, That such applicant shall be qualified to vote under State law. In the case of an application filed within twenty days prior to an election, the court, in its discretion, may make such an order. In either case the order shall make appropriate provision for the impounding of the applicant's ballot pending determination of the application. The court may take any other action, and may authorize such referee or such other person as it may designate to take any other

action, appropriate or necessary to carry out the provisions of this subsection and to enforce its decrees. This subsection shall in no way be construed as a limitation upon the existing powers of the court.

When used in the subsection, the word “vote” includes all action necessary to make a vote effective including, but not limited to, registration or other action required by State law prerequisite to voting, casting a ballot, and having such ballot counted and included in the appropriate totals of votes cast with respect to candidates for public office and propositions for which votes are received in an election; the words “affected area” shall mean any subdivision of the State in which the laws of the State relating to voting are or have been to any extent administered by a person found in the proceeding to have violated subsection (a); and the words “qualified under State law” shall mean qualified according to the laws, customs, or usages of the State, and shall not, in any event, imply qualifications more stringent than those used by the persons found in the proceeding to have violated subsection (a) in qualifying persons other than those of the race or color against which the pattern or practice of discrimination was found to exist.

(f) Contempt; assignment of counsel; witnesses

Any person cited for an alleged contempt under this Act shall be allowed to make his full defense by counsel learned in the law; and the court before which he is cited or tried, or some judge thereof, shall immediately, upon his request, assign to him such counsel, not exceeding two, as he may desire, who shall have free access to him at all reasonable hours. He shall be allowed, in his defense to make any proof that he can produce by lawful witnesses, and shall have the like process of the court to compel his witnesses to appear at his trial or hearing, as is usually granted to compel witnesses to appear on behalf of the prosecution. If such person shall be found by the court to be financially unable to provide for such counsel, it shall be the duty of the court to provide such counsel.

(g) Three-judge district court: hearing, determination, expedition of action, review by Supreme Court; single-judge district court: hearing, determination, expedition of action

In any proceeding instituted by the United States in any district court of the United States under this section in which the Attorney General requests a finding of a pattern or practice of discrimination pursuant to subsection (e) of this section the Attorney General, at the time he files the complaint, or any defendant in the proceeding, within twenty days after service upon him of the complaint, may file with the clerk of such court a request that a court of three judges be convened to hear and determine the entire case. A copy of the request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of the copy of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In any proceeding brought under subsection (c) of this section to enforce subsection (b) of this section, or in the event neither the Attorney General nor any defendant files a request for a three-judge court in any proceeding authorized by this subsection, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or, in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

CREDIT(S)

(R.S. § 2004; Pub.L. 85-315, pt. IV, § 131, Sept. 9, 1957, 71 Stat. 637; Pub.L. 86-449, Title VI, § 601, May 6, 1960, 74 Stat. 90; Pub.L. 88-352, Title I, § 101, July 2, 1964, 78 Stat. 241; Pub.L. 89-110, § 15, Aug. 6, 1965, 79 Stat. 445.)

52 U.S.C.A. § 10101, 52 USCA § 10101
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 10102
Formerly cited as 42 USCA § 1972

§ 10102. Interference with freedom of elections

Currentness

No officer of the Army, Navy, or Air Force of the United States shall prescribe or fix, or attempt to prescribe or fix, by proclamation, order, or otherwise, the qualifications of voters in any State, or in any manner interfere with the freedom of any election in any State, or with the exercise of the free right of suffrage in any State.

CREDIT(S)

(R.S. § 2003.)

52 U.S.C.A. § 10102, 52 USCA § 10102
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle I. Voting Rights
Chapter 103. Enforcement of Voting Rights

52 U.S.C.A. § 10301
Formerly cited as 42 USCA § 1973

§ 10301. Denial or abridgement of right to vote on account of race or color through voting qualifications or prerequisites; establishment of violation

Effective: September 1, 2014
Currentness

(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.

CREDIT(S)

(Pub.L. 89-110, Title I, § 2, Aug. 6, 1965, 79 Stat. 437; renumbered Title I, Pub.L. 91-285, § 2, June 22, 1970, 84 Stat. 314; amended Pub.L. 94-73, Title II, § 206, Aug. 6, 1975, 89 Stat. 402; Pub.L. 97-205, § 3, June 29, 1982, 96 Stat. 134.)

52 U.S.C.A. § 10301, 52 USCA § 10301
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle I. Voting Rights
Chapter 103. Enforcement of Voting Rights

52 U.S.C.A. § 10302
Formerly cited as 42 USCA § 1973a

§ 10302. Proceeding to enforce the right to vote

Currentness

(a) Authorization by court for appointment of Federal observers

Whenever the Attorney General or an aggrieved person institutes a proceeding under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment in any State or political subdivision the court shall authorize the appointment of Federal observers by the Director of the Office of Personnel Management in accordance with section 1973d[1] of Title 42 to serve for such period of time and for such political subdivisions as the court shall determine is appropriate to enforce the voting guarantees of the fourteenth or fifteenth amendment (1) as part of any interlocutory order if the court determines that the appointment of such observers is necessary to enforce such voting guarantees or (2) as part of any final judgment if the court finds that violations of the fourteenth or fifteenth amendment justifying equitable relief have occurred in such State or subdivision: *Provided*, That the court need not authorize the appointment of observers if any incidents of denial or abridgement of the right to vote on account of race or color, or in contravention of the voting guarantees set forth in section 10303(f)(2) of this title (1) have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

(b) Suspension of use of tests and devices which deny or abridge the right to vote

If in a proceeding instituted by the Attorney General or an aggrieved person under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment in any State or political subdivision the court finds that a test or device has been used for the purpose or with the effect of denying or abridging the right of any citizen of the United States to vote on account of race or color, or in contravention of the voting guarantees set forth in section 10303(f)(2) of this title, it shall suspend the use of tests and devices in such State or political subdivisions as the court shall determine is appropriate and for such period as it deems necessary.

(c) Retention of jurisdiction to prevent commencement of new devices to deny or abridge the right to vote

If in any proceeding instituted by the Attorney General or an aggrieved person under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment in any State or political subdivision the court finds that violations of the fourteenth or fifteenth amendment justifying equitable relief have occurred within the territory of such State or political subdivision, the court, in addition to such relief as it may grant, shall retain jurisdiction for such period as it may deem appropriate and during such period no voting qualification or prerequisite to voting or standard, practice, or procedure with respect to voting different from that in force or effect at the time the proceeding was commenced shall be enforced unless and until the court finds that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the voting guarantees set forth in section

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

10303(f)(2) of this title: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither the court's finding nor the Attorney General's failure to object shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure.

CREDIT(S)

(Pub.L. 89-110, Title I, § 3, Aug. 6, 1965, 79 Stat. 437; renumbered Title I, Pub.L. 91-285, § 2, June 22, 1970, 84 Stat. 314; amended Pub.L. 94-73, Title II, §§ 205, 206, Title IV, §§ 401, 410, Aug. 6, 1975, 89 Stat. 402, 404, 406; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub.L. 109-246, § 3(d)(1), July 27, 2006, 120 Stat. 580.)

Footnotes

1 Repealed by Pub.L. 109-246, § 3(c), July 27, 2006, 120 Stat. 580.

52 U.S.C.A. § 10302, 52 USCA § 10302
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 10303
Formerly cited as 42 USCA § 1973b

§ 10303. Suspension of the use of tests or devices in determining eligibility to vote

Effective: September 1, 2014
Currentness

(a) Action by State or political subdivision for declaratory judgment of no denial or abridgement; three-judge district court; appeal to Supreme Court; retention of jurisdiction by three-judge court

(1) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the first two sentences of subsection (b) or in any political subdivision of such State (as such subdivision existed on the date such determinations were made with respect to such State), though such determinations were not made with respect to such subdivision as a separate unit, or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia issues a declaratory judgment under this section. No citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the third sentence of subsection (b) of this section or in any political subdivision of such State (as such subdivision existed on the date such determinations were made with respect to such State), though such determinations were not made with respect to such subdivision as a separate unit, or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia issues a declaratory judgment under this section. A declaratory judgment under this section shall issue only if such court determines that during the ten years preceding the filing of the action, and during the pendency of such action--

(A) no such test or device has been used within such State or political subdivision for the purpose or with the effect of denying or abridging the right to vote on account of race or color or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) in contravention of the guarantees of subsection (f)(2);

(B) no final judgment of any court of the United States, other than the denial of declaratory judgment under this section, has determined that denials or abridgements of the right to vote on account of race or color have occurred anywhere in the territory of such State or political subdivision or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) that denials or abridgements of the right to vote in contravention of the guarantees of subsection (f)(2) have occurred anywhere in the territory of such State or subdivision and no consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds; and no declaratory judgment under this section shall be entered during the pendency of an action commenced before the filing of an action under this section and alleging such denials or abridgements of the right to vote;

(C) no Federal examiners or observers under chapters 103 to 107 of this title have been assigned to such State or political subdivision;

(D) such State or political subdivision and all governmental units within its territory have complied with section 10304 of this title, including compliance with the requirement that no change covered by section 10304 of this title has been enforced without preclearance under section 10304 of this title, and have repealed all changes covered by section 10304 of this title to which the Attorney General has successfully objected or as to which the United States District Court for the District of Columbia has denied a declaratory judgment;

(E) the Attorney General has not interposed any objection (that has not been overturned by a final judgment of a court) and no declaratory judgment has been denied under section 10304 of this title, with respect to any submission by or on behalf of the plaintiff or any governmental unit within its territory under section 10304 of this title, and no such submissions or declaratory judgment actions are pending; and

(F) such State or political subdivision and all governmental units within its territory--

(i) have eliminated voting procedures and methods of election which inhibit or dilute equal access to the electoral process;

(ii) have engaged in constructive efforts to eliminate intimidation and harassment of persons exercising rights protected under chapters 103 to 107 of this title; and

(iii) have engaged in other constructive efforts, such as expanded opportunity for convenient registration and voting for every person of voting age and the appointment of minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process.

(2) To assist the court in determining whether to issue a declaratory judgment under this subsection, the plaintiff shall present evidence of minority participation, including evidence of the levels of minority group registration and voting, changes in such levels over time, and disparities between minority-group and non-minority-group participation.

(3) No declaratory judgment shall issue under this subsection with respect to such State or political subdivision if such plaintiff and governmental units within its territory have, during the period beginning ten years before the date the judgment is issued, engaged in violations of any provision of the Constitution or laws of the United States or any State or political subdivision with respect to discrimination in voting on account of race or color or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) in contravention of the guarantees of subsection (f)(2) unless the plaintiff establishes that any such violations were trivial, were promptly corrected, and were not repeated.

(4) The State or political subdivision bringing such action shall publicize the intended commencement and any proposed settlement of such action in the media serving such State or political subdivision and in appropriate United States post offices. Any aggrieved party may as of right intervene at any stage in such action.

(5) An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for ten years after judgment and shall reopen the action upon motion of the Attorney General or any aggrieved person alleging that conduct has occurred which, had that conduct occurred during the ten-year periods referred to in this subsection, would have precluded the issuance of a declaratory judgment under this subsection. The court, upon such reopening, shall vacate the declaratory judgment issued under this section if, after the issuance of such declaratory judgment, a final judgment against the State or subdivision with respect to which such declaratory judgment was issued, or against any governmental unit within that State or subdivision, determines that denials or abridgements of the right to vote on account of race or color have occurred anywhere in the territory of such State or political subdivision or (in the case of a State or subdivision which sought a declaratory judgment under the second sentence of this subsection) that denials or abridgements of the right to vote in contravention of the guarantees of subsection (f)(2) have occurred anywhere in the territory of such State or subdivision, or if, after the issuance of such declaratory judgment, a consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds.

(6) If, after two years from the date of the filing of a declaratory judgment under this subsection, no date has been set for a hearing in such action, and that delay has not been the result of an avoidable delay on the part of counsel for any party, the chief judge of the United States District Court for the District of Columbia may request the Judicial Council for the Circuit of the District of Columbia to provide the necessary judicial resources to expedite any action filed under this section. If such resources are unavailable within the circuit, the chief judge shall file a certificate of necessity in accordance with section 292(d) of Title 28.

(7) The Congress shall reconsider the provisions of this section at the end of the fifteen-year period following the effective date of the amendments made by the Fannie Lou Hamer, Rosa Parks, Coretta Scott King, César E. Chávez, Barbara C. Jordan, William C. Velásquez, and Dr. Hector P. Garcia Voting Rights Act Reauthorization and Amendments Act of 2006.

(8) The provisions of this section shall expire at the end of the twenty-five-year period following the effective date of the amendments made by the Fannie Lou Hamer, Rosa Parks, Coretta Scott King, César E. Chávez, Barbara C. Jordan, William C. Velásquez, and Dr. Hector P. Garcia Voting Rights Act Reauthorization and Amendments Act of 2006.

(9) Nothing in this section shall prohibit the Attorney General from consenting to an entry of judgment if based upon a showing of objective and compelling evidence by the plaintiff, and upon investigation, he is satisfied that the State or political subdivision has complied with the requirements of subsection (a)(1). Any aggrieved party may as of right intervene at any stage in such action.

(b) Required factual determinations necessary to allow suspension of compliance with tests and devices; publication in Federal Register

The provisions of subsection (a) shall apply in any State or in any political subdivision of a State which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964. On and after August 6, 1970, in addition to any State or political subdivision of a State determined to be subject to subsection (a) pursuant to the previous sentence, the provisions of subsection (a) shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1968, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1968, or that less than 50 per centum of such persons voted in the presidential election of November 1968. On and after August

6, 1975, in addition to any State or political subdivision of a State determined to be subject to subsection (a) pursuant to the previous two sentences, the provisions of subsection (a) shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1972, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the citizens of voting age were registered on November 1, 1972, or that less than 50 per centum of such persons voted in the Presidential election of November 1972.

A determination or certification of the Attorney General or of the Director of the Census under this section or under section 10305 or 10309 of this title shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

(c) "Test or device" defined

The phrase "test or device" shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

(d) Required frequency, continuation and probable recurrence of incidents of denial or abridgement to constitute forbidden use of tests or devices

For purposes of this section no State or political subdivision shall be determined to have engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) if (1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

(e) Completion of requisite grade level of education in American-flag schools in which the predominant classroom language was other than English

(1) Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.

(2) No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or interpret any matter in the English language, except that in States in which State law provides that a different level of education is presumptive of literacy, he shall demonstrate that he has successfully completed an equivalent level of education in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English.

(f) Congressional findings of voting discrimination against language minorities; prohibition of English-only elections; other remedial measures

(1) The Congress finds that voting discrimination against citizens of language minorities is pervasive and national in scope. Such minority citizens are from environments in which the dominant language is other than English. In addition they have been denied equal educational opportunities by State and local governments, resulting in severe disabilities and continuing illiteracy in the English language. The Congress further finds that, where State and local officials conduct elections only in English, language minority citizens are excluded from participating in the electoral process. In many areas of the country, this exclusion is aggravated by acts of physical, economic, and political intimidation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting English-only elections, and by prescribing other remedial devices.

(2) 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 because he is a member of a language minority group.

(3) In addition to the meaning given the term under subsection (c), the term "test or device" shall also mean any practice or requirement by which any State or political subdivision provided any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, only in the English language, where the Director of the Census determines that more than five per centum of the citizens of voting age residing in such State or political subdivision are members of a single language minority. With respect to subsection (b), the term "test or device", as defined in this subsection, shall be employed only in making the determinations under the third sentence of that subsection.

(4) Whenever any State or political subdivision subject to the prohibitions of the second sentence of subsection (a) provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable language minority group as well as in the English language: *Provided,* That where the language of the applicable minority group is oral or unwritten or in the case of Alaskan Natives and American Indians, if the predominate language is historically unwritten, the State or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting.

CREDIT(S)

(Pub.L. 89-110, Title I, § 4, Aug. 6, 1965, 79 Stat. 438; renumbered Title I, and amended Pub.L. 91-285, §§ 2 to 4, June 22, 1970, 84 Stat. 314, 315; Pub.L. 94-73, Title I, § 101, Title II, §§ 201 to 203, 206, Aug. 6, 1975, 89 Stat. 400 to 402; Pub.L. 97-205, § 2(a) to (c), June 29, 1982, 96 Stat. 131 to 133; Pub.L. 109-246, §§ 3(d)(2), (e)(1), 4, July 27, 2006, 120 Stat. 580; Pub.L. 110-258, § 2, July 1, 2008, 122 Stat. 2428.)

52 U.S.C.A. § 10303, 52 USCA § 10303
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle I. Voting Rights
Chapter 103. Enforcement of Voting Rights

52 U.S.C.A. § 10304
Formerly cited as 42 USCA § 1973c

§ 10304. Alteration of voting qualifications; procedure and appeal; purpose or effect of diminishing the ability of citizens to elect their preferred candidates

Currentness

(a) Whenever a State or political subdivision with respect to which the prohibitions set forth in section 10303(a) of this title based upon determinations made under the first sentence of section 10303(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 10303(a) of this title based upon determinations made under the second sentence of section 10303(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 10303(a) of this title based upon determinations made under the third sentence of section 10303(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

(b) Any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting that has the purpose of or will have the effect of diminishing the ability of any citizens of the United States on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title, to elect their preferred candidates of choice denies or abridges the right to vote within the meaning of subsection (a) of this section.

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(c) The term "purpose" in subsections (a) and (b) of this section shall include any discriminatory purpose.

(d) The purpose of subsection (b) of this section is to protect the ability of such citizens to elect their preferred candidates of choice.

CREDIT(S)

(Pub.L. 89-110, Title I, § 5, Aug. 6, 1965, 79 Stat. 439; renumbered Title I and amended Pub.L. 91-285, §§ 2, 5, June 22, 1970, 84 Stat. 314, 315; Pub.L. 94-73, Title II, §§ 204, 206, Title IV, § 405, Aug. 6, 1975, 89 Stat. 402, 404; Pub.L. 109-246, § 5, July 27, 2006, 120 Stat. 580.)

52 U.S.C.A. § 10304, 52 USCA § 10304
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle I. Voting Rights
Chapter 103. Enforcement of Voting Rights

52 U.S.C.A. § 10305
Formerly cited as 42 USCA § 1973f

§ 10305. Use of observers

Currentness

(a) Assignment

Whenever--

(1) a court has authorized the appointment of observers under section 10302(a) of this title for a political subdivision; or

(2) the Attorney General certifies with respect to any political subdivision named in, or included within the scope of, determinations made under section 10303(b) of this title, unless a declaratory judgment has been rendered under section 10303(a) of this title, that--

(A) the Attorney General has received written meritorious complaints from residents, elected officials, or civic participation organizations that efforts to deny or abridge the right to vote under the color of law on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title are likely to occur; or

(B) in the Attorney General's judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to the Attorney General to be reasonably attributable to violations of the 14th or 15th amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the 14th or 15th amendment), the assignment of observers is otherwise necessary to enforce the guarantees of the 14th or 15th amendment;

the Director of the Office of Personnel Management shall assign as many observers for such subdivision as the Director may deem appropriate.

(b) Status

Except as provided in subsection (c), such observers shall be assigned, compensated, and separated without regard to the provisions of any statute administered by the Director of the Office of Personnel Management, and their service under chapters 103 to 107 of this title shall not be considered employment for the purposes of any statute administered by the Director of the Office of Personnel Management, except the provisions of section 7324 of Title 5 prohibiting partisan political activity.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(c) Designation

The Director of the Office of Personnel Management is authorized to, after consulting the head of the appropriate department or agency, designate suitable persons in the official service of the United States, with their consent, to serve in these positions.

(d) Authority

Observers shall be authorized to--

(1) enter and attend at any place for holding an election in such subdivision for the purpose of observing whether persons who are entitled to vote are being permitted to vote; and

(2) enter and attend at any place for tabulating the votes cast at any election held in such subdivision for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated.

(e) Investigation and report

Observers shall investigate and report to the Attorney General, and if the appointment of observers has been authorized pursuant to section 10302(a) of this title, to the court.

CREDIT(S)

(Pub.L. 89-110, Title I, § 8, Aug. 6, 1965, 79 Stat. 441; renumbered Title I, Pub.L. 91-285, § 2, June 22, 1970, 84 Stat. 314; amended Pub.L. 109-246, § 3(a), July 27, 2006, 120 Stat. 578.)

52 U.S.C.A. § 10305, 52 USCA § 10305
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle I. Voting Rights
Chapter 103. Enforcement of Voting Rights

52 U.S.C.A. § 10306
Formerly cited as 42 USCA § 1973h

§ 10306. Poll taxes

Currentness

(a) Congressional finding and declaration of policy against enforced payment of poll taxes as a device to impair voting rights

The Congress finds that the requirement of the payment of a poll tax as a precondition to voting (i) precludes persons of limited means from voting or imposes unreasonable financial hardship upon such persons as a precondition to their exercise of the franchise, (ii) does not bear a reasonable relationship to any legitimate State interest in the conduct of elections, and (iii) in some areas has the purpose or effect of denying persons the right to vote because of race or color. Upon the basis of these findings, Congress declares that the constitutional right of citizens to vote is denied or abridged in some areas by the requirement of the payment of a poll tax as a precondition to voting.

(b) Authority of Attorney General to institute actions for relief against enforcement of poll tax requirement

In the exercise of the powers of Congress under section 5 of the fourteenth amendment, section 2 of the fifteenth amendment and section 2 of the twenty-fourth amendment, the Attorney General is authorized and directed to institute forthwith in the name of the United States such actions, including actions against States or political subdivisions, for declaratory judgment or injunctive relief against the enforcement of any requirement of the payment of a poll tax as a precondition to voting, or substitute therefor enacted after November 1, 1964, as will be necessary to implement the declaration of subsection (a) and the purposes of this section.

(c) Jurisdiction of three-judge district courts; appeal to Supreme Court

The district courts of the United States shall have jurisdiction of such actions which shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

CREDIT(S)

(Pub.L. 89-110, Title I, § 10, Aug. 6, 1965, 79 Stat. 442; renumbered Title I, Pub.L. 91-285, § 2, June 22, 1970, 84 Stat. 314; amended Pub.L. 94-73, Title IV, § 408, Aug. 6, 1975, 89 Stat. 405.)

52 U.S.C.A. § 10306, 52 USCA § 10306

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 10307
Formerly cited as 42 USCA § 1973i

§ 10307. Prohibited acts

Currentness

(a) Failure or refusal to permit casting or tabulation of vote

No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote under any provision of chapters 103 to 107 of this title or is otherwise qualified to vote, or willfully fail or refuse to tabulate, count, and report such person's vote.

(b) Intimidation, threats, or coercion

No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 10302(a), 10305, 10306, or 10308(e) of this title or section 1973d or 1973g of Title 42.[1]

(c) False information in registering or voting; penalties

Whoever knowingly or willfully gives false information as to his name, address or period of residence in the voting district for the purpose of establishing his eligibility to register or vote, or conspires with another individual for the purpose of encouraging his false registration to vote or illegal voting, or pays or offers to pay or accepts payment either for registration to vote or for voting shall be fined not more than $10,000 or imprisoned not more than five years, or both: *Provided, however*, That this provision shall be applicable only to general, special, or primary elections held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, Delegate from the District of Columbia, Guam, or the Virgin Islands, or Resident Commissioner of the Commonwealth of Puerto Rico.

(d) Falsification or concealment of material facts or giving of false statements in matters within jurisdiction of examiners or hearing officers; penalties

Whoever, in any matter within the jurisdiction of an examiner or hearing officer knowingly and willfully falsifies or conceals a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(e) Voting more than once

(1) Whoever votes more than once in an election referred to in paragraph (2) shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(2) The prohibition of this subsection applies with respect to any general, special, or primary election held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, Delegate from the District of Columbia, Guam, or the Virgin Islands, or Resident Commissioner of the Commonwealth of Puerto Rico.

(3) As used in this subsection, the term "votes more than once" does not include the casting of an additional ballot if all prior ballots of that voter were invalidated, nor does it include the voting in two jurisdictions under section 10502 of this title, to the extent two ballots are not cast for an election to the same candidacy or office.

CREDIT(S)

(Pub.L. 89-110, Title I, § 11, Aug. 6, 1965, 79 Stat. 443; renumbered Title I, Pub.L. 91-285, § 2, June 22, 1970, 84 Stat. 314; amended Pub.L. 91-405, Title II, § 204(e), Sept. 22, 1970, 84 Stat. 853; Pub.L. 94-73, Title IV, §§ 404, 409, Aug. 6, 1975, 89 Stat. 404, 405.)

Footnotes

1 Repealed by Pub.L. 109-246, § 3(c), July 27, 2006, 120 Stat. 580.

52 U.S.C.A. § 10307, 52 USCA § 10307
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 10308
Formerly cited as 42 USCA § 1973j

§ 10308. Civil and criminal sanctions

Currentness

(a) Depriving or attempting to deprive persons of secured rights

Whoever shall deprive or attempt to deprive any person of any right secured by section 10301, 10302, 10303, 10304, or 10306 of this title or shall violate section 10307(a) of this title, shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(b) Destroying, defacing, mutilating, or altering ballots or official voting records

Whoever, within a year following an election in a political subdivision in which an observer has been assigned (1) destroys, defaces, mutilates, or otherwise alters the marking of a paper ballot which has been cast in such election, or (2) alters any official record of voting in such election tabulated from a voting machine or otherwise, shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(c) Conspiring to violate or interfere with secured rights

Whoever conspires to violate the provisions of subsection (a) or (b) of this section, or interferes with any right secured by section 10301, 10302, 10303, 10304, 10306, or 10307(a) of this title shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(d) Civil action by Attorney General for preventive relief; injunctive and other relief

Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 10301, 10302, 10303, 10304, 10306, or 10307 of this title, section 1973e of Title 42,[1] or subsection (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, an action for preventive relief, including an application for a temporary or permanent injunction, restraining order, or other order, and including an order directed to the State and State or local election officials to require them (1) to permit persons listed under chapters 103 to 107 of this title to vote and (2) to count such votes.

(e) Proceeding by Attorney General to enforce the counting of ballots of registered and eligible persons who are prevented from voting

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

Whenever in any political subdivision in which there are observers appointed pursuant to chapters 103 to 107 of this title any persons allege to such an observer within forty-eight hours after the closing of the polls that notwithstanding (1) their listing under chapters 103 to 107 of this title or registration by an appropriate election official and (2) their eligibility to vote, they have not been permitted to vote in such election, the observer shall forthwith notify the Attorney General if such allegations in his opinion appear to be well founded. Upon receipt of such notification, the Attorney General may forthwith file with the district court an application for an order providing for the marking, casting, and counting of the ballots of such persons and requiring the inclusion of their votes in the total vote before the results of such election shall be deemed final and any force or effect given thereto. The district court shall hear and determine such matters immediately after the filing of such application. The remedy provided in this subsection shall not preclude any remedy available under State or Federal law.

(f) Jurisdiction of district courts; exhaustion of administrative or other remedies unnecessary

The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether a person asserting rights under the provisions of chapters 103 to 107 of this title shall have exhausted any administrative or other remedies that may be provided by law.

CREDIT(S)

(Pub.L. 89-110, Title I, § 12, Aug. 6, 1965, 79 Stat. 443; Pub.L. 90-284, Title I, § 103(c), Apr. 11, 1968, 82 Stat. 75; renumbered Title I, Pub.L. 91-285, § 2, June 22, 1970, 84 Stat. 314; Pub.L. 109-246, § 3(d)(3), (4), (e)(2), July 27, 2006, 120 Stat. 580.)

Footnotes

1 Repealed by Pub.L. 109-246, § 3(c), July 27, 2006, 120 Stat. 580.

52 U.S.C.A. § 10308, 52 USCA § 10308
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle I. Voting Rights
Chapter 103. Enforcement of Voting Rights

52 U.S.C.A. § 10309
Formerly cited as 42 USCA § 1973k

§ 10309. Termination of assignment of observers

Currentness

(a) In general

The assignment of observers shall terminate in any political subdivision of any State--

(1) with respect to observers appointed pursuant to section 10305 of this title or with respect to examiners certified under chapters 103 to 107 of this title before July 27, 2006, whenever the Attorney General notifies the Director of the Office of Personnel Management, or whenever the District Court for the District of Columbia determines in an action for declaratory judgment brought by any political subdivision described in subsection (b), that there is no longer reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title in such subdivision; and

(2) with respect to observers appointed pursuant to section 10302(a) of this title, upon order of the authorizing court.

(b) Political subdivision with majority of nonwhite persons registered

A political subdivision referred to in subsection (a)(1) is one with respect to which the Director of the Census has determined that more than 50 per centum of the nonwhite persons of voting age residing therein are registered to vote.

(c) Petition for termination

A political subdivision may petition the Attorney General for a termination under subsection (a)(1).

CREDIT(S)

(Pub.L. 89-110, Title I, § 13, Aug. 6, 1965, 79 Stat. 444; renumbered Title I, Pub.L. 91-285, § 2, June 22, 1970, 84 Stat. 314; amended Pub.L. 94-73, Title II, § 206, Aug. 6, 1975, 89 Stat. 402; Pub.L. 109-246, § 3(b), July 27, 2006, 120 Stat. 579; Pub.L. 110-258, § 2, July 1, 2008, 122 Stat. 2428.)

52 U.S.C.A. § 10309, 52 USCA § 10309
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 10310
Formerly cited as 42 USCA § 1973***l***

§ 10310. Enforcement proceedings

Currentness

(a)Criminal contempt

All cases of criminal contempt arising under the provisions of chapters 103 to 107 of this title shall be governed by section 1995 of Title 42.

(b)Jurisdiction of courts for declaratory judgment, restraining orders, or temporary or permanent injunction

No court other than the District Court for the District of Columbia shall have jurisdiction to issue any declaratory judgment pursuant to section 10303 or 10304 of this title or any restraining order or temporary or permanent injunction against the execution or enforcement of any provision of chapters 103 to 107 of this title or any action of any Federal officer or employee pursuant hereto.

(c)Definitions

(1) The terms "vote" or "voting" shall include all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to, registration, listing pursuant to this chapter, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election.

(2) The term "political subdivision" shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting.

(3) The term "language minorities" or "language minority group" means persons who are American Indian, Asian American, Alaskan Natives or of Spanish heritage.

(d)Subpenas

In any action for a declaratory judgment brought pursuant to section 10303 or 10304 of this title, subpenas for witnesses who are required to attend the District Court for the District of Columbia may be served in any judicial district of the United States:

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

Provided, That no writ of subpena shall issue for witnesses without the District of Columbia at a greater distance than one hundred miles from the place of holding court without the permission of the District Court for the District of Columbia being first had upon proper application and cause shown.

(e)Attorney's fees

In any action or proceeding to enforce the voting guarantees of the fourteenth or fifteenth amendment, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, reasonable expert fees, and other reasonable litigation expenses as part of the costs.

CREDIT(S)

(Pub.L. 89-110, Title I, § 14, Aug. 6, 1965, 79 Stat. 445; renumbered Title I, Pub.L. 91-285, § 2, June 22, 1970, 84 Stat. 314; amended Pub.L. 94-73, Title II, § 207, Title IV, § 402, Aug. 6, 1975, 89 Stat. 402, 404; Pub.L. 109-246, §§ 3(e)(3), 6, July 27, 2006, 120 Stat. 580, 581.)

52 U.S.C.A. § 10310, 52 USCA § 10310
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 10311
Formerly cited as 42 USCA § 1973n

§ 10311. Impairment of voting rights of persons holding current registration

Currentness

Nothing in chapters 103 to 107 of this title shall be construed to deny, impair, or otherwise adversely affect the right to vote of any person registered to vote under the law of any State or political subdivision.

CREDIT(S)

(Pub.L. 89-110, Title I, § 17, Aug. 6, 1965, 79 Stat. 446; renumbered Title I, Pub.L. 91-285, § 2, June 22, 1970, 84 Stat. 314.)

52 U.S.C.A. § 10311, 52 USCA § 10311
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle I. Voting Rights
Chapter 103. Enforcement of Voting Rights

52 U.S.C.A. § 10312
Formerly cited as 42 USCA § 1973***o***

§ 10312. Authorization of appropriations

Currentness

There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of chapters 103 to 107 of this title.

CREDIT(S)

(Pub.L. 89-110, Title I, § 18, Aug. 6, 1965, 79 Stat. 446; renumbered Title I, Pub.L. 91-285, § 2, June 22, 1970, 84 Stat. 314.)

52 U.S.C.A. § 10312, 52 USCA § 10312
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 10313
Formerly cited as 42 USCA § 1973p

§ 10313. Separability

Currentness

If any provision of chapters 103 to 107 of this title or the application thereof to any person or circumstances is held invalid, the remainder of chapters 103 to 107 of this title and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

CREDIT(S)

(Pub.L. 89-110, Title I, § 19, Aug. 6, 1965, 79 Stat. 446; renumbered Title I, Pub.L. 91-285, § 2, June 22, 1970, 84 Stat. 314.)

52 U.S.C.A. § 10313, 52 USCA § 10313
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 10314
Formerly cited as 42 USCA § 1973q

§ 10314. Construction

Currentness

A reference in this chapter to the effective date of the amendments made by, or the date of the enactment of, the Fannie Lou Hamer, Rosa Parks, Coretta Scott King, César E. Chávez, Barbara C. Jordan, William C. Velásquez, and Dr. Hector P. Garcia Voting Rights Act Reauthorization and Amendments Act of 2006 shall be considered to refer to, respectively, the effective date of the amendments made by, or the date of the enactment of, the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006.

CREDIT(S)

(Pub.L. 89-110, Title I, § 20, as added Pub.L. 110-258, § 3, July 1, 2008, 122 Stat. 2428.)

52 U.S.C.A. § 10314, 52 USCA § 10314
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle I. Voting Rights
Chapter 105. Supplemental Provisions

52 U.S.C.A. § 10501
Formerly cited as 42 USCA § 1973aa

§ 10501. Application of prohibition to other States; "test or device" defined

Currentness

(a) No citizen shall be denied, because of his failure to comply with any test or device, the right to vote in any Federal, State, or local election conducted in any State or political subdivision of a State.

(b) As used in this section, the term "test or device" means any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

CREDIT(S)

(Pub.L. 89-110, Title II, § 201, as added Pub.L. 91-285, § 6, June 22, 1970, 84 Stat. 315; amended Pub.L. 94-73, Title I, § 102, Aug. 6, 1975, 89 Stat. 400.)

52 U.S.C.A. § 10501, 52 USCA § 10501
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 10502
Formerly cited as 42 USCA § 1973aa-1

§ 10502. Residence requirements for voting

Effective: September 1, 2014
Currentness

(a) Congressional findings

The Congress hereby finds that the imposition and application of the durational residency requirement as a precondition to voting for the offices of President and Vice President, and the lack of sufficient opportunities for absentee registration and absentee balloting in presidential elections--

(1) denies or abridges the inherent constitutional right of citizens to vote for their President and Vice President;

(2) denies or abridges the inherent constitutional right of citizens to enjoy their free movement across State lines;

(3) denies or abridges the privileges and immunities guaranteed to the citizens of each State under article IV, section 2, clause 1, of the Constitution;

(4) in some instances has the impermissible purpose or effect of denying citizens the right to vote for such officers because of the way they may vote;

(5) has the effect of denying to citizens the equality of civil rights, and due process and equal protection of the laws that are guaranteed to them under the fourteenth amendment; and

(6) does not bear a reasonable relationship to any compelling State interest in the conduct of presidential elections.

(b) Congressional declaration: durational residency requirement, abolishment; absentee registration and balloting standards, establishment

Upon the basis of these findings, Congress declares that in order to secure and protect the above-stated rights of citizens under the Constitution, to enable citizens to better obtain the enjoyment of such rights, and to enforce the guarantees of the fourteenth amendment, it is necessary (1) to completely abolish the durational residency requirement as a precondition to voting for President and Vice President, and (2) to establish nationwide, uniform standards relative to absentee registration and absentee balloting in presidential elections.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(c) Prohibition of denial of right to vote because of durational residency requirement or absentee balloting

No citizen of the United States who is otherwise qualified to vote in any election for President and Vice President shall be denied the right to vote for electors for President and Vice President, or for President and Vice President, in such election because of the failure of such citizen to comply with any durational residency requirement of such State or political subdivision; nor shall any citizen of the United States be denied the right to vote for electors for President and Vice President, or for President and Vice President, in such election because of the failure of such citizen to be physically present in such State or political subdivision at the time of such election, if such citizen shall have complied with the requirements prescribed by the law of such State or political subdivision providing for the casting of absentee ballots in such election.

(d) Registration: time for application; absentee balloting: time of application and return of ballots

For the purposes of this section, each State shall provide by law for the registration or other means of qualification of all duly qualified residents of such State who apply, not later than thirty days immediately prior to any presidential election, for registration or qualification to vote for the choice of electors for President and Vice President or for President and Vice President in such election; and each State shall provide by law for the casting of absentee ballots for the choice of electors for President and Vice President, or for President and Vice President, by all duly qualified residents of such State who may be absent from their election district or unit in such State on the day such election is held and who have applied therefor not later than seven days immediately prior to such election and have returned such ballots to the appropriate election official of such State not later than the time of closing of the polls in such State on the day of such election.

(e) Change of residence; voting in person or by absentee ballot in State of prior residence

If any citizen of the United States who is otherwise qualified to vote in any State or political subdivision in any election for President and Vice President has begun residence in such State or political subdivision after the thirtieth day next preceding such election and, for that reason, does not satisfy the registration requirements of such State or political subdivision he shall be allowed to vote for the choice of electors for President and Vice President, or for President and Vice President, in such election, (1) in person in the State or political subdivision in which he resided immediately prior to his removal if he had satisfied, as of the date of his change of residence, the requirements to vote in that State or political subdivision, or (2) by absentee ballot in the State or political subdivision in which he resided immediately prior to his removal if he satisfies, but for his nonresident status and the reason for his absence, the requirements for absentee voting in that State or political subdivision.

(f) Absentee registration requirement

No citizen of the United States who is otherwise qualified to vote by absentee ballot in any State or political subdivision in any election for President and Vice President shall be denied the right to vote for the choice of electors for President and Vice President, or for President and Vice President, in such election because of any requirement of registration that does not include a provision for absentee registration.

(g) State or local adoption of less restrictive voting practices

Nothing in this section shall prevent any State or political subdivision from adopting less restrictive voting practices than those that are prescribed herein.

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(h) "State" defined

The term "State" as used in this section includes each of the several States and the District of Columbia.

(i) False registration, and other fraudulent acts and conspiracies: application of penalty for false information in registering or voting

The provisions of section 10307(c) of this title shall apply to false registration, and other fraudulent acts and conspiracies, committed under this section.

CREDIT(S)

(Pub.L. 89-110, Title II, § 202, as added Pub.L. 91-285, § 6, June 22, 1970, 84 Stat. 316.)

52 U.S.C.A. § 10502, 52 USCA § 10502
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 10503
Formerly cited as 42 USCA § 1973aa-1a

§ 10503. Bilingual election requirements

Currentness

(a) Congressional findings and declaration of policy

The Congress finds that, through the use of various practices and procedures, citizens of language minorities have been effectively excluded from participation in the electoral process. Among other factors, the denial of the right to vote of such minority group citizens is ordinarily directly related to the unequal educational opportunities afforded them resulting in high illiteracy and low voting participation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting these practices, and by prescribing other remedial devices.

(b) Bilingual voting materials requirement

(1) Generally

Before August 6, 2032, no covered State or political subdivision shall provide voting materials only in the English language.

(2) Covered States and political subdivisions

(A) Generally

A State or political subdivision is a covered State or political subdivision for the purposes of this subsection if the Director of the Census determines, based on the 2010 American Community Survey census data and subsequent American Community Survey data in 5-year increments, or comparable census data, that--

(i)(I) more than 5 percent of the citizens of voting age of such State or political subdivision are members of a single language minority and are limited-English proficient;

(II) more than 10,000 of the citizens of voting age of such political subdivision are members of a single language minority and are limited-English proficient; or

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(III) in the case of a political subdivision that contains all or any part of an Indian reservation, more than 5 percent of the American Indian or Alaska Native citizens of voting age within the Indian reservation are members of a single language minority and are limited-English proficient; and

(ii) the illiteracy rate of the citizens in the language minority as a group is higher than the national illiteracy rate.

(B) Exception

The prohibitions of this subsection do not apply in any political subdivision that has less than 5 percent voting age limited-English proficient citizens of each language minority which comprises over 5 percent of the statewide limited-English proficient population of voting age citizens, unless the political subdivision is a covered political subdivision independently from its State.

(3) Definitions

As used in this section--

(A) the term "voting materials" means registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots;

(B) the term "limited-English proficient" means unable to speak or understand English adequately enough to participate in the electoral process;

(C) the term "Indian reservation" means any area that is an American Indian or Alaska Native area, as defined by the Census Bureau for the purposes of the 1990 decennial census;

(D) the term "citizens" means citizens of the United States; and

(E) the term "illiteracy" means the failure to complete the 5th primary grade.

(4) Special rule

The determinations of the Director of the Census under this subsection shall be effective upon publication in the Federal Register and shall not be subject to review in any court.

(c) Requirement of voting notices, forms, instructions, assistance, or other materials and ballots in minority language

Whenever any State or political subdivision subject to the prohibition of subsection (b) of this section provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language: *Provided,* That where the language of the applicable minority group is oral or unwritten or in the case of Alaskan natives and American

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

Indians, if the predominant language is historically unwritten, the State or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting.

(d) Action for declaratory judgment permitting English-only materials

Any State or political subdivision subject to the prohibition of subsection (b) of this section, which seeks to provide English-only registration or voting materials or information, including ballots, may file an action against the United States in the United States District Court for a declaratory judgment permitting such provision. The court shall grant the requested relief if it determines that the illiteracy rate of the applicable language minority group within the State or political subdivision is equal to or less than the national illiteracy rate.

(e) Definitions

For purposes of this section, the term "language minorities" or "language minority group" means persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage.

CREDIT(S)

(Pub.L. 89-110, Title II, § 203, as added Pub.L. 94-73, Title III, § 301, Aug. 6, 1975, 89 Stat. 402; amended Pub.L. 97-205, §§ 2(d), 4, June 29, 1982, 96 Stat. 134; Pub.L. 102-344, § 2, Aug. 26, 1992, 106 Stat. 921; Pub.L. 109-246, §§ 7, 8, July 27, 2006, 120 Stat. 581.)

52 U.S.C.A. § 10503, 52 USCA § 10503
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle I. Voting Rights
Chapter 105. Supplemental Provisions

52 U.S.C.A. § 10504
Formerly cited as 42 USCA § 1973aa-2

§ 10504. Judicial relief; civil actions by the Attorney General; three-judge district court; appeal to Supreme Court

Currentness

Whenever the Attorney General has reason to believe that a State or political subdivision (a) has enacted or is seeking to administer any test or device as a prerequisite to voting in violation of the prohibition contained in section 10501 of this title, or (b) undertakes to deny the right to vote in any election in violation of section 10502 or 10503 of this title, he may institute for the United States, or in the name of the United States, an action in a district court of the United States, in accordance with sections 1391 through 1393[1] of Title 28, for a restraining order, a preliminary or permanent injunction, or such other order as he deems appropriate. An action under this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall be to the Supreme Court.

CREDIT(S)

(Pub.L. 89-110, Title II, § 204, formerly § 203, as added Pub.L. 91-285, § 6, June 22, 1970, 84 Stat. 317; renumbered § 204 and amended Pub.L. 94-73, Title III, §§ 302, 303, Title IV, § 406, Aug. 6, 1975, 89 Stat. 403, 405.)

Footnotes

1 Repealed by Pub.L. 100-702, Title X, § 1001(a), Nov. 19, 1988, 102 Stat. 4664.

52 U.S.C.A. § 10504, 52 USCA § 10504
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 10505
Formerly cited as 42 USCA § 1973aa-3

§ 10505. Penalty

Currentness

Whoever shall deprive or attempt to deprive any person of any right secured by section 10501, 10502, or 10503 of this title shall be fined not more than $5,000, or imprisoned not more than five years, or both.

CREDIT(S)

(Pub.L. 89-110, Title II, § 205, formerly § 204, as added Pub.L. 91-285, § 6, June 22, 1970, 84 Stat. 317; renumbered § 205 and amended Pub.L. 94-73, Title III, §§ 302, 304, Aug. 6, 1975, 89 Stat. 403.)

52 U.S.C.A. § 10505, 52 USCA § 10505
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle I. Voting Rights
Chapter 105. Supplemental Provisions

52 U.S.C.A. § 10506
Formerly cited as 42 USCA § 1973aa-4

§ 10506. Separability

Currentness

If any provision of chapters 103 to 107 of this title or the application of any provision thereof to any person or circumstance is judicially determined to be invalid, the remainder of chapters 103 to 107 of this title or the application of such provision to other persons or circumstances shall not be affected by such determination.

CREDIT(S)

(Pub.L. 89-110, Title II, § 206, formerly § 205, as added Pub.L. 91-285, § 6, June 22, 1970, 84 Stat. 318; renumbered § 206, Pub.L. 94-73, Title III, § 302, Aug. 6, 1975, 89 Stat. 403.)

52 U.S.C.A. § 10506, 52 USCA § 10506
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 10507
Formerly cited as 42 USCA § 1973aa-5

§ 10507. Survey to compile registration and voting statistics

Currentness

(a) Elections to House of Representatives and elections designated by United States Commission on Civil Rights

Congress hereby directs the Director of the Census forthwith to conduct a survey to compile registration and voting statistics: (i) in every State or political subdivision with respect to which the prohibitions of section 10303(a) of this title are in effect, for every statewide general election for Members of the United States House of Representatives after January 1, 1974; and (ii) in every State or political subdivision for any election designated by the United States Commission on Civil Rights. Such surveys shall only include a count of citizens of voting age, race or color, and national origin, and a determination of the extent to which such persons are registered to vote and have voted in the elections surveyed.

(b) Prohibition against compulsion to disclose personal data; advice of rights

In any survey under subsection (a) of this section no person shall be compelled to disclose his race, color, national origin, political party affiliation, or how he voted (or the reasons therefor), nor shall any penalty be imposed for his failure or refusal to make such disclosures. Every person interrogated orally, by written survey or questionnaire, or by any other means with respect to such information shall be fully advised of his right to fail or refuse to furnish such information.

(c) Report to Congress

The Director of the Census shall, at the earliest practicable time, report to the Congress the results of every survey conducted pursuant to the provisions of subsection (a) of this section.

(d) Confidentiality of information; penalties

The provisions of section 9 and chapter 7 of Title 13 shall apply to any survey, collection, or compilation of registration and voting statistics carried out under subsection (a) of this section.

CREDIT(S)

(Pub.L. 89-110, Title II, § 207, as added Pub.L. 94-73, Title IV, § 403, Aug. 6, 1975, 89 Stat. 404.)

52 U.S.C.A. § 10507, 52 USCA § 10507

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 10508
Formerly cited as 42 USCA § 1973aa-6

§ 10508. Voting assistance for blind, disabled or illiterate persons

Effective: September 1, 2014
Currentness

Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union.

CREDIT(S)

(Pub.L. 89-110, Title II, § 208, as added Pub.L. 97-205, § 5, June 29, 1982, 96 Stat. 134.)

52 U.S.C.A. § 10508, 52 USCA § 10508
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 10701
Formerly cited as 42 USCA § 1973bb

§ 10701. Enforcement of twenty-sixth amendment

Currentness

(a)(1) The Attorney General is directed to institute, in the name of the United States, such actions against States or political subdivisions, including actions for injunctive relief, as he may determine to be necessary to implement the twenty-sixth article of amendment to the Constitution of the United States.

(2) The district courts of the United States shall have jurisdiction of proceedings instituted under this chapter, which shall be heard and determined by a court of three judges in accordance with section 2284 of Title 28, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing and determination thereof, and to cause the case to be in every way expedited.

(b) Whoever shall deny or attempt to deny any person of any right secured by the twenty-sixth article of amendment to the Constitution of the United States shall be fined not more than $5,000 or imprisoned not more than five years, or both.

CREDIT(S)

(Pub.L. 89-110, Title III, § 301, as added Pub.L. 91-285, § 6, June 22, 1970, 84 Stat. 318; amended Pub.L. 94-73, Title IV, § 407, Aug. 6, 1975, 89 Stat. 405.)

52 U.S.C.A. § 10701, 52 USCA § 10701
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 10702
Formerly cited as 42 USCA § 1973bb-1

§ 10702. "State" defined

Currentness

As used in this chapter, the term "State" includes the District of Columbia.

CREDIT(S)

(Pub.L. 89-110, Title III, § 302, as added Pub.L. 91-285, § 6, June 22, 1970, 84 Stat. 318; amended Pub.L. 94-73, Title IV, § 407, Aug. 6, 1975, 89 Stat. 405.)

52 U.S.C.A. § 10702, 52 USCA § 10702
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20101
Formerly cited as 42 USCA § 1973ee

§ 20101. Congressional declaration of purpose

Currentness

It is the intention of Congress in enacting this chapter to promote the fundamental right to vote by improving access for handicapped and elderly individuals to registration facilities and polling places for Federal elections.

CREDIT(S)

(Pub.L. 98-435, § 2, Sept. 28, 1984, 98 Stat. 1678.)

52 U.S.C.A. § 20101, 52 USCA § 20101
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20102
Formerly cited as 42 USCA § 1973ee-1

§ 20102. Selection of polling facilities

Currentness

(a) Accessibility to all polling places as responsibility of each political subdivision

Within each State, except as provided in subsection (b), each political subdivision responsible for conducting elections shall assure that all polling places for Federal elections are accessible to handicapped and elderly voters.

(b) Exception

Subsection (a) shall not apply to a polling place--

(1) in the case of an emergency, as determined by the chief election officer of the State; or

(2) if the chief election officer of the State--

(A) determines that all potential polling places have been surveyed and no such accessible place is available, nor is the political subdivision able to make one temporarily accessible, in the area involved; and

(B) assures that any handicapped or elderly voter assigned to an inaccessible polling place, upon advance request of such voter (pursuant to procedures established by the chief election officer of the State)--

(i) will be assigned to an accessible polling place, or

(ii) will be provided with an alternative means for casting a ballot on the day of the election.

(c) Report to Federal Election Commission

(1) Not later than December 31 of each even-numbered year, the chief election officer of each State shall report to the Federal Election Commission, in a manner to be determined by the Commission, the number of accessible and inaccessible polling places in such State on the date of the preceding general Federal election, and the reasons for any instance of inaccessibility.

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(2) Not later than April 30 of each odd-numbered year, the Federal Election Commission shall compile the information reported under paragraph (1) and shall transmit that information to the Congress.

(3) The provisions of this subsection shall only be effective for a period of 10 years beginning on September 28, 1984.

CREDIT(S)

(Pub.L. 98-435, § 3, Sept. 28, 1984, 98 Stat. 1678.)

52 U.S.C.A. § 20102, 52 USCA § 20102
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle II. Voting Assistance and Election Administration (Refs & Annos)
Chapter 201. Voting Accessibility for the Elderly and Handicapped

52 U.S.C.A. § 20103
Formerly cited as 42 USCA § 1973ee-2

§ 20103. Selection of registration facilities

Currentness

(a) Each State or political subdivision responsible for registration for Federal elections shall provide a reasonable number of accessible permanent registration facilities.

(b) Subsection (a) does not apply to any State that has in effect a system that provides an opportunity for each potential voter to register by mail or at the residence of such voter.

CREDIT(S)

(Pub.L. 98-435, § 4, Sept. 28, 1984, 98 Stat. 1679.)

52 U.S.C.A. § 20103, 52 USCA § 20103
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20104
Formerly cited as 42 USCA § 1973ee-3

§ 20104. Registration and voting aids

Currentness

(a) Printed instructions; telecommunications devices for the deaf

Each State shall make available registration and voting aids for Federal elections for handicapped and elderly individuals, including--

(1) instructions, printed in large type, conspicuously displayed at each permanent registration facility and each polling place; and

(2) information by telecommunications devices for the deaf.

(b) Medical certification

No notarization or medical certification shall be required of a handicapped voter with respect to an absentee ballot or an application for such ballot, except that medical certification may be required when the certification establishes eligibility, under State law--

(1) to automatically receive an application or a ballot on a continuing basis; or

(2) to apply for an absentee ballot after the deadline has passed.

(c) Notice of availability of aids

The chief election officer of each State shall provide public notice, calculated to reach elderly and handicapped voters, of the availability of aids under this section, assistance under section 10508 of this title, and the procedures for voting by absentee ballot, not later than general public notice of registration and voting is provided.

CREDIT(S)

(Pub.L. 98-435, § 5, Sept. 28, 1984, 98 Stat. 1679.)

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20104, 52 USCA § 20104
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20105
Formerly cited as 42 USCA § 1973ee-4

§ 20105. Enforcement

Currentness

(a) Action for declaratory or injunctive relief

If a State or political subdivision does not comply with this chapter, the United States Attorney General or a person who is personally aggrieved by the noncompliance may bring an action for declaratory or injunctive relief in the appropriate district court.

(b) Prerequisite notice of noncompliance

An action may be brought under this section only if the plaintiff notifies the chief election officer of the State of the noncompliance and a period of 45 days has elapsed since the date of notification.

(c) Attorney fees

Notwithstanding any other provision of law, no award of attorney fees may be made with respect to an action under this section, except in any action brought to enforce the original judgment of the court.

CREDIT(S)

(Pub.L. 98-435, § 6, Sept. 28, 1984, 98 Stat. 1679.)

52 U.S.C.A. § 20105, 52 USCA § 20105
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20106
Formerly cited as 42 USCA § 1973ee-5

§ 20106. Relationship to Voting Rights Act of 1965

Currentness

This chapter shall not be construed to impair any right guaranteed by the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).[1]

CREDIT(S)

(Pub.L. 98-435, § 7, Sept. 28, 1984, 98 Stat. 1679.)

Footnotes

1 Redesignated as 52 U.S.C.A. § 10301 et seq.

52 U.S.C.A. § 20106, 52 USCA § 20106
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20107
Formerly cited as 42 USCA § 1973ee-6

§ 20107. Definitions

Currentness

As used in this chapter, the term--

(1) "accessible" means accessible to handicapped and elderly individuals for the purpose of voting or registration, as determined under guidelines established by the chief election officer of the State involved;

(2) "elderly" means 65 years of age or older;

(3) "Federal election" means a general, special, primary, or runoff election for the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

(4) "handicapped" means having a temporary or permanent physical disability; and

(5) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possesssion[1] of the United States.

CREDIT(S)

(Pub.L. 98-435, § 8, Sept. 28, 1984, 98 Stat. 1679.)

Footnotes

1 So in original. Probably should be "possession".

52 U.S.C.A. § 20107, 52 USCA § 20107
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle II. Voting Assistance and Election Administration (Refs & Annos)
Chapter 203 . Registration and Voting by Absent Uniformed Services Voters and Overseas Voters in Elections for Federal Office

52 U.S.C.A. § 20301
Formerly cited as 42 USCA § 1973ff

§ 20301. Federal responsibilities

Currentness

(a) Presidential designee

The President shall designate the head of an executive department to have primary responsibility for Federal functions under this chapter.

(b) Duties of Presidential designee

The Presidential designee shall--

(1) consult State and local election officials in carrying out this chapter, and ensure that such officials are aware of the requirements of this Act;

(2) prescribe an official post card form, containing both an absentee voter registration application and an absentee ballot application, for use by the States as required under section 20302(a)(4) of this title;

(3) carry out section 20303 of this title with respect to the Federal write-in absentee ballot for absent uniformed services voters and overseas voters in general elections for Federal office;

(4) prescribe a suggested design for absentee ballot mailing envelopes;

(5) compile and distribute (A) descriptive material on State absentee registration and voting procedures, and (B) to the extent practicable, facts relating to specific elections, including dates, offices involved, and the text of ballot questions;

(6) not later than the end of each year after a Presidential election year, transmit to the President and the Congress a report on the effectiveness of assistance under this chapter, including a statistical analysis of uniformed services voter participation, a separate statistical analysis of overseas nonmilitary participation, and a description of State-Federal cooperation;

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(7) prescribe a standard oath for use with any document under this chapter affirming that a material misstatement of fact in the completion of such a document may constitute grounds for a conviction for perjury;

(8) carry out section 20304 of this title with respect to the collection and delivery of marked absentee ballots of absent overseas uniformed services voters in elections for Federal office;

(9) to the greatest extent practicable, take such actions as may be necessary--

(A) to ensure that absent uniformed services voters who cast absentee ballots at locations or facilities under the jurisdiction of the Presidential designee are able to do so in a private and independent manner; and

(B) to protect the privacy of the contents of absentee ballots cast by absentee uniformed services voters and overseas voters while such ballots are in the possession or control of the Presidential designee;

(10) carry out section 20305 of this title with respect to Federal Voting Assistance Program Improvements; and

(11) working with the Election Assistance Commission and the chief State election official of each State, develop standards--

(A) for States to report data on the number of absentee ballots transmitted and received under section 20302(c) of this title and such other data as the Presidential designee determines appropriate; and

(B) for the Presidential designee to store the data reported.

(c) Duties of other Federal officials

(1) In general

The head of each Government department, agency, or other entity shall, upon request of the Presidential designee, distribute balloting materials and otherwise cooperate in carrying out this chapter.

(2) Administrator of General Services

As directed by the Presidential designee, the Administrator of General Services shall furnish official post card forms (prescribed under subsection (b)) and Federal write-in absentee ballots (prescribed under section 20303 of this title).

(d) Authorization of appropriations for carrying out Federal Voting Assistance Program Improvements

There are authorized to be appropriated to the Presidential designee such sums as are necessary for purposes of carrying out subsection (b)(10).

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

CREDIT(S)

(Pub.L. 99-410, Title I, § 101, Aug. 28, 1986, 100 Stat. 924; Pub.L. 105-277, Div. G, Title XXII, § 2219(c), Oct. 21, 1998, 112 Stat. 2681-817; Pub.L. 107-107, Div. A, Title XVI, § 1606(a)(2), Dec. 28, 2001, 115 Stat. 1279; Pub.L. 107-252, Title VII, § 705(a), (b)(1), (c), Oct. 29, 2002, 116 Stat. 1724, 1725; Pub.L. 108-375, Div. A, Title V, § 566(a), Oct. 28, 2004, 118 Stat. 1919; Pub.L. 111-84, Div. A, Title V, §§ 580(b), (e), 583(a)(2), 584(a), 585(b)(1), Oct. 28, 2009, 123 Stat. 2325, 2328, 2330, 2331; Pub.L. 111-383, Div. A, Title X, § 1075(d)(4), (5), Jan. 7, 2011, 124 Stat. 4372.)

52 U.S.C.A. § 20301, 52 USCA § 20301
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle II. Voting Assistance and Election Administration (Refs & Annos)
Chapter 203 . Registration and Voting by Absent Uniformed Services Voters and Overseas Voters in Elections for Federal Office

52 U.S.C.A. § 20301a

§ 20301a. Duties of Secretary under Uniformed and Overseas Citizens Absentee Voting Act

Effective: January 1, 2021
Currentness

(a) Ensuring ability of absent uniformed services voters serving at diplomatic and consular posts to receive and transmit balloting materials

In carrying out the Secretary's duties as the Presidential designee under the Uniformed and Overseas Citizens Absentee Voting Act (52 U.S.C. 20301 et seq.), the Secretary shall take such actions as may be necessary, feasible, and practical to ensure that a uniformed services voter under such Act who is absent from the United States by reason of active duty or service at a diplomatic and consular post of the United States is able to receive and transmit balloting materials in the same manner and with the same rights and protections as a uniformed services voter under such Act who is absent from the United States by reason of active duty or service at a military installation.

(b) Effective date

This section shall apply with respect to elections held on or after January 1, 2021.

CREDIT(S)

(Pub.L. 116-283, Div. A, Title X, § 1086, Jan. 1, 2021, 134 Stat. 3877.)

52 U.S.C.A. § 20301a, 52 USCA § 20301a
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20302
Formerly cited as 42 USCA § 1973ff-1

§ 20302. State responsibilities

Currentness

(a) In general

Each State shall--

(1) permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office;

(2) accept and process, with respect to any election for Federal office, any otherwise valid voter registration application and absentee ballot application from an absent uniformed services voter or overseas voter, if the application is received by the appropriate State election official not less than 30 days before the election;

(3) permit absent uniformed services voters and overseas voters to use Federal write-in absentee ballots (in accordance with section 20303 of this title) in general elections for Federal office;

(4) use the official post card form (prescribed under section 20301 of this title) for simultaneous voter registration application and absentee ballot application;

(5) if the State requires an oath or affirmation to accompany any document under this chapter, use the standard oath prescribed by the Presidential designee under section 20301(b)(7) of this title;

(6) in addition to any other method of registering to vote or applying for an absentee ballot in the State, establish procedures--

(A) for absent uniformed services voters and overseas voters to request by mail and electronically voter registration applications and absentee ballot applications with respect to general, special, primary, and runoff elections for Federal office in accordance with subsection (e);

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(B) for States to send by mail and electronically (in accordance with the preferred method of transmission designated by the absent uniformed services voter or overseas voter under subparagraph (C)) voter registration applications and absentee ballot applications requested under subparagraph (A) in accordance with subsection (e); and

(C) by which the absent uniformed services voter or overseas voter can designate whether the voter prefers that such voter registration application or absentee ballot application be transmitted by mail or electronically;

(7) in addition to any other method of transmitting blank absentee ballots in the State, establish procedures for transmitting by mail and electronically blank absentee ballots to absent uniformed services voters and overseas voters with respect to general, special, primary, and runoff elections for Federal office in accordance with subsection (f);

(8) transmit a validly requested absentee ballot to an absent uniformed services voter or overseas voter--

(A) except as provided in subsection (g), in the case in which the request is received at least 45 days before an election for Federal office, not later than 45 days before the election; and

(B) in the case in which the request is received less than 45 days before an election for Federal office--

(i) in accordance with State law; and

(ii) if practicable and as determined appropriate by the State, in a manner that expedites the transmission of such absentee ballot;

(9) if the State declares or otherwise holds a runoff election for Federal office, establish a written plan that provides absentee ballots are made available to absent uniformed services voters and overseas voters in manner[1] that gives them sufficient time to vote in the runoff election;

(10) carry out section 20304(b)(1) of this title with respect to the processing and acceptance of marked absentee ballots of absent overseas uniformed services voters; and

(11) report data on the number of absentee ballots transmitted and received under subsection (c) and such other data as the Presidential designee determines appropriate in accordance with the standards developed by the Presidential designee under section 20301(b)(11) of this title.

(b) Designation of single State office to provide information on registration and absentee ballot procedures for all voters in State

(1) In general

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

Each State shall designate a single office which shall be responsible for providing information regarding voter registration procedures and absentee ballot procedures to be used by absent uniformed services voters and overseas voters with respect to elections for Federal office (including procedures relating to the use of the Federal write-in absentee ballot) to all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.

(2) Recommendation regarding use of office to accept and process materials

Congress recommends that the State office designated under paragraph (1) be responsible for carrying out the State's duties under this Act, including accepting valid voter registration applications, absentee ballot applications, and absentee ballots (including Federal write-in absentee ballots) from all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.

(c) Report on number of absentee ballots transmitted and received

Not later than 90 days after the date of each regularly scheduled general election for Federal office, each State and unit of local government which administered the election shall (through the State, in the case of a unit of local government) submit a report to the Election Assistance Commission (established under the Help America Vote Act of 2002) on the combined number of absentee ballots transmitted to absent uniformed services voters and overseas voters for the election and the combined number of such ballots which were returned by such voters and cast in the election, and shall make such report available to the general public.

(d) Registration notification

With respect to each absent uniformed services voter and each overseas voter who submits a voter registration application or an absentee ballot request, if the State rejects the application or request, the State shall provide the voter with the reasons for the rejection.

(e) Designation of means of electronic communication for absent uniformed services voters and overseas voters to request and for States to send voter registration applications and absentee ballot applications, and for other purposes related to voting information

(1) In general

Each State shall, in addition to the designation of a single State office under subsection (b), designate not less than 1 means of electronic communication--

(A) for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State to request voter registration applications and absentee ballot applications under subsection (a)(6);

(B) for use by States to send voter registration applications and absentee ballot applications requested under such subsection; and

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(C) for the purpose of providing related voting, balloting, and election information to absent uniformed services voters and overseas voters.

(2) Clarification regarding provision of multiple means of electronic communication

A State may, in addition to the means of electronic communication so designated, provide multiple means of electronic communication to absent uniformed services voters and overseas voters, including a means of electronic communication for the appropriate jurisdiction of the State.

(3) Inclusion of designated means of electronic communication with informational and instructional materials that accompany balloting materials

Each State shall include a means of electronic communication so designated with all informational and instructional materials that accompany balloting materials sent by the State to absent uniformed services voters and overseas voters.

(4) Availability and maintenance of online repository of State contact information

The Federal Voting Assistance Program of the Department of Defense shall maintain and make available to the public an online repository of State contact information with respect to elections for Federal office, including the single State office designated under subsection (b) and the means of electronic communication designated under paragraph (1), to be used by absent uniformed services voters and overseas voters as a resource to send voter registration applications and absentee ballot applications to the appropriate jurisdiction in the State.

(5) Transmission if no preference indicated

In the case where an absent uniformed services voter or overseas voter does not designate a preference under subsection (a)(6)(C), the State shall transmit the voter registration application or absentee ballot application by any delivery method allowable in accordance with applicable State law, or if there is no applicable State law, by mail.

(6) Security and privacy protections

(A) Security protections

To the extent practicable, States shall ensure that the procedures established under subsection (a)(6) protect the security and integrity of the voter registration and absentee ballot application request processes.

(B) Privacy protections

To the extent practicable, the procedures established under subsection (a)(6) shall ensure that the privacy of the identity and other personal data of an absent uniformed services voter or overseas voter who requests or is sent a voter registration application or absentee ballot application under such subsection is protected throughout the process of making such request or being sent such application.

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(f) Transmission of blank absentee ballots by mail and electronically

(1) In general

Each State shall establish procedures--

(A) to transmit blank absentee ballots by mail and electronically (in accordance with the preferred method of transmission designated by the absent uniformed services voter or overseas voter under subparagraph (B)) to absent uniformed services voters and overseas voters for an election for Federal office; and

(B) by which the absent uniformed services voter or overseas voter can designate whether the voter prefers that such blank absentee ballot be transmitted by mail or electronically.

(2) Transmission if no preference indicated

In the case where an absent uniformed services voter or overseas voter does not designate a preference under paragraph (1)(B), the State shall transmit the ballot by any delivery method allowable in accordance with applicable State law, or if there is no applicable State law, by mail.

(3) Security and privacy protections

(A) Security protections

To the extent practicable, States shall ensure that the procedures established under subsection (a)(7) protect the security and integrity of absentee ballots.

(B) Privacy protections

To the extent practicable, the procedures established under subsection (a)(7) shall ensure that the privacy of the identity and other personal data of an absent uniformed services voter or overseas voter to whom a blank absentee ballot is transmitted under such subsection is protected throughout the process of such transmission.

(g) Hardship exemption

(1) In general

If the chief State election official determines that the State is unable to meet the requirement under subsection (a)(8)(A) with respect to an election for Federal office due to an undue hardship described in paragraph (2)(B), the chief State election official shall request that the Presidential designee grant a waiver to the State of the application of such subsection. Such request shall include--

(A) a recognition that the purpose of such subsection is to allow absent uniformed services voters and overseas voters enough time to vote in an election for Federal office;

(B) an explanation of the hardship that indicates why the State is unable to transmit absent uniformed services voters and overseas voters an absentee ballot in accordance with such subsection;

(C) the number of days prior to the election for Federal office that the State requires absentee ballots be transmitted to absent uniformed services voters and overseas voters; and

(D) a comprehensive plan to ensure that absent uniformed services voters and overseas voters are able to receive absentee ballots which they have requested and submit marked absentee ballots to the appropriate State election official in time to have that ballot counted in the election for Federal office, which includes--

(i) the steps the State will undertake to ensure that absent uniformed services voters and overseas voters have time to receive, mark, and submit their ballots in time to have those ballots counted in the election;

(ii) why the plan provides absent uniformed services voters and overseas voters sufficient time to vote as a substitute for the requirements under such subsection; and

(iii) the underlying factual information which explains how the plan provides such sufficient time to vote as a substitute for such requirements.

(2) Approval of waiver request

After consulting with the Attorney General, the Presidential designee shall approve a waiver request under paragraph (1) if the Presidential designee determines each of the following requirements are met:

(A) The comprehensive plan under subparagraph (D) of such paragraph provides absent uniformed services voters and overseas voters sufficient time to receive absentee ballots they have requested and submit marked absentee ballots to the appropriate State election official in time to have that ballot counted in the election for Federal office.

(B) One or more of the following issues creates an undue hardship for the State:

(i) The State's primary election date prohibits the State from complying with subsection (a)(8)(A).

(ii) The State has suffered a delay in generating ballots due to a legal contest.

(iii) The State Constitution prohibits the State from complying with such subsection.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(3) Timing of waiver

(A) In general

Except as provided under subparagraph (B), a State that requests a waiver under paragraph (1) shall submit to the Presidential designee the written waiver request not later than 90 days before the election for Federal office with respect to which the request is submitted. The Presidential designee shall approve or deny the waiver request not later than 65 days before such election.

(B) Exception

If a State requests a waiver under paragraph (1) as the result of an undue hardship described in paragraph (2)(B)(ii), the State shall submit to the Presidential designee the written waiver request as soon as practicable. The Presidential designee shall approve or deny the waiver request not later than 5 business days after the date on which the request is received.

(4) Application of waiver

A waiver approved under paragraph (2) shall only apply with respect to the election for Federal office for which the request was submitted. For each subsequent election for Federal office, the Presidential designee shall only approve a waiver if the State has submitted a request under paragraph (1) with respect to such election.

(h) Tracking marked ballots

The chief State election official, in coordination with local election jurisdictions, shall develop a free access system by which an absent uniformed services voter or overseas voter may determine whether the absentee ballot of the absent uniformed services voter or overseas voter has been received by the appropriate State election official.

(i) Prohibiting refusal to accept applications for failure to meet certain requirements

A State shall not refuse to accept and process any otherwise valid voter registration application or absentee ballot application (including the official post card form prescribed under section 20301 of this title) or marked absentee ballot submitted in any manner by an absent uniformed services voter or overseas voter solely on the basis of the following:

(1) Notarization requirements.

(2) Restrictions on paper type, including weight and size.

(3) Restrictions on envelope type, including weight and size.

CREDIT(S)

(Pub.L. 99-410, Title I, § 102, Aug. 28, 1986, 100 Stat. 925; Pub.L. 107-107, Div. A, Title XVI, § 1606(a)(1), Dec. 28, 2001, 115 Stat. 1278; Pub.L. 107-252, Title VII, §§ 702, 703(a), 705(b)(2), 707, Oct. 29, 2002, 116 Stat. 1723 to 1725; Pub.L. 108-375, Div. A, Title V, § 566(b), Oct. 28, 2004, 118 Stat. 1919; Pub.L. 111-84, Div. A, Title V, §§ 577(a), 578(a), 579(a), (b), 580(c), (d), 582(a), 584(b), Oct. 28, 2009, 123 Stat. 2319, 2321 to 2323, 2325, 2327, 2330.)

Footnotes

1 So in original. Probably should be “in a manner”.

52 U.S.C.A. § 20302, 52 USCA § 20302

Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20303
Formerly cited as 42 USCA § 1973ff-2

§ 20303. Federal write-in absentee ballot in general elections for Federal office for absent uniformed services voters and overseas voters

Currentness

(a) In general

(1) Federal write-in absentee ballot

The Presidential designee shall prescribe a Federal write-in absentee ballot (including a secrecy envelope and mailing envelope for such ballot) for use in general, special, primary, and runoff elections for Federal office by absent uniformed services voters and overseas voters who make timely application for, and do not receive, States, absentee ballots.[1]

(2) Promotion and expansion of use of Federal write-in absentee ballots

(A) In general

Not later than December 31, 2011, the Presidential designee shall adopt procedures to promote and expand the use of the Federal write-in absentee ballot as a back-up measure to vote in elections for Federal office.

(B) Use of technology

Under such procedures, the Presidential designee shall utilize technology to implement a system under which the absent uniformed services voter or overseas voter may--

(i) enter the address of the voter or other information relevant in the appropriate jurisdiction of the State, and the system will generate a list of all candidates in the election for Federal office in that jurisdiction; and

(ii) submit the marked Federal write-in absentee ballot by printing the ballot (including complete instructions for submitting the marked Federal write-in absentee ballot to the appropriate State election official and the mailing address of the single State office designated under section 20302(b) of this title).

(C) Authorization of appropriations

There are authorized to be appropriated to the Presidential designee such sums as may be necessary to carry out this paragraph.

(b) Submission and processing

Except as otherwise provided in this chapter, a Federal write-in absentee ballot shall be submitted and processed in the manner provided by law for absentee ballots in the State involved. A Federal write-in absentee ballot of an absent uniformed services voter or overseas voter shall not be counted--

(1) in the case of a ballot submitted by an overseas voter who is not an absent uniformed services voter, if the ballot is submitted from any location in the United States;

(2) if the application of the absent uniformed services voter or overseas voter for a State absentee ballot is received by the appropriate State election official after the later of--

(A) the deadline of the State for receipt of such application; or

(B) the date that is 30 days before the general election; or

(3) if a State absentee ballot of the absent uniformed services voter or overseas voter is received by the appropriate State election official not later than the deadline for receipt of the State absentee ballot under State law.

(c) Special rules

The following rules shall apply with respect to Federal write-in absentee ballots:

(1) In completing the ballot, the absent uniformed services voter or overseas voter may designate a candidate by writing in the name of the candidate or by writing in the name of a political party (in which case the ballot shall be counted for the candidate of that political party).

(2) In the case of the offices of President and Vice President, a vote for a named candidate or a vote by writing in the name of a political party shall be counted as a vote for the electors supporting the candidate involved.

(3) Any abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party shall be disregarded in determining the validity of the ballot, if the intention of the voter can be ascertained.

(d) Second ballot submission; instruction to absent uniformed services voter or overseas voter

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

An absent uniformed services voter or overseas voter who submits a Federal write-in absentee ballot and later receives a State absentee ballot, may submit the State absentee ballot. The Presidential designee shall assure that the instructions for each Federal write-in absentee ballot clearly state that an absent uniformed services voter or overseas voter who submits a Federal write-in absentee ballot and later receives and submits a State absentee ballot should make every reasonable effort to inform the appropriate State election official that the voter has submitted more than one ballot.

(e) Use of approved State absentee ballot in place of Federal write-in absentee ballot

The Federal write-in absentee ballot shall not be valid for use in a general, special, primary, or runoff election for Federal office if the State involved provides a State absentee ballot that--

(1) at the request of the State, is approved by the Presidential designee for use in place of the Federal write-in absentee ballot; and

(2) is made available to absent uniformed services voters and overseas voters at least 60 days before the deadline for receipt of the State ballot under State law.

(f) Prohibiting refusal to accept ballot for failure to meet certain requirements

A State shall not refuse to accept and process any otherwise valid Federal write-in absentee ballot submitted in any manner by an absent uniformed services voter or overseas voter solely on the basis of the following:

(1) Notarization requirements.

(2) Restrictions on paper type, including weight and size.

(3) Restrictions on envelope type, including weight and size.

(g) Certain States exempted

A State is not required to permit use of the Federal write-in absentee ballot, if, on and after August 28, 1986, the State has in effect a law providing that--

(1) a State absentee ballot is required to be available to any voter described in section 20310(5)(A) of this title at least 90 days before the general, special, primary, or runoff election for Federal office involved; and

(2) a State absentee ballot is required to be available to any voter described in section 20310(5)(B) or (C) of this title, as soon as the official list of candidates in the general, special, primary, or runoff election for Federal office is complete.

CREDIT(S)

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(Pub.L. 99-410, Title I, § 103, Aug. 28, 1986, 100 Stat. 925; Pub.L. 108-375, Div. A, Title V, § 566(c), (d), Oct. 28, 2004, 118 Stat. 1919; Pub.L. 111-84, Div. A, Title V, §§ 581(a)(1), (b), 582(b), Oct. 28, 2009, 123 Stat. 2326, 2327; Pub.L. 111-383, Div. A, Title X, § 1075(d)(3), Jan. 7, 2011, 124 Stat. 4372.)

Footnotes

1 So in original. Probably should be “States' absentee ballots.”

52 U.S.C.A. § 20303, 52 USCA § 20303
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20304
Formerly cited as 42 USCA § 1973ff-2a

§ 20304. Procedures for collection and delivery of marked absentee ballots of absent overseas uniformed services voters

Currentness

(a) Establishment of procedures

The Presidential designee shall establish procedures for collecting marked absentee ballots of absent overseas uniformed services voters in regularly scheduled general elections for Federal office, including absentee ballots prepared by States and the Federal write-in absentee ballot prescribed under section 20303 of this title, and for delivering such marked absentee ballots to the appropriate election officials.

(b) Delivery to appropriate election officials

(1) In general

Under the procedures established under this section, the Presidential designee shall implement procedures that facilitate the delivery of marked absentee ballots of absent overseas uniformed services voters for regularly scheduled general elections for Federal office to the appropriate election officials, in accordance with this section, not later than the date by which an absentee ballot must be received in order to be counted in the election.

(2) Cooperation and coordination with the United States Postal Service

The Presidential designee shall carry out this section in cooperation and coordination with the United States Postal Service, and shall provide expedited mail delivery service for all such marked absentee ballots of absent uniformed services voters that are collected on or before the deadline described in paragraph (3) and then transferred to the United States Postal Service.

(3) Deadline described

(A) In general

Except as provided in subparagraph (B), the deadline described in this paragraph is noon (in the location in which the ballot is collected) on the seventh day preceding the date of the regularly scheduled general election for Federal office.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(B) Authority to establish alternative deadline for certain locations

If the Presidential designee determines that the deadline described in subparagraph (A) is not sufficient to ensure timely delivery of the ballot under paragraph (1) with respect to a particular location because of remoteness or other factors, the Presidential designee may establish as an alternative deadline for that location the latest date occurring prior to the deadline described in subparagraph (A) which is sufficient to provide timely delivery of the ballot under paragraph (1).

(4) No postage requirement

In accordance with section 3406 of Title 39, such marked absentee ballots and other balloting materials shall be carried free of postage.

(5) Date of mailing

Such marked absentee ballots shall be postmarked with a record of the date on which the ballot is mailed.

(c) Outreach for absent overseas uniformed services voters on procedures

The Presidential designee shall take appropriate actions to inform individuals who are anticipated to be absent overseas uniformed services voters in a regularly scheduled general election for Federal office to which this section applies of the procedures for the collection and delivery of marked absentee ballots established pursuant to this section, including the manner in which such voters may utilize such procedures for the submittal of marked absentee ballots pursuant to this section.

(d) Absent overseas uniformed services voter defined

In this section, the term "absent overseas uniformed services voter" means an overseas voter described in section 20310(5)(A) of this title.

(e) Authorization of appropriations

There are authorized to be appropriated to the Presidential designee such sums as may be necessary to carry out this section.

CREDIT(S)

(Pub.L. 99-410, Title I, § 103A, as added Pub.L. 111-84, Div. A, Title V, § 580(a), Oct. 28, 2009, 123 Stat. 2324.)

52 U.S.C.A. § 20304, 52 USCA § 20304
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle II. Voting Assistance and Election Administration (Refs & Annos)
Chapter 203 . Registration and Voting by Absent Uniformed Services Voters and Overseas Voters in Elections for Federal Office

52 U.S.C.A. § 20305
Formerly cited as 42 USCA § 1973ff-2b

§ 20305. Federal Voting Assistance Program Improvements

Currentness

(a) Duties

The Presidential designee shall carry out the following duties:

(1) Develop online portals of information to inform absent uniformed services voters regarding voter registration procedures and absentee ballot procedures to be used by such voters with respect to elections for Federal office.

(2) Establish a program to notify absent uniformed services voters of voter registration information and resources, the availability of the Federal postcard application, and the availability of the Federal write-in absentee ballot on the military Global Network, and shall use the military Global Network to notify absent uniformed services voters of the foregoing 90, 60, and 30 days prior to each election for Federal office.

(b) Clarification regarding other duties and obligations

Nothing in this section shall relieve the Presidential designee of their duties and obligations under any directives or regulations issued by the Department of Defense, including the Department of Defense Directive 1000.04 (or any successor directive or regulation) that is not inconsistent or contradictory to the provisions of this section.

(c) Authorization of appropriations

There are authorized to be appropriated to the Federal Voting Assistance Program of the Department of Defense (or a successor program) such sums as are necessary for purposes of carrying out this section.

CREDIT(S)

(Pub.L. 99-410, Title I, § 103B, as added Pub.L. 111-84, Div. A, Title V, § 583(a)(1), Oct. 28, 2009, 123 Stat. 2327.)

52 U.S.C.A. § 20305, 52 USCA § 20305
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20306
Formerly cited as 42 USCA § 1973ff-3

§ 20306. Prohibition of refusal of applications on grounds of early submission

Currentness

A State may not refuse to accept or process, with respect to any election for Federal office, any otherwise valid voter registration application or absentee ballot application (including the postcard form prescribed under section 20301 of this title) submitted by an absent uniformed services voter during a year on the grounds that the voter submitted the application before the first date on which the State otherwise accepts or processes such applications for that year submitted by absentee voters who are not members of the uniformed services.

CREDIT(S)

(Pub.L. 99-410, Title I, § 104, Aug. 28, 1986, 100 Stat. 926; Pub.L. 107-107, Div. A, Title XVI, § 1606(b), Dec. 28, 2001, 115 Stat. 1279; Pub.L. 107-252, Title VII, §§ 704, 706(a), Oct. 29, 2002, 116 Stat. 1724, 1725; Pub.L. 111-84, Div. A, Title V, § 585(a), (b)(2), Oct. 28, 2009, 123 Stat. 2331.)

52 U.S.C.A. § 20306, 52 USCA § 20306
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20307
Formerly cited as 42 USCA § 1973ff-4

§ 20307. Enforcement

Currentness

(a) In general

The Attorney General may bring a civil action in an appropriate district court for such declaratory or injunctive relief as may be necessary to carry out this chapter.

(b) Report to Congress

Not later than December 31 of each year, the Attorney General shall submit to Congress an annual report on any civil action brought under subsection (a) during the preceding year.

CREDIT(S)

(Pub.L. 99-410, Title I, § 105, Aug. 28, 1986, 100 Stat. 927; Pub.L. 111-84, Div. A, Title V, § 587, Oct. 28, 2009, 123 Stat. 2333.)

52 U.S.C.A. § 20307, 52 USCA § 20307
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20308
Formerly cited as 42 USCA § 1973ff-4a

§ 20308. Reporting requirements

Effective: January 1, 2021
Currentness

(a) Report on status of implementation and assessment of programs

Not later than 180 days after October 28, 2009, the Presidential designee shall submit to the relevant committees of Congress a report containing the following information:

(1) The status of the implementation of the procedures established for the collection and delivery of marked absentee ballots of absent overseas uniformed services voters under section 20304 of this title, and a detailed description of the specific steps taken towards such implementation for the regularly scheduled general election for Federal office held in November 2010.

(2) An assessment of the effectiveness of the Voting Assistance Officer Program of the Department of Defense, which shall include the following:

(A) A thorough and complete assessment of whether the Program, as configured and implemented as of October 28, 2009, is effectively assisting absent uniformed services voters in exercising their right to vote.

(B) An inventory and explanation of any areas of voter assistance in which the Program has failed to accomplish its stated objectives and effectively assist absent uniformed services voters in exercising their right to vote.

(C) As necessary, a detailed plan for the implementation of any new program to replace or supplement voter assistance activities required to be performed under this Act.

(3) A detailed description of the specific steps taken towards the implementation of voter registration assistance for absent uniformed services voters under section 1566a of Title 10.

(b) Biennial report on effectiveness of activities and utilization of certain procedures

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

Not later than September 30 of each odd-numbered year, the Presidential designee shall transmit to the President and to the relevant committees of Congress a report containing the following information with respect to the Federal elections held during the preceding calendar year:

(1) An assessment of the effectiveness of activities carried out under section 20305 of this title, including the activities and actions of the Federal Voting Assistance Program of the Department of Defense, a separate assessment of voter registration and participation by absent uniformed services voters, a separate assessment of voter registration and participation by overseas voters who are not members of the uniformed services, and a description of the cooperation between States and the Federal Government in carrying out such section.

(2) A description of the utilization of voter registration assistance under section 1566a of Title 10, which shall include the following:

(A) A description of the specific programs implemented by each military department of the Armed Forces pursuant to such section.

(B) The number of absent uniformed services voters who utilized voter registration assistance provided under such section.

(3) A description of the utilization of the procedures for the collection and delivery of marked absentee ballots established pursuant to section 20304 of this title, which shall include the number of marked absentee ballots collected and delivered under such procedures and the number of such ballots which were not delivered by the time of the closing of the polls on the date of the election (and the reasons such ballots were not so delivered).

(c) Definitions

In this section:

(1) Absent overseas uniformed services voter

The term “absent overseas uniformed services voter” has the meaning given such term in section 20304(d) of this title.

(2) Presidential designee

The term “Presidential designee” means the Presidential designee under section 20301(a) of this title.

(3) Relevant committees of Congress defined

The term “relevant committees of Congress” means--

(A) the Committees on Appropriations, Armed Services, and Rules and Administration of the Senate; and

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(B) the Committees on Appropriations, Armed Services, and House Administration of the House of Representatives.

CREDIT(S)

(Pub.L. 99-410, Title I, § 105A, as added Pub.L. 111-84, Div. A, Title V, § 586, Oct. 28, 2009, 123 Stat. 2331; amended Pub.L. 116-283, Div. A, Title V, § 595, Jan. 1, 2021, 134 Stat. 3666.)

52 U.S.C.A. § 20308, 52 USCA § 20308
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20309
Formerly cited as 42 USCA § 1973ff-5

§ 20309. Effect on certain other laws

Currentness

The exercise of any right under this chapter shall not affect, for purposes of any Federal, State, or local tax, the residence or domicile of a person exercising such right.

CREDIT(S)

(Pub.L. 99-410, Title I, § 106, Aug. 28, 1986, 100 Stat. 927.)

52 U.S.C.A. § 20309, 52 USCA § 20309
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20310
Formerly cited as 42 USCA § 1973ff-6

§ 20310. Definitions

Currentness

As used in this chapter, the term--

(1) "absent uniformed services voter" means--

(A) a member of a uniformed service on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote;

(B) a member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; and

(C) a spouse or dependent of a member referred to in subparagraph (A) or (B) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote;

(2) "balloting materials" means official post card forms (prescribed under section 20301 of this title), Federal write-in absentee ballots (prescribed under section 20303 of this title), and any State balloting materials that, as determined by the Presidential designee, are essential to the carrying out of this chapter;

(3) "Federal office" means the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

(4) "member of the merchant marine" means an individual (other than a member of a uniformed service or an individual employed, enrolled, or maintained on the Great Lakes or the inland waterways)--

(A) employed as an officer or crew member of a vessel documented under the laws of the United States, or a vessel owned by the United States, or a vessel of foreign-flag registry under charter to or control of the United States; or

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(B) enrolled with the United States for employment or training for employment, or maintained by the United States for emergency relief service, as an officer or crew member of any such vessel;

(5) "overseas voter" means--

(A) an absent uniformed services voter who, by reason of active duty or service is absent from the United States on the date of the election involved;

(B) a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or

(C) a person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States.

(6) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa;

(7) "uniformed services" means the Army, Navy, Air Force, Marine Corps, and Coast Guard, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration; and

(8) "United States", where used in the territorial sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.

CREDIT(S)

(Pub.L. 99-410, Title I, § 107, Aug. 28, 1986, 100 Stat. 927.)

52 U.S.C.A. § 20310, 52 USCA § 20310
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20311
Formerly cited as 42 USCA § 1973ff-7

§ 20311. Technology pilot program

Currentness

(a) Definitions

In this section:

(1) Absent uniformed services voter

The term "absent uniformed services voter" has the meaning given such term in section 107(1) of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-6(1)).[1]

(2) Overseas voter

The term "overseas voter" has the meaning given such term in section 107(5) of such Act.

(3) Presidential designee

The term "Presidential designee" means the individual designated under section 101(a) of such Act.

(b) Establishment

(1) In general

The Presidential designee may establish 1 or more pilot programs under which the feasibility of new election technology is tested for the benefit of absent uniformed services voters and overseas voters claiming rights under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.).[2]

(2) Design and conduct

The design and conduct of a pilot program established under this subsection--

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(A) shall be at the discretion of the Presidential designee; and

(B) shall not conflict with or substitute for existing laws, regulations, or procedures with respect to the participation of absent uniformed services voters and military voters in elections for Federal office.

(c) Considerations

In conducting a pilot program established under subsection (b), the Presidential designee may consider the following issues:

(1) The transmission of electronic voting material across military networks.

(2) Virtual private networks, cryptographic voting systems, centrally controlled voting stations, and other information security techniques.

(3) The transmission of ballot representations and scanned pictures in a secure manner.

(4) Capturing, retaining, and comparing electronic and physical ballot representations.

(5) Utilization of voting stations at military bases.

(6) Document delivery and upload systems.

(7) The functional effectiveness of the application or adoption of the pilot program to operational environments, taking into account environmental and logistical obstacles and State procedures.

(d) Reports

The Presidential designee shall submit to Congress reports on the progress and outcomes of any pilot program conducted under this subsection, together with recommendations--

(1) for the conduct of additional pilot programs under this section; and

(2) for such legislation and administrative action as the Presidential designee determines appropriate.

(e) Technical assistance

(1) In general

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

The Election Assistance Commission and the National Institute of Standards and Technology shall provide the Presidential designee with best practices or standards in accordance with electronic absentee voting guidelines established under the first sentence of section 1604(a)(2) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107; 115 Stat. 1277; 42 U.S.C. 1973ff note),[3] as amended by section 567 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375; 118 Stat. 1919) to support the pilot program or programs.

(2) Report

In the case in which the Election Assistance Commission has not established electronic absentee voting guidelines under such section 1604(a)(2), as so amended, by not later than 180 days after October 28, 2009, the Election Assistance Commission shall submit to the relevant committees of Congress a report containing the following information:

(A) The reasons such guidelines have not been established as of such date.

(B) A detailed timeline for the establishment of such guidelines.

(C) A detailed explanation of the Commission's actions in establishing such guidelines since October 28, 2004.

(3) Relevant committees of Congress defined

In this subsection, the term "relevant committees of Congress" means--

(A) the Committees on Appropriations, Armed Services, and Rules and Administration of the Senate; and

(B) the Committees on Appropriations, Armed Services, and House Administration of the House of Representatives.

(f) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this section.

CREDIT(S)

(Pub.L. 111-84, Div. A, Title V, § 589, Oct. 28, 2009, 123 Stat. 2334; Pub.L. 111-383, Div. A, Title X, § 1075(d)(6), Jan. 7, 2011, 124 Stat. 4373.)

Footnotes

1 Redesignated as 52 U.S.C.A. § 20310(1).

2 Redesignated as 52 U.S.C.A. § 20301 et seq.

3 Redesignated as 52 U.S.C.A. § 20301 note.

52 U.S.C.A. § 20311, 52 USCA § 20311
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle II. Voting Assistance and Election Administration (Refs & Annos)
Chapter 205. National Voter Registration

52 U.S.C.A. § 20501
Formerly cited as 42 USCA § 1973gg

§ 20501. Findings and purposes

Currentness

(a) Findings

The Congress finds that--

(1) the right of citizens of the United States to vote is a fundamental right;

(2) it is the duty of the Federal, State, and local governments to promote the exercise of that right; and

(3) discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities.

(b) Purposes

The purposes of this chapter are--

(1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office;

(2) to make it possible for Federal, State, and local governments to implement this chapter in a manner that enhances the participation of eligible citizens as voters in elections for Federal office;

(3) to protect the integrity of the electoral process; and

(4) to ensure that accurate and current voter registration rolls are maintained.

CREDIT(S)

(Pub.L. 103-31, § 2, May 20, 1993, 107 Stat. 77.)

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20501, 52 USCA § 20501
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle II. Voting Assistance and Election Administration (Refs & Annos)
Chapter 205. National Voter Registration

52 U.S.C.A. § 20502
Formerly cited as 42 USCA § 1973gg-1

§ 20502. Definitions

Currentness

As used in this chapter--

(1) the term "election" has the meaning stated in section 30101(1) of this title;

(2) the term "Federal office" has the meaning stated in section 30101(3) of this title;

(3) the term "motor vehicle driver's license" includes any personal identification document issued by a State motor vehicle authority;

(4) the term "State" means a State of the United States and the District of Columbia; and

(5) the term "voter registration agency" means an office designated under section 20506(a)(1) of this title to perform voter registration activities.

CREDIT(S)

(Pub.L. 103-31, § 3, May 20, 1993, 107 Stat. 77.)

52 U.S.C.A. § 20502, 52 USCA § 20502
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20503
Formerly cited as 42 USCA § 1973gg-2

§ 20503. National procedures for voter registration for elections for Federal office

Currentness

(a) In general

Except as provided in subsection (b), notwithstanding any other Federal or State law, in addition to any other method of voter registration provided for under State law, each State shall establish procedures to register to vote in elections for Federal office--

(1) by application made simultaneously with an application for a motor vehicle driver's license pursuant to section 20504 of this title;

(2) by mail application pursuant to section 20505 of this title; and

(3) by application in person--

(A) at the appropriate registration site designated with respect to the residence of the applicant in accordance with State law; and

(B) at a Federal, State, or nongovernmental office designated under section 20506 of this title.

(b) Nonapplicability to certain States

This chapter does not apply to a State described in either or both of the following paragraphs:

(1) A State in which, under law that is in effect continuously on and after August 1, 1994, there is no voter registration requirement for any voter in the State with respect to an election for Federal office.

(2) A State in which, under law that is in effect continuously on and after August 1, 1994, or that was enacted on or prior to August 1, 1994, and by its terms is to come into effect upon the enactment of this chapter, so long as that law remains in effect, all voters in the State may register to vote at the polling place at the time of voting in a general election for Federal office.

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

CREDIT(S)

(Pub.L. 103-31, § 4, May 20, 1993, 107 Stat. 78; Pub.L. 104-91, Title I, § 101(a), Jan. 6, 1996, 110 Stat. 11; amended Pub.L. 104-99, Title II, § 211, Jan. 26, 1996, 110 Stat. 37.)

52 U.S.C.A. § 20503, 52 USCA § 20503
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20504
Formerly cited as 42 USCA § 1973gg-3

§ 20504. Simultaneous application for voter registration and application for motor vehicle driver's license

Currentness

(a) In general

(1) Each State motor vehicle driver's license application (including any renewal application) submitted to the appropriate State motor vehicle authority under State law shall serve as an application for voter registration with respect to elections for Federal office unless the applicant fails to sign the voter registration application.

(2) An application for voter registration submitted under paragraph (1) shall be considered as updating any previous voter registration by the applicant.

(b) Limitation on use of information

No information relating to the failure of an applicant for a State motor vehicle driver's license to sign a voter registration application may be used for any purpose other than voter registration.

(c) Forms and procedures

(1) Each State shall include a voter registration application form for elections for Federal office as part of an application for a State motor vehicle driver's license.

(2) The voter registration application portion of an application for a State motor vehicle driver's license--

(A) may not require any information that duplicates information required in the driver's license portion of the form (other than a second signature or other information necessary under subparagraph (C));

(B) may require only the minimum amount of information necessary to--

(i) prevent duplicate voter registrations; and

(ii) enable State election officials to assess the eligibility of the applicant and to administer voter registration and other parts of the election process;

(C) shall include a statement that--

(i) states each eligibility requirement (including citizenship);

(ii) contains an attestation that the applicant meets each such requirement; and

(iii) requires the signature of the applicant, under penalty of perjury;

(D) shall include, in print that is identical to that used in the attestation portion of the application--

(i) the information required in section 20507(a)(5)(A) and (B) of this title;

(ii) a statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes; and

(iii) a statement that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes; and

(E) shall be made available (as submitted by the applicant, or in machine readable or other format) to the appropriate State election official as provided by State law.

(d) Change of address

Any change of address form submitted in accordance with State law for purposes of a State motor vehicle driver's license shall serve as notification of change of address for voter registration with respect to elections for Federal office for the registrant involved unless the registrant states on the form that the change of address is not for voter registration purposes.

(e) Transmittal deadline

(1) Subject to paragraph (2), a completed voter registration portion of an application for a State motor vehicle driver's license accepted at a State motor vehicle authority shall be transmitted to the appropriate State election official not later than 10 days after the date of acceptance.

(2) If a registration application is accepted within 5 days before the last day for registration to vote in an election, the application shall be transmitted to the appropriate State election official not later than 5 days after the date of acceptance.

CREDIT(S)

(Pub.L. 103-31, § 5, May 20, 1993, 107 Stat. 78.)

52 U.S.C.A. § 20504, 52 USCA § 20504
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20505
Formerly cited as 42 USCA § 1973gg-4

§ 20505. Mail registration

Currentness

(a) Form

(1) Each State shall accept and use the mail voter registration application form prescribed by the Federal Election Commission pursuant to section 20508(a)(2) of this title for the registration of voters in elections for Federal office.

(2) In addition to accepting and using the form described in paragraph (1), a State may develop and use a mail voter registration form that meets all of the criteria stated in section 20508(b) of this title for the registration of voters in elections for Federal office.

(3) A form described in paragraph (1) or (2) shall be accepted and used for notification of a registrant's change of address.

(b) Availability of forms

The chief State election official of a State shall make the forms described in subsection (a) available for distribution through governmental and private entities, with particular emphasis on making them available for organized voter registration programs.

(c) First-time voters

(1) Subject to paragraph (2), a State may by law require a person to vote in person if--

(A) the person was registered to vote in a jurisdiction by mail; and

(B) the person has not previously voted in that jurisdiction.

(2) Paragraph (1) does not apply in the case of a person--

(A) who is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act;

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(B) who is provided the right to vote otherwise than in person under section 20102(b)(2)(B)(ii) of this title; or

(C) who is entitled to vote otherwise than in person under any other Federal law.

(d) Undelivered notices

If a notice of the disposition of a mail voter registration application under section 20507(a)(2) of this title is sent by nonforwardable mail and is returned undelivered, the registrar may proceed in accordance with section 20507(d) of this title.

CREDIT(S)

(Pub.L. 103-31, § 6, May 20, 1993, 107 Stat. 79.)

52 U.S.C.A. § 20505, 52 USCA § 20505
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20506
Formerly cited as 42 USCA § 1973gg-5

§ 20506. Voter registration agencies

Currentness

(a) Designation

(1) Each State shall designate agencies for the registration of voters in elections for Federal office.

(2) Each State shall designate as voter registration agencies--

(A) all offices in the State that provide public assistance; and

(B) all offices in the State that provide State-funded programs primarily engaged in providing services to persons with disabilities.

(3)(A) In addition to voter registration agencies designated under paragraph (2), each State shall designate other offices within the State as voter registration agencies.

(B) Voter registration agencies designated under subparagraph (A) may include--

(i) State or local government offices such as public libraries, public schools, offices of city and county clerks (including marriage license bureaus), fishing and hunting license bureaus, government revenue offices, unemployment compensation offices, and offices not described in paragraph (2)(B) that provide services to persons with disabilities; and

(ii) Federal and nongovernmental offices, with the agreement of such offices.

(4)(A) At each voter registration agency, the following services shall be made available:

(i) Distribution of mail voter registration application forms in accordance with paragraph (6).

(ii) Assistance to applicants in completing voter registration application forms, unless the applicant refuses such assistance.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(iii) Acceptance of completed voter registration application forms for transmittal to the appropriate State election official.

(B) If a voter registration agency designated under paragraph (2)(B) provides services to a person with a disability at the person's home, the agency shall provide the services described in subparagraph (A) at the person's home.

(5) A person who provides service described in paragraph (4) shall not--

(A) seek to influence an applicant's political preference or party registration;

(B) display any such political preference or party allegiance;

(C) make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

(D) make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

(6) A voter registration agency that is an office that provides service or assistance in addition to conducting voter registration shall--

(A) distribute with each application for such service or assistance, and with each recertification, renewal, or change of address form relating to such service or assistance--

(i) the mail voter registration application form described in section 20508(a)(2) of this title, including a statement that--

(I) specifies each eligibility requirement (including citizenship);

(II) contains an attestation that the applicant meets each such requirement; and

(III) requires the signature of the applicant, under penalty of perjury; or

(ii) the office's own form if it is equivalent to the form described in section 20508(a)(2) of this title,

unless the applicant, in writing, declines to register to vote;

(B) provide a form that includes--

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(i) the question, “If you are not registered to vote where you live now, would you like to apply to register to vote here today?”;

(ii) if the agency provides public assistance, the statement, “Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency.”;

(iii) boxes for the applicant to check to indicate whether the applicant would like to register or declines to register to vote (failure to check either box being deemed to constitute a declination to register for purposes of subparagraph (C)), together with the statement (in close proximity to the boxes and in prominent type), “IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME.”;

(iv) the statement, “If you would like help in filling out the voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private.”; and

(v) the statement, “If you believe that someone has interfered with your right to register or to decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with __________.”, the blank being filled by the name, address, and telephone number of the appropriate official to whom such a complaint should be addressed; and

(C) provide to each applicant who does not decline to register to vote the same degree of assistance with regard to the completion of the registration application form as is provided by the office with regard to the completion of its own forms, unless the applicant refuses such assistance.

(7) No information relating to a declination to register to vote in connection with an application made at an office described in paragraph (6) may be used for any purpose other than voter registration.

(b) Federal Government and private sector cooperation

All departments, agencies, and other entities of the executive branch of the Federal Government shall, to the greatest extent practicable, cooperate with the States in carrying out subsection (a), and all nongovernmental entities are encouraged to do so.

(c) Armed Forces recruitment offices

(1) Each State and the Secretary of Defense shall jointly develop and implement procedures for persons to apply to register to vote at recruitment offices of the Armed Forces of the United States.

(2) A recruitment office of the Armed Forces of the United States shall be considered to be a voter registration agency designated under subsection (a)(2) for all purposes of this chapter.

(d) Transmittal deadline

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(1) Subject to paragraph (2), a completed registration application accepted at a voter registration agency shall be transmitted to the appropriate State election official not later than 10 days after the date of acceptance.

(2) If a registration application is accepted within 5 days before the last day for registration to vote in an election, the application shall be transmitted to the appropriate State election official not later than 5 days after the date of acceptance.

CREDIT(S)

(Pub.L. 103-31, § 7, May 20, 1993, 107 Stat. 80.)

52 U.S.C.A. § 20506, 52 USCA § 20506
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20507
Formerly cited as 42 USCA § 1973gg-6

§ 20507. Requirements with respect to administration of voter registration

Currentness

(a) In general

In the administration of voter registration for elections for Federal office, each State shall--

(1) ensure that any eligible applicant is registered to vote in an election--

(A) in the case of registration with a motor vehicle application under section 20504 of this title, if the valid voter registration form of the applicant is submitted to the appropriate State motor vehicle authority not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(B) in the case of registration by mail under section 20505 of this title, if the valid voter registration form of the applicant is postmarked not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(C) in the case of registration at a voter registration agency, if the valid voter registration form of the applicant is accepted at the voter registration agency not later than the lesser of 30 days, or the period provided by State law, before the date of the election; and

(D) in any other case, if the valid voter registration form of the applicant is received by the appropriate State election official not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(2) require the appropriate State election official to send notice to each applicant of the disposition of the application;

(3) provide that the name of a registrant may not be removed from the official list of eligible voters except--

(A) at the request of the registrant;

(B) as provided by State law, by reason of criminal conviction or mental incapacity; or

(C) as provided under paragraph (4);

(4) conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of--

(A) the death of the registrant; or

(B) a change in the residence of the registrant, in accordance with subsections (b), (c), and (d);

(5) inform applicants under sections 20504, 20505, and 20506 of this title of--

(A) voter eligibility requirements; and

(B) penalties provided by law for submission of a false voter registration application; and

(6) ensure that the identity of the voter registration agency through which any particular voter is registered is not disclosed to the public.

(b) Confirmation of voter registration

Any State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office--

(1) shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.)[1]; and

(2) shall not result in the removal of the name of any person from the official list of voters registered to vote in an election for Federal office by reason of the person's failure to vote, except that nothing in this paragraph may be construed to prohibit a State from using the procedures described in subsections (c) and (d) to remove an individual from the official list of eligible voters if the individual--

(A) has not either notified the applicable registrar (in person or in writing) or responded during the period described in subparagraph (B) to the notice sent by the applicable registrar; and then

(B) has not voted or appeared to vote in 2 or more consecutive general elections for Federal office.

(c) Voter removal programs

(1) A State may meet the requirement of subsection (a)(4) by establishing a program under which--

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

(A) change-of-address information supplied by the Postal Service through its licensees is used to identify registrants whose addresses may have changed; and

(B) if it appears from information provided by the Postal Service that--

(i) a registrant has moved to a different residence address in the same registrar's jurisdiction in which the registrant is currently registered, the registrar changes the registration records to show the new address and sends the registrant a notice of the change by forwardable mail and a postage prepaid pre-addressed return form by which the registrant may verify or correct the address information; or

(ii) the registrant has moved to a different residence address not in the same registrar's jurisdiction, the registrar uses the notice procedure described in subsection (d)(2) to confirm the change of address.

(2)(A) A State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.

(B) Subparagraph (A) shall not be construed to preclude--

(i) the removal of names from official lists of voters on a basis described in paragraph (3)(A) or (B) or (4)(A) of subsection (a); or

(ii) correction of registration records pursuant to this chapter.

(d) Removal of names from voting rolls

(1) A State shall not remove the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant has changed residence unless the registrant--

(A) confirms in writing that the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered; or

(B)(i) has failed to respond to a notice described in paragraph (2); and

(ii) has not voted or appeared to vote (and, if necessary, correct the registrar's record of the registrant's address) in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(2) A notice is described in this paragraph if it is a postage prepaid and pre-addressed return card, sent by forwardable mail, on which the registrant may state his or her current address, together with a notice to the following effect:

(A) If the registrant did not change his or her residence, or changed residence but remained in the registrar's jurisdiction, the registrant should return the card not later than the time provided for mail registration under subsection (a)(1)(B). If the card is not returned, affirmation or confirmation of the registrant's address may be required before the registrant is permitted to vote in a Federal election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice, and if the registrant does not vote in an election during that period the registrant's name will be removed from the list of eligible voters.

(B) If the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered, information concerning how the registrant can continue to be eligible to vote.

(3) A voting registrar shall correct an official list of eligible voters in elections for Federal office in accordance with change of residence information obtained in conformance with this subsection.

(e) Procedure for voting following failure to return card

(1) A registrant who has moved from an address in the area covered by a polling place to an address in the same area shall, notwithstanding failure to notify the registrar of the change of address prior to the date of an election, be permitted to vote at that polling place upon oral or written affirmation by the registrant of the change of address before an election official at that polling place.

(2)(A) A registrant who has moved from an address in the area covered by one polling place to an address in an area covered by a second polling place within the same registrar's jurisdiction and the same congressional district and who has failed to notify the registrar of the change of address prior to the date of an election, at the option of the registrant--

(i) shall be permitted to correct the voting records and vote at the registrant's former polling place, upon oral or written affirmation by the registrant of the new address before an election official at that polling place; or

(ii)(I) shall be permitted to correct the voting records and vote at a central location within the same registrar's jurisdiction designated by the registrar where a list of eligible voters is maintained, upon written affirmation by the registrant of the new address on a standard form provided by the registrar at the central location; or

(II) shall be permitted to correct the voting records for purposes of voting in future elections at the appropriate polling place for the current address and, if permitted by State law, shall be permitted to vote in the present election, upon confirmation by the registrant of the new address by such means as are required by law.

(B) If State law permits the registrant to vote in the current election upon oral or written affirmation by the registrant of the new address at a polling place described in subparagraph (A)(i) or (A)(ii)(II), voting at the other locations described in subparagraph (A) need not be provided as options.

(3) If the registration records indicate that a registrant has moved from an address in the area covered by a polling place, the registrant shall, upon oral or written affirmation by the registrant before an election official at that polling place that the registrant continues to reside at the address previously made known to the registrar, be permitted to vote at that polling place.

(f) Change of voting address within a jurisdiction

In the case of a change of address, for voting purposes, of a registrant to another address within the same registrar's jurisdiction, the registrar shall correct the voting registration list accordingly, and the registrant's name may not be removed from the official list of eligible voters by reason of such a change of address except as provided in subsection (d).

(g) Conviction in Federal court

(1) On the conviction of a person of a felony in a district court of the United States, the United States attorney shall give written notice of the conviction to the chief State election official designated under section 20509 of this title of the State of the person's residence.

(2) A notice given pursuant to paragraph (1) shall include--

(A) the name of the offender;

(B) the offender's age and residence address;

(C) the date of entry of the judgment;

(D) a description of the offenses of which the offender was convicted; and

(E) the sentence imposed by the court.

(3) On request of the chief State election official of a State or other State official with responsibility for determining the effect that a conviction may have on an offender's qualification to vote, the United States attorney shall provide such additional information as the United States attorney may have concerning the offender and the offense of which the offender was convicted.

(4) If a conviction of which notice was given pursuant to paragraph (1) is overturned, the United States attorney shall give the official to whom the notice was given written notice of the vacation of the judgment.

(5) The chief State election official shall notify the voter registration officials of the local jurisdiction in which an offender resides of the information received under this subsection.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(h) Omitted

(i) Public disclosure of voter registration activities

(1) Each State shall maintain for at least 2 years and shall make available for public inspection and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters, except to the extent that such records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered.

(2) The records maintained pursuant to paragraph (1) shall include lists of the names and addresses of all persons to whom notices described in subsection (d)(2) are sent, and information concerning whether or not each such person has responded to the notice as of the date that inspection of the records is made.

(j) "Registrar's jurisdiction" defined

For the purposes of this section, the term "registrar's jurisdiction" means--

(1) an incorporated city, town, borough, or other form of municipality;

(2) if voter registration is maintained by a county, parish, or other unit of government that governs a larger geographic area than a municipality, the geographic area governed by that unit of government; or

(3) if voter registration is maintained on a consolidated basis for more than one municipality or other unit of government by an office that performs all of the functions of a voting registrar, the geographic area of the consolidated municipalities or other geographic units.

CREDIT(S)

(Pub.L. 103-31, § 8, May 20, 1993, 107 Stat. 82; Pub.L. 107-252, Title IX, § 903, Oct. 29, 2002, 116 Stat. 1728.)

Footnotes

1 Redesignated as 52 U.S.C.A. § 10301 et seq.

52 U.S.C.A. § 20507, 52 USCA § 20507
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20508
Formerly cited as 42 USCA § 1973gg-7

§ 20508. Federal coordination and regulations

Currentness

(a) In general

The Election Assistance Commission--

(1) in consultation with the chief election officers of the States, shall prescribe such regulations as are necessary to carry out paragraphs (2) and (3);

(2) in consultation with the chief election officers of the States, shall develop a mail voter registration application form for elections for Federal office;

(3) not later than June 30 of each odd-numbered year, shall submit to the Congress a report assessing the impact of this chapter on the administration of elections for Federal office during the preceding 2-year period and including recommendations for improvements in Federal and State procedures, forms, and other matters affected by this chapter; and

(4) shall provide information to the States with respect to the responsibilities of the States under this chapter.

(b) Contents of mail voter registration form

The mail voter registration form developed under subsection (a)(2)--

(1) may require only such identifying information (including the signature of the applicant) and other information (including data relating to previous registration by the applicant), as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process;

(2) shall include a statement that--

(A) specifies each eligibility requirement (including citizenship);

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(B) contains an attestation that the applicant meets each such requirement; and

(C) requires the signature of the applicant, under penalty of perjury;

(3) may not include any requirement for notarization or other formal authentication; and

(4) shall include, in print that is identical to that used in the attestation portion of the application--

(i) the information required in section 20507(a)(5)(A) and (B) of this title;

(ii) a statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes; and

(iii) a statement that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

CREDIT(S)

(Pub.L. 103-31, § 9, May 20, 1993, 107 Stat. 87; Pub.L. 107-252, Title VIII, § 802(b), Oct. 29, 2002, 116 Stat. 1726.)

52 U.S.C.A. § 20508, 52 USCA § 20508
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle II. Voting Assistance and Election Administration (Refs & Annos)
Chapter 205. National Voter Registration

52 U.S.C.A. § 20509
Formerly cited as 42 USCA § 1973gg-8

§ 20509. Designation of chief State election official

Currentness

Each State shall designate a State officer or employee as the chief State election official to be responsible for coordination of State responsibilities under this chapter.

CREDIT(S)

(Pub.L. 103-31, § 10, May 20, 1993, 107 Stat. 87.)

52 U.S.C.A. § 20509, 52 USCA § 20509
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20510
Formerly cited as 42 USCA § 1973gg-9

§ 20510. Civil enforcement and private right of action

Currentness

(a) Attorney General

The Attorney General may bring a civil action in an appropriate district court for such declaratory or injunctive relief as is necessary to carry out this chapter.

(b) Private right of action

(1) A person who is aggrieved by a violation of this chapter may provide written notice of the violation to the chief election official of the State involved.

(2) If the violation is not corrected within 90 days after receipt of a notice under paragraph (1), or within 20 days after receipt of the notice if the violation occurred within 120 days before the date of an election for Federal office, the aggrieved person may bring a civil action in an appropriate district court for declaratory or injunctive relief with respect to the violation.

(3) If the violation occurred within 30 days before the date of an election for Federal office, the aggrieved person need not provide notice to the chief election official of the State under paragraph (1) before bringing a civil action under paragraph (2).

(c) Attorney's fees

In a civil action under this section, the court may allow the prevailing party (other than the United States) reasonable attorney fees, including litigation expenses, and costs.

(d) Relation to other laws

(1) The rights and remedies established by this section are in addition to all other rights and remedies provided by law, and neither the rights and remedies established by this section nor any other provision of this chapter shall supersede, restrict, or limit the application of the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).[1]

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(2) Nothing in this chapter authorizes or requires conduct that is prohibited by the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).[1]

CREDIT(S)

(Pub.L. 103-31, § 11, May 20, 1993, 107 Stat. 88.)

Footnotes

1 Redesignated as 52 U.S.C.A. § 10301 et seq.

52 U.S.C.A. § 20510, 52 USCA § 20510
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle II. Voting Assistance and Election Administration (Refs & Annos)
Chapter 205. National Voter Registration

52 U.S.C.A. § 20511
Formerly cited as 42 USCA § 1973gg-10

§ 20511. Criminal penalties

Currentness

A person, including an election official, who in any election for Federal office--

(1) knowingly and willfully intimidates, threatens, or coerces, or attempts to intimidate, threaten, or coerce, any person for--

(A) registering to vote, or voting, or attempting to register or vote;

(B) urging or aiding any person to register to vote, to vote, or to attempt to register or vote; or

(C) exercising any right under this chapter; or

(2) knowingly and willfully deprives, defrauds, or attempts to deprive or defraud the residents of a State of a fair and impartially conducted election process, by--

(A) the procurement or submission of voter registration applications that are known by the person to be materially false, fictitious, or fraudulent under the laws of the State in which the election is held; or

(B) the procurement, casting, or tabulation of ballots that are known by the person to be materially false, fictitious, or fraudulent under the laws of the State in which the election is held,

shall be fined in accordance with Title 18 (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of Title 31), notwithstanding any other law), or imprisoned not more than 5 years, or both.

CREDIT(S)

(Pub.L. 103-31, § 12, May 20, 1993, 107 Stat. 88.)

52 U.S.C.A. § 20511, 52 USCA § 20511
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20701
Formerly cited as 42 USCA § 1974

§ 20701. Retention and preservation of records and papers by officers of elections; deposit with custodian; penalty for violation

Currentness

Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico are voted for, all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election, except that, when required by law, such records and papers may be delivered to another officer of election and except that, if a State or the Commonwealth of Puerto Rico designates a custodian to retain and preserve these records and papers at a specified place, then such records and papers may be deposited with such custodian, and the duty to retain and preserve any record or paper so deposited shall devolve upon such custodian. Any officer of election or custodian who willfully fails to comply with this section shall be fined not more than $1,000 or imprisoned not more than one year, or both.

CREDIT(S)

(Pub.L. 86-449, Title III, § 301, May 6, 1960, 74 Stat. 88.)

52 U.S.C.A. § 20701, 52 USCA § 20701
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20702
Formerly cited as 42 USCA § 1974a

§ 20702. Theft, destruction, concealment, mutilation, or alteration of records or papers; penalties

Currentness

Any person, whether or not an officer of election or custodian, who willfully steals, destroys, conceals, mutilates, or alters any record or paper required by section 20701 of this title to be retained and preserved shall be fined not more than $1,000 or imprisoned not more than one year, or both.

CREDIT(S)

(Pub.L. 86-449, Title III, § 302, May 6, 1960, 74 Stat. 88.)

52 U.S.C.A. § 20702, 52 USCA § 20702
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20703
Formerly cited as 42 USCA § 1974b

§ 20703. Demand for records or papers by Attorney General or representative; statement of basis and purpose

Currentness

Any record or paper required by section 20701 of this title to be retained and preserved shall, upon demand in writing by the Attorney General or his representative directed to the person having custody, possession, or control of such record or paper, be made available for inspection, reproduction, and copying at the principal office of such custodian by the Attorney General or his representative. This demand shall contain a statement of the basis and the purpose therefor.

CREDIT(S)

(Pub.L. 86-449, Title III, § 303, May 6, 1960, 74 Stat. 88.)

52 U.S.C.A. § 20703, 52 USCA § 20703
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle II. Voting Assistance and Election Administration (Refs & Annos)
Chapter 207. Federal Election Records

52 U.S.C.A. § 20704
Formerly cited as 42 USCA § 1974c

§ 20704. Disclosure of records or papers

Currentness

Unless otherwise ordered by a court of the United States, neither the Attorney General nor any employee of the Department of Justice, nor any other representative of the Attorney General, shall disclose any record or paper produced pursuant to this chapter, or any reproduction or copy, except to Congress and any committee thereof, governmental agencies, and in the presentation of any case or proceeding before any court or grand jury.

CREDIT(S)

(Pub.L. 86-449, Title III, § 304, May 6, 1960, 74 Stat. 88.)

52 U.S.C.A. § 20704, 52 USCA § 20704
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20705
Formerly cited as 42 USCA § 1974d

§ 20705. Jurisdiction to compel production of records or papers

Currentness

The United States district court for the district in which a demand is made pursuant to section 20703 of this title, or in which a record or paper so demanded is located, shall have jurisdiction by appropriate process to compel the production of such record or paper.

CREDIT(S)

(Pub.L. 86-449, Title III, § 305, May 6, 1960, 74 Stat. 88.)

52 U.S.C.A. § 20705, 52 USCA § 20705
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20706
Formerly cited as 42 USCA § 1974e

§ 20706. “Officer of election” defined

Currentness

As used in this chapter, the term “officer of election” means any person who, under color of any Federal, State, Commonwealth, or local law, statute, ordinance, regulation, authority, custom, or usage, performs or is authorized to perform any function, duty, or task in connection with any application, registration, payment of poll tax, or other act requisite to voting in any general, special, or primary election at which votes are cast for candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico.

CREDIT(S)

(Pub.L. 86-449, Title III, § 306, May 6, 1960, 74 Stat. 88.)

52 U.S.C.A. § 20706, 52 USCA § 20706
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20901
Formerly cited as 42 USCA § 15301

§ 20901. Payments to States for activities to improve administration of elections

Currentness

(a) In general

Not later than 45 days after October 29, 2002, the Administrator of General Services (in this subchapter referred to as the "Administrator") shall establish a program under which the Administrator shall make a payment to each State in which the chief executive officer of the State, or designee, in consultation and coordination with the chief State election official, notifies the Administrator not later than 6 months after October 29, 2002, that the State intends to use the payment in accordance with this section.

(b) Use of payment

(1) In general

A State shall use the funds provided under a payment made under this section to carry out one or more of the following activities:

(A) Complying with the requirements under subchapter III.

(B) Improving the administration of elections for Federal office.

(C) Educating voters concerning voting procedures, voting rights, and voting technology.

(D) Training election officials, poll workers, and election volunteers.

(E) Developing the State plan for requirements payments to be submitted under subpart 1 of part D of subchapter II.

(F) Improving, acquiring, leasing, modifying, or replacing voting systems and technology and methods for casting and counting votes.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(G) Improving the accessibility and quantity of polling places, including providing physical access for individuals with disabilities, providing nonvisual access for individuals with visual impairments, and providing assistance to Native Americans, Alaska Native citizens, and to individuals with limited proficiency in the English language.

(H) Establishing toll-free telephone hotlines that voters may use to report possible voting fraud and voting rights violations, to obtain general election information, and to access detailed automated information on their own voter registration status, specific polling place locations, and other relevant information.

(2) Limitation

A State may not use the funds provided under a payment made under this section--

(A) to pay costs associated with any litigation, except to the extent that such costs otherwise constitute permitted uses of a payment under this section; or

(B) for the payment of any judgment.

(c) Use of funds to be consistent with other laws and requirements

In order to receive a payment under the program under this section, the State shall provide the Administrator with certifications that--

(1) the State will use the funds provided under the payment in a manner that is consistent with each of the laws described in section 21145 of this title, as such laws relate to the provisions of this chapter; and

(2) the proposed uses of the funds are not inconsistent with the requirements of subchapter III.

(d) Amount of payment

(1) In general

Subject to section 20903(b) of this title, the amount of payment made to a State under this section shall be the minimum payment amount described in paragraph (2) plus the voting age population proportion amount described in paragraph (3).

(2) Minimum payment amount

The minimum payment amount described in this paragraph is--

(A) in the case of any of the several States or the District of Columbia, one-half of 1 percent of the aggregate amount made available for payments under this section; and

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(B) in the case of the Commonwealth of Puerto Rico, Guam, American Samoa, or the United States Virgin Islands, one-tenth of 1 percent of such aggregate amount.

(3) Voting age population proportion amount

The voting age population proportion amount described in this paragraph is the product of--

(A) the aggregate amount made available for payments under this section minus the total of all of the minimum payment amounts determined under paragraph (2); and

(B) the voting age population proportion for the State (as defined in paragraph (4)).

(4) Voting age population proportion defined

The term "voting age population proportion" means, with respect to a State, the amount equal to the quotient of--

(A) the voting age population of the State (as reported in the most recent decennial census); and

(B) the total voting age population of all States (as reported in the most recent decennial census).

CREDIT(S)

(Pub.L. 107-252, Title I, § 101, Oct. 29, 2002, 116 Stat. 1668.)

52 U.S.C.A. § 20901, 52 USCA § 20901
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20902
Formerly cited as 42 USCA § 15302

§ 20902. Replacement of punch card or lever voting machines

Effective: September 1, 2014
Currentness

(a) Establishment of program

(1) In general

Not later than 45 days after October 29, 2002, the Administrator shall establish a program under which the Administrator shall make a payment to each State eligible under subsection (b) in which a precinct within that State used a punch card voting system or a lever voting system to administer the regularly scheduled general election for Federal office held in November 2000 (in this section referred to as a "qualifying precinct").

(2) Use of funds

A State shall use the funds provided under a payment under this section (either directly or as reimbursement, including as reimbursement for costs incurred on or after January 1, 2001, under multiyear contracts) to replace punch card voting systems or lever voting systems (as the case may be) in qualifying precincts within that State with a voting system (by purchase, lease, or such other arrangement as may be appropriate) that--

(A) does not use punch cards or levers;

(B) is not inconsistent with the requirements of the laws described in section 21145 of this title; and

(C) meets the requirements of section 21081 of this title.

(3) Deadline

(A) In general

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

Except as provided in subparagraph (B), a State receiving a payment under the program under this section shall ensure that all of the punch card voting systems or lever voting systems in the qualifying precincts within that State have been replaced in time for the regularly scheduled general election for Federal office to be held in November 2004.

(B) Waiver

If a State certifies to the Administrator not later than January 1, 2004, that the State will not meet the deadline described in subparagraph (A) for good cause and includes in the certification the reasons for the failure to meet such deadline, the State shall ensure that all of the punch card voting systems or lever voting systems in the qualifying precincts within that State will be replaced in time for the first election for Federal office held after November 1, 2010.

(b) Eligibility

(1) In general

A State is eligible to receive a payment under the program under this section if it submits to the Administrator a notice not later than the date that is 6 months after October 29, 2002 (in such form as the Administrator may require) that contains--

(A) certifications that the State will use the payment (either directly or as reimbursement, including as reimbursement for costs incurred on or after January 1, 2001, under multiyear contracts) to replace punch card voting systems or lever voting systems (as the case may be) in the qualifying precincts within the State by the deadline described in subsection (a)(3);

(B) certifications that the State will continue to comply with the laws described in section 21145 of this title;

(C) certifications that the replacement voting systems will meet the requirements of section 21081 of this title; and

(D) such other information and certifications as the Administrator may require which are necessary for the administration of the program.

(2) Compliance of States that require changes to State law

In the case of a State that requires State legislation to carry out an activity covered by any certification submitted under this subsection, the State shall be permitted to make the certification notwithstanding that the legislation has not been enacted at the time the certification is submitted and such State shall submit an additional certification once such legislation is enacted.

(c) Amount of payment

(1) In general

Subject to paragraph (2) and section 20903(b) of this title, the amount of payment made to a State under the program under this section shall be equal to the product of--

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(A) the number of the qualifying precincts within the State; and

(B) $4,000.

(2) Reduction

If the amount of funds appropriated pursuant to the authority of section 20904(a)(2) of this title is insufficient to ensure that each State receives the amount of payment calculated under paragraph (1), the Administrator shall reduce the amount specified in paragraph (1)(B) to ensure that the entire amount appropriated under such section is distributed to the States.

(d) Repayment of funds for failure to meet deadlines

(1) In general

If a State receiving funds under the program under this section fails to meet the deadline applicable to the State under subsection (a)(3), the State shall pay to the Administrator an amount equal to the noncompliant precinct percentage of the amount of the funds provided to the State under the program.

(2) Noncompliant precinct percentage defined

In this subsection, the term "noncompliant precinct percentage" means, with respect to a State, the amount (expressed as a percentage) equal to the quotient of--

(A) the number of qualifying precincts within the State for which the State failed to meet the applicable deadline; and

(B) the total number of qualifying precincts in the State.

(e) Punch card voting system defined

For purposes of this section, a "punch card voting system" includes any of the following voting systems:

(1) C.E.S.

(2) Datavote.

(3) PBC Counter.

(4) Pollstar.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(5) Punch Card.

(6) Vote Recorder.

(7) Votomatic.

CREDIT(S)

(Pub.L. 107-252, Title I, § 102, Oct. 29, 2002, 116 Stat. 1670; Pub.L. 110-28, Title VI, § 6301(a), May 25, 2007, 121 Stat. 171; Pub.L. 111-8, Div. D, Title VI, § 625(a), Mar. 11, 2009, 123 Stat. 678.)

52 U.S.C.A. § 20902, 52 USCA § 20902
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20903
Formerly cited as 42 USCA § 15303

§ 20903. Guaranteed minimum payment amount

Currentness

(a) In general

In addition to any other payments made under this subchapter, the Administrator shall make a payment to each State to which a payment is made under either section 20901 or 20902 of this title and with respect to which the aggregate amount paid under such sections is less than $5,000,000 in an amount equal to the difference between the aggregate amount paid to the State under sections 20901 and 20902 of this title and $5,000,000. In the case of the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands, the previous sentence shall be applied as if each reference to "$5,000,000" were a reference to "$1,000,000".

(b) Pro rata reductions

The Administrator shall make such pro rata reductions to the amounts described in sections 20901(d) and 20902(c) of this title as are necessary to comply with the requirements of subsection (a).

CREDIT(S)

(Pub.L. 107-252, Title I, § 103, Oct. 29, 2002, 116 Stat. 1672.)

52 U.S.C.A. § 20903, 52 USCA § 20903
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20904
Formerly cited as 42 USCA § 15304

§ 20904. Authorization of appropriations

Currentness

(a) In general

There are authorized to be appropriated for payments under this subchapter $650,000,000, of which--

(1) 50 percent shall be for payments under section 20901 of this title; and

(2) 50 percent shall be for payments under section 20902 of this title.

(b) Continuing availability of funds after appropriation

Any payment made to a State under this subchapter shall be available to the State without fiscal year limitation (subject to subsection (c)(2)(B)).

(c) Use of returned funds and funds remaining unexpended for requirements payments

(1) In general

The amounts described in paragraph (2) shall be transferred to the Election Assistance Commission (established under subchapter II) and used by the Commission to make requirements payments under subpart 1 of part D of subchapter II.

(2) Amounts described

The amounts referred to in this paragraph are as follows:

(A) Any amounts paid to the Administrator by a State under section 20902(d)(1) of this title.

(B) Any amounts appropriated for payments under this subchapter which remain unobligated as of September 1, 2003.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(d) Deposit of amounts in State election fund

When a State has established an election fund described in section 21004(b) of this title, the State shall ensure that any funds provided to the State under this subchapter are deposited and maintained in such fund.

(e) Authorization of appropriations for Administrator

In addition to the amounts authorized under subsection (a), there are authorized to be appropriated to the Administrator such sums as may be necessary to administer the programs under this subchapter.

CREDIT(S)

(Pub.L. 107-252, Title I, § 104, Oct. 29, 2002, 116 Stat. 1672.)

52 U.S.C.A. § 20904, 52 USCA § 20904
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle II. Voting Assistance and Election Administration (Refs & Annos)
Chapter 209. Election Administration Improvement
Subchapter I. Payments to States for Election Administration Improvements and Replacement of Punch Card and Lever Voting Machines

52 U.S.C.A. § 20905
Formerly cited as 42 USCA § 15305

§ 20905. Administration of programs

Currentness

In administering the programs under this subchapter, the Administrator shall take such actions as the Administrator considers appropriate to expedite the payment of funds to States.

CREDIT(S)

(Pub.L. 107-252, Title I, § 105, Oct. 29, 2002, 116 Stat. 1673.)

52 U.S.C.A. § 20905, 52 USCA § 20905
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20906
Formerly cited as 42 USCA § 15306

§ 20906. Effective date

Currentness

The Administrator shall implement the programs established under this subchapter in a manner that ensures that the Administrator is able to make payments under the program not later than the expiration of the 45-day period which begins on October 29, 2002.

CREDIT(S)

(Pub.L. 107-252, Title I, § 106, Oct. 29, 2002, 116 Stat. 1673.)

52 U.S.C.A. § 20906, 52 USCA § 20906
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 21111
Formerly cited as 42 USCA § 15511

§ 21111. Actions by the Attorney General for declaratory and injunctive relief

Currentness

The Attorney General may bring a civil action against any State or jurisdiction in an appropriate United States District Court for such declaratory and injunctive relief (including a temporary restraining order, a permanent or temporary injunction, or other order) as may be necessary to carry out the uniform and nondiscriminatory election technology and administration requirements under sections 21081, 21082, and 21083 of this title.

CREDIT(S)

(Pub.L. 107-252, Title IV, § 401, Oct. 29, 2002, 116 Stat. 1715.)

52 U.S.C.A. § 21111, 52 USCA § 21111
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle II. Voting Assistance and Election Administration (Refs & Annos)
Chapter 209. Election Administration Improvement
Subchapter IV. Enforcement

52 U.S.C.A. § 21112
Formerly cited as 42 USCA § 15512

§ 21112. Establishment of State-based administrative complaint procedures to remedy grievances

Currentness

(a) Establishment of State-based administrative complaint procedures to remedy grievances

(1) Establishment of procedures as condition of receiving funds

If a State receives any payment under a program under this chapter, the State shall be required to establish and maintain State-based administrative complaint procedures which meet the requirements of paragraph (2).

(2) Requirements for procedures

The requirements of this paragraph are as follows:

(A) The procedures shall be uniform and nondiscriminatory.

(B) Under the procedures, any person who believes that there is a violation of any provision of subchapter III (including a violation which has occurred, is occurring, or is about to occur) may file a complaint.

(C) Any complaint filed under the procedures shall be in writing and notarized, and signed and sworn by the person filing the complaint.

(D) The State may consolidate complaints filed under subparagraph (B).

(E) At the request of the complainant, there shall be a hearing on the record.

(F) If, under the procedures, the State determines that there is a violation of any provision of subchapter III, the State shall provide the appropriate remedy.

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(G) If, under the procedures, the State determines that there is no violation, the State shall dismiss the complaint and publish the results of the procedures.

(H) The State shall make a final determination with respect to a complaint prior to the expiration of the 90-day period which begins on the date the complaint is filed, unless the complainant consents to a longer period for making such a determination.

(I) If the State fails to meet the deadline applicable under subparagraph (H), the complaint shall be resolved within 60 days under alternative dispute resolution procedures established for purposes of this section. The record and other materials from any proceedings conducted under the complaint procedures established under this section shall be made available for use under the alternative dispute resolution procedures.

(b) Requiring Attorney General approval of compliance plan for States not receiving funds

(1) In general

Not later than January 1, 2004, each nonparticipating State shall elect--

(A) to certify to the Commission that the State meets the requirements of subsection (a) in the same manner as a State receiving a payment under this chapter; or

(B) to submit a compliance plan to the Attorney General which provides detailed information on the steps the State will take to ensure that it meets the requirements of subchapter III.

(2) States without approved plan deemed out of compliance

A nonparticipating State (other than a State which makes the election described in paragraph (1)(A)) shall be deemed to not meet the requirements of subchapter III if the Attorney General has not approved a compliance plan submitted by the State under this subsection.

(3) Nonparticipating State defined

In this section, a "nonparticipating State" is a State which, during 2003, does not notify any office which is responsible for making payments to States under any program under this chapter of its intent to participate in, and receive funds under, the program.

CREDIT(S)

(Pub.L. 107-252, Title IV, § 402, Oct. 29, 2002, 116 Stat. 1715.)

52 U.S.C.A. § 21112, 52 USCA § 21112
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 21121
Formerly cited as 42 USCA § 15521

§ 21121. Establishment of Program

Currentness

(a) In general

Not later than 1 year after the appointment of its members, the Election Assistance Commission shall develop a program to be known as the "Help America Vote College Program" (hereafter in this subchapter referred to as the "Program").

(b) Purposes of Program

The purpose of the Program shall be--

(1) to encourage students enrolled at institutions of higher education (including community colleges) to assist State and local governments in the administration of elections by serving as nonpartisan poll workers or assistants; and

(2) to encourage State and local governments to use the services of the students participating in the Program.

CREDIT(S)

(Pub.L. 107-252, Title V, § 501, Oct. 29, 2002, 116 Stat. 1717.)

52 U.S.C.A. § 21121, 52 USCA § 21121
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 21122
Formerly cited as 42 USCA § 15522

§ 21122. Activities under Program

Currentness

(a) In general

In carrying out the Program, the Commission (in consultation with the chief election official of each State) shall develop materials, sponsor seminars and workshops, engage in advertising targeted at students, make grants, and take such other actions as it considers appropriate to meet the purposes described in section 21121(b) of this title.

(b) Requirements for grant recipients

In making grants under the Program, the Commission shall ensure that the funds provided are spent for projects and activities which are carried out without partisan bias or without promoting any particular point of view regarding any issue, and that each recipient is governed in a balanced manner which does not reflect any partisan bias.

(c) Coordination with institutions of higher education

The Commission shall encourage institutions of higher education (including community colleges) to participate in the Program, and shall make all necessary materials and other assistance (including materials and assistance to enable the institution to hold workshops and poll worker training sessions) available without charge to any institution which desires to participate in the Program.

CREDIT(S)

(Pub.L. 107-252, Title V, § 502, Oct. 29, 2002, 116 Stat. 1717.)

52 U.S.C.A. § 21122, 52 USCA § 21122
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 21123
Formerly cited as 42 USCA § 15523

§ 21123. Authorization of appropriations

Currentness

In addition to any funds authorized to be appropriated to the Commission under section 20930 of this title, there are authorized to be appropriated to carry out this subchapter--

(1) $5,000,000 for fiscal year 2003; and

(2) such sums as may be necessary for each succeeding fiscal year.

CREDIT(S)

(Pub.L. 107-252, Title V, § 503, Oct. 29, 2002, 116 Stat. 1717.)

52 U.S.C.A. § 21123, 52 USCA § 21123
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 21131
Formerly cited as 42 USCA § 15531

§ 21131. Transfer of functions of Office of Election Administration of Federal Election Commission

Currentness

There are transferred to the Election Assistance Commission established under section 20921 of this title all functions which the Office of Election Administration, established within the Federal Election Commission, exercised before October 29, 2002.

CREDIT(S)

(Pub.L. 107-252, Title VIII, § 801(a), Oct. 29, 2002, 116 Stat. 1725.)

52 U.S.C.A. § 21131, 52 USCA § 21131
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 21132
Formerly cited as 42 USCA § 15532

§ 21132. Transfer of functions

Currentness

There are transferred to the Election Assistance Commission established under section 20921 of this title all functions which the Federal Election Commission exercised under section 20508(a) of this title before October 29, 2002.

CREDIT(S)

(Pub.L. 107-252, Title VIII, § 802(a), Oct. 29, 2002, 116 Stat. 1726.)

52 U.S.C.A. § 21132, 52 USCA § 21132
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 21133
Formerly cited as 42 USCA § 15533

§ 21133. Transfer of property, records, and personnel

Currentness

(a) Property and records

The contracts, liabilities, records, property, and other assets and interests of, or made available in connection with, the offices and functions of the Federal Election Commission which are transferred by this subchapter are transferred to the Election Assistance Commission for appropriate allocation.

(b) Personnel

(1) In general

The personnel employed in connection with the offices and functions of the Federal Election Commission which are transferred by this subchapter are transferred to the Election Assistance Commission.

(2) Effect

Any full-time or part-time personnel employed in permanent positions shall not be separated or reduced in grade or compensation because of the transfer under this subsection during the 1-year period beginning on October 29, 2002.

CREDIT(S)

(Pub.L. 107-252, Title VIII, § 803, Oct. 29, 2002, 116 Stat. 1726.)

52 U.S.C.A. § 21133, 52 USCA § 21133
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 21134
Formerly cited as 42 USCA § 15534

§ 21134. Effective date; transition

Currentness

(a) Effective date

This subchapter and the amendments made by this subchapter shall take effect upon the appointment of all members of the Election Assistance Commission under section 20923 of this title.

(b) Transition

With the consent of the entity involved, the Election Assistance Commission is authorized to utilize the services of such officers, employees, and other personnel of the entities from which functions have been transferred to the Election Assistance Commission under this subchapter or the amendments made by this subchapter for such period of time as may reasonably be needed to facilitate the orderly transfer of such functions.

(c) No effect on authorities of Office of Election Administration prior to appointment of members of Commission

During the period which begins on October 29, 2002, and ends on the effective date described in subsection (a), the Office of Election Administration of the Federal Election Commission shall continue to have the authority to carry out any of the functions (including the development of voluntary standards for voting systems and procedures for the certification of voting systems) which it has the authority to carry out as of October 29, 2002.

CREDIT(S)

(Pub.L. 107-252, Title VIII, § 804, Oct. 29, 2002, 116 Stat. 1726.)

52 U.S.C.A. § 21134, 52 USCA § 21134
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle II. Voting Assistance and Election Administration (Refs & Annos)
Chapter 209. Election Administration Improvement
Subchapter VII. Miscellaneous Provisions

52 U.S.C.A. § 21141
Formerly cited as 42 USCA § 15541

§ 21141. “State” defined

Currentness

In this chapter, the term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.

CREDIT(S)

(Pub.L. 107-252, Title IX, § 901, Oct. 29, 2002, 116 Stat. 1727.)

52 U.S.C.A. § 21141, 52 USCA § 21141
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 21142
Formerly cited as 42 USCA § 15542

§ 21142. Audits and repayment of funds

Effective: November 26, 2014
Currentness

(a) Recordkeeping requirement

Each recipient of a grant or other payment made under this chapter shall keep such records with respect to the payment as are consistent with sound accounting principles, including records which fully disclose the amount and disposition by such recipient of funds, the total cost of the project or undertaking for which such funds are used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) Audits and examinations

(1) Audits and examinations

Except as provided in paragraph (4), each office making a grant or other payment under this chapter, or any duly authorized representative of such office, may audit or examine any recipient of the grant or payment and shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient which in the opinion of the entity may be related or pertinent to the grant or payment.

(2) Recipients of assistance subject to provisions of section

The provisions of this section shall apply to all recipients of grants or other payments under this chapter, whether by direct grant, cooperative agreement, or contract under this chapter or by subgrant or subcontract from primary grantees or contractors under this chapter.

(3) Special rule for payments by General Services Administration

With respect to any grant or payment made under this chapter by the Administrator of General Services, the Election Assistance Commission shall be deemed to be the office making the grant or payment for purposes of this section.

(4) Special rule

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

In the case of grants or payments made under section 21001 of this title, audits and examinations conducted under paragraph (1) shall be performed on a regular basis (as determined by the Commission).

(5) Special rules for audits by the Commission

In addition to the audits described in paragraph (1), the Election Assistance Commission may conduct a special audit or special examination of a recipient described in paragraph (1) upon a vote of the Commission.

(c) Recoupment of funds

If the Comptroller General determines as a result of an audit conducted under subsection (b) prior to November 26, 2014, that--

(1) a recipient of funds under this chapter is not in compliance with each of the requirements of the program under which the funds are provided; or

(2) an excess payment has been made to the recipient under the program,

the recipient shall pay to the office which made the grant or payment involved a portion of the funds provided which reflects the proportion of the requirements with which the recipient is not in compliance, or the extent to which the payment is in excess, under the program involved.

CREDIT(S)

(Pub.L. 107-252, Title IX, § 902, Oct. 29, 2002, 116 Stat. 1727; Pub.L. 113-188, Title IX, § 901(c), Nov. 26, 2014, 128 Stat. 2020.)

52 U.S.C.A. § 21142, 52 USCA § 21142
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 21143
Formerly cited as 42 USCA § 15543

§ 21143. Review and report on adequacy of existing electoral fraud statutes and penalties

Currentness

(a) Review

The Attorney General shall conduct a review of existing criminal statutes concerning election offenses to determine--

(1) whether additional statutory offenses are needed to secure the use of the Internet for election purposes; and

(2) whether existing penalties provide adequate punishment and deterrence with respect to such offenses.

(b) Report

The Attorney General shall submit a report to the Committees on the Judiciary of the Senate and House of Representatives, the Committee on Rules and Administration of the Senate, and the Committee on House Administration of the House of Representatives on the review conducted under subsection (a) together with such recommendations for legislative and administrative action as the Attorney General determines appropriate.

CREDIT(S)

(Pub.L. 107-252, Title IX, § 904, Oct. 29, 2002, 116 Stat. 1729.)

52 U.S.C.A. § 21143, 52 USCA § 21143
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle II. Voting Assistance and Election Administration (Refs & Annos)
Chapter 209. Election Administration Improvement
Subchapter VII. Miscellaneous Provisions

52 U.S.C.A. § 21144
Formerly cited as 42 USCA § 15544

§ 21144. Other criminal penalties

Currentness

(a) Conspiracy to deprive voters of a fair election

Any individual who knowingly and willfully gives false information in registering or voting in violation of section 10307(c) of this title, or conspires with another to violate such section, shall be fined or imprisoned, or both, in accordance with such section.

(b) False information in registering and voting

Any individual who knowingly commits fraud or knowingly makes a false statement with respect to the naturalization, citizenry, or alien registry of such individual in violation of section 1015 of Title 18 shall be fined or imprisoned, or both, in accordance with such section.

CREDIT(S)

(Pub.L. 107-252, Title IX, § 905, Oct. 29, 2002, 116 Stat. 1729.)

52 U.S.C.A. § 21144, 52 USCA § 21144
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 21145
Formerly cited as 42 USCA § 15545

§ 21145. No effect on other laws

Effective: September 1, 2014
Currentness

(a) In general

Except as specifically provided in section 21083(b) of this title with regard to the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.),[1] nothing in this chapter may be construed to authorize or require conduct prohibited under any of the following laws, or to supersede, restrict, or limit the application of such laws:

(1) The Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).[2]

(2) The Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee et seq.).[3]

(3) The Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.).[4]

(4) The National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.).[1]

(5) The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

(6) The Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.).

(b) No effect on preclearance or other requirements under Voting Rights Act

The approval by the Administrator or the Commission of a payment or grant application under subchapter I or subchapter II, or any other action taken by the Commission or a State under such subchapter, shall not be considered to have any effect on requirements for preclearance under section 5 of the Voting Rights Act of 1965 (42 U.S.C. 1973c)[5] or any other requirements of such Act.

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

CREDIT(S)

(Pub.L. 107-252, Title IX, § 906, Oct. 29, 2002, 116 Stat. 1729.)

Footnotes

1 Redesignated as 52 U.S.C.A. § 20501 et seq.

2 Redesignated as 52 U.S.C.A. § 10301 et seq.

3 Redesignated as 52 U.S.C.A. § 20101 et seq.

4 Redesignated as 52 U.S.C.A. § 20301 et seq.

5 Redesignated as 52 U.S.C.A. § 10304.

52 U.S.C.A. § 21145, 52 USCA § 21145
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle II. Voting Assistance and Election Administration (Refs & Annos)
Chapter 209. Election Administration Improvement
Subchapter II. Commission
Part A. Establishment and General Organization
Subpart 1. Election Assistance Commission

52 U.S.C.A. § 20921
Formerly cited as 42 USCA § 15321

§ 20921. Establishment

Currentness

There is hereby established as an independent entity the Election Assistance Commission (hereafter in this subchapter referred to as the "Commission"), consisting of the members appointed under this subpart. Additionally, there is established the Election Assistance Commission Standards Board (including the Executive Board of such Board) and the Election Assistance Commission Board of Advisors under subpart 2 of this part (hereafter in this subpart referred to as the "Standards Board" and the "Board of Advisors", respectively) and the Technical Guidelines Development Committee under subpart 3 of this part.

CREDIT(S)

(Pub.L. 107-252, Title II, § 201, Oct. 29, 2002, 116 Stat. 1673.)

52 U.S.C.A. § 20921, 52 USCA § 20921
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20922
Formerly cited as 42 USCA § 15322

§ 20922. Duties

Currentness

The Commission shall serve as a national clearinghouse and resource for the compilation of information and review of procedures with respect to the administration of Federal elections by--

(1) carrying out the duties described in subpart 3 of this part (relating to the adoption of voluntary voting system guidelines), including the maintenance of a clearinghouse of information on the experiences of State and local governments in implementing the guidelines and in operating voting systems in general;

(2) carrying out the duties described in part B of this subchapter (relating to the testing, certification, decertification, and recertification of voting system hardware and software);

(3) carrying out the duties described in part C of this subchapter (relating to conducting studies and carrying out other activities to promote the effective administration of Federal elections);

(4) carrying out the duties described in part D of this subchapter (relating to election assistance), and providing information and training on the management of the payments and grants provided under such part;

(5) carrying out the duties described in part B of subchapter III (relating to the adoption of voluntary guidance); and

(6) developing and carrying out the Help America Vote College Program under subchapter V.

CREDIT(S)

(Pub.L. 107-252, Title II, § 202, Oct. 29, 2002, 116 Stat. 1673.)

52 U.S.C.A. § 20922, 52 USCA § 20922
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20923
Formerly cited as 42 USCA § 15323

§ 20923. Membership and appointment

Currentness

(a) Membership

(1) In general

The Commission shall have four members appointed by the President, by and with the advice and consent of the Senate.

(2) Recommendations

Before the initial appointment of the members of the Commission and before the appointment of any individual to fill a vacancy on the Commission, the Majority Leader of the Senate, the Speaker of the House of Representatives, the Minority Leader of the Senate, and the Minority Leader of the House of Representatives shall each submit to the President a candidate recommendation with respect to each vacancy on the Commission affiliated with the political party of the Member of Congress involved.

(3) Qualifications

Each member of the Commission shall have experience with or expertise in election administration or the study of elections.

(4) Date of appointment

The appointments of the members of the Commission shall be made not later than 120 days after October 29, 2002.

(b) Term of service

(1) In general

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

Except as provided in paragraphs (2) and (3), members shall serve for a term of 4 years and may be reappointed for not more than one additional term.

(2) Terms of initial appointees

As designated by the President at the time of nomination, of the members first appointed--

(A) two of the members (not more than one of whom may be affiliated with the same political party) shall be appointed for a term of 2 years; and

(B) two of the members (not more than one of whom may be affiliated with the same political party) shall be appointed for a term of 4 years.

(3) Vacancies

(A) In general

A vacancy on the Commission shall be filled in the manner in which the original appointment was made and shall be subject to any conditions which applied with respect to the original appointment.

(B) Expired terms

A member of the Commission shall serve on the Commission after the expiration of the member's term until the successor of such member has taken office as a member of the Commission.

(C) Unexpired terms

An individual appointed to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(c) Chair and vice chair

(1) In general

The Commission shall select a chair and vice chair from among its members for a term of 1 year, except that the chair and vice chair may not be affiliated with the same political party.

(2) Number of terms

A member of the Commission may serve as the chairperson and vice chairperson for only 1 term each during the term of office to which such member is appointed.

(d) Compensation

(1) In general

Each member of the Commission shall be compensated at the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of Title 5.

(2) Other activities

No member appointed to the Commission under subsection (a) may engage in any other business, vocation, or employment while serving as a member of the Commission and shall terminate or liquidate such business, vocation, or employment before sitting as a member of the Commission.

CREDIT(S)

(Pub.L. 107-252, Title II, § 203, Oct. 29, 2002, 116 Stat. 1674.)

52 U.S.C.A. § 20923, 52 USCA § 20923
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20924
Formerly cited as 42 USCA § 15324

§ 20924. Staff

Currentness

(a) Executive Director, General Counsel, and other staff

(1) Executive Director

The Commission shall have an Executive Director, who shall be paid at a rate not to exceed the rate of basic pay for level V of the Executive Schedule under section 5316 of Title 5.

(2) Term of service for Executive Director

The Executive Director shall serve for a term of 4 years. An Executive Director may serve for a longer period only if reappointed for an additional term or terms by a vote of the Commission.

(3) Procedure for appointment

(A) In general

When a vacancy exists in the position of the Executive Director, the Standards Board and the Board of Advisors shall each appoint a search committee to recommend at least three nominees for the position.

(B) Requiring consideration of nominees

Except as provided in subparagraph (C), the Commission shall consider the nominees recommended by the Standards Board and the Board of Advisors in appointing the Executive Director.

(C) Interim service of General Counsel

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

If a vacancy exists in the position of the Executive Director, the General Counsel of the Commission shall serve as the acting Executive Director until the Commission appoints a new Executive Director in accordance with this paragraph.

(D) Special rules for interim Executive Director

(i) Convening of search committees

The Standards Board and the Board of Advisors shall each appoint a search committee and recommend nominees for the position of Executive Director in accordance with subparagraph (A) as soon as practicable after the appointment of their members.

(ii) Interim initial appointment

Notwithstanding subparagraph (B), the Commission may appoint an individual to serve as an interim Executive Director prior to the recommendation of nominees for the position by the Standards Board or the Board of Advisors, except that such individual's term of service may not exceed 6 months. Nothing in the previous sentence may be construed to prohibit the individual serving as the interim Executive Director from serving any additional term.

(4) General Counsel

The Commission shall have a General Counsel, who shall be appointed by the Commission and who shall serve under the Executive Director. The General Counsel shall serve for a term of 4 years, and may serve for a longer period only if reappointed for an additional term or terms by a vote of the Commission.

(5) Other staff

Subject to rules prescribed by the Commission, the Executive Director may appoint and fix the pay of such additional personnel as the Executive Director considers appropriate.

(6) Applicability of certain civil service laws

The Executive Director, General Counsel, and staff of the Commission may be appointed without regard to the provisions of Title 5 governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate of basic pay for level V of the Executive Schedule under section 5316 of that title.

(b) Experts and consultants

Subject to rules prescribed by the Commission, the Executive Director may procure temporary and intermittent services under section 3109(b) of Title 5 by a vote of the Commission.

(c) Staff of Federal agencies

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

Upon request of the Commission, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this chapter.

(d) Arranging for assistance for Board of Advisors and Standards Board

At the request of the Board of Advisors or the Standards Board, the Commission may enter into such arrangements as the Commission considers appropriate to make personnel available to assist the Boards with carrying out their duties under this subchapter (including contracts with private individuals for providing temporary personnel services or the temporary detailing of personnel of the Commission).

(e) Consultation with Board of Advisors and Standards Board on certain matters

In preparing the program goals, long-term plans, mission statements, and related matters for the Commission, the Executive Director and staff of the Commission shall consult with the Board of Advisors and the Standards Board.

CREDIT(S)

(Pub.L. 107-252, Title II, § 204, Oct. 29, 2002, 116 Stat. 1675.)

52 U.S.C.A. § 20924, 52 USCA § 20924
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20925
Formerly cited as 42 USCA § 15325

§ 20925. Powers

Currentness

(a) Hearings and sessions

The Commission may hold such hearings for the purpose of carrying out this chapter, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this chapter. The Commission may administer oaths and affirmations to witnesses appearing before the Commission.

(b) Information from Federal agencies

The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out this chapter. Upon request of the Commission, the head of such department or agency shall furnish such information to the Commission.

(c) Postal services

The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(d) Administrative support services

Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services that are necessary to enable the Commission to carry out its duties under this chapter.

(e) Contracts

The Commission may contract with and compensate persons and Federal agencies for supplies and services without regard to section 6101 of Title 41.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

CREDIT(S)

(Pub.L. 107-252, Title II, § 205, Oct. 29, 2002, 116 Stat. 1677.)

52 U.S.C.A. § 20925, 52 USCA § 20925
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle II. Voting Assistance and Election Administration (Refs & Annos)
Chapter 209. Election Administration Improvement
Subchapter II. Commission
Part A. Establishment and General Organization
Subpart 1. Election Assistance Commission

52 U.S.C.A. § 20926
Formerly cited as 42 USCA § 15326

§ 20926. Dissemination of information

Currentness

In carrying out its duties, the Commission shall, on an ongoing basis, disseminate to the public (through the Internet, published reports, and such other methods as the Commission considers appropriate) in a manner that is consistent with the requirements of chapter 19 of Title 44, information on the activities carried out under this chapter.

CREDIT(S)

(Pub.L. 107-252, Title II, § 206, Oct. 29, 2002, 116 Stat. 1677.)

52 U.S.C.A. § 20926, 52 USCA § 20926
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle II. Voting Assistance and Election Administration (Refs & Annos)
Chapter 209. Election Administration Improvement
Subchapter II. Commission
Part A. Establishment and General Organization
Subpart 1. Election Assistance Commission

52 U.S.C.A. § 20927
Formerly cited as 42 USCA § 15327

§ 20927. Annual report

Currentness

Not later than January 31 of each year (beginning with 2004), the Commission shall submit a report to the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate detailing its activities during the fiscal year which ended on September 30 of the previous calendar year, and shall include in the report the following information:

(1) A detailed description of activities conducted with respect to each program carried out by the Commission under this chapter, including information on each grant or other payment made under such programs.

(2) A copy of each report submitted to the Commission by a recipient of such grants or payments which is required under such a program, including reports submitted by States receiving requirements payments under subpart 1 of part D of this subchapter, and each other report submitted to the Commission under this chapter.

(3) Information on the voluntary voting system guidelines adopted or modified by the Commission under subpart 3 of this part and information on the voluntary guidance adopted under part B of subchapter III.

(4) All votes taken by the Commission.

(5) Such other information and recommendations as the Commission considers appropriate.

CREDIT(S)

(Pub.L. 107-252, Title II, § 207, Oct. 29, 2002, 116 Stat. 1677.)

52 U.S.C.A. § 20927, 52 USCA § 20927
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle II. Voting Assistance and Election Administration (Refs & Annos)
Chapter 209. Election Administration Improvement
Subchapter II. Commission
Part A. Establishment and General Organization
Subpart 1. Election Assistance Commission

52 U.S.C.A. § 20928
Formerly cited as 42 USCA § 15328

§ 20928. Requiring majority approval for actions

Currentness

Any action which the Commission is authorized to carry out under this chapter may be carried out only with the approval of at least three of its members.

CREDIT(S)

(Pub.L. 107-252, Title II, § 208, Oct. 29, 2002, 116 Stat. 1678.)

52 U.S.C.A. § 20928, 52 USCA § 20928
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle II. Voting Assistance and Election Administration (Refs & Annos)
Chapter 209. Election Administration Improvement
Subchapter II. Commission
Part A. Establishment and General Organization
Subpart 1. Election Assistance Commission

52 U.S.C.A. § 20929
Formerly cited as 42 USCA § 15329

§ 20929. Limitation on rulemaking authority

Currentness

The Commission shall not have any authority to issue any rule, promulgate any regulation, or take any other action which imposes any requirement on any State or unit of local government, except to the extent permitted under section 20508(a) of this title.

CREDIT(S)

(Pub.L. 107-252, Title II, § 209, Oct. 29, 2002, 116 Stat. 1678.)

52 U.S.C.A. § 20929, 52 USCA § 20929
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20930
Formerly cited as 42 USCA § 15330

§ 20930. Authorization of appropriations

Currentness

In addition to the amounts authorized for payments and grants under this subchapter and the amounts authorized to be appropriated for the program under section 21123 of this title, there are authorized to be appropriated for each of the fiscal years 2003 through 2005 such sums as may be necessary (but not to exceed $10,000,000 for each such year) for the Commission to carry out this subchapter.

CREDIT(S)

(Pub.L. 107-252, Title II, § 210, Oct. 29, 2002, 116 Stat. 1678.)

52 U.S.C.A. § 20930, 52 USCA § 20930
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20941
Formerly cited as 42 USCA § 15341

§ 20941. Establishment

Currentness

There are hereby established the Election Assistance Commission Standards Board (hereafter in this subchapter referred to as the "Standards Board") and the Election Assistance Commission Board of Advisors (hereafter in this subchapter referred to as the "Board of Advisors").

CREDIT(S)

(Pub.L. 107-252, Title II, § 211, Oct. 29, 2002, 116 Stat. 1678.)

52 U.S.C.A. § 20941, 52 USCA § 20941
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20942
Formerly cited as 42 USCA § 15342

§ 20942. Duties

Currentness

The Standards Board and the Board of Advisors shall each, in accordance with the procedures described in subpart 3 of this part, review the voluntary voting system guidelines under such subpart, the voluntary guidance under subchapter III, and the best practices recommendations contained in the report submitted under section 20982(b) of this title.

CREDIT(S)

(Pub.L. 107-252, Title II, § 212, Oct. 29, 2002, 116 Stat. 1678.)

52 U.S.C.A. § 20942, 52 USCA § 20942
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20943
Formerly cited as 42 USCA § 15343

§ 20943. Membership of Standards Board

Currentness

(a) Composition

(1) In general

Subject to certification by the chair of the Federal Election Commission under subsection (b), the Standards Board shall be composed of 110 members as follows:

(A) Fifty-five shall be State election officials selected by the chief State election official of each State.

(B) Fifty-five shall be local election officials selected in accordance with paragraph (2).

(2) List of local election officials

Each State's local election officials, including the local election officials of Puerto Rico and the United States Virgin Islands, shall select (under a process supervised by the chief election official of the State) a representative local election official from the State for purposes of paragraph (1)(B). In the case of the District of Columbia, Guam, and American Samoa, the chief election official shall establish a procedure for selecting an individual to serve as a local election official for purposes of such paragraph, except that under such a procedure the individual selected may not be a member of the same political party as the chief election official.

(3) Requiring mix of political parties represented

The two members of the Standards Board who represent the same State may not be members of the same political party.

(b) Procedures for notice and certification of appointment

(1) Notice to chair of Federal Election Commission

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

Not later than 90 days after October 29, 2002, the chief State election official of the State shall transmit a notice to the chair of the Federal Election Commission containing--

(A) the name of the State election official who agrees to serve on the Standards Board under this subchapter; and

(B) the name of the representative local election official from the State selected under subsection (a)(2) who agrees to serve on the Standards Board under this subchapter.

(2) Certification

Upon receiving a notice from a State under paragraph (1), the chair of the Federal Election Commission shall publish a certification that the selected State election official and the representative local election official are appointed as members of the Standards Board under this subchapter.

(3) Effect of failure to provide notice

If a State does not transmit a notice to the chair of the Federal Election Commission under paragraph (1) within the deadline described in such paragraph, no representative from the State may participate in the selection of the initial Executive Board under subsection (c).

(4) Role of Commission

Upon the appointment of the members of the Election Assistance Commission, the Election Assistance Commission shall carry out the duties of the Federal Election Commission under this subsection.

(c) Executive Board

(1) In general

Not later than 60 days after the last day on which the appointment of any of its members may be certified under subsection (b), the Standards Board shall select nine of its members to serve as the Executive Board of the Standards Board, of whom--

(A) not more than five may be State election officials;

(B) not more than five may be local election officials; and

(C) not more than five may be members of the same political party.

(2) Terms

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

Except as provided in paragraph (3), members of the Executive Board of the Standards Board shall serve for a term of 2 years and may not serve for more than 3 consecutive terms.

(3) Staggering of initial terms

Of the members first selected to serve on the Executive Board of the Standards Board--

(A) three shall serve for 1 term;

(B) three shall serve for 2 consecutive terms; and

(C) three shall serve for 3 consecutive terms,

as determined by lot at the time the members are first appointed.

(4) Duties

In addition to any other duties assigned under this subchapter, the Executive Board of the Standards Board may carry out such duties of the Standards Board as the Standards Board may delegate.

CREDIT(S)

(Pub.L. 107-252, Title II, § 213, Oct. 29, 2002, 116 Stat. 1678.)

52 U.S.C.A. § 20943, 52 USCA § 20943
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20944
Formerly cited as 42 USCA § 15344

§ 20944. Membership of Board of Advisors

Currentness

(a) In general

The Board of Advisors shall be composed of 37 members appointed as follows:

(1) Two members appointed by the National Governors Association.

(2) Two members appointed by the National Conference of State Legislatures.

(3) Two members appointed by the National Association of Secretaries of State.

(4) Two members appointed by the National Association of State Election Directors.

(5) Two members appointed by the National Association of Counties.

(6) Two members appointed by the National Association of County Recorders, Election Administrators, and Clerks.[1]

(7) Two members appointed by the United States Conference of Mayors.

(8) Two members appointed by the Election Center.

(9) Two members appointed by the International Association of County Recorders, Election Officials, and Treasurers.[2]

(10) Two members appointed by the United States Commission on Civil Rights.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(11) Two members appointed by the Architectural and Transportation Barrier[3] Compliance Board under section 792 of Title 29.

(12) The chief of the Office of Public Integrity of the Department of Justice,[4] or the chief's designee.

(13) The chief of the Voting Section of the Civil Rights Division of the Department of Justice or the chief's designee.

(14) The director of the Federal Voting Assistance Program of the Department of Defense.

(15) Four members representing professionals in the field of science and technology, of whom--

(A) one each shall be appointed by the Speaker and the Minority Leader of the House of Representatives; and

(B) one each shall be appointed by the Majority Leader and the Minority Leader of the Senate.

(16) Eight members representing voter interests, of whom--

(A) four members shall be appointed by the Committee on House Administration of the House of Representatives, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member; and

(B) four members shall be appointed by the Committee on Rules and Administration of the Senate, of whom two shall be appointed by the chair and two shall be appointed by the ranking minority member.

(b) Manner of appointments

Appointments shall be made to the Board of Advisors under subsection (a) in a manner which ensures that the Board of Advisors will be bipartisan in nature and will reflect the various geographic regions of the United States.

(c) Term of service; vacancy

Members of the Board of Advisors shall serve for a term of 2 years, and may be reappointed. Any vacancy in the Board of Advisors shall be filled in the manner in which the original appointment was made.

(d) Chair

The Board of Advisors shall elect a Chair from among its members.

CREDIT(S)

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

(Pub.L. 107-252, Title II, § 214, Oct. 29, 2002, 116 Stat. 1680.)

Footnotes

1 So in original. Probably should be "National Association of County Recorders, Election Officials and Clerks".

2 So in original. Probably should be "International Association of Clerks, Recorders, Election Officials and Treasurers".

3 So in original. Probably should be "Barriers".

4 So in original. Probably means the Public Integrity Section of the Criminal Division of the Department of Justice.

52 U.S.C.A. § 20944, 52 USCA § 20944
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20945
Formerly cited as 42 USCA § 15345

§ 20945. Powers of Boards; no compensation for service

Currentness

(a) Hearings and sessions

(1) In general

To the extent that funds are made available by the Commission, the Standards Board (acting through the Executive Board) and the Board of Advisors may each hold such hearings for the purpose of carrying out this chapter, sit and act at such times and places, take such testimony, and receive such evidence as each such Board considers advisable to carry out this subchapter, except that the Boards may not issue subpoenas requiring the attendance and testimony of witnesses or the production of any evidence.

(2) Meetings

The Standards Board and the Board of Advisors shall each hold a meeting of its members--

(A) not less frequently than once every year for purposes of voting on the voluntary voting system guidelines referred to it under section 20962 of this title;

(B) in the case of the Standards Board, not less frequently than once every 2 years for purposes of selecting the Executive Board; and

(C) at such other times as it considers appropriate for purposes of conducting such other business as it considers appropriate consistent with this subchapter.

(b) Information from Federal agencies

The Standards Board and the Board of Advisors may each secure directly from any Federal department or agency such information as the Board considers necessary to carry out this chapter. Upon request of the Executive Board (in the case of

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

the Standards Board) or the Chair (in the case of the Board of Advisors), the head of such department or agency shall furnish such information to the Board.

(c) Postal services

The Standards Board and the Board of Advisors may use the United States mails in the same manner and under the same conditions as a department or agency of the Federal Government.

(d) Administrative support services

Upon the request of the Executive Board (in the case of the Standards Board) or the Chair (in the case of the Board of Advisors), the Administrator of the General Services Administration shall provide to the Board, on a reimbursable basis, the administrative support services that are necessary to enable the Board to carry out its duties under this subchapter.

(e) No compensation for service

Members of the Standards Board and members of the Board of Advisors shall not receive any compensation for their service, but shall be paid travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of Title 5, while away from their homes or regular places of business in the performance of services for the Board.

CREDIT(S)

(Pub.L. 107-252, Title II, § 215, Oct. 29, 2002, 116 Stat. 1681.)

52 U.S.C.A. § 20945, 52 USCA § 20945
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20946
Formerly cited as 42 USCA § 15346

§ 20946. Status of Boards and members for purposes of claims against Board

Currentness

(a) In general

The provisions of chapters 161 and 171 of Title 28 shall apply with respect to the liability of the Standards Board, the Board of Advisors, and their members for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the Board.

(b) Exception for criminal acts and other willful conduct

Subsection (a) may not be construed to limit personal liability for criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other act or omission outside the scope of the service of a member of the Standards Board or the Board of Advisors.

CREDIT(S)

(Pub.L. 107-252, Title II, § 216, Oct. 29, 2002, 116 Stat. 1681.)

52 U.S.C.A. § 20946, 52 USCA § 20946
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20961
Formerly cited as 42 USCA § 15361

§ 20961. Technical Guidelines Development Committee

Currentness

(a) Establishment

There is hereby established the Technical Guidelines Development Committee (hereafter in this subpart referred to as the "Development Committee").

(b) Duties

(1) In general

The Development Committee shall assist the Executive Director of the Commission in the development of the voluntary voting system guidelines.

(2) Deadline for initial set of recommendations

The Development Committee shall provide its first set of recommendations under this section to the Executive Director of the Commission not later than 9 months after all of its members have been appointed.

(c) Membership

(1) In general

The Development Committee shall be composed of the Director of the National Institute of Standards and Technology (who shall serve as its chair), together with a group of 14 other individuals appointed jointly by the Commission and the Director of the National Institute of Standards and Technology, consisting of the following:

(A) An equal number of each of the following:

(i) Members of the Standards Board.

(ii) Members of the Board of Advisors.

(iii) Members of the Architectural and Transportation Barrier Compliance Board under section 792 of Title 29.

(B) A representative of the American National Standards Institute.

(C) A representative of the Institute of Electrical and Electronics Engineers.

(D) Two representatives of the National Association of State Election Directors selected by such Association who are not members of the Standards Board or Board of Advisors, and who are not of the same political party.

(E) Other individuals with technical and scientific expertise relating to voting systems and voting equipment.

(2) Quorum

A majority of the members of the Development Committee shall constitute a quorum, except that the Development Committee may not conduct any business prior to the appointment of all of its members.

(d) No compensation for service

Members of the Development Committee shall not receive any compensation for their service, but shall be paid travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of Title 5, while away from their homes or regular places of business in the performance of services for the Development Committee.

(e) Technical support from National Institute of Standards and Technology

(1) In general

At the request of the Development Committee, the Director of the National Institute of Standards and Technology shall provide the Development Committee with technical support necessary for the Development Committee to carry out its duties under this part.

(2) Technical support

The technical support provided under paragraph (1) shall include intramural research and development in areas to support the development of the voluntary voting system guidelines under this subpart, including--

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(A) the security of computers, computer networks, and computer data storage used in voting systems, including the computerized list required under section 21083(a) of this title;

(B) methods to detect and prevent fraud;

(C) the protection of voter privacy;

(D) the role of human factors in the design and application of voting systems, including assistive technologies for individuals with disabilities (including blindness) and varying levels of literacy; and

(E) remote access voting, including voting through the Internet.

(3) No private sector intellectual property rights in guidelines

No private sector individual or entity shall obtain any intellectual property rights to any guideline or the contents of any guideline (or any modification to any guideline) adopted by the Commission under this chapter.

(f) Publication of recommendations in Federal Register

At the time the Commission adopts any voluntary voting system guideline pursuant to section 20962 of this title, the Development Committee shall cause to have published in the Federal Register the recommendations it provided under this section to the Executive Director of the Commission concerning the guideline adopted.

CREDIT(S)

(Pub.L. 107-252, Title II, § 221, Oct. 29, 2002, 116 Stat. 1682.)

52 U.S.C.A. § 20961, 52 USCA § 20961
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20962
Formerly cited as 42 USCA § 15362

§ 20962. Process for adoption

Currentness

(a) General requirement for notice and comment

Consistent with the requirements of this section, the final adoption of the voluntary voting system guidelines (or modification of such a guideline) shall be carried out by the Commission in a manner that provides for each of the following:

(1) Publication of notice of the proposed guidelines in the Federal Register.

(2) An opportunity for public comment on the proposed guidelines.

(3) An opportunity for a public hearing on the record.

(4) Publication of the final guidelines in the Federal Register.

(b) Consideration of recommendations of Development Committee; submission of proposed guidelines to Board of Advisors and Standards Board

(1) Consideration of recommendations of Development Committee

In developing the voluntary voting system guidelines and modifications of such guidelines under this section, the Executive Director of the Commission shall take into consideration the recommendations provided by the Technical Guidelines Development Committee under section 20961 of this title.

(2) Board of Advisors

The Executive Director of the Commission shall submit the guidelines proposed to be adopted under this subpart (or any modifications to such guidelines) to the Board of Advisors.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(3) Standards Board

The Executive Director of the Commission shall submit the guidelines proposed to be adopted under this subpart (or any modifications to such guidelines) to the Executive Board of the Standards Board, which shall review the guidelines (or modifications) and forward its recommendations to the Standards Board.

(c) Review

Upon receipt of voluntary voting system guidelines described in subsection (b) (or a modification of such guidelines) from the Executive Director of the Commission, the Board of Advisors and the Standards Board shall each review and submit comments and recommendations regarding the guideline (or modification) to the Commission.

(d) Final adoption

(1) In general

A voluntary voting system guideline described in subsection (b) (or modification of such a guideline) shall not be considered to be finally adopted by the Commission unless the Commission votes to approve the final adoption of the guideline (or modification), taking into consideration the comments and recommendations submitted by the Board of Advisors and the Standards Board under subsection (c).

(2) Minimum period for consideration of comments and recommendations

The Commission may not vote on the final adoption of a guideline described in subsection (b) (or modification of such a guideline) until the expiration of the 90-day period which begins on the date the Executive Director of the Commission submits the proposed guideline (or modification) to the Board of Advisors and the Standards Board under subsection (b).

(e) Special rule for initial set of guidelines

Notwithstanding any other provision of this subpart, the most recent set of voting system standards adopted by the Federal Election Commission prior to October 29, 2002, shall be deemed to have been adopted by the Commission as of October 29, 2002, as the first set of voluntary voting system guidelines adopted under this subpart.

CREDIT(S)

(Pub.L. 107-252, Title II, § 222, Oct. 29, 2002, 116 Stat. 1683.)

52 U.S.C.A. § 20962, 52 USCA § 20962
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 21081
Formerly cited as 42 USCA § 15481

§ 21081. Voting systems standards

Currentness

(a) Requirements

Each voting system used in an election for Federal office shall meet the following requirements:

(1) In general

(A) Except as provided in subparagraph (B), the voting system (including any lever voting system, optical scanning voting system, or direct recording electronic system) shall--

(i) permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted;

(ii) provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and

(iii) if the voter selects votes for more than one candidate for a single office--

(I) notify the voter that the voter has selected more than one candidate for a single office on the ballot;

(II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and

(III) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted.

(B) A State or jurisdiction that uses a paper ballot voting system, a punch card voting system, or a central count voting system (including mail-in absentee ballots and mail-in ballots), may meet the requirements of subparagraph (A)(iii) by--

(i) establishing a voter education program specific to that voting system that notifies each voter of the effect of casting multiple votes for an office; and

(ii) providing the voter with instructions on how to correct the ballot before it is cast and counted (including instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error).

(C) The voting system shall ensure that any notification required under this paragraph preserves the privacy of the voter and the confidentiality of the ballot.

(2) Audit capacity

(A) In general

The voting system shall produce a record with an audit capacity for such system.

(B) Manual audit capacity

(i) The voting system shall produce a permanent paper record with a manual audit capacity for such system.

(ii) The voting system shall provide the voter with an opportunity to change the ballot or correct any error before the permanent paper record is produced.

(iii) The paper record produced under subparagraph (A) shall be available as an official record for any recount conducted with respect to any election in which the system is used.

(3) Accessibility for individuals with disabilities

The voting system shall--

(A) be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters;

(B) satisfy the requirement of subparagraph (A) through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place; and

(C) if purchased with funds made available under subchapter II on or after January 1, 2007, meet the voting system standards for disability access (as outlined in this paragraph).

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(4) Alternative language accessibility

The voting system shall provide alternative language accessibility pursuant to the requirements of section 10503 of this title.

(5) Error rates

The error rate of the voting system in counting ballots (determined by taking into account only those errors which are attributable to the voting system and not attributable to an act of the voter) shall comply with the error rate standards established under section 3.2.1 of the voting systems standards issued by the Federal Election Commission which are in effect on October 29, 2002.

(6) Uniform definition of what constitutes a vote

Each State shall adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State.

(b) Voting system defined

In this section, the term "voting system" means--

(1) the total combination of mechanical, electromechanical, or electronic equipment (including the software, firmware, and documentation required to program, control, and support the equipment) that is used--

(A) to define ballots;

(B) to cast and count votes;

(C) to report or display election results; and

(D) to maintain and produce any audit trail information; and

(2) the practices and associated documentation used--

(A) to identify system components and versions of such components;

(B) to test the system during its development and maintenance;

(C) to maintain records of system errors and defects;

(D) to determine specific system changes to be made to a system after the initial qualification of the system; and

(E) to make available any materials to the voter (such as notices, instructions, forms, or paper ballots).

(c) Construction

(1) In general

Nothing in this section shall be construed to prohibit a State or jurisdiction which used a particular type of voting system in the elections for Federal office held in November 2000 from using the same type of system after the effective date of this section, so long as the system meets or is modified to meet the requirements of this section.

(2) Protection of paper ballot voting systems

For purposes of subsection (a)(1)(A)(i), the term "verify" may not be defined in a manner that makes it impossible for a paper ballot voting system to meet the requirements of such subsection or to be modified to meet such requirements.

(d) Effective date

Each State and jurisdiction shall be required to comply with the requirements of this section on and after January 1, 2006.

CREDIT(S)

(Pub.L. 107-252, Title III, § 301, Oct. 29, 2002, 116 Stat. 1704.)

52 U.S.C.A. § 21081, 52 USCA § 21081
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 21082
Formerly cited as 42 USCA § 15482

§ 21082. Provisional voting and voting information requirements

Currentness

(a) Provisional voting requirements

If an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to cast a provisional ballot as follows:

(1) An election official at the polling place shall notify the individual that the individual may cast a provisional ballot in that election.

(2) The individual shall be permitted to cast a provisional ballot at that polling place upon the execution of a written affirmation by the individual before an election official at the polling place stating that the individual is--

(A) a registered voter in the jurisdiction in which the individual desires to vote; and

(B) eligible to vote in that election.

(3) An election official at the polling place shall transmit the ballot cast by the individual or the voter information contained in the written affirmation executed by the individual under paragraph (2) to an appropriate State or local election official for prompt verification under paragraph (4).

(4) If the appropriate State or local election official to whom the ballot or voter information is transmitted under paragraph (3) determines that the individual is eligible under State law to vote, the individual's provisional ballot shall be counted as a vote in that election in accordance with State law.

(5)(A) At the time that an individual casts a provisional ballot, the appropriate State or local election official shall give the individual written information that states that any individual who casts a provisional ballot will be able to ascertain under

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

the system established under subparagraph (B) whether the vote was counted, and, if the vote was not counted, the reason that the vote was not counted.

(B) The appropriate State or local election official shall establish a free access system (such as a toll-free telephone number or an Internet website) that any individual who casts a provisional ballot may access to discover whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted.

States described in section 20503(b) of this title may meet the requirements of this subsection using voter registration procedures established under applicable State law. The appropriate State or local official shall establish and maintain reasonable procedures necessary to protect the security, confidentiality, and integrity of personal information collected, stored, or otherwise used by the free access system established under paragraph (5)(B). Access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot.

(b) Voting information requirements

(1) Public posting on election day

The appropriate State or local election official shall cause voting information to be publicly posted at each polling place on the day of each election for Federal office.

(2) Voting information defined

In this section, the term "voting information" means--

(A) a sample version of the ballot that will be used for that election;

(B) information regarding the date of the election and the hours during which polling places will be open;

(C) instructions on how to vote, including how to cast a vote and how to cast a provisional ballot;

(D) instructions for mail-in registrants and first-time voters under section 21083(b) of this title;

(E) general information on voting rights under applicable Federal and State laws, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights are alleged to have been violated; and

(F) general information on Federal and State laws regarding prohibitions on acts of fraud and misrepresentation.

(c) Voters who vote after the polls close

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

Any individual who votes in an election for Federal office as a result of a Federal or State court order or any other order extending the time established for closing the polls by a State law in effect 10 days before the date of that election may only vote in that election by casting a provisional ballot under subsection (a). Any such ballot cast under the preceding sentence shall be separated and held apart from other provisional ballots cast by those not affected by the order.

(d) Effective date for provisional voting and voting information

Each State and jurisdiction shall be required to comply with the requirements of this section on and after January 1, 2004.

CREDIT(S)

(Pub.L. 107-252, Title III, § 302, Oct. 29, 2002, 116 Stat. 1706.)

52 U.S.C.A. § 21082, 52 USCA § 21082
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 21083
Formerly cited as 42 USCA § 15483

§ 21083. Computerized statewide voter registration list requirements and requirements for voters who register by mail

Currentness

(a) Computerized statewide voter registration list requirements

(1) Implementation

(A) In general

Except as provided in subparagraph (B), each State, acting through the chief State election official, shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter in the State (in this subsection referred to as the "computerized list"), and includes the following:

(i) The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the State.

(ii) The computerized list contains the name and registration information of every legally registered voter in the State.

(iii) Under the computerized list, a unique identifier is assigned to each legally registered voter in the State.

(iv) The computerized list shall be coordinated with other agency databases within the State.

(v) Any election official in the State, including any local election official, may obtain immediate electronic access to the information contained in the computerized list.

(vi) All voter registration information obtained by any local election official in the State shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(vii) The chief State election official shall provide such support as may be required so that local election officials are able to enter information as described in clause (vi).

(viii) The computerized list shall serve as the official voter registration list for the conduct of all elections for Federal office in the State.

(B) Exception

The requirement under subparagraph (A) shall not apply to a State in which, under a State law in effect continuously on and after October 29, 2002, there is no voter registration requirement for individuals in the State with respect to elections for Federal office.

(2) Computerized list maintenance

(A) In general

The appropriate State or local election official shall perform list maintenance with respect to the computerized list on a regular basis as follows:

(i) If an individual is to be removed from the computerized list, such individual shall be removed in accordance with the provisions of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.),[1] including subsections (a)(4), (c)(2), (d), and (e) of section 8 of such Act (42 U.S.C. 1973gg-6).[2]

(ii) For purposes of removing names of ineligible voters from the official list of eligible voters--

(I) under section 8(a)(3)(B) of such Act (42 U.S.C. 1973gg-6(a)(3)(B)),[3] the State shall coordinate the computerized list with State agency records on felony status; and

(II) by reason of the death of the registrant under section 8(a)(4)(A) of such Act (42 U.S.C. 1973gg-6(a)(4)(A)),[4] the State shall coordinate the computerized list with State agency records on death.

(iii) Notwithstanding the preceding provisions of this subparagraph, if a State is described in section 4(b) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-2(b)),[5] that State shall remove the names of ineligible voters from the computerized list in accordance with State law.

(B) Conduct

The list maintenance performed under subparagraph (A) shall be conducted in a manner that ensures that--

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(i) the name of each registered voter appears in the computerized list;

(ii) only voters who are not registered or who are not eligible to vote are removed from the computerized list; and

(iii) duplicate names are eliminated from the computerized list.

(3) Technological security of computerized list

The appropriate State or local official shall provide adequate technological security measures to prevent the unauthorized access to the computerized list established under this section.

(4) Minimum standard for accuracy of State voter registration records

The State election system shall include provisions to ensure that voter registration records in the State are accurate and are updated regularly, including the following:

(A) A system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters. Under such system, consistent with the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.)[1], registrants who have not responded to a notice and who have not voted in 2 consecutive general elections for Federal office shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote.

(B) Safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.

(5) Verification of voter registration information

(A) Requiring provision of certain information by applicants

(i) In general

Except as provided in clause (ii), notwithstanding any other provision of law, an application for voter registration for an election for Federal office may not be accepted or processed by a State unless the application includes--

(I) in the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number; or

(II) in the case of any other applicant (other than an applicant to whom clause (ii) applies), the last 4 digits of the applicant's social security number.

(ii) Special rule for applicants without driver's license or social security number

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

If an applicant for voter registration for an election for Federal office has not been issued a current and valid driver's license or a social security number, the State shall assign the applicant a number which will serve to identify the applicant for voter registration purposes. To the extent that the State has a computerized list in effect under this subsection and the list assigns unique identifying numbers to registrants, the number assigned under this clause shall be the unique identifying number assigned under the list.

(iii) Determination of validity of numbers provided

The State shall determine whether the information provided by an individual is sufficient to meet the requirements of this subparagraph, in accordance with State law.

(B) Requirements for State officials

(i) Sharing information in databases

The chief State election official and the official responsible for the State motor vehicle authority of a State shall enter into an agreement to match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority to the extent required to enable each such official to verify the accuracy of the information provided on applications for voter registration.

(ii) Agreements with Commissioner of Social Security

The official responsible for the State motor vehicle authority shall enter into an agreement with the Commissioner of Social Security under section 405(r)(8) of Title 42 (as added by subparagraph (C)).

(C) Omitted

(D) Special rule for certain States

In the case of a State which is permitted to use social security numbers, and provides for the use of social security numbers, on applications for voter registration, in accordance with section 7 of the Privacy Act of 1974 (5 U.S.C. 552a note), the provisions of this paragraph shall be optional.

(b) Requirements for voters who register by mail

(1) In general

Notwithstanding section 6(c) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4(c))[6] and subject to paragraph (3), a State shall, in a uniform and nondiscriminatory manner, require an individual to meet the requirements of paragraph (2) if--

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(A) the individual registered to vote in a jurisdiction by mail; and

(B)(i) the individual has not previously voted in an election for Federal office in the State; or

(ii) the individual has not previously voted in such an election in the jurisdiction and the jurisdiction is located in a State that does not have a computerized list that complies with the requirements of subsection (a).

(2) Requirements

(A) In general

An individual meets the requirements of this paragraph if the individual--

(i) in the case of an individual who votes in person--

(I) presents to the appropriate State or local election official a current and valid photo identification; or

(II) presents to the appropriate State or local election official a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter; or

(ii) in the case of an individual who votes by mail, submits with the ballot--

(I) a copy of a current and valid photo identification; or

(II) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

(B) Fail-safe voting

(i) In person

An individual who desires to vote in person, but who does not meet the requirements of subparagraph (A)(i), may cast a provisional ballot under section 21082(a) of this title.

(ii) By mail

An individual who desires to vote by mail but who does not meet the requirements of subparagraph (A)(ii) may cast such a ballot by mail and the ballot shall be counted as a provisional ballot in accordance with section 21082(a) of this title.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(3) Inapplicability

Paragraph (1) shall not apply in the case of a person--

(A) who registers to vote by mail under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4)[7] and submits as part of such registration either--

(i) a copy of a current and valid photo identification; or

(ii) a copy of a current utility bill, bank statement, government check, paycheck, or government document that shows the name and address of the voter;

(B)(i) who registers to vote by mail under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4)[7] and submits with such registration either--

(I) a driver's license number; or

(II) at least the last 4 digits of the individual's social security number; and

(ii) with respect to whom a State or local election official matches the information submitted under clause (i) with an existing State identification record bearing the same number, name and date of birth as provided in such registration; or

(C) who is--

(i) entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act;

(ii) provided the right to vote otherwise than in person under section 20102(b)(2)(B)(ii) of this title; or

(iii) entitled to vote otherwise than in person under any other Federal law.

(4) Contents of mail-in registration form

(A) In general

The mail voter registration form developed under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4)[7] shall include the following:

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(i) The question "Are you a citizen of the United States of America?" and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

(ii) The question "Will you be 18 years of age on or before election day?" and boxes for the applicant to check to indicate whether or not the applicant will be 18 years of age or older on election day.

(iii) The statement "If you checked 'no' in response to either of these questions, do not complete this form.".

(iv) A statement informing the individual that if the form is submitted by mail and the individual is registering for the first time, the appropriate information required under this section must be submitted with the mail-in registration form in order to avoid the additional identification requirements upon voting for the first time.

(B) Incomplete forms

If an applicant for voter registration fails to answer the question included on the mail voter registration form pursuant to subparagraph (A)(i), the registrar shall notify the applicant of the failure and provide the applicant with an opportunity to complete the form in a timely manner to allow for the completion of the registration form prior to the next election for Federal office (subject to State law).

(5) Construction

Nothing in this subsection shall be construed to require a State that was not required to comply with a provision of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.)[1] before October 29, 2002, to comply with such a provision after October 29, 2002.

(c) Permitted use of last 4 digits of social security numbers

The last 4 digits of a social security number described in subsections (a)(5)(A)(i)(II) and (b)(3)(B)(i)(II) shall not be considered to be a social security number for purposes of section 7 of the Privacy Act of 1974 (5 U.S.C. 552a note).

(d) Effective date

(1) Computerized statewide voter registration list requirements

(A) In general

Except as provided in subparagraph (B), each State and jurisdiction shall be required to comply with the requirements of subsection (a) on and after January 1, 2004.

(B) Waiver

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

If a State or jurisdiction certifies to the Commission not later than January 1, 2004, that the State or jurisdiction will not meet the deadline described in subparagraph (A) for good cause and includes in the certification the reasons for the failure to meet such deadline, subparagraph (A) shall apply to the State or jurisdiction as if the reference in such subparagraph to "January 1, 2004" were a reference to "January 1, 2006".

(2) Requirement for voters who register by mail

(A) In general

Each State and jurisdiction shall be required to comply with the requirements of subsection (b) on and after January 1, 2004, and shall be prepared to receive registration materials submitted by individuals described in subparagraph (B) on and after the date described in such subparagraph.

(B) Applicability with respect to individuals

The provisions of subsection (b) shall apply to any individual who registers to vote on or after January 1, 2003.

CREDIT(S)

(Pub.L. 107-252, Title III, § 303, Oct. 29, 2002, 116 Stat. 1708.)

Footnotes

1 Redesignated as 52 U.S.C.A. § 20501 et seq.

2 Redesignated as 52 U.S.C.A. § 20507.

3 Redesignated as 52 U.S.C.A. § 20507(a)(3)(B).

4 Redesignated as 52 U.S.C.A. § 20507(a)(4)(A).

5 Redesignated as 52 U.S.C.A. § 20503(b).

6 Redesignated as 52 U.S.C.A. § 20505(c).

7 Redesignated as 52 U.S.C.A. § 20505.

52 U.S.C.A. § 21083, 52 USCA § 21083
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle II. Voting Assistance and Election Administration (Refs & Annos)
Chapter 209. Election Administration Improvement
Subchapter III. Uniform and Nondiscriminatory Election Technology and Administration Requirements
Part A. Requirements

52 U.S.C.A. § 21084
Formerly cited as 42 USCA § 15484

§ 21084. Minimum requirements

Currentness

The requirements established by this subchapter are minimum requirements and nothing in this subchapter shall be construed to prevent a State from establishing election technology and administration requirements that are more strict than the requirements established under this subchapter so long as such State requirements are not inconsistent with the Federal requirements under this subchapter or any law described in section 21145 of this title.

CREDIT(S)

(Pub.L. 107-252, Title III, § 304, Oct. 29, 2002, 116 Stat. 1714.)

52 U.S.C.A. § 21084, 52 USCA § 21084
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle II. Voting Assistance and Election Administration (Refs & Annos)
Chapter 209. Election Administration Improvement
Subchapter III. Uniform and Nondiscriminatory Election Technology and Administration Requirements
Part A. Requirements

52 U.S.C.A. § 21085
Formerly cited as 42 USCA § 15485

§ 21085. Methods of implementation left to discretion of State

Currentness

The specific choices on the methods of complying with the requirements of this subchapter shall be left to the discretion of the State.

CREDIT(S)

(Pub.L. 107-252, Title III, § 305, Oct. 29, 2002, 116 Stat. 1714.)

52 U.S.C.A. § 21085, 52 USCA § 21085
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20971
Formerly cited as 42 USCA § 15371

§ 20971. Certification and testing of voting systems

Currentness

(a) Certification and testing

(1) In general

The Commission shall provide for the testing, certification, decertification, and recertification of voting system hardware and software by accredited laboratories.

(2) Optional use by States

At the option of a State, the State may provide for the testing, certification, decertification, or recertification of its voting system hardware and software by the laboratories accredited by the Commission under this section.

(b) Laboratory accreditation

(1) Recommendations by National Institute of Standards and Technology

Not later than 6 months after the Commission first adopts voluntary voting system guidelines under subpart 3 of part A of this subchapter, the Director of the National Institute of Standards and Technology shall conduct an evaluation of independent, non-Federal laboratories and shall submit to the Commission a list of those laboratories the Director proposes to be accredited to carry out the testing, certification, decertification, and recertification provided for under this section.

(2) Approval by Commission

(A) In general

The Commission shall vote on the accreditation of any laboratory under this section, taking into consideration the list submitted under paragraph (1), and no laboratory may be accredited for purposes of this section unless its accreditation is approved by a vote of the Commission.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(B) Accreditation of laboratories not on Director list

The Commission shall publish an explanation for the accreditation of any laboratory not included on the list submitted by the Director of the National Institute of Standards and Technology under paragraph (1).

(c) Continuing review by National Institute of Standards and Technology

(1) In general

In cooperation with the Commission and in consultation with the Standards Board and the Board of Advisors, the Director of the National Institute of Standards and Technology shall monitor and review, on an ongoing basis, the performance of the laboratories accredited by the Commission under this section, and shall make such recommendations to the Commission as it considers appropriate with respect to the continuing accreditation of such laboratories, including recommendations to revoke the accreditation of any such laboratory.

(2) Approval by Commission required for revocation

The accreditation of a laboratory for purposes of this section may not be revoked unless the revocation is approved by a vote of the Commission.

(d) Transition

Until such time as the Commission provides for the testing, certification, decertification, and recertification of voting system hardware and software by accredited laboratories under this section, the accreditation of laboratories and the procedure for the testing, certification, decertification, and recertification of voting system hardware and software used as of October 29, 2002, shall remain in effect.

CREDIT(S)

(Pub.L. 107-252, Title II, § 231, Oct. 29, 2002, 116 Stat. 1684.)

52 U.S.C.A. § 20971, 52 USCA § 20971
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 21101
Formerly cited as 42 USCA § 15501

§ 21101. Adoption of voluntary guidance by Commission

Currentness

(a) In general

To assist States in meeting the requirements of part A of this subchapter, the Commission shall adopt voluntary guidance consistent with such requirements in accordance with the procedures described in section 21102 of this title.

(b) Deadlines

The Commission shall adopt the recommendations under this section not later than--

(1) in the case of the recommendations with respect to section 21081 of this title, January 1, 2004;

(2) in the case of the recommendations with respect to section 21082 of this title, October 1, 2003; and

(3) in the case of the recommendations with respect to section 21083 of this title, October 1, 2003.

(c) Quadrennial update

The Commission shall review and update recommendations adopted with respect to section 21081 of this title no less frequently than once every 4 years.

CREDIT(S)

(Pub.L. 107-252, Title III, § 311, Oct. 29, 2002, 116 Stat. 1715.)

52 U.S.C.A. § 21101, 52 USCA § 21101
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 21102
Formerly cited as 42 USCA § 15502

§ 21102. Process for adoption

Currentness

The adoption of the voluntary guidance under this part shall be carried out by the Commission in a manner that provides for each of the following:

(1) Publication of notice of the proposed recommendations in the Federal Register.

(2) An opportunity for public comment on the proposed recommendations.

(3) An opportunity for a public hearing on the record.

(4) Publication of the final recommendations in the Federal Register.

CREDIT(S)

(Pub.L. 107-252, Title III, § 312, Oct. 29, 2002, 116 Stat. 1715.)

52 U.S.C.A. § 21102, 52 USCA § 21102
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20981
Formerly cited as 42 USCA § 15381

§ 20981. Periodic studies of election administration issues

Currentness

(a) In general

On such periodic basis as the Commission may determine, the Commission shall conduct and make available to the public studies regarding the election administration issues described in subsection (b), with the goal of promoting methods of voting and administering elections which--

(1) will be the most convenient, accessible, and easy to use for voters, including members of the uniformed services and overseas voters, individuals with disabilities, including the blind and visually impaired, and voters with limited proficiency in the English language;

(2) will yield the most accurate, secure, and expeditious system for voting and tabulating election results;

(3) will be nondiscriminatory and afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and

(4) will be efficient and cost-effective for use.

(b) Election administration issues described

For purposes of subsection (a), the election administration issues described in this subsection are as follows:

(1) Methods and mechanisms of election technology and voting systems used in voting and counting votes in elections for Federal office, including the over-vote and under-vote notification capabilities of such technology and systems.

(2) Ballot designs for elections for Federal office.

(3) Methods of voter registration, maintaining secure and accurate lists of registered voters (including the establishment of a centralized, interactive, statewide voter registration list linked to relevant agencies and all polling sites), and ensuring that registered voters appear on the voter registration list at the appropriate polling site.

(4) Methods of conducting provisional voting.

(5) Methods of ensuring the accessibility of voting, registration, polling places, and voting equipment to all voters, including individuals with disabilities (including the blind and visually impaired), Native American or Alaska Native citizens, and voters with limited proficiency in the English language.

(6) Nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office.

(7) Identifying, deterring, and investigating methods of voter intimidation.

(8) Methods of recruiting, training, and improving the performance of poll workers.

(9) Methods of educating voters about the process of registering to vote and voting, the operation of voting mechanisms, the location of polling places, and all other aspects of participating in elections.

(10) The feasibility and advisability of conducting elections for Federal office on different days, at different places, and during different hours, including the advisability of establishing a uniform poll closing time and establishing--

(A) a legal public holiday under section 6103 of Title 5 as the date on which general elections for Federal office are held;

(B) the Tuesday next after the 1st Monday in November, in every even numbered year, as a legal public holiday under such section;

(C) a date other than the Tuesday next after the 1st Monday in November, in every even numbered year as the date on which general elections for Federal office are held; and

(D) any date described in subparagraph (C) as a legal public holiday under such section.

(11) Federal and State laws governing the eligibility of persons to vote.

(12) Ways that the Federal Government can best assist State and local authorities to improve the administration of elections for Federal office and what levels of funding would be necessary to provide such assistance.

(13)(A) The laws and procedures used by each State that govern--

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(i) recounts of ballots cast in elections for Federal office;

(ii) contests of determinations regarding whether votes are counted in such elections; and

(iii) standards that define what will constitute a vote on each type of voting equipment used in the State to conduct elections for Federal office.

(B) The best practices (as identified by the Commission) that are used by States with respect to the recounts and contests described in clause (i).

(C) Whether or not there is a need for more consistency among State recount and contest procedures used with respect to elections for Federal office.

(14) The technical feasibility of providing voting materials in eight or more languages for voters who speak those languages and who have limited English proficiency.

(15) Matters particularly relevant to voting and administering elections in rural and urban areas.

(16) Methods of voter registration for members of the uniformed services and overseas voters, and methods of ensuring that such voters receive timely ballots that will be properly and expeditiously handled and counted.

(17) The best methods for establishing voting system performance benchmarks, expressed as a percentage of residual vote in the Federal contest at the top of the ballot.

(18) Broadcasting practices that may result in the broadcast of false information concerning the location or time of operation of a polling place.

(19) Such other matters as the Commission determines are appropriate.

(c) Reports

The Commission shall submit to the President and to the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate a report on each study conducted under subsection (a) together with such recommendations for administrative and legislative action as the Commission determines is appropriate.

CREDIT(S)

(Pub.L. 107-252, Title II, § 241, Oct. 29, 2002, 116 Stat. 1686.)

52 U.S.C.A. § 20981, 52 USCA § 20981
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20982
Formerly cited as 42 USCA § 15382

§ 20982. Study, report, and recommendations on best practices for facilitating military and overseas voting

Currentness

(a) Study

(1) In general

The Commission, in consultation with the Secretary of Defense, shall conduct a study on the best practices for facilitating voting by absent uniformed services voters (as defined in section 20310(1) of this title) and overseas voters (as defined in section 20310(5) of this title).

(2) Issues considered

In conducting the study under paragraph (1) the Commission shall consider the following issues:

(A) The rights of residence of uniformed services voters absent due to military orders.

(B) The rights of absent uniformed services voters and overseas voters to register to vote and cast absentee ballots, including the right of such voters to cast a secret ballot.

(C) The rights of absent uniformed services voters and overseas voters to submit absentee ballot applications early during an election year.

(D) The appropriate preelection deadline for mailing absentee ballots to absent uniformed services voters and overseas voters.

(E) The appropriate minimum period between the mailing of absentee ballots to absent uniformed services voters and overseas voters and the deadline for receipt of such ballots.

(F) The timely transmission of balloting materials to absent uniformed services voters and overseas voters.

(G) Security and privacy concerns in the transmission, receipt, and processing of ballots from absent uniformed services voters and overseas voters, including the need to protect against fraud.

(H) The use of a single application by absent uniformed services voters and overseas voters for absentee ballots for all Federal elections occurring during a year.

(I) The use of a single application for voter registration and absentee ballots by absent uniformed services voters and overseas voters.

(J) The use of facsimile machines and electronic means of transmission of absentee ballot applications and absentee ballots to absent uniformed services voters and overseas voters.

(K) Other issues related to the rights of absent uniformed services voters and overseas voters to participate in elections.

(b) Report and recommendations

Not later than the date that is 18 months after October 29, 2002, the Commission shall submit to the President and Congress a report on the study conducted under subsection (a)(1) together with recommendations identifying the best practices used with respect to the issues considered under subsection (a)(2).

CREDIT(S)

(Pub.L. 107-252, Title II, § 242, Oct. 29, 2002, 116 Stat. 1688.)

52 U.S.C.A. § 20982, 52 USCA § 20982
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20983
Formerly cited as 42 USCA § 15383

§ 20983. Report on human factor research

Currentness

Not later than 1 year after October 29, 2002, the Commission, in consultation with the Director of the National Institute of Standards and Technology, shall submit a report to Congress which assesses the areas of human factor research, including usability engineering and human-computer and human-machine interaction, which feasibly could be applied to voting products and systems design to ensure the usability and accuracy of voting products and systems, including methods to improve access for individuals with disabilities (including blindness) and individuals with limited proficiency in the English language and to reduce voter error and the number of spoiled ballots in elections.

CREDIT(S)

(Pub.L. 107-252, Title II, § 243, Oct. 29, 2002, 116 Stat. 1688.)

52 U.S.C.A. § 20983, 52 USCA § 20983
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20984
Formerly cited as 42 USCA § 15384

§ 20984. Study and report on voters who register by mail and use of Social Security information

Currentness

(a) Registration by mail

(1) Study

(A) In general

The Commission shall conduct a study of the impact of section 21083(b) of this title on voters who register by mail.

(B) Specific issues studied

The study conducted under subparagraph (A) shall include--

(i) an examination of the impact of section 21083(b) of this title on first time mail registrant voters who vote in person, including the impact of such section on voter registration;

(ii) an examination of the impact of such section on the accuracy of voter rolls, including preventing ineligible names from being placed on voter rolls and ensuring that all eligible names are placed on voter rolls; and

(iii) an analysis of the impact of such section on existing State practices, such as the use of signature verification or attestation procedures to verify the identity of voters in elections for Federal office, and an analysis of other changes that may be made to improve the voter registration process, such as verification or additional information on the registration card.

(2) Report

Not later than 18 months after the date on which section 21083(b)(2) of this title takes effect, the Commission shall submit a report to the President and Congress on the study conducted under paragraph (1)(A) together with such recommendations for administrative and legislative action as the Commission determines is appropriate.

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(b) Use of Social Security information

Not later than 18 months after the date on which section 21083(a)(5) of this title takes effect, the Commission, in consultation with the Commissioner of Social Security, shall study and report to Congress on the feasibility and advisability of using Social Security identification numbers or other information compiled by the Social Security Administration to establish voter registration or other election law eligibility or identification requirements, including the matching of relevant information specific to an individual voter, the impact of such use on national security issues, and whether adequate safeguards or waiver procedures exist to protect the privacy of an individual voter.

CREDIT(S)

(Pub.L. 107-252, Title II, § 244, Oct. 29, 2002, 116 Stat. 1689.)

52 U.S.C.A. § 20984, 52 USCA § 20984
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20985
Formerly cited as 42 USCA § 15385

§ 20985. Study and report on electronic voting and the electoral process

Currentness

(a) Study

(1) In general

The Commission shall conduct a thorough study of issues and challenges, specifically to include the potential for election fraud, presented by incorporating communications and Internet technologies in the Federal, State, and local electoral process.

(2) Issues to be studied

The Commission may include in the study conducted under paragraph (1) an examination of--

(A) the appropriate security measures required and minimum standards for certification of systems or technologies in order to minimize the potential for fraud in voting or in the registration of qualified citizens to register and vote;

(B) the possible methods, such as Internet or other communications technologies, that may be utilized in the electoral process, including the use of those technologies to register voters and enable citizens to vote online, and recommendations concerning statutes and rules to be adopted in order to implement an online or Internet system in the electoral process;

(C) the impact that new communications or Internet technology systems for use in the electoral process could have on voter participation rates, voter education, public accessibility, potential external influences during the elections process, voter privacy and anonymity, and other issues related to the conduct and administration of elections;

(D) whether other aspects of the electoral process, such as public availability of candidate information and citizen communication with candidates, could benefit from the increased use of online or Internet technologies;

(E) the requirements for authorization of collection, storage, and processing of electronically generated and transmitted digital messages to permit any eligible person to register to vote or vote in an election, including applying for and casting an absentee ballot;

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(F) the implementation cost of an online or Internet voting or voter registration system and the costs of elections after implementation (including a comparison of total cost savings for the administration of the electoral process by using Internet technologies or systems);

(G) identification of current and foreseeable online and Internet technologies for use in the registration of voters, for voting, or for the purpose of reducing election fraud, currently available or in use by election authorities;

(H) the means by which to ensure and achieve equity of access to online or Internet voting or voter registration systems and address the fairness of such systems to all citizens; and

(I) the impact of technology on the speed, timeliness, and accuracy of vote counts in Federal, State, and local elections.

(b) Report

(1) Submission

Not later than 20 months after October 29, 2002, the Commission shall transmit to the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate a report on the results of the study conducted under subsection (a), including such legislative recommendations or model State laws as are required to address the findings of the Commission.

(2) Internet posting

In addition to the dissemination requirements under chapter 19 of Title 44, the Election Administration Commission shall post the report transmitted under paragraph (1) on an Internet website.

CREDIT(S)

(Pub.L. 107-252, Title II, § 245, Oct. 29, 2002, 116 Stat. 1690.)

52 U.S.C.A. § 20985, 52 USCA § 20985
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 20986
Formerly cited as 42 USCA § 15386

§ 20986. Study and report on free absentee ballot postage

Currentness

(a) Study on the establishment of a free absentee ballot postage program

(1) In general

The Commission, in consultation with the Postal Service, shall conduct a study on the feasibility and advisability of the establishment of a program under which the Postal Service shall waive or otherwise reduce the amount of postage applicable with respect to absentee ballots submitted by voters in general elections for Federal office (other than balloting materials mailed under section 3406 of Title 39) that does not apply with respect to the postage required to send the absentee ballots to voters.

(2) Public survey

As part of the study conducted under paragraph (1), the Commission shall conduct a survey of potential beneficiaries under the program described in such paragraph, including the elderly and disabled, and shall take into account the results of such survey in determining the feasibility and advisability of establishing such a program.

(b) Report

(1) Submission

Not later than the date that is 1 year after October 29, 2002, the Commission shall submit to Congress a report on the study conducted under subsection (a)(1) together with recommendations for such legislative and administrative action as the Commission determines appropriate.

(2) Costs

The report submitted under paragraph (1) shall contain an estimate of the costs of establishing the program described in subsection (a)(1).

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(3) Implementation

The report submitted under paragraph (1) shall contain an analysis of the feasibility of implementing the program described in subsection (a)(1) with respect to the absentee ballots to be submitted in the general election for Federal office held in 2004.

(4) Recommendations regarding the elderly and disabled

The report submitted under paragraph (1) shall--

(A) include recommendations on ways that program described in subsection (a)(1) would target elderly individuals and individuals with disabilities; and

(B) identify methods to increase the number of such individuals who vote in elections for Federal office.

(c) Postal Service defined

The term "Postal Service" means the United States Postal Service established under section 201 of Title 39.

CREDIT(S)

(Pub.L. 107-252, Title II, § 246, Oct. 29, 2002, 116 Stat. 1691.)

52 U.S.C.A. § 20986, 52 USCA § 20986
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle II. Voting Assistance and Election Administration (Refs & Annos)
Chapter 209. Election Administration Improvement
Subchapter II. Commission
Part C. Studies and Other Activities to Promote Effective Administration of Federal Elections

52 U.S.C.A. § 20987
Formerly cited as 42 USCA § 15387

§ 20987. Consultation with Standards Board and Board of Advisors

Currentness

The Commission shall carry out its duties under this part in consultation with the Standards Board and the Board of Advisors.

CREDIT(S)

(Pub.L. 107-252, Title II, § 247, Oct. 29, 2002, 116 Stat. 1692.)

52 U.S.C.A. § 20987, 52 USCA § 20987
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 21001
Formerly cited as 42 USCA § 15401

§ 21001. Requirements payments

Currentness

(a) In general

The Commission shall make a requirements payment each year in an amount determined under section 21002 of this title to each State which meets the conditions described in section 21003 of this title for the year.

(b) Use of funds

(1) In general

Except as provided in paragraphs (2) and (3), a State receiving a requirements payment shall use the payment only to meet the requirements of subchapter III.

(2) Other activities

A State may use a requirements payment to carry out other activities to improve the administration of elections for Federal office if the State certifies to the Commission that--

(A) the State has implemented the requirements of subchapter III; or

(B) the amount expended with respect to such other activities does not exceed an amount equal to the minimum payment amount applicable to the State under section 21002(c) of this title.

(3) Activities under Uniformed and Overseas Citizens Absentee Voting Act

A State shall use a requirements payment made using funds appropriated pursuant to the authorization under section 21007(a)(4) of this title only to meet the requirements under the Uniformed and Overseas Citizens Absentee Voting Act imposed as a result of the provisions of and amendments made by the Military and Overseas Voter Empowerment Act.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(c) Retroactive payments

(1) In general

Notwithstanding any other provision of this part, including the maintenance of effort requirements of section 21004(a)(7) of this title, a State may use a requirements payment as a reimbursement for costs incurred in obtaining voting equipment which meets the requirements of section 21081 of this title if the State obtains the equipment after the regularly scheduled general election for Federal office held in November 2000.

(2) Special rule regarding multiyear contracts

A State may use a requirements payment for any costs for voting equipment which meets the requirements of section 21081 of this title that, pursuant to a multiyear contract, were incurred on or after January 1, 2001, except that the amount that the State is otherwise required to contribute under the maintenance of effort requirements of section 21004(a)(7) of this title shall be increased by the amount of the payment made with respect to such multiyear contract.

(d) Adoption of Commission guidelines and guidance not required to receive payment

Nothing in this subpart may be construed to require a State to implement any of the voluntary voting system guidelines or any of the voluntary guidance adopted by the Commission with respect to any matter as a condition for receiving a requirements payment.

(e) Schedule of payments

As soon as practicable after the initial appointment of all members of the Commission (but in no event later than 6 months thereafter), and not less frequently than once each calendar year thereafter, the Commission shall make requirements payments to States under this subpart.

(f) Limitation

A State may not use any portion of a requirements payment--

(1) to pay costs associated with any litigation, except to the extent that such costs otherwise constitute permitted uses of a requirements payment under this subpart; or

(2) for the payment of any judgment.

CREDIT(S)

(Pub.L. 107-252, Title II, § 251, Oct. 29, 2002, 116 Stat. 1692; Pub.L. 111-84, Div. A, Title V, § 588(a), Oct. 28, 2009, 123 Stat. 2333.)

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 21001, 52 USCA § 21001
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 21002
Formerly cited as 42 USCA § 15402

§ 21002. Allocation of funds

Currentness

(a) In general

Subject to subsection (c), the amount of a requirements payment made to a State for a year shall be equal to the product of--

(1) the total amount appropriated for requirements payments for the year pursuant to the authorization under section 21007 of this title; and

(2) the State allocation percentage for the State (as determined under subsection (b)).

(b) State allocation percentage defined

The "State allocation percentage" for a State is the amount (expressed as a percentage) equal to the quotient of--

(1) the voting age population of the State (as reported in the most recent decennial census); and

(2) the total voting age population of all States (as reported in the most recent decennial census).

(c) Minimum amount of payment

The amount of a requirements payment made to a State for a year may not be less than--

(1) in the case of any of the several States or the District of Columbia, one-half of 1 percent of the total amount appropriated for requirements payments for the year under section 21007 of this title; or

(2) in the case of the Commonwealth of Puerto Rico, Guam, American Samoa, or the United States Virgin Islands, one-tenth of 1 percent of such total amount.

(d) Pro rata reductions

The Administrator[1] shall make such pro rata reductions to the allocations determined under subsection (a) as are necessary to comply with the requirements of subsection (c).

(e) Continuing availability of funds after appropriation

A requirements payment made to a State under this subpart shall be available to the State without fiscal year limitation.

CREDIT(S)

(Pub.L. 107-252, Title II, § 252, Oct. 29, 2002, 116 Stat. 1693.)

Footnotes

1 So in original. Probably should be "Commission".

52 U.S.C.A. § 21002, 52 USCA § 21002
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 21003
Formerly cited as 42 USCA § 15403

§ 21003. Condition for receipt of funds

Currentness

(a) In general

A State is eligible to receive a requirements payment for a fiscal year if the chief executive officer of the State, or designee, in consultation and coordination with the chief State election official, has filed with the Commission a statement certifying that the State is in compliance with the requirements referred to in subsection (b). A State may meet the requirement of the previous sentence by filing with the Commission a statement which reads as follows: "__________ hereby certifies that it is in compliance with the requirements referred to in section 253(b) of the Help America Vote Act of 2002." (with the blank to be filled in with the name of the State involved).

(b) State plan requirement; certification of compliance with applicable laws and requirements

The requirements referred to in this subsection are as follows:

(1) The State has filed with the Commission a State plan covering the fiscal year which the State certifies--

(A) contains each of the elements described in section 21004(a) of this title (or, for purposes of determining the eligibility of a State to receive a requirements payment appropriated pursuant to the authorization provided under section 21007(a)(4) of this title, contains the element described in paragraph (14) of such section) with respect to the fiscal year;

(B) is developed in accordance with section 21005 of this title; and

(C) meets the public notice and comment requirements of section 21006 of this title.

(2)(A) Subject to subparagraph (B), the State has filed with the Commission a plan for the implementation of the uniform, nondiscriminatory administrative complaint procedures required under section 21112 of this title (or has included such a plan in the State plan filed under paragraph (1)), and has such procedures in place for purposes of meeting the requirements of such section. If the State does not include such an implementation plan in the State plan filed under paragraph (1), the

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

requirements of sections 21005(b) and 21006 of this title shall apply to the implementation plan in the same manner as such requirements apply to the State plan.

(B) Subparagraph (A) shall not apply for purposes of determining the eligibility of a State to receive a requirements payment appropriated pursuant to the authorization provided under section 21007(a)(4) of this title.

(3) The State is in compliance with each of the laws described in section 21145 of this title, as such laws apply with respect to this chapter.

(4) To the extent that any portion of the requirements payment is used for activities other than meeting the requirements of subchapter III--

(A) the State's proposed uses of the requirements payment are not inconsistent with the requirements of subchapter III; and

(B) the use of the funds under this paragraph is consistent with the requirements of section 21001(b) of this title.

(5)(A) Subject to subparagraph (B), the State has appropriated funds for carrying out the activities for which the requirements payment is made in an amount equal to 5 percent of the total amount to be spent for such activities (taking into account the requirements payment and the amount spent by the State) and, in the case of a State that uses a requirements payment as a reimbursement under section 21001(c)(2) of this title, an additional amount equal to the amount of such reimbursement.

(B) Subparagraph (A) shall not apply for purposes of determining the eligibility of a State to receive a requirements payment appropriated pursuant to the authorization provided under section 21007(a)(4) of this title for fiscal year 2010, except that if the State does not appropriate funds in accordance with subparagraph (A) prior to the last day of fiscal year 2011, the State shall repay to the Commission the requirements payment which is appropriated pursuant to such authorization.

(c) Methods of compliance left to discretion of State

The specific choices on the methods of complying with the elements of a State plan shall be left to the discretion of the State.

(d) Timing for filing of certification

A State may not file a statement of certification under subsection (a) until the expiration of the 45-day period (or, in the case of a fiscal year other than the first fiscal year for which a requirements payment is made to the State under this part, the 30-day period) which begins on the date notice of the State plan under this part is published in the Federal Register pursuant to section 21005(b) of this title.

(e) Chief State election official defined

In this part, the "chief State election official" of a State is the individual designated by the State under section 10 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-8)[1] to be responsible for coordination of the State's responsibilities under such Act.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

CREDIT(S)

(Pub.L. 107-252, Title II, § 253, Oct. 29, 2002, 116 Stat. 1693; Pub.L. 111-84, Div. A, Title V, § 588(b)(1)(B) to (3), Oct. 28, 2009, 123 Stat. 2333; Pub.L. 112-74, Div. C, Title VI, § 622(2), Dec. 23, 2011, 125 Stat. 927.)

Footnotes

1 Redesignated as 52 U.S.C.A. § 20509.

52 U.S.C.A. § 21003, 52 USCA § 21003
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 21004
Formerly cited as 42 USCA § 15404

§ 21004. State plan

Currentness

(a) In general

The State plan shall contain a description of each of the following:

(1) How the State will use the requirements payment to meet the requirements of subchapter III, and, if applicable under section 21001(a)(2) of this title, to carry out other activities to improve the administration of elections.

(2) How the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in paragraph (1), including a description of--

(A) the criteria to be used to determine the eligibility of such units or entities for receiving the payment; and

(B) the methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under paragraph (8).

(3) How the State will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of subchapter III.

(4) How the State will adopt voting system guidelines and processes which are consistent with the requirements of section 21081 of this title.

(5) How the State will establish a fund described in subsection (b) for purposes of administering the State's activities under this subpart, including information on fund management.

(6) The State's proposed budget for activities under this subpart, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on--

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(A) the costs of the activities required to be carried out to meet the requirements of subchapter III;

(B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and

(C) the portion of the requirements payment which will be used to carry out other activities.

(7) How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.

(8) How the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met.

(9) A description of the uniform, nondiscriminatory State-based administrative complaint procedures in effect under section 21112 of this title.

(10) If the State received any payment under subchapter I, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities.

(11) How the State will conduct ongoing management of the plan, except that the State may not make any material change in the administration of the plan unless notice of the change--

(A) is developed and published in the Federal Register in accordance with section 21005 of this title in the same manner as the State plan;

(B) is subject to public notice and comment in accordance with section 21006 of this title in the same manner as the State plan; and

(C) takes effect only after the expiration of the 30-day period which begins on the date notice of the change is published in the Federal Register in accordance with subparagraph (A).

(12) In the case of a State with a State plan in effect under this part during the previous fiscal year, a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year.

(13) A description of the committee which participated in the development of the State plan in accordance with section 21005 of this title and the procedures followed by the committee under such section and section 21006 of this title.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(14) How the State will comply with the provisions and requirements of and amendments made by the Military and Overseas Voter Empowerment Act.

(b) Requirements for election fund

(1) Election fund described

For purposes of subsection (a)(5), a fund described in this subsection with respect to a State is a fund which is established in the treasury of the State government, which is used in accordance with paragraph (2), and which consists of the following amounts:

(A) Amounts appropriated or otherwise made available by the State for carrying out the activities for which the requirements payment is made to the State under this subpart.

(B) The requirements payment made to the State under this subpart.

(C) Such other amounts as may be appropriated under law.

(D) Interest earned on deposits of the fund.

(2) Use of fund

Amounts in the fund shall be used by the State exclusively to carry out the activities for which the requirements payment is made to the State under this subpart.

(3) Treatment of States that require changes to State law

In the case of a State that requires State legislation to establish the fund described in this subsection, the Commission shall defer disbursement of the requirements payment to such State until such time as legislation establishing the fund is enacted.

(c) Protection against actions based on information in plan

(1) In general

No action may be brought under this chapter against a State or other jurisdiction on the basis of any information contained in the State plan filed under this subpart.

(2) Exception for criminal acts

Paragraph (1) may not be construed to limit the liability of a State or other jurisdiction for criminal acts or omissions.

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

CREDIT(S)

(Pub.L. 107-252, Title II, § 254, Oct. 29, 2002, 116 Stat. 1694; Pub.L. 111-84, Div. A, Title V, § 588(b)(1)(A), Oct. 28, 2009, 123 Stat. 2333; Pub.L. 112-74, Div. C, Title VI, § 622(3), (4), Dec. 23, 2011, 125 Stat. 927.)

52 U.S.C.A. § 21004, 52 USCA § 21004
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 21005
Formerly cited as 42 USCA § 15405

§ 21005. Process for development and filing of plan; publication by Commission

Currentness

(a) In general

The chief State election official shall develop the State plan under this part through a committee of appropriate individuals, including the chief election officials of the two most populous jurisdictions within the States, other local election officials, stake holders (including representatives of groups of individuals with disabilities), and other citizens, appointed for such purpose by the chief State election official.

(b) Publication of plan by Commission

After receiving the State plan of a State under this part, the Commission shall cause to have the plan posted on the Commission's website with a notice published in the Federal Register.

CREDIT(S)

(Pub.L. 107-252, Title II, § 255, Oct. 29, 2002, 116 Stat. 1697; Pub.L. 112-74, Div. C, Title VI, § 622(1), Dec. 23, 2011, 125 Stat. 926.)

52 U.S.C.A. § 21005, 52 USCA § 21005
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle II. Voting Assistance and Election Administration (Refs & Annos)
Chapter 209. Election Administration Improvement
Subchapter II. Commission
Part D. Election Assistance
Subpart 1. Requirements Payments

52 U.S.C.A. § 21006
Formerly cited as 42 USCA § 15406

§ 21006. Requirement for public notice and comment

Currentness

For purposes of section 21001(a)(1)(C)[1] of this title, a State plan meets the public notice and comment requirements of this section if--

(1) not later than 30 days prior to the submission of the plan, the State made a preliminary version of the plan available for public inspection and comment;

(2) the State publishes notice that the preliminary version of the plan is so available; and

(3) the State took the public comments made regarding the preliminary version of the plan into account in preparing the plan which was filed with the Commission.

CREDIT(S)

(Pub.L. 107-252, Title II, § 256, Oct. 29, 2002, 116 Stat. 1697.)

Footnotes
1 Probably should be a reference to section 21003(b)(1)(C) of this title. See References in Text note set out under this section.

52 U.S.C.A. § 21006, 52 USCA § 21006
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 21007
Formerly cited as 42 USCA § 15407

§ 21007. Authorization of appropriations

Currentness

(a) In general

In addition to amounts transferred under section 20904(c) of this title, there are authorized to be appropriated for requirements payments under this subpart the following amounts:

(1) For fiscal year 2003, $1,400,000,000.

(2) For fiscal year 2004, $1,000,000,000.

(3) For fiscal year 2005, $600,000,000.

(4) For fiscal year 2010 and subsequent fiscal years, such sums as are necessary for purposes of making requirements payments to States to carry out the activities described in section 21001(b)(3) of this title.

(b) Availability

Any amounts appropriated pursuant to the authority of subsection (a) shall remain available without fiscal year limitation until expended.

CREDIT(S)

(Pub.L. 107-252, Title II, § 257, Oct. 29, 2002, 116 Stat. 1697; Pub.L. 111-84, Div. A, Title V, § 588(c), Oct. 28, 2009, 123 Stat. 2334.)

52 U.S.C.A. § 21007, 52 USCA § 21007
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 21008
Formerly cited as 42 USCA § 15408

§ 21008. Reports

Currentness

Not later than 6 months after the end of each fiscal year for which a State received a requirements payment under this subpart, the State shall submit a report to the Commission on the activities conducted with the funds provided during the year, and shall include in the report--

(1) a list of expenditures made with respect to each category of activities described in section 21001(b) of this title;

(2) the number and type of articles of voting equipment obtained with the funds; and

(3) an analysis and description of the activities funded under this subpart to meet the requirements of this chapter and an analysis and description of how such activities conform to the State plan under section 21004 of this title.

CREDIT(S)

(Pub.L. 107-252, Title II, § 258, Oct. 29, 2002, 116 Stat. 1697.)

52 U.S.C.A. § 21008, 52 USCA § 21008
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 21021
Formerly cited as 42 USCA § 15421

§ 21021. Payments to States and units of local government to assure access for individuals with disabilities

Currentness

(a) In general

The Secretary of Health and Human Services shall make a payment to each eligible State and each eligible unit of local government (as described in section 21023 of this title).

(b) Use of funds

An eligible State and eligible unit of local government shall use the payment received under this subpart for--

(1) making polling places, including the path of travel, entrances, exits, and voting areas of each polling facility, accessible to individuals with disabilities, including the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters; and

(2) providing individuals with disabilities and the other individuals described in paragraph (1) with information about the accessibility of polling places, including outreach programs to inform the individuals about the availability of accessible polling places and training election officials, poll workers, and election volunteers on how best to promote the access and participation of individuals with disabilities in elections for Federal office.

(c) Schedule of payments

As soon as practicable after October 29, 2002 (but in no event later than 6 months thereafter), and not less frequently than once each calendar year thereafter, the Secretary shall make payments under this subpart.

CREDIT(S)

(Pub.L. 107-252, Title II, § 261, Oct. 29, 2002, 116 Stat. 1698.)

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 21021, 52 USCA § 21021
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 21022
Formerly cited as 42 USCA § 15422

§ 21022. Amount of payment

Currentness

(a) In general

The amount of a payment made to an eligible State or an eligible unit of local government for a year under this subpart shall be determined by the Secretary.

(b) Continuing availability of funds after appropriation

A payment made to an eligible State or eligible unit of local government under this subpart shall be available without fiscal year limitation.

CREDIT(S)

(Pub.L. 107-252, Title II, § 262, Oct. 29, 2002, 116 Stat. 1698.)

52 U.S.C.A. § 21022, 52 USCA § 21022
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 21023
Formerly cited as 42 USCA § 15423

§ 21023. Requirements for eligibility

Currentness

(a) Application

Each State or unit of local government that desires to receive a payment under this subpart for a fiscal year shall submit an application for the payment to the Secretary at such time and in such manner and containing such information as the Secretary shall require.

(b) Contents of application

Each application submitted under subsection (a) shall--

(1) describe the activities for which assistance under this section is sought; and

(2) provide such additional information and certifications as the Secretary determines to be essential to ensure compliance with the requirements of this subpart.

(c) Protection against actions based on information in application

(1) In general

No action may be brought under this chapter against a State or unit of local government on the basis of any information contained in the application submitted under subsection (a).

(2) Exception for criminal acts

Paragraph (1) may not be construed to limit the liability of a State or unit of local government for criminal acts or omissions.

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

CREDIT(S)

(Pub.L. 107-252, Title II, § 263, Oct. 29, 2002, 116 Stat. 1698.)

52 U.S.C.A. § 21023, 52 USCA § 21023
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle II. Voting Assistance and Election Administration (Refs & Annos)
Chapter 209. Election Administration Improvement
Subchapter II. Commission
Part D. Election Assistance
Subpart 2. Payments to States and Units of Local Government to Assure Access for Individuals with Disabilities

52 U.S.C.A. § 21024
Formerly cited as 42 USCA § 15424

§ 21024. Authorization of appropriations

Currentness

(a) In general

There are authorized to be appropriated to carry out the provisions of this subpart the following amounts:

(1) For fiscal year 2003, $50,000,000.

(2) For fiscal year 2004, $25,000,000.

(3) For fiscal year 2005, $25,000,000.

(b) Availability

Any amounts appropriated pursuant to the authority of subsection (a) shall remain available without fiscal year limitation until expended.

CREDIT(S)

(Pub.L. 107-252, Title II, § 264, Oct. 29, 2002, 116 Stat. 1699.)

52 U.S.C.A. § 21024, 52 USCA § 21024
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle II. Voting Assistance and Election Administration (Refs & Annos)
Chapter 209. Election Administration Improvement
Subchapter II. Commission
Part D. Election Assistance
Subpart 2. Payments to States and Units of Local Government to Assure Access for Individuals with Disabilities

52 U.S.C.A. § 21025
Formerly cited as 42 USCA § 15425

§ 21025. Reports

Currentness

(a) Reports by recipients

Not later than the[1] 6 months after the end of each fiscal year for which an eligible State or eligible unit of local government received a payment under this subpart, the State or unit shall submit a report to the Secretary on the activities conducted with the funds provided during the year, and shall include in the report a list of expenditures made with respect to each category of activities described in section 21021(b) of this title.

(b) Report by Secretary to Committees

With respect to each fiscal year for which the Secretary makes payments under this subpart, the Secretary shall submit a report on the activities carried out under this subpart to the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate.

CREDIT(S)

(Pub.L. 107-252, Title II, § 265, Oct. 29, 2002, 116 Stat. 1699.)

Footnotes

1 So in original. The word "the" probably should not appear.

52 U.S.C.A. § 21025, 52 USCA § 21025
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle II. Voting Assistance and Election Administration (Refs & Annos)
Chapter 209. Election Administration Improvement
Subchapter II. Commission
Part D. Election Assistance
Subpart 3. Grants for Research on Voting Technology Improvements

52 U.S.C.A. § 21041
Formerly cited as 42 USCA § 15441

§ 21041. Grants for research on voting technology improvements

Currentness

(a) In general

The Commission shall make grants to assist entities in carrying out research and development to improve the quality, reliability, accuracy, accessibility, affordability, and security of voting equipment, election systems, and voting technology.

(b) Eligibility

An entity is eligible to receive a grant under this subpart if it submits to the Commission (at such time and in such form as the Commission may require) an application containing--

(1) certifications that the research and development funded with the grant will take into account the need to make voting equipment fully accessible for individuals with disabilities, including the blind and visually impaired, the need to ensure that such individuals can vote independently and with privacy, and the need to provide alternative language accessibility for individuals with limited proficiency in the English language (consistent with the requirements of the Voting Rights Act of 1965); and

(2) such other information and certifications as the Commission may require.

(c) Applicability of regulations governing patent rights in inventions made with Federal assistance

Any invention made by the recipient of a grant under this subpart using funds provided under this subpart shall be subject to chapter 18 of Title 35 (relating to patent rights in inventions made with Federal assistance).

(d) Recommendation of topics for research

(1) In general

The Director of the National Institute of Standards and Technology (hereafter in this section referred to as the "Director") shall submit to the Commission an annual list of the Director's suggestions for issues which may be the subject of research funded with grants awarded under this subpart during the year.

(2) Review of grant applications received by Commission

The Commission shall submit each application it receives for a grant under this subpart to the Director, who shall review the application and provide the Commission with such comments as the Director considers appropriate.

(3) Monitoring and adjustment of grant activities at request of Commission

After the Commission has awarded a grant under this subpart, the Commission may request that the Director monitor the grant, and (to the extent permitted under the terms of the grant as awarded) the Director may recommend to the Commission that the recipient of the grant modify and adjust the activities carried out under the grant.

(4) Evaluation of grants at request of Commission

(A) In general

In the case of a grant for which the Commission submits the application to the Director under paragraph (2) or requests that the Director monitor the grant under paragraph (3), the Director shall prepare and submit to the Commission an evaluation of the grant and the activities carried out under the grant.

(B) Inclusion in reports

The Commission shall include the evaluations submitted under subparagraph (A) for a year in the report submitted for the year under section 20927 of this title.

(e) Provision of information on projects

The Commission may provide to the Technical Guidelines Development Committee under subpart 3 of part A of this subchapter such information regarding the activities funded under this subpart as the Commission deems necessary to assist the Committee in carrying out its duties.

CREDIT(S)

(Pub.L. 107-252, Title II, § 271, Oct. 29, 2002, 116 Stat. 1699.)

52 U.S.C.A. § 21041, 52 USCA § 21041
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle II. Voting Assistance and Election Administration (Refs & Annos)
Chapter 209. Election Administration Improvement
Subchapter II. Commission
Part D. Election Assistance
Subpart 3. Grants for Research on Voting Technology Improvements

52 U.S.C.A. § 21042
Formerly cited as 42 USCA § 15442

§ 21042. Report

Currentness

(a) In general

Each entity which receives a grant under this subpart shall submit to the Commission a report describing the activities carried out with the funds provided under the grant.

(b) Deadline

An entity shall submit a report required under subsection (a) not later than 60 days after the end of the fiscal year for which the entity received the grant which is the subject of the report.

CREDIT(S)

(Pub.L. 107-252, Title II, § 272, Oct. 29, 2002, 116 Stat. 1700.)

52 U.S.C.A. § 21042, 52 USCA § 21042
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 21043
Formerly cited as 42 USCA § 15443

§ 21043. Authorization of appropriations

Currentness

(a) In general

There are authorized to be appropriated for grants under this subpart $20,000,000 for fiscal year 2003.

(b) Availability of funds

Amounts appropriated pursuant to the authorization under this section shall remain available, without fiscal year limitation, until expended.

CREDIT(S)

(Pub.L. 107-252, Title II, § 273, Oct. 29, 2002, 116 Stat. 1700.)

52 U.S.C.A. § 21043, 52 USCA § 21043
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 21051
Formerly cited as 42 USCA § 15451

§ 21051. Pilot program

Currentness

(a) In general

The Commission shall make grants to carry out pilot programs under which new technologies in voting systems and equipment are tested and implemented on a trial basis so that the results of such tests and trials are reported to Congress.

(b) Eligibility

An entity is eligible to receive a grant under this subpart if it submits to the Commission (at such time and in such form as the Commission may require) an application containing--

(1) certifications that the pilot programs funded with the grant will take into account the need to make voting equipment fully accessible for individuals with disabilities, including the blind and visually impaired, the need to ensure that such individuals can vote independently and with privacy, and the need to provide alternative language accessibility for individuals with limited proficiency in the English language (consistent with the requirements of the Voting Rights Act of 1965 and the requirements of this chapter); and

(2) such other information and certifications as the Commission may require.

(c) Recommendation of topics for pilot programs

(1) In general

The Director of the National Institute of Standards and Technology (hereafter in this section referred to as the "Director") shall submit to the Commission an annual list of the Director's suggestions for issues which may be the subject of pilot programs funded with grants awarded under this subpart during the year.

(2) Review of grant applications received by Commission

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

The Commission shall submit each application it receives for a grant under this subpart to the Director, who shall review the application and provide the Commission with such comments as the Director considers appropriate.

(3) Monitoring and adjustment of grant activities at request of Commission

After the Commission has awarded a grant under this subpart, the Commission may request that the Director monitor the grant, and (to the extent permitted under the terms of the grant as awarded) the Director may recommend to the Commission that the recipient of the grant modify and adjust the activities carried out under the grant.

(4) Evaluation of grants at request of Commission

(A) In general

In the case of a grant for which the Commission submits the application to the Director under paragraph (2) or requests that the Director monitor the grant under paragraph (3), the Director shall prepare and submit to the Commission an evaluation of the grant and the activities carried out under the grant.

(B) Inclusion in reports

The Commission shall include the evaluations submitted under subparagraph (A) for a year in the report submitted for the year under section 20927 of this title.

(d) Provision of information on projects

The Commission may provide to the Technical Guidelines Development Committee under subpart 3 of part A of this subchapter such information regarding the activities funded under this subpart as the Commission deems necessary to assist the Committee in carrying out its duties.

CREDIT(S)

(Pub.L. 107-252, Title II, § 281, Oct. 29, 2002, 116 Stat. 1701.)

52 U.S.C.A. § 21051, 52 USCA § 21051
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 21052
Formerly cited as 42 USCA § 15452

§ 21052. Report

Currentness

(a) In general

Each entity which receives a grant under this subpart shall submit to the Commission a report describing the activities carried out with the funds provided under the grant.

(b) Deadline

An entity shall submit a report required under subsection (a) not later than 60 days after the end of the fiscal year for which the entity received the grant which is the subject of the report.

CREDIT(S)

(Pub.L. 107-252, Title II, § 282, Oct. 29, 2002, 116 Stat. 1702.)

52 U.S.C.A. § 21052, 52 USCA § 21052
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 21053
Formerly cited as 42 USCA § 15453

§ 21053. Authorization of appropriations

Currentness

(a) In general

There are authorized to be appropriated for grants under this subpart $10,000,000 for fiscal year 2003.

(b) Availability of funds

Amounts appropriated pursuant to the authorization under this section shall remain available, without fiscal year limitation, until expended.

CREDIT(S)

(Pub.L. 107-252, Title II, § 283, Oct. 29, 2002, 116 Stat. 1702.)

52 U.S.C.A. § 21053, 52 USCA § 21053
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle II. Voting Assistance and Election Administration (Refs & Annos)
Chapter 209. Election Administration Improvement
Subchapter II. Commission
Part D. Election Assistance
Subpart 5. Protection and Advocacy Systems

52 U.S.C.A. § 21061
Formerly cited as 42 USCA § 15461

§ 21061. Payments for protection and advocacy systems

Effective: October 1, 2022
Currentness

(a) In general

In addition to any other payments made under this part, the Secretary of Health and Human Services shall pay the protection and advocacy system (as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002)) of each State to ensure full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote and accessing polling places. In providing such services, protection and advocacy systems shall have the same general authorities as they are afforded under subtitle C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15041 et seq.).

(b) Minimum grant amount

The minimum amount of each grant to a protection and advocacy system shall be determined and allocated as set forth in subsections (c)(1)(B), (c)(3), (c)(4), (c)(5), (e), and (g) of section 794e of Title 29, except that the amount of the grants to systems referred to in subsection (c)(3)(B)[1] shall not be less than $70,000, and the amount of the grants to systems referred to in subsections (c)(1)(B) and (c)(4) shall not be less than $35,000.

(c) Eligible grant recipients

(1) Definition of State

For the purposes of this section, the term "State" shall have the meaning given such term in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002).

(2) American Indian consortium eligible

A system serving the American Indian consortium for which funds have been reserved under section 794e(c)(1)(B) of Title 29 shall be eligible for payments under subsection (a) in the same manner as a protection and advocacy system of a State.

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(d) Training and technical assistance program

(1) In general

Not later than 90 days after the date on which the initial appropriation of funds for a fiscal year is made pursuant to the authorization under section 21062 of this title, the Secretary shall set aside 7 percent of the amount appropriated under such section and use such portion to make payments to eligible entities to provide training and technical assistance with respect to the activities carried out under this section.

(2) Use of funds

A recipient of a payment under this subsection may use the payment to support training in the use of voting systems and technologies, and to demonstrate and evaluate the use of such systems and technologies, by individuals with disabilities (including blindness) in order to assess the availability and use of such systems and technologies for such individuals. At least one of the recipients under this subsection shall use the payment to provide training and technical assistance for nonvisual access.

(3) Eligibility

An entity is eligible to receive a payment under this subsection if the entity--

(A) is a public or private nonprofit entity with demonstrated experience in voting issues for individuals with disabilities;

(B) is governed by a board with respect to which the majority of its members are individuals with disabilities or family members of such individuals or individuals who are blind; and

(C) submits to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

CREDIT(S)

(Pub.L. 107-252, Title II, § 291, Oct. 29, 2002, 116 Stat. 1702; Pub.L. 117-182, § 2, Sept. 30, 2022, 136 Stat. 2178.)

Footnotes

1 So in original. Probably should be followed by "of that section".

52 U.S.C.A. § 21061, 52 USCA § 21061
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 21062
Formerly cited as 42 USCA § 15462

§ 21062. Authorization of appropriations

Currentness

(a) In general

In addition to any other amounts authorized to be appropriated under this part, there are authorized to be appropriated $10,000,000 for each of the fiscal years 2003, 2004, 2005, and 2006, and for each subsequent fiscal year such sums as may be necessary, for the purpose of making payments under section 21061(a) of this title; except that none of the funds provided by this subsection shall be used to initiate or otherwise participate in any litigation related to election-related disability access, notwithstanding the general authorities that the protection and advocacy systems are otherwise afforded under subtitle C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15041 et seq.).

(b) Availability

Any amounts appropriated pursuant to the authority of this section shall remain available until expended.

CREDIT(S)

(Pub.L. 107-252, Title II, § 292, Oct. 29, 2002, 116 Stat. 1703.)

52 U.S.C.A. § 21062, 52 USCA § 21062
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 21071
Formerly cited as 42 USCA § 15471

§ 21071. National Student and Parent Mock Election

Currentness

(a) In general

The Election Assistance Commission is authorized to award grants to the National Student and Parent Mock Election, a national nonprofit, nonpartisan organization that works to promote voter participation in American elections to enable it to carry out voter education activities for students and their parents. Such activities may--

(1) include simulated national elections at least 5 days before the actual election that permit participation by students and parents from each of the 50 States in the United States, its territories, the District of Columbia, and United States schools overseas; and

(2) consist of--

(A) school forums and local cable call-in shows on the national issues to be voted upon in an "issues forum";

(B) speeches and debates before students and parents by local candidates or stand-ins for such candidates;

(C) quiz team competitions, mock press conferences, and speech writing competitions;

(D) weekly meetings to follow the course of the campaign; or

(E) school and neighborhood campaigns to increase voter turnout, including newsletters, posters, telephone chains, and transportation.

(b) Requirement

The National Student and Parent Mock Election shall present awards to outstanding student and parent mock election projects.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

CREDIT(S)

(Pub.L. 107-252, Title II, § 295, Oct. 29, 2002, 116 Stat. 1703.)

52 U.S.C.A. § 21071, 52 USCA § 21071
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle II. Voting Assistance and Election Administration (Refs & Annos)
Chapter 209. Election Administration Improvement
Subchapter II. Commission
Part D. Election Assistance
Subpart 6. National Student and Parent Mock Election

52 U.S.C.A. § 21072
Formerly cited as 42 USCA § 15472

§ 21072. Authorization of appropriations

Currentness

There are authorized to be appropriated to carry out the provisions of this part $200,000 for fiscal year 2003 and such sums as may be necessary for each of the 6 succeeding fiscal years.

CREDIT(S)

(Pub.L. 107-252, Title II, § 296, Oct. 29, 2002, 116 Stat. 1704.)

52 U.S.C.A. § 21072, 52 USCA § 21072
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 30101
Formerly cited as 2 USCA § 431

§ 30101. Definitions

Effective: September 1, 2014
Currentness

When used in this Act:

(1) The term "election" means--

(A) a general, special, primary, or runoff election;

(B) a convention or caucus of a political party which has authority to nominate a candidate;

(C) a primary election held for the selection of delegates to a national nominating convention of a political party; and

(D) a primary election held for the expression of a preference for the nomination of individuals for election to the office of President.

(2) The term "candidate" means an individual who seeks nomination for election, or election, to Federal office, and for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election--

(A) if such individual has received contributions aggregating in excess of $5,000 or has made expenditures aggregating in excess of $5,000; or

(B) if such individual has given his or her consent to another person to receive contributions or make expenditures on behalf of such individual and if such person has received such contributions aggregating in excess of $5,000 or has made such expenditures aggregating in excess of $5,000.

(3) The term "Federal office" means the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress.

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(4) The term “political committee” means--

(A) any committee, club, association, or other group of persons which receives contributions aggregating in excess of $1,000 during a calendar year or which makes expenditures aggregating in excess of $1,000 during a calendar year; or

(B) any separate segregated fund established under the provisions of section 30118(b) of this title; or

(C) any local committee of a political party which receives contributions aggregating in excess of $5,000 during a calendar year, or makes payments exempted from the definition of contribution or expenditure as defined in paragraphs (8) and (9) aggregating in excess of $5,000 during a calendar year, or makes contributions aggregating in excess of $1,000 during a calendar year or makes expenditures aggregating in excess of $1,000 during a calendar year.

(5) The term “principal campaign committee” means a political committee designated and authorized by a candidate under section 30102(e)(1) of this title.

(6) The term “authorized committee” means the principal campaign committee or any other political committee authorized by a candidate under section 30102(e)(1) of this title to receive contributions or make expenditures on behalf of such candidate.

(7) The term “connected organization” means any organization which is not a political committee but which directly or indirectly establishes, administers or financially supports a political committee.

(8)(A) The term “contribution” includes--

(i) any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office; or

(ii) the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose.

(B) The term “contribution” does not include--

(i) the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee;

(ii) the use of real or personal property, including a church or community room used on a regular basis by members of a community for noncommercial purposes, and the cost of invitations, food, and beverages, voluntarily provided by an individual to any candidate or any political committee of a political party in rendering voluntary personal services on the individual's residential premises or in the church or community room for candidate-related or political party-related activities, to the extent that the cumulative value of such invitations, food, and beverages provided by such individual on

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

behalf of any single candidate does not exceed $1,000 with respect to any single election, and on behalf of all political committees of a political party does not exceed $2,000 in any calendar year;

(iii) the sale of any food or beverage by a vendor for use in any candidate's campaign or for use by or on behalf of any political committee of a political party at a charge less than the normal comparable charge, if such charge is at least equal to the cost of such food or beverage to the vendor, to the extent that the cumulative value of such activity by such vendor on behalf of any single candidate does not exceed $1,000 with respect to any single election, and on behalf of all political committees of a political party does not exceed $2,000 in any calendar year;

(iv) any unreimbursed payment for travel expenses made by any individual on behalf of any candidate or any political committee of a political party, to the extent that the cumulative value of such activity by such individual on behalf of any single candidate does not exceed $1,000 with respect to any single election, and on behalf of all political committees of a political party does not exceed $2,000 in any calendar year;

(v) the payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card or sample ballot, or other printed listing, of 3 or more candidates for any public office for which an election is held in the State in which such committee is organized, except that this clause shall not apply to any cost incurred by such committee with respect to a display of any such listing made on broadcasting stations, or in newspapers, magazines, or similar types of general public political advertising;

(vi) any payment made or obligation incurred by a corporation or a labor organization which, under section 30118(b) of this title, would not constitute an expenditure by such corporation or labor organization;

(vii) any loan of money by a State bank, a federally chartered depository institution, or a depository institution the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration, other than any overdraft made with respect to a checking or savings account, made in accordance with applicable law and in the ordinary course of business, but such loan--

(I) shall be considered a loan by each endorser or guarantor, in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors;

(II) shall be made on a basis which assures repayment, evidenced by a written instrument, and subject to a due date or amortization schedule; and

(III) shall bear the usual and customary interest rate of the lending institution;

(viii) any legal or accounting services rendered to or on behalf of--

(I) any political committee of a political party if the person paying for such services is the regular employer of the person rendering such services and if such services are not attributable to activities which directly further the election of any designated candidate to Federal office; or

(II) an authorized committee of a candidate or any other political committee, if the person paying for such services is the regular employer of the individual rendering such services and if such services are solely for the purpose of ensuring compliance with this Act or chapter 95 or chapter 96 of Title 26,

but amounts paid or incurred by the regular employer for such legal or accounting services shall be reported in accordance with section 30104(b) of this title by the committee receiving such services;

(ix) the payment by a State or local committee of a political party of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids, and yard signs) used by such committee in connection with volunteer activities on behalf of nominees of such party: *Provided*, That--

(1) such payments are not for the costs of campaign materials or activities used in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising;

(2) such payments are made from contributions subject to the limitations and prohibitions of this Act; and

(3) such payments are not made from contributions designated to be spent on behalf of a particular candidate or particular candidates;

(x) the payment by a candidate, for nomination or election to any public office (including State or local office), or authorized committee of a candidate, of the costs of campaign materials which include information on or referenced to any other candidate and which are used in connection with volunteer activities (including pins, bumper stickers, handbills, brochures, posters, and yard signs, but not including the use of broadcasting, newspapers, magazines, billboards, direct mail, or similar types of general public communication or political advertising): *Provided*, That such payments are made from contributions subject to the limitations and prohibitions of this Act;

(xi) the payment by a State or local committee of a political party of the costs of voter registration and get-out-the-vote activities conducted by such committee on behalf of nominees of such party for President and Vice President: *Provided*, That--

(1) such payments are not for the costs of campaign materials or activities used in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising;

(2) such payments are made from contributions subject to the limitations and prohibitions of this Act; and

(3) such payments are not made from contributions designated to be spent on behalf of a particular candidate or candidates;

(xii) payments made by a candidate or the authorized committee of a candidate as a condition of ballot access and payments received by any political party committee as a condition of ballot access;

(xiii) any honorarium (within the meaning of section 30125 of this title); and

(xiv) any loan of money derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other line of credit available to the candidate, if such loan is made in accordance with applicable law and under commercially reasonable terms and if the person making such loan makes loans derived from an advance on the candidate's brokerage account, credit card, home equity line of credit, or other line of credit in the normal course of the person's business.

(9)(A) The term "expenditure" includes--

(i) any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office; and

(ii) a written contract, promise, or agreement to make an expenditure.

(B) The term "expenditure" does not include--

(i) any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate;

(ii) nonpartisan activity designed to encourage individuals to vote or to register to vote;

(iii) any communication by any membership organization or corporation to its members, stockholders, or executive or administrative personnel, if such membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual to Federal office, except that the costs incurred by a membership organization (including a labor organization) or by a corporation directly attributable to a communication expressly advocating the election or defeat of a clearly identified candidate (other than a communication primarily devoted to subjects other than the express advocacy of the election or defeat of a clearly identified candidate), shall, if such costs exceed $2,000 for any election, be reported to the Commission in accordance with section 30104(a)(4)(A)(i) of this title, and in accordance with section 30104(a)(4)(A)(ii) of this title with respect to any general election;

(iv) the payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card or sample ballot, or other printed listing, of 3 or more candidates for any public office for which an election is held in the State in which such committee is organized, except that this clause shall not apply to costs incurred by such committee with respect to a display of any such listing made on broadcasting stations, or in newspapers, magazines, or similar types of general public political advertising;

(v) any payment made or obligation incurred by a corporation or a labor organization which, under section 30118(b) of this title, would not constitute an expenditure by such corporation or labor organization;

(vi) any costs incurred by an authorized committee or candidate in connection with the solicitation of contributions on behalf of such candidate, except that this clause shall not apply with respect to costs incurred by an authorized committee of a candidate in excess of an amount equal to 20 percent of the expenditure limitation applicable to such candidate under section 30116(b) of this title, but all such costs shall be reported in accordance with section 30104(b) of this title;

(vii) the payment of compensation for legal or accounting services--

(I) rendered to or on behalf of any political committee of a political party if the person paying for such services is the regular employer of the individual rendering such services, and if such services are not attributable to activities which directly further the election of any designated candidate to Federal office; or

(II) rendered to or on behalf of a candidate or political committee if the person paying for such services is the regular employer of the individual rendering such services, and if such services are solely for the purpose of ensuring compliance with this Act or chapter 95 or chapter 96 of Title 26,

but amounts paid or incurred by the regular employer for such legal or accounting services shall be reported in accordance with section 30104(b) of this title by the committee receiving such services;

(viii) the payment by a State or local committee of a political party of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids, and yard signs) used by such committee in connection with volunteer activities on behalf of nominees of such party: *Provided*, That--

(1) such payments are not for the costs of campaign materials or activities used in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising;

(2) such payments are made from contributions subject to the limitations and prohibitions of this Act; and

(3) such payments are not made from contributions designated to be spent on behalf of a particular candidate or particular candidates;

(ix) the payment by a State or local committee of a political party of the costs of voter registration and get-out-the-vote activities conducted by such committee on behalf of nominees of such party for President and Vice President: *Provided*, That--

(1) such payments are not for the costs of campaign materials or activities used in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising;

(2) such payments are made from contributions subject to the limitations and prohibitions of this Act; and

(3) such payments are not made from contributions designated to be spent on behalf of a particular candidate or candidates; and

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(x) payments received by a political party committee as a condition of ballot access which are transferred to another political party committee or the appropriate State official.

(10) The term "Commission" means the Federal Election Commission.

(11) The term "person" includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons, but such term does not include the Federal Government or any authority of the Federal Government.

(12) The term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

(13) The term "identification" means--

(A) in the case of any individual, the name, the mailing address, and the occupation of such individual, as well as the name of his or her employer; and

(B) in the case of any other person, the full name and address of such person.

(14) The term "national committee" means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level, as determined by the Commission.

(15) The term "State committee" means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level, as determined by the Commission.

(16) The term "political party" means an association, committee, or organization which nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of such association, committee, or organization.

(17) Independent expenditure

The term "independent expenditure" means an expenditure by a person--

(A) expressly advocating the election or defeat of a clearly identified candidate; and

(B) that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents.

(18) The term "clearly identified" means that--

(A) the name of the candidate involved appears;

(B) a photograph or drawing of the candidate appears; or

(C) the identity of the candidate is apparent by unambiguous reference.

(19) The term "Act" means the Federal Election Campaign Act of 1971 as amended.

(20) Federal election activity

(A) In general

The term "Federal election activity" means--

(i) voter registration activity during the period that begins on the date that is 120 days before the date a regularly scheduled Federal election is held and ends on the date of the election;

(ii) voter identification, get-out-the-vote activity, or generic campaign activity conducted in connection with an election in which a candidate for Federal office appears on the ballot (regardless of whether a candidate for State or local office also appears on the ballot);

(iii) a public communication that refers to a clearly identified candidate for Federal office (regardless of whether a candidate for State or local office is also mentioned or identified) and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate); or

(iv) services provided during any month by an employee of a State, district, or local committee of a political party who spends more than 25 percent of that individual's compensated time during that month on activities in connection with a Federal election.

(B) Excluded activity

The term "Federal election activity" does not include an amount expended or disbursed by a State, district, or local committee of a political party for--

(i) a public communication that refers solely to a clearly identified candidate for State or local office, if the communication is not a Federal election activity described in subparagraph (A)(i) or (ii);

(ii) a contribution to a candidate for State or local office, provided the contribution is not designated to pay for a Federal election activity described in subparagraph (A);

(iii) the costs of a State, district, or local political convention; and

(iv) the costs of grassroots campaign materials, including buttons, bumper stickers, and yard signs, that name or depict only a candidate for State or local office.

(21) Generic campaign activity

The term "generic campaign activity" means a campaign activity that promotes a political party and does not promote a candidate or non-Federal candidate.

(22) Public communication

The term "public communication" means a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising.

(23) Mass mailing

The term "mass mailing" means a mailing by United States mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period.

(24) Telephone bank

The term "telephone bank" means more than 500 telephone calls of an identical or substantially similar nature within any 30-day period.

(25) Election cycle

For purposes of sections 30116(i) and 30117 of this title and paragraph (26), the term "election cycle" means the period beginning on the day after the date of the most recent election for the specific office or seat that a candidate is seeking and ending on the date of the next election for that office or seat. For purposes of the preceding sentence, a primary election and a general election shall be considered to be separate elections.

(26) Personal funds

The term "personal funds" means an amount that is derived from--

(A) any asset that, under applicable State law, at the time the individual became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had--

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(i) legal and rightful title; or

(ii) an equitable interest;

(B) income received during the current election cycle of the candidate, including--

(i) a salary and other earned income from bona fide employment;

(ii) dividends and proceeds from the sale of the candidate's stocks or other investments;

(iii) bequests to the candidate;

(iv) income from trusts established before the beginning of the election cycle;

(v) income from trusts established by bequest after the beginning of the election cycle of which the candidate is the beneficiary;

(vi) gifts of a personal nature that had been customarily received by the candidate prior to the beginning of the election cycle; and

(vii) proceeds from lotteries and similar legal games of chance; and

(C) a portion of assets that are jointly owned by the candidate and the candidate's spouse equal to the candidate's share of the asset under the instrument of conveyance or ownership, but if no specific share is indicated by an instrument of conveyance or ownership, the value of ½ of the property.

CREDIT(S)

(Pub.L. 92-225, Title III, § 301, Feb. 7, 1972, 86 Stat. 11; Pub.L. 93-443, Title II, §§ 201(a), 208(c)(1), Oct. 15, 1974, 88 Stat. 1272, 1286; Pub.L. 94-283, Title I, §§ 102, 115(d), (h), May 11, 1976, 90 Stat. 478, 495, 496; Pub.L. 96-187, Title I, § 101, Jan. 8, 1980, 93 Stat. 1339; Pub.L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub.L. 106-346, § 101(a) [Title V, § 502(b)], Oct. 23, 2000, 114 Stat. 1356, 1356A-49; Pub.L. 107-155, Title I, §§ 101(b), 103(b)(1), Title II, § 211, Title III, § 304(c), Mar. 27, 2002, 116 Stat. 85, 87, 92, 100.)

52 U.S.C.A. § 30101, 52 USCA § 30101
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 30102
Formerly cited as 2 USCA § 432

§ 30102. Organization of political committees

Effective: September 21, 2018
Currentness

(a) Treasurer; vacancy; official authorizations

Every political committee shall have a treasurer. No contribution or expenditure shall be accepted or made by or on behalf of a political committee during any period in which the office of treasurer is vacant. No expenditure shall be made for or on behalf of a political committee without the authorization of the treasurer or his or her designated agent.

(b) Account of contributions; segregated funds

(1) Every person who receives a contribution for an authorized political committee shall, no later than 10 days after receiving such contribution, forward to the treasurer such contribution, and if the amount of the contribution is in excess of $50 the name and address of the person making the contribution and the date of receipt.

(2) Every person who receives a contribution for a political committee which is not an authorized committee shall--

(A) if the amount of the contribution is $50 or less, forward to the treasurer such contribution no later than 30 days after receiving the contribution; and

(B) if the amount of the contribution is in excess of $50, forward to the treasurer such contribution, the name and address of the person making the contribution, and the date of receipt of the contribution, no later than 10 days after receiving the contribution.

(3) All funds of a political committee shall be segregated from, and may not be commingled with, the personal funds of any individual.

(c) Recordkeeping

The treasurer of a political committee shall keep an account of--

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(1) all contributions received by or on behalf of such political committee;

(2) the name and address of any person who makes any contribution in excess of $50, together with the date and amount of such contribution by any person;

(3) the identification of any person who makes a contribution or contributions aggregating more than $200 during a calendar year, together with the date and amount of any such contribution;

(4) the identification of any political committee which makes a contribution, together with the date and amount of any such contribution; and

(5) the name and address of every person to whom any disbursement is made, the date, amount, and purpose of the disbursement, and the name of the candidate and the office sought by the candidate, if any, for whom the disbursement was made, including a receipt, invoice, or canceled check for each disbursement in excess of $200.

(d) Preservation of records and copies of reports

The treasurer shall preserve all records required to be kept by this section and copies of all reports required to be filed by this subchapter for 3 years after the report is filed. For any report filed in electronic format under section 30104(a)(11) of this title, the treasurer shall retain a machine-readable copy of the report as the copy preserved under the preceding sentence.

(e) Principal and additional campaign committees; designations, status of candidate, authorized committees, etc.

(1) Each candidate for Federal office (other than the nominee for the office of Vice President) shall designate in writing a political committee in accordance with paragraph (3) to serve as the principal campaign committee of such candidate. Such designation shall be made no later than 15 days after becoming a candidate. A candidate may designate additional political committees in accordance with paragraph (3) to serve as authorized committees of such candidate. Such designation shall be in writing and filed with the principal campaign committee of such candidate in accordance with subsection (f)(1).

(2) Any candidate described in paragraph (1) who receives a contribution, or any loan for use in connection with the campaign of such candidate for election, or makes a disbursement in connection with such campaign, shall be considered, for purposes of this Act, as having received the contribution or loan, or as having made the disbursement, as the case may be, as an agent of the authorized committee or committees of such candidate.

(3)(A) No political committee which supports or has supported more than one candidate may be designated as an authorized committee, except that--

(i) the candidate for the office of President nominated by a political party may designate the national committee of such political party as a principal campaign committee, but only if that national committee maintains separate books of account with respect to its function as a principal campaign committee; and

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(ii) candidates may designate a political committee established solely for the purpose of joint fundraising by such candidates as an authorized committee.

(B) As used in this section, the term "support" does not include a contribution by any authorized committee in amounts of $2,000 or less to an authorized committee of any other candidate.

(4) The name of each authorized committee shall include the name of the candidate who authorized such committee under paragraph (1). In the case of any political committee which is not an authorized committee, such political committee shall not include the name of any candidate in its name.

(5) The name of any separate segregated fund established pursuant to section 30118(b) of this title shall include the name of its connected organization.

(f) Filing with and receipt of designations, statements, and reports by principal campaign committee

(1) Notwithstanding any other provision of this Act, each designation, statement, or report of receipts or disbursements made by an authorized committee of a candidate shall be filed with the candidate's principal campaign committee.

(2) Each principal campaign committee shall receive all designations, statements, and reports required to be filed with it under paragraph (1) and shall compile and file such designations, statements, and reports in accordance with this Act.

(g) Filing with the Commission

All designations, statements, and reports required to be filed under this Act shall be filed with the Commission.

(h) Campaign depositories; designations, maintenance of accounts, etc.; petty cash fund for disbursements; record of disbursements

(1) Each political committee shall designate one or more State banks, federally chartered depository institutions, or depository institutions the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration, as its campaign depository or depositories. Each political committee shall maintain at least one checking account and such other accounts as the committee determines at a depository designated by such committee. All receipts received by such committee shall be deposited in such accounts. No disbursements may be made (other than petty cash disbursements under paragraph (2)) by such committee except by check drawn on such accounts in accordance with this section.

(2) A political committee may maintain a petty cash fund for disbursements not in excess of $100 to any person in connection with a single purchase or transaction. A record of all petty cash disbursements shall be maintained in accordance with subsection (c)(5).

(i) Reports and records, compliance with requirements based on best efforts

When the treasurer of a political committee shows that best efforts have been used to obtain, maintain, and submit the information required by this Act for the political committee, any report or any records of such committee shall be considered in compliance with this Act or chapter 95 or chapter 96 of Title 26.

CREDIT(S)

(Pub.L. 92-225, Title III, § 302, Feb. 7, 1972, 86 Stat. 12; Pub.L. 93-443, Title II, §§ 202, 208(c)(2), Oct. 15, 1974, 88 Stat. 1275, 1286; Pub.L. 94-283, Title I, § 103, May 11, 1976, 90 Stat. 480; Pub.L. 96-187, Title I, § 102, Jan. 8, 1980, 93 Stat. 1345; Pub.L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub.L. 104-79, §§ 1(b), 3(a), Dec. 28, 1995, 109 Stat. 791, 792; Pub.L. 105-61, Title VI, § 637, Oct. 10, 1997, 111 Stat. 1316; Pub.L. 108-447, Div. H, Title V, § 525, Dec. 8, 2004, 118 Stat. 3271; Pub.L. 115-244, Div. B, Title I, § 102, Sept. 21, 2018, 132 Stat. 2926.)

52 U.S.C.A. § 30102, 52 USCA § 30102
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 30103
Formerly cited as 2 USCA § 433

§ 30103. Registration of political committees

Currentness

(a) Statements of organizations

Each authorized campaign committee shall file a statement of organization no later than 10 days after designation pursuant to section 30102(e)(1) of this title. Each separate segregated fund established under the provisions of section 30118(b) of this title shall file a statement of organization no later than 10 days after establishment. All other committees shall file a statement of organization within 10 days after becoming a political committee within the meaning of section 30101(4) of this title.

(b) Contents of statements

The statement of organization of a political committee shall include--

(1) the name, address, and type of committee;

(2) the name, address, relationship, and type of any connected organization or affiliated committee;

(3) the name, address, and position of the custodian of books and accounts of the committee;

(4) the name and address of the treasurer of the committee;

(5) if the committee is authorized by a candidate, the name, address, office sought, and party affiliation of the candidate; and

(6) a listing of all banks, safety deposit boxes, or other depositories used by the committee.

(c) Change of information in statements

Any change in information previously submitted in a statement of organization shall be reported in accordance with section 30102(g) of this title no later than 10 days after the date of the change.

(d) Termination, etc., requirements and authorities

(1) A political committee may terminate only when such a committee files a written statement, in accordance with section 30102(g) of this title, that it will no longer receive any contributions or make any disbursements and that such committee has no outstanding debts or obligations.

(2) Nothing contained in this subsection may be construed to eliminate or limit the authority of the Commission to establish procedures for--

(A) the determination of insolvency with respect to any political committee;

(B) the orderly liquidation of an insolvent political committee, and the orderly application of its assets for the reduction of outstanding debts; and

(C) the termination of an insolvent political committee after such liquidation and application of assets.

CREDIT(S)

(Pub.L. 92-225, Title III, § 303, Feb. 7, 1972, 86 Stat. 14; Pub.L. 93-443, Title II, §§ 203, 208(c)(3), Oct. 15, 1974, 88 Stat. 1276, 1286; Pub.L. 96-187, Title I, § 103, Jan. 8, 1980, 93 Stat. 1347.)

52 U.S.C.A. § 30103, 52 USCA § 30103
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 30104
Formerly cited as 2 USCA § 434

§ 30104. Reporting requirements

Currentness

(a) Receipts and disbursements by treasurers of political committees; filing requirements

(1) Each treasurer of a political committee shall file reports of receipts and disbursements in accordance with the provisions of this subsection. The treasurer shall sign each such report.

(2) If the political committee is the principal campaign committee of a candidate for the House of Representatives or for the Senate--

(A) in any calendar year during which there is[1] regularly scheduled election for which such candidate is seeking election, or nomination for election, the treasurer shall file the following reports:

(i) a pre-election report, which shall be filed no later than the 12th day before (or posted by any of the following: registered mail, certified mail, priority mail having a delivery confirmation, or express mail having a delivery confirmation, or delivered to an overnight delivery service with an on-line tracking system, if posted or delivered no later than the 15th day before) any election in which such candidate is seeking election, or nomination for election, and which shall be complete as of the 20th day before such election;

(ii) a post-general election report, which shall be filed no later than the 30th day after any general election in which such candidate has sought election, and which shall be complete as of the 20th day after such general election; and

(iii) additional quarterly reports, which shall be filed no later than the 15th day after the last day of each calendar quarter, and which shall be complete as of the last day of each calendar quarter: except that the report for the quarter ending December 31 shall be filed no later than January 31 of the following calendar year; and

(B) in any other calendar year the treasurer shall file quarterly reports, which shall be filed not later than the 15th day after the last day of each calendar quarter, and which shall be complete as of the last day of each calendar quarter, except that the report for the quarter ending December 31 shall be filed not later than January 31 of the following calendar year.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(3) If the committee is the principal campaign committee of a candidate for the office of President--

(A) in any calendar year during which a general election is held to fill such office--

(i) the treasurer shall file monthly reports if such committee has on January 1 of such year, received contributions aggregating $100,000 or made expenditures aggregating $100,000 or anticipates receiving contributions aggregating $100,000 or more or making expenditures aggregating $100,000 or more during such year: such monthly reports shall be filed no later than the 20th day after the last day of each month and shall be complete as of the last day of the month, except that, in lieu of filing the report otherwise due in November and December, a pre-general election report shall be filed in accordance with paragraph (2)(A)(i), a post-general election report shall be filed in accordance with paragraph (2)(A)(ii), and a year end report shall be filed no later than January 31 of the following calendar year;

(ii) the treasurer of the other principal campaign committees of a candidate for the office of President shall file a pre-election report or reports in accordance with paragraph (2)(A)(i), a post-general election report in accordance with paragraph (2)(A)(ii), and quarterly reports in accordance with paragraph (2)(A)(iii); and

(iii) if at any time during the election year a committee filing under paragraph (3)(A)(ii) receives contributions in excess of $100,000 or makes expenditures in excess of $100,000, the treasurer shall begin filing monthly reports under paragraph (3)(A)(i) at the next reporting period; and

(B) in any other calendar year, the treasurer shall file either--

(i) monthly reports, which shall be filed no later than the 20th day after the last day of each month and shall be complete as of the last day of the month; or

(ii) quarterly reports, which shall be filed no later than the 15th day after the last day of each calendar quarter and which shall be complete as of the last day of each calendar quarter.

(4) All political committees other than authorized committees of a candidate shall file either--

(A)(i) quarterly reports, in a calendar year in which a regularly scheduled general election is held, which shall be filed no later than the 15th day after the last day of each calendar quarter: except that the report for the quarter ending on December 31 of such calendar year shall be filed no later than January 31 of the following calendar year;

(ii) a pre-election report, which shall be filed no later than the 12th day before (or posted by any of the following: registered mail, certified mail, priority mail having a delivery confirmation, or express mail having a delivery confirmation, or delivered to an overnight delivery service with an on-line tracking system, if posted or delivered no later than the 15th day before) any election in which the committee makes a contribution to or expenditure on behalf of a candidate in such election, and which shall be complete as of the 20th day before the election;

(iii) a post-general election report, which shall be filed no later than the 30th day after the general election and which shall be complete as of the 20th day after such general election; and

(iv) in any other calendar year, a report covering the period beginning January 1 and ending June 30, which shall be filed no later than July 31 and a report covering the period beginning July 1 and ending December 31, which shall be filed no later than January 31 of the following calendar year; or

(B) monthly reports in all calendar years which shall be filed no later than the 20th day after the last day of the month and shall be complete as of the last day of the month, except that, in lieu of filing the reports otherwise due in November and December of any year in which a regularly scheduled general election is held, a pre-general election report shall be filed in accordance with paragraph (2)(A)(i), a post-general election report shall be filed in accordance with paragraph (2)(A)(ii), and a year end report shall be filed no later than January 31 of the following calendar year.

Notwithstanding the preceding sentence, a national committee of a political party shall file the reports required under subparagraph (B).

(5) If a designation, report, or statement filed pursuant to this Act (other than under paragraph (2)(A)(i) or (4)(A)(ii) or subsection (g)(1)) is sent by registered mail, certified mail, priority mail having a delivery confirmation, or express mail having a delivery confirmation, the United States postmark shall be considered the date of filing the designation, report or statement. If a designation, report or statement filed pursuant to this Act (other than under paragraph (2)(A)(i) or (4)(A)(ii), or subsection (g)(1)) is sent by an overnight delivery service with an on-line tracking system, the date on the proof of delivery to the delivery service shall be considered the date of filing of the designation, report, or statement.

(6)(A) The principal campaign committee of a candidate shall notify the Secretary or the Commission, and the Secretary of State, as appropriate, in writing, of any contribution of $1,000 or more received by any authorized committee of such candidate after the 20th day, but more than 48 hours before, any election. This notification shall be made within 48 hours after the receipt of such contribution and shall include the name of the candidate and the office sought by the candidate, the identification of the contributor, and the date of receipt and amount of the contribution.

(B) Notification of expenditure from personal funds

(i) Definition of expenditure from personal funds

In this subparagraph, the term “expenditure from personal funds” means--

(I) an expenditure made by a candidate using personal funds; and

(II) a contribution or loan made by a candidate using personal funds or a loan secured using such funds to the candidate's authorized committee.

(ii) Declaration of intent

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

Not later than the date that is 15 days after the date on which an individual becomes a candidate for the office of Senator, the candidate shall file a declaration stating the total amount of expenditures from personal funds that the candidate intends to make, or to obligate to make, with respect to the election that will exceed the State-by-State competitive and fair campaign formula with--

(I) the Commission; and

(II) each candidate in the same election.

(iii) Initial notification

Not later than 24 hours after a candidate described in clause (ii) makes or obligates to make an aggregate amount of expenditures from personal funds in excess of 2 times the threshold amount in connection with any election, the candidate shall file a notification with--

(I) the Commission; and

(II) each candidate in the same election.

(iv) Additional notification

After a candidate files an initial notification under clause (iii), the candidate shall file an additional notification each time expenditures from personal funds are made or obligated to be made in an aggregate amount that exceed[2] $10,000 with--

(I) the Commission; and

(II) each candidate in the same election.

Such notification shall be filed not later than 24 hours after the expenditure is made.

(v) Contents

A notification under clause (iii) or (iv) shall include--

(I) the name of the candidate and the office sought by the candidate;

(II) the date and amount of each expenditure; and

(III) the total amount of expenditures from personal funds that the candidate has made, or obligated to make, with respect to an election as of the date of the expenditure that is the subject of the notification.

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(C) Notification of disposal of excess contributions

In the next regularly scheduled report after the date of the election for which a candidate seeks nomination for election to, or election to, Federal office, the candidate or the candidate's authorized committee shall submit to the Commission a report indicating the source and amount of any excess contributions (as determined under paragraph (1) of section 30116(i) of this title) and the manner in which the candidate or the candidate's authorized committee used such funds.

(D) Enforcement

For provisions providing for the enforcement of the reporting requirements under this paragraph, see section 30109 of this title.

(E) The notification required under this paragraph shall be in addition to all other reporting requirements under this Act.

(7) The reports required to be filed by this subsection shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous report during such year, only the amount need be carried forward.

(8) The requirement for a political committee to file a quarterly report under paragraph (2)(A)(iii) or paragraph (4)(A)(i) shall be waived if such committee is required to file a pre-election report under paragraph (2)(A)(i), or paragraph (4)(A)(ii) during the period beginning on the 5th day after the close of the calendar quarter and ending on the 15th day after the close of the calendar quarter.

(9) The Commission shall set filing dates for reports to be filed by principal campaign committees of candidates seeking election, or nomination for election, in special elections and political committees filing under paragraph (4)(A) which make contributions to or expenditures on behalf of a candidate or candidates in special elections. The Commission shall require no more than one pre-election report for each election and one post-election report for the election which fills the vacancy. The Commission may waive any reporting obligation of committees required to file for special elections if any report required by paragraph (2) or (4) is required to be filed within 10 days of a report required under this subsection. The Commission shall establish the reporting dates within 5 days of the setting of such election and shall publish such dates and notify the principal campaign committees of all candidates in such election of the reporting dates.

(10) The treasurer of a committee supporting a candidate for the office of Vice President (other than the nominee of a political party) shall file reports in accordance with paragraph (3).

(11)(A) The Commission shall promulgate a regulation under which a person required to file a designation, statement, or report under this Act--

(i) is required to maintain and file a designation, statement, or report for any calendar year in electronic form accessible by computers if the person has, or has reason to expect to have, aggregate contributions or expenditures in excess of a threshold amount determined by the Commission; and

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(ii) may maintain and file a designation, statement, or report in electronic form or an alternative form if not required to do so under the regulation promulgated under clause (i).

(B) The Commission shall make a designation, statement, report, or notification that is filed with the Commission under this Act available for inspection by the public in the offices of the Commission and accessible to the public on the Internet not later than 48 hours (or not later than 24 hours in the case of a designation, statement, report, or notification filed electronically) after receipt by the Commission.

(C) In promulgating a regulation under this paragraph, the Commission shall provide methods (other than requiring a signature on the document being filed) for verifying designations, statements, and reports covered by the regulation. Any document verified under any of the methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.

(D) As used in this paragraph, the term "report" means, with respect to the Commission, a report, designation, or statement required by this Act to be filed with the Commission.

(12) Software for filing of reports

(A) In general

The Commission shall--

(i) promulgate standards to be used by vendors to develop software that--

(I) permits candidates to easily record information concerning receipts and disbursements required to be reported under this Act at the time of the receipt or disbursement;

(II) allows the information recorded under subclause (I) to be transmitted immediately to the Commission; and

(III) allows the Commission to post the information on the Internet immediately upon receipt; and

(ii) make a copy of software that meets the standards promulgated under clause (i) available to each person required to file a designation, statement, or report in electronic form under this Act.

(B) Additional information

To the extent feasible, the Commission shall require vendors to include in the software developed under the standards under subparagraph (A) the ability for any person to file any designation, statement, or report required under this Act in electronic form.

(C) Required use

Notwithstanding any provision of this Act relating to times for filing reports, each candidate for Federal office (or that candidate's authorized committee) shall use software that meets the standards promulgated under this paragraph once such software is made available to such candidate.

(D) Required posting

The Commission shall, as soon as practicable, post on the Internet any information received under this paragraph.

(b) Contents of reports

Each report under this section shall disclose--

(1) the amount of cash on hand at the beginning of the reporting period;

(2) for the reporting period and the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), the total amount of all receipts, and the total amount of all receipts in the following categories:

(A) contributions from persons other than political committees;

(B) for an authorized committee, contributions from the candidate;

(C) contributions from political party committees;

(D) contributions from other political committees;

(E) for an authorized committee, transfers from other authorized committees of the same candidate;

(F) transfers from affiliated committees and, where the reporting committee is a political party committee, transfers from other political party committees, regardless of whether such committees are affiliated;

(G) for an authorized committee, loans made by or guaranteed by the candidate;

(H) all other loans;

(I) rebates, refunds, and other offsets to operating expenditures;

(J) dividends, interest, and other forms of receipts; and

(K) for an authorized committee of a candidate for the office of President, Federal funds received under chapter 95 and chapter 96 of Title 26;

(3) the identification of each--

(A) person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), or in any lesser amount if the reporting committee should so elect, together with the date and amount of any such contribution;

(B) political committee which makes a contribution to the reporting committee during the reporting period, together with the date and amount of any such contribution;

(C) authorized committee which makes a transfer to the reporting committee;

(D) affiliated committee which makes a transfer to the reporting committee during the reporting period and, where the reporting committee is a political party committee, each transfer of funds to the reporting committee from another political party committee, regardless of whether such committees are affiliated, together with the date and amount of such transfer;

(E) person who makes a loan to the reporting committee during the reporting period, together with the identification of any endorser or guarantor of such loan, and the date and amount or value of such loan;

(F) person who provides a rebate, refund, or other offset to operating expenditures to the reporting committee in an aggregate amount or value in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), together with the date and amount of such receipt; and

(G) person who provides any dividend, interest, or other receipt to the reporting committee in an aggregate value or amount in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), together with the date and amount of any such receipt;

(4) for the reporting period and the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), the total amount of all disbursements, and all disbursements in the following categories:

(A) expenditures made to meet candidate or committee operating expenses;

(B) for authorized committees, transfers to other committees authorized by the same candidate;

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(C) transfers to affiliated committees and, where the reporting committee is a political party committee, transfers to other political party committees, regardless of whether they are affiliated;

(D) for an authorized committee, repayment of loans made by or guaranteed by the candidate;

(E) repayment of all other loans;

(F) contribution refunds and other offsets to contributions;

(G) for an authorized committee, any other disbursements;

(H) for any political committee other than an authorized committee--

(i) contributions made to other political committees;

(ii) loans made by the reporting committees;

(iii) independent expenditures;

(iv) expenditures made under section 30116(d) of this title; and

(v) any other disbursements; and

(I) for an authorized committee of a candidate for the office of President, disbursements not subject to the limitation of section 30116(b) of this title;

(5) the name and address of each--

(A) person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure;

(B) authorized committee to which a transfer is made by the reporting committee;

(C) affiliated committee to which a transfer is made by the reporting committee during the reporting period and, where the reporting committee is a political party committee, each transfer of funds by the reporting committee to another political party committee, regardless of whether such committees are affiliated, together with the date and amount of such transfers;

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(D) person who receives a loan repayment from the reporting committee during the reporting period, together with the date and amount of such loan repayment; and

(E) person who receives a contribution refund or other offset to contributions from the reporting committee where such contribution was reported under paragraph (3)(A) of this subsection, together with the date and amount of such disbursement;

(6)(A) for an authorized committee, the name and address of each person who has received any disbursement not disclosed under paragraph (5) in an aggregate amount or value in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), together with the date and amount of any such disbursement;

(B) for any other political committee, the name and address of each--

(i) political committee which has received a contribution from the reporting committee during the reporting period, together with the date and amount of any such contribution;

(ii) person who has received a loan from the reporting committee during the reporting period, together with the date and amount of such loan;

(iii) person who receives any disbursement during the reporting period in an aggregate amount or value in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), in connection with an independent expenditure by the reporting committee, together with the date, amount, and purpose of any such independent expenditure and a statement which indicates whether such independent expenditure is in support of, or in opposition to, a candidate, as well as the name and office sought by such candidate, and a certification, under penalty of perjury, whether such independent expenditure is made in cooperation, consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such committee;

(iv) person who receives any expenditure from the reporting committee during the reporting period in connection with an expenditure under section 30116(d) of this title, together with the date, amount, and purpose of any such expenditure as well as the name of, and office sought by, the candidate on whose behalf the expenditure is made; and

(v) person who has received any disbursement not otherwise disclosed in this paragraph or paragraph (5) in an aggregate amount or value in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), from the reporting committee within the reporting period, together with the date, amount, and purpose of any such disbursement;

(7) the total sum of all contributions to such political committee, together with the total contributions less offsets to contributions and the total sum of all operating expenditures made by such political committee, together with total operating expenditures less offsets to operating expenditures, for both the reporting period and the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office); and

(8) the amount and nature of outstanding debts and obligations owed by or to such political committee; and where such debts and obligations are settled for less than their reported amount or value, a statement as to the circumstances and conditions under which such debts or obligations were extinguished and the consideration therefor.

(c) Statements by other than political committees; filing; contents; indices of expenditures

(1) Every person (other than a political committee) who makes independent expenditures in an aggregate amount or value in excess of $250 during a calendar year shall file a statement containing the information required under subsection (b)(3)(A) for all contributions received by such person.

(2) Statements required to be filed by this subsection shall be filed in accordance with subsection (a)(2), and shall include--

(A) the information required by subsection (b)(6)(B)(iii), indicating whether the independent expenditure is in support of, or in opposition to, the candidate involved;

(B) under penalty of perjury, a certification whether or not such independent expenditure is made in cooperation, consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate; and

(C) the identification of each person who made a contribution in excess of $200 to the person filing such statement which was made for the purpose of furthering an independent expenditure.

(3) The Commission shall be responsible for expeditiously preparing indices which set forth, on a candidate-by-candidate basis, all independent expenditures separately, including those reported under subsection (b)(6)(B)(iii), made by or for each candidate, as reported under this subsection, and for periodically publishing such indices on a timely pre-election basis.

(d) Filing by facsimile device or electronic mail

(1) Any person who is required to file a statement under subsection (c) or (g) of this section, except statements required to be filed electronically pursuant to subsection (a)(11)(A)(i) may file the statement by facsimile device or electronic mail, in accordance with such regulations as the Commission may promulgate.

(2) The Commission shall make a document which is filed electronically with the Commission pursuant to this paragraph accessible to the public on the Internet not later than 24 hours after the document is received by the Commission.

(3) In promulgating a regulation under this paragraph, the Commission shall provide methods (other than requiring a signature on the document being filed) for verifying the documents covered by the regulation. Any document verified under any of the methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.

(e) Political committees

© 2024 Thomson Reuters. No claim to o

U.S. Government Works.

(1) National and congressional political committees

The national committee of a political party, any national congressional campaign committee of a political party, and any subordinate committee of either, shall report all receipts and disbursements during the reporting period.

(2) Other political committees to which section 30125 of this title applies

(A) In general

In addition to any other reporting requirements applicable under this Act, a political committee (not described in paragraph (1)) to which section 30125(b)(1) of this title applies shall report all receipts and disbursements made for activities described in section 30101(20)(A) of this title, unless the aggregate amount of such receipts and disbursements during the calendar year is less than $5,000.

(B) Specific disclosure by State and local parties of certain non-Federal amounts permitted to be spent on Federal election activity

Each report by a political committee under subparagraph (A) of receipts and disbursements made for activities described in section 30101(20)(A) of this title shall include a disclosure of all receipts and disbursements described in section 30125(b)(2)(A) and (B) of this title.

(3) Itemization

If a political committee has receipts or disbursements to which this subsection applies from or to any person aggregating in excess of $200 for any calendar year, the political committee shall separately itemize its reporting for such person in the same manner as required in paragraphs (3)(A), (5), and (6) of subsection (b).

(4) Reporting periods

Reports required to be filed under this subsection shall be filed for the same time periods required for political committees under subsection (a)(4)(B).

(f) Disclosure of electioneering communications

(1) Statement required

Every person who makes a disbursement for the direct costs of producing and airing electioneering communications in an aggregate amount in excess of $10,000 during any calendar year shall, within 24 hours of each disclosure date, file with the Commission a statement containing the information described in paragraph (2).

(2) Contents of statement

Each statement required to be filed under this subsection shall be made under penalty of perjury and shall contain the following information:

(A) The identification of the person making the disbursement, of any person sharing or exercising direction or control over the activities of such person, and of the custodian of the books and accounts of the person making the disbursement.

(B) The principal place of business of the person making the disbursement, if not an individual.

(C) The amount of each disbursement of more than $200 during the period covered by the statement and the identification of the person to whom the disbursement was made.

(D) The elections to which the electioneering communications pertain and the names (if known) of the candidates identified or to be identified.

(E) If the disbursements were paid out of a segregated bank account which consists of funds contributed solely by individuals who are United States citizens or nationals or lawfully admitted for permanent residence (as defined in section 1101(a)(20) of Title 8) directly to this account for electioneering communications, the names and addresses of all contributors who contributed an aggregate amount of $1,000 or more to that account during the period beginning on the first day of the preceding calendar year and ending on the disclosure date. Nothing in this subparagraph is to be construed as a prohibition on the use of funds in such a segregated account for a purpose other than electioneering communications.

(F) If the disbursements were paid out of funds not described in subparagraph (E), the names and addresses of all contributors who contributed an aggregate amount of $1,000 or more to the person making the disbursement during the period beginning on the first day of the preceding calendar year and ending on the disclosure date.

(3) Electioneering communication

For purposes of this subsection--

(A) In general

(i) The term "electioneering communication" means any broadcast, cable, or satellite communication which--

(I) refers to a clearly identified candidate for Federal office;

(II) is made within--

(aa) 60 days before a general, special, or runoff election for the office sought by the candidate; or

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(bb) 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and

(III) in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate.

(ii) If clause (i) is held to be constitutionally insufficient by final judicial decision to support the regulation provided herein, then the term “electioneering communication” means any broadcast, cable, or satellite communication which promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate) and which also is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate. Nothing in this subparagraph shall be construed to affect the interpretation or application of section 100.22(b) of title 11, Code of Federal Regulations.

(B) Exceptions

The term “electioneering communication” does not include--

(i) a communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless such facilities are owned or controlled by any political party, political committee, or candidate;

(ii) a communication which constitutes an expenditure or an independent expenditure under this Act;

(iii) a communication which constitutes a candidate debate or forum conducted pursuant to regulations adopted by the Commission, or which solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum; or

(iv) any other communication exempted under such regulations as the Commission may promulgate (consistent with the requirements of this paragraph) to ensure the appropriate implementation of this paragraph, except that under any such regulation a communication may not be exempted if it meets the requirements of this paragraph and is described in section 30101(20)(A)(iii) of this title.

(C) Targeting to relevant electorate

For purposes of this paragraph, a communication which refers to a clearly identified candidate for Federal office is “targeted to the relevant electorate” if the communication can be received by 50,000 or more persons--

(i) in the district the candidate seeks to represent, in the case of a candidate for Representative in, or Delegate or Resident Commissioner to, the Congress; or

(ii) in the State the candidate seeks to represent, in the case of a candidate for Senator.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(4) Disclosure date

For purposes of this subsection, the term "disclosure date" means--

(A) the first date during any calendar year by which a person has made disbursements for the direct costs of producing or airing electioneering communications aggregating in excess of $10,000; and

(B) any other date during such calendar year by which a person has made disbursements for the direct costs of producing or airing electioneering communications aggregating in excess of $10,000 since the most recent disclosure date for such calendar year.

(5) Contracts to disburse

For purposes of this subsection, a person shall be treated as having made a disbursement if the person has executed a contract to make the disbursement.

(6) Coordination with other requirements

Any requirement to report under this subsection shall be in addition to any other reporting requirement under this Act.

(7) Coordination with Title 26

Nothing in this subsection may be construed to establish, modify, or otherwise affect the definition of political activities or electioneering activities (including the definition of participating in, intervening in, or influencing or attempting to influence a political campaign on behalf of or in opposition to any candidate for public office) for purposes of Title 26.

(g) Time for reporting certain expenditures

(1) Expenditures aggregating $1,000

(A) Initial report

A person (including a political committee) that makes or contracts to make independent expenditures aggregating $1,000 or more after the 20th day, but more than 24 hours, before the date of an election shall file a report describing the expenditures within 24 hours.

(B) Additional reports

After a person files a report under subparagraph (A), the person shall file an additional report within 24 hours after each time the person makes or contracts to make independent expenditures aggregating an additional $1,000 with respect to the same election as that to which the initial report relates.

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

(2) Expenditures aggregating $10,000

(A) Initial report

A person (including a political committee) that makes or contracts to make independent expenditures aggregating $10,000 or more at any time up to and including the 20th day before the date of an election shall file a report describing the expenditures within 48 hours.

(B) Additional reports

After a person files a report under subparagraph (A), the person shall file an additional report within 48 hours after each time the person makes or contracts to make independent expenditures aggregating an additional $10,000 with respect to the same election as that to which the initial report relates.

(3) Place of filing; contents

A report under this subsection--

(A) shall be filed with the Commission; and

(B) shall contain the information required by subsection (b)(6)(B)(iii), including the name of each candidate whom an expenditure is intended to support or oppose.

(4) Time of filing for expenditures aggregating $1,000

Notwithstanding subsection (a)(5), the time at which the statement under paragraph (1) is received by the Commission or any other recipient to whom the notification is required to be sent shall be considered the time of filing of the statement with the recipient.

(h) Reports from Inaugural Committees

The Federal Election Commission shall make any report filed by an Inaugural Committee under section 510 of Title 36 accessible to the public at the offices of the Commission and on the Internet not later than 48 hours after the report is received by the Commission.

(i) Disclosure of bundled contributions

(1) Required disclosure

Each committee described in paragraph (6) shall include in the first report required to be filed under this section after each covered period (as defined in paragraph (2)) a separate schedule setting forth the name, address, and employer of each person

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

reasonably known by the committee to be a person described in paragraph (7) who provided 2 or more bundled contributions to the committee in an aggregate amount greater than the applicable threshold (as defined in paragraph (3)) during the covered period, and the aggregate amount of the bundled contributions provided by each such person during the covered period.

(2) Covered period

In this subsection, a "covered period" means, with respect to a committee--

(A) the period beginning January 1 and ending June 30 of each year;

(B) the period beginning July 1 and ending December 31 of each year; and

(C) any reporting period applicable to the committee under this section during which any person described in paragraph (7) provided 2 or more bundled contributions to the committee in an aggregate amount greater than the applicable threshold.

(3) Applicable threshold

(A) In general

In this subsection, the "applicable threshold" is $15,000, except that in determining whether the amount of bundled contributions provided to a committee by a person described in paragraph (7) exceeds the applicable threshold, there shall be excluded any contribution made to the committee by the person or the person's spouse.

(B) Indexing

In any calendar year after 2007, section 30116(c)(1)(B) of this title shall apply to the amount applicable under subparagraph (A) in the same manner as such section applies to the limitations established under subsections (a)(1)(A), (a)(1)(B), (a)(3), and (h) of such section, except that for purposes of applying such section to the amount applicable under subparagraph (A), the "base period" shall be 2006.

(4) Public availability

The Commission shall ensure that, to the greatest extent practicable--

(A) information required to be disclosed under this subsection is publicly available through the Commission website in a manner that is searchable, sortable, and downloadable; and

(B) the Commission's public database containing information disclosed under this subsection is linked electronically to the websites maintained by the Secretary of the Senate and the Clerk of the House of Representatives containing information filed pursuant to the Lobbying Disclosure Act of 1995.

(5) Regulations

Not later than 6 months after September 14, 2007, the Commission shall promulgate regulations to implement this subsection. Under such regulations, the Commission--

(A) may, notwithstanding paragraphs (1) and (2), provide for quarterly filing of the schedule described in paragraph (1) by a committee which files reports under this section more frequently than on a quarterly basis;

(B) shall provide guidance to committees with respect to whether a person is reasonably known by a committee to be a person described in paragraph (7), which shall include a requirement that committees consult the websites maintained by the Secretary of the Senate and the Clerk of the House of Representatives containing information filed pursuant to the Lobbying Disclosure Act of 1995;

(C) may not exempt the activity of a person described in paragraph (7) from disclosure under this subsection on the grounds that the person is authorized to engage in fundraising for the committee or any other similar grounds; and

(D) shall provide for the broadest possible disclosure of activities described in this subsection by persons described in paragraph (7) that is consistent with this subsection.

(6) Committees described

A committee described in this paragraph is an authorized committee of a candidate, a leadership PAC, or a political party committee.

(7) Persons described

A person described in this paragraph is any person, who, at the time a contribution is forwarded to a committee as described in paragraph (8)(A)(i) or is received by a committee as described in paragraph (8)(A)(ii), is--

(A) a current registrant under section 4(a) of the Lobbying Disclosure Act of 1995;

(B) an individual who is listed on a current registration filed under section 4(b)(6) of such Act or a current report under section 5(b)(2)(C) of such Act; or

(C) a political committee established or controlled by such a registrant or individual.

(8) Definitions

For purposes of this subsection, the following definitions apply:

(A) Bundled contribution

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

The term "bundled contribution" means, with respect to a committee described in paragraph (6) and a person described in paragraph (7), a contribution (subject to the applicable threshold) which is--

(i) forwarded from the contributor or contributors to the committee by the person; or

(ii) received by the committee from a contributor or contributors, but credited by the committee or candidate involved (or, in the case of a leadership PAC, by the individual referred to in subparagraph (B) involved) to the person through records, designations, or other means of recognizing that a certain amount of money has been raised by the person.

(B) Leadership PAC

The term "leadership PAC" means, with respect to a candidate for election to Federal office or an individual holding Federal office, a political committee that is directly or indirectly established, financed, maintained or controlled by the candidate or the individual but which is not an authorized committee of the candidate or individual and which is not affiliated with an authorized committee of the candidate or individual, except that such term does not include a political committee of a political party.

CREDIT(S)

(Pub.L. 92-225, Title III, § 304, Feb. 7, 1972, 86 Stat. 14; Pub.L. 93-443, Title II, §§ 204(a) to (d), 208(c)(4), Oct. 15, 1974, 88 Stat. 1276 to 1278, 1286; Pub.L. 94-283, Title I, § 104, May 11, 1976, 90 Stat. 480; Pub.L. 96-187, Title I, § 104, Jan. 8, 1980, 93 Stat. 1348; Pub.L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub.L. 104-79, §§ 1(a), 3(b), Dec. 28, 1995, 109 Stat. 791, 792; Pub.L. 106-58, Title VI, §§ 639(a), 641(a), Sept. 29, 1999, 113 Stat. 476, 477; Pub.L. 106-346, § 101(a) [Title V, § 502(a), (c)], Oct. 23, 2000, 114 Stat. 1356, 1356A-49; Pub.L. 107-155, Title I, § 103(a), Title II, §§ 201(a), 212, Title III, §§ 304(b), 306, 308(b), Title V, §§ 501, 503, Mar. 27, 2002, 116 Stat. 87, 88, 93, 99, 102, 104, 114, 115; Pub.L. 108-199, Div. F, Title VI, § 641, Jan. 23, 2004, 118 Stat. 359; Pub.L. 110-81, Title II, § 204(a), Sept. 14, 2007, 121 Stat. 744.)

Footnotes

1 So in original. Probably should be followed by "a".

2 So in original. Probably should be "exceeds".

52 U.S.C.A. § 30104, 52 USCA § 30104
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 30105
Formerly cited as 2 USCA § 437

§ 30105. Reports on convention financing

Currentness

Each committee or other organization which--

(1) represents a State, or a political subdivision thereof, or any group of persons, in dealing with officials of a national political party with respect to matters involving a convention held in such State or political subdivision to nominate a candidate for the office of President or Vice President, or

(2) represents a national political party in making arrangements for the convention of such party held to nominate a candidate for the office of President or Vice President,

shall, within 60 days following the end of the convention (but not later than 20 days prior to the date on which presidential and vice-presidential electors are chosen), file with the Commission a full and complete financial statement, in such form and detail as it may prescribe, of the sources from which it derived its funds, and the purpose for which such funds were expended.

CREDIT(S)

(Pub.L. 92-225, Title III, § 305, formerly § 307, Feb. 7, 1972, 86 Stat. 16; Pub.L. 93-443, Title II, § 208(c)(6), Oct. 15, 1974, 88 Stat. 1286; renumbered § 305 and amended Pub.L. 96-187, Title I, §§ 105(2), 112(a), Jan. 8, 1980, 93 Stat. 1354, 1366.)

52 U.S.C.A. § 30105, 52 USCA § 30105
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 30106
Formerly cited as 2 USCA § 437c

§ 30106. Federal Election Commission

Currentness

(a) Establishment; membership; term of office; vacancies; qualifications; compensation; chairman and vice chairman

(1) There is established a commission to be known as the Federal Election Commission. The Commission is composed of the Secretary of the Senate and the Clerk of the House of Representatives or their designees, ex officio and without the right to vote, and 6 members appointed by the President, by and with the advice and consent of the Senate. No more than 3 members of the Commission appointed under this paragraph may be affiliated with the same political party.

(2)(A) Members of the Commission shall serve for a single term of 6 years, except that of the members first appointed--

(i) two of the members, not affiliated with the same political party, shall be appointed for terms ending on April 30, 1977;

(ii) two of the members, not affiliated with the same political party, shall be appointed for terms ending on April 30, 1979; and

(iii) two of the members, not affiliated with the same political party, shall be appointed for terms ending on April 30, 1981.

(B) A member of the Commission may serve on the Commission after the expiration of his or her term until his or her successor has taken office as a member of the Commission.

(C) An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed only for the unexpired term of the member he or she succeeds.

(D) Any vacancy occurring in the membership of the Commission shall be filled in the same manner as in the case of the original appointment.

(3) Members shall be chosen on the basis of their experience, integrity, impartiality, and good judgment and members (other than the Secretary of the Senate and the Clerk of the House of Representatives) shall be individuals who, at the time appointed to the Commission, are not elected or appointed officers or employees in the executive, legislative, or judicial branch of the

Federal Government. Such members of the Commission shall not engage in any other business, vocation, or employment. Any individual who is engaging in any other business, vocation, or employment at the time of his or her appointment to the Commission shall terminate or liquidate such activity no later than 90 days after such appointment.

(4) Members of the Commission (other than the Secretary of the Senate and the Clerk of the House of Representatives) shall receive compensation equivalent to the compensation paid at level IV of the Executive Schedule (5 U.S.C. 5315).

(5) The Commission shall elect a chairman and a vice chairman from among its members (other than the Secretary of the Senate and the Clerk of the House of Representatives) for a term of one year. A member may serve as chairman only once during any term of office to which such member is appointed. The chairman and the vice chairman shall not be affiliated with the same political party. The vice chairman shall act as chairman in the absence or disability of the chairman or in the event of a vacancy in such office.

(b) Administration, enforcement, and formulation of policy; exclusive jurisdiction of civil enforcement; Congressional authorities or functions with respect to elections for Federal office

(1) The Commission shall administer, seek to obtain compliance with, and formulate policy with respect to, this Act and chapter 95 and chapter 96 of Title 26. The Commission shall have exclusive jurisdiction with respect to the civil enforcement of such provisions.

(2) Nothing in this Act shall be construed to limit, restrict, or diminish any investigatory, informational, oversight, supervisory, or disciplinary authority or function of the Congress or any committee of the Congress with respect to elections for Federal office.

(c) Voting requirements; delegation of authorities

All decisions of the Commission with respect to the exercise of its duties and powers under the provisions of this Act shall be made by a majority vote of the members of the Commission. A member of the Commission may not delegate to any person his or her vote or any decisionmaking authority or duty vested in the Commission by the provisions of this Act, except that the affirmative vote of 4 members of the Commission shall be required in order for the Commission to take any action in accordance with paragraph (6), (7), (8), or (9) of section 30107(a) of this title or with chapter 95 or chapter 96 of Title 26.

(d) Meetings

The Commission shall meet at least once each month and also at the call of any member.

(e) Rules for conduct of activities; judicial notice of seal; principal office

The Commission shall prepare written rules for the conduct of its activities, shall have an official seal which shall be judicially noticed, and shall have its principal office in or near the District of Columbia (but it may meet or exercise any of its powers anywhere in the United States).

(f) Staff director and general counsel; appointment and compensation; appointment and compensation of personnel and procurement of intermittent services by staff director; use of assistance, personnel, and facilities of Federal agencies and departments; counsel for defense of actions

(1) The Commission shall have a staff director and a general counsel who shall be appointed by the Commission. The staff director shall be paid at a rate not to exceed the rate of basic pay in effect for level IV of the Executive Schedule (5 U.S.C. 5315). The general counsel shall be paid at a rate not to exceed the rate of basic pay in effect for level V of the Executive Schedule (5 U.S.C. 5316). With the approval of the Commission, the staff director may appoint and fix the pay of such additional personnel as he or she considers desirable without regard to the provisions of Title 5 governing appointments in the competitive service.

(2) With the approval of the Commission, the staff director may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of Title 5, but at rates for individuals not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS-15 of the General Schedule (5 U.S.C. 5332).

(3) In carrying out its responsibilities under this Act, the Commission shall, to the fullest extent practicable, avail itself of the assistance, including personnel and facilities of other agencies and departments of the United States. The heads of such agencies and departments may make available to the Commission such personnel, facilities, and other assistance, with or without reimbursement, as the Commission may request.

(4) Notwithstanding the provisions of paragraph (2), the Commission is authorized to appear in and defend against any action instituted under this Act, either (A) by attorneys employed in its office, or (B) by counsel whom it may appoint, on a temporary basis as may be necessary for such purpose, without regard to the provisions of Title 5 governing appointments in the competitive service, and whose compensation it may fix without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title. The compensation of counsel so appointed on a temporary basis shall be paid out of any funds otherwise available to pay the compensation of employees of the Commission.

CREDIT(S)

(Pub.L. 92-225, Title III, § 306, formerly § 310, as added Pub.L. 93-443, Title II, § 208(a), Oct. 15, 1974, 88 Stat. 1280; renumbered § 309 and amended Pub.L. 94-283, Title I, §§ 101(a) to (d), 105, May 11, 1976, 90 Stat. 475, 476, 481; renumbered § 306 and amended Pub.L. 96-187, Title I, §§ 105(3), (6), 112(b), Jan. 8, 1980, 93 Stat. 1354, 1366; Pub.L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub.L. 105-61, Title V, § 512(a), Oct. 10, 1997, 111 Stat. 1305.)

52 U.S.C.A. § 30106, 52 USCA § 30106
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 30107
Formerly cited as 2 USCA § 437d

§ 30107. Powers of Commission

Currentness

(a) Specific authorities

The Commission has the power--

(1) to require by special or general orders, any person to submit, under oath, such written reports and answers to questions as the Commission may prescribe;

(2) to administer oaths or affirmations;

(3) to require by subpena, signed by the chairman or the vice chairman, the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties;

(4) in any proceeding or investigation, to order testimony to be taken by deposition before any person who is designated by the Commission and has the power to administer oaths and, in such instances, to compel testimony and the production of evidence in the same manner as authorized under paragraph (3);

(5) to pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States;

(6) to initiate (through civil actions for injunctive, declaratory, or other appropriate relief), defend (in the case of any civil action brought under section 30109(a)(8) of this title) or appeal any civil action in the name of the Commission to enforce the provisions of this Act and chapter 95 and chapter 96 of Title 26, through its general counsel;

(7) to render advisory opinions under section 30108 of this title;

(8) to develop such prescribed forms and to make, amend, and repeal such rules, pursuant to the provisions of chapter 5 of Title 5, as are necessary to carry out the provisions of this Act and chapter 95 and chapter 96 of Title 26; and

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(9) to conduct investigations and hearings expeditiously, to encourage voluntary compliance, and to report apparent violations to the appropriate law enforcement authorities.

(b) Judicial orders for compliance with subpenas and orders of Commission; contempt of court

Upon petition by the Commission, any United States district court within the jurisdiction of which any inquiry is being carried on may, in case of refusal to obey a subpena or order of the Commission issued under subsection (a), issue an order requiring compliance. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(c) Civil liability for disclosure of information

No person shall be subject to civil liability to any person (other than the Commission or the United States) for disclosing information at the request of the Commission.

(d) Concurrent transmissions to Congress or Member of budget estimates, etc.; prior submission of legislative recommendations, testimony, or comments on legislation

(1) Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of such estimate or request to the Congress.

(2) Whenever the Commission submits any legislative recommendation, or testimony, or comments on legislation, requested by the Congress or by any Member of the Congress, to the President or the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress or to the Member requesting the same. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, testimony, or comments on legislation, to any office or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

(e) Exclusive civil remedy for enforcement

Except as provided in section 30109(a)(8) of this title, the power of the Commission to initiate civil actions under subsection (a)(6) shall be the exclusive civil remedy for the enforcement of the provisions of this Act.

CREDIT(S)

(Pub.L. 92-225, Title III, § 307, formerly § 311, as added Pub.L. 93-443, Title II, § 208(a), Oct. 15, 1974, 88 Stat. 1282; renumbered § 310 and amended Pub.L. 94-283, Title I, §§ 105, 107, 115(b), May 11, 1976, 90 Stat. 481, 495; renumbered § 307 and amended Pub.L. 96-187, Title I, §§ 105(3), 106, Jan. 8, 1980, 93 Stat. 1354, 1356; Pub.L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

52 U.S.C.A. § 30107, 52 USCA § 30107
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 30108
Formerly cited as 2 USCA § 437f

§ 30108. Advisory opinions

Currentness

(a) Requests by persons, candidates, or authorized committees; subject matter; time for response

(1) Not later than 60 days after the Commission receives from a person a complete written request concerning the application of this Act, chapter 95 or chapter 96 of Title 26, or a rule or regulation prescribed by the Commission, with respect to a specific transaction or activity by the person, the Commission shall render a written advisory opinion relating to such transaction or activity to the person.

(2) If an advisory opinion is requested by a candidate, or any authorized committee of such candidate, during the 60-day period before any election for Federal office involving the requesting party, the Commission shall render a written advisory opinion relating to such request no later than 20 days after the Commission receives a complete written request.

(b) Procedures applicable to initial proposal of rules or regulations, and advisory opinions

Any rule of law which is not stated in this Act or in chapter 95 or chapter 96 of Title 26 may be initially proposed by the Commission only as a rule or regulation pursuant to procedures established in section 30111(d) of this title. No opinion of an advisory nature may be issued by the Commission or any of its employees except in accordance with the provisions of this section.

(c) Persons entitled to rely upon opinions; scope of protection for good faith reliance

(1) Any advisory opinion rendered by the Commission under subsection (a) may be relied upon by--

(A) any person involved in the specific transaction or activity with respect to which such advisory opinion is rendered; and

(B) any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion is rendered.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(2) Notwithstanding any other provisions of law, any person who relies upon any provision or finding of an advisory opinion in accordance with the provisions of paragraph (1) and who acts in good faith in accordance with the provisions and findings of such advisory opinion shall not, as a result of any such act, be subject to any sanction provided by this Act or by chapter 95 or chapter 96 of Title 26.

(d) Requests made public; submission of written comments by interested public

The Commission shall make public any request made under subsection (a) for an advisory opinion. Before rendering an advisory opinion, the Commission shall accept written comments submitted by any interested party within the 10-day period following the date the request is made public.

CREDIT(S)

(Pub.L. 92-225, Title III, § 308, formerly § 313, as added Pub.L. 93-443, Title II, § 208(a), Oct. 15, 1974, 88 Stat. 1283; renumbered § 312 and amended Pub.L. 94-283, Title I, §§ 105, 108(a), May 11, 1976, 90 Stat. 481, 482; renumbered § 308 and amended Pub.L. 96-187, Title I, §§ 105(4), 107(a), Jan. 8, 1980, 93 Stat. 1354, 1357; Pub.L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

52 U.S.C.A. § 30108, 52 USCA § 30108
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 30109
Formerly cited as 2 USCA § 437g

§ 30109. Enforcement

Effective: December 19, 2023
Currentness

(a) Administrative and judicial practice and procedure

(1) Any person who believes a violation of this Act or of chapter 95 or chapter 96 of Title 26 has occurred, may file a complaint with the Commission. Such complaint shall be in writing, signed and sworn to by the person filing such complaint, shall be notarized, and shall be made under penalty of perjury and subject to the provisions of section 1001 of Title 18. Within 5 days after receipt of a complaint, the Commission shall notify, in writing, any person alleged in the complaint to have committed such a violation. Before the Commission conducts any vote on the complaint, other than a vote to dismiss, any person so notified shall have the opportunity to demonstrate, in writing, to the Commission within 15 days after notification that no action should be taken against such person on the basis of the complaint. The Commission may not conduct any investigation or take any other action under this section solely on the basis of a complaint of a person whose identity is not disclosed to the Commission.

(2) If the Commission, upon receiving a complaint under paragraph (1) or on the basis of information ascertained in the normal course of carrying out its supervisory responsibilities, determines, by an affirmative vote of 4 of its members, that it has reason to believe that a person has committed, or is about to commit, a violation of this Act or chapter 95 or chapter 96 of Title 26, the Commission shall, through its chairman or vice chairman, notify the person of the alleged violation. Such notification shall set forth the factual basis for such alleged violation. The Commission shall make an investigation of such alleged violation, which may include a field investigation or audit, in accordance with the provisions of this section.

(3) The general counsel of the Commission shall notify the respondent of any recommendation to the Commission by the general counsel to proceed to a vote on probable cause pursuant to paragraph (4)(A)(i). With such notification, the general counsel shall include a brief stating the position of the general counsel on the legal and factual issues of the case. Within 15 days of receipt of such brief, respondent may submit a brief stating the position of such respondent on the legal and factual issues of the case, and replying to the brief of general counsel. Such briefs shall be filed with the Secretary of the Commission and shall be considered by the Commission before proceeding under paragraph (4).

(4)(A)(i) Except as provided in clauses[1] (ii) and subparagraph (C), if the Commission determines, by an affirmative vote of 4 of its members, that there is probable cause to believe that any person has committed, or is about to commit, a violation of this Act or of chapter 95 or chapter 96 of Title 26, the Commission shall attempt, for a period of at least 30 days, to correct or prevent such violation by informal methods of conference, conciliation, and persuasion, and to enter into a conciliation agreement with any person involved. Such attempt by the Commission to correct or prevent such violation may continue for a period of not more

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

than 90 days. The Commission may not enter into a conciliation agreement under this clause except pursuant to an affirmative vote of 4 of its members. A conciliation agreement, unless violated, is a complete bar to any further action by the Commission, including the bringing of a civil proceeding under paragraph (6)(A).

(ii) If any determination of the Commission under clause (i) occurs during the 45-day period immediately preceding any election, then the Commission shall attempt, for a period of at least 15 days, to correct or prevent the violation involved by the methods specified in clause (i).

(B)(i) No action by the Commission or any person, and no information derived, in connection with any conciliation attempt by the Commission under subparagraph (A) may be made public by the Commission without the written consent of the respondent and the Commission.

(ii) If a conciliation agreement is agreed upon by the Commission and the respondent, the Commission shall make public any conciliation agreement signed by both the Commission and the respondent. If the Commission makes a determination that a person has not violated this Act or chapter 95 or chapter 96 of Title 26, the Commission shall make public such determination.

(C)(i) Notwithstanding subparagraph (A), in the case of a violation of a qualified disclosure requirement, the Commission may--

(I) find that a person committed such a violation on the basis of information obtained pursuant to the procedures described in paragraphs (1) and (2); and

(II) based on such finding, require the person to pay a civil money penalty in an amount determined, for violations of each qualified disclosure requirement, under a schedule of penalties which is established and published by the Commission and which takes into account the amount of the violation involved, the existence of previous violations by the person, and such other factors as the Commission considers appropriate.

(ii) The Commission may not make any determination adverse to a person under clause (i) until the person has been given written notice and an opportunity to be heard before the Commission.

(iii) Any person against whom an adverse determination is made under this subparagraph may obtain a review of such determination in the district court of the United States for the district in which the person resides, or transacts business, by filing in such court (prior to the expiration of the 30-day period which begins on the date the person receives notification of the determination) a written petition requesting that the determination be modified or set aside.

(iv) In this subparagraph, the term "qualified disclosure requirement" means any requirement of--

(I) subsections[2] (a), (c), (e), (f), (g), or (i) of section 30104 of this title; or

(II) section 30105 of this title.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(v) This subparagraph shall apply with respect to violations that relate to reporting periods that begin on or after January 1, 2000, and that end on or before December 31, 2033.

(5)(A) If the Commission believes that a violation of this Act or of chapter 95 or chapter 96 of Title 26 has been committed, a conciliation agreement entered into by the Commission under paragraph (4)(A) may include a requirement that the person involved in such conciliation agreement shall pay a civil penalty which does not exceed the greater of $5,000 or an amount equal to any contribution or expenditure involved in such violation.

(B) If the Commission believes that a knowing and willful violation of this Act or of chapter 95 or chapter 96 of Title 26 has been committed, a conciliation agreement entered into by the Commission under paragraph (4)(A) may require that the person involved in such conciliation agreement shall pay a civil penalty which does not exceed the greater of $10,000 or an amount equal to 200 percent of any contribution or expenditure involved in such violation (or, in the case of a violation of section 30122 of this title, which is not less than 300 percent of the amount involved in the violation and is not more than the greater of $50,000 or 1,000 percent of the amount involved in the violation).

(C) If the Commission by an affirmative vote of 4 of its members, determines that there is probable cause to believe that a knowing and willful violation of this Act which is subject to subsection (d), or a knowing and willful violation of chapter 95 or chapter 96 of Title 26, has occurred or is about to occur, it may refer such apparent violation to the Attorney General of the United States without regard to any limitations set forth in paragraph (4)(A).

(D) In any case in which a person has entered into a conciliation agreement with the Commission under paragraph (4)(A), the Commission may institute a civil action for relief under paragraph (6)(A) if it believes that the person has violated any provision of such conciliation agreement. For the Commission to obtain relief in any civil action, the Commission need only establish that the person has violated, in whole or in part, any requirement of such conciliation agreement.

(6)(A) If the Commission is unable to correct or prevent any violation of this Act or of chapter 95 or chapter 96 of Title 26, by the methods specified in paragraph (4), the Commission may, upon an affirmative vote of 4 of its members, institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order (including an order for a civil penalty which does not exceed the greater of $5,000 or an amount equal to any contribution or expenditure involved in such violation) in the district court of the United States for the district in which the person against whom such action is brought is found, resides, or transacts business.

(B) In any civil action instituted by the Commission under subparagraph (A), the court may grant a permanent or temporary injunction, restraining order, or other order, including a civil penalty which does not exceed the greater of $5,000 or an amount equal to any contribution or expenditure involved in such violation, upon a proper showing that the person involved has committed, or is about to commit (if the relief sought is a permanent or temporary injunction or a restraining order), a violation of this Act or chapter 95 or chapter 96 of Title 26.

(C) In any civil action for relief instituted by the Commission under subparagraph (A), if the court determines that the Commission has established that the person involved in such civil action has committed a knowing and willful violation of this Act or of chapter 95 or chapter 96 of Title 26, the court may impose a civil penalty which does not exceed the greater of $10,000 or an amount equal to 200 percent of any contribution or expenditure involved in such violation (or, in the case of a violation

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

of section 30122 of this title, which is not less than 300 percent of the amount involved in the violation and is not more than the greater of $50,000 or 1,000 percent of the amount involved in the violation).

(7) In any action brought under paragraph (5) or (6), subpenas for witnesses who are required to attend a United States district court may run into any other district.

(8)(A) Any party aggrieved by an order of the Commission dismissing a complaint filed by such party under paragraph (1), or by a failure of the Commission to act on such complaint during the 120-day period beginning on the date the complaint is filed, may file a petition with the United States District Court for the District of Columbia.

(B) Any petition under subparagraph (A) shall be filed, in the case of a dismissal of a complaint by the Commission, within 60 days after the date of the dismissal.

(C) In any proceeding under this paragraph the court may declare that the dismissal of the complaint or the failure to act is contrary to law, and may direct the Commission to conform with such declaration within 30 days, failing which the complainant may bring, in the name of such complainant, a civil action to remedy the violation involved in the original complaint.

(9) Any judgment of a district court under this subsection may be appealed to the court of appeals, and the judgment of the court of appeals affirming or setting aside, in whole or in part, any such order of the district court shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of Title 28.

(10) Repealed. Pub.L. 98-620, Title IV, § 402(1)(A), Nov. 8, 1984, 98 Stat. 3357

(11) If the Commission determines after an investigation that any person has violated an order of the court entered in a proceeding brought under paragraph (6), it may petition the court for an order to hold such person in civil contempt, but if it believes the violation to be knowing and willful it may petition the court for an order to hold such person in criminal contempt.

(12)(A) Any notification or investigation made under this section shall not be made public by the Commission or by any person without the written consent of the person receiving such notification or the person with respect to whom such investigation is made.

(B) Any member or employee of the Commission, or any other person, who violates the provisions of subparagraph (A) shall be fined not more than $2,000. Any such member, employee, or other person who knowingly and willfully violates the provisions of subparagraph (A) shall be fined not more than $5,000.

(b) Notice to persons not filing required reports prior to institution of enforcement action; publication of identity of persons and unfiled reports

Before taking any action under subsection (a) against any person who has failed to file a report required under section 30104(a)(2)(A)(iii) of this title for the calendar quarter immediately preceding the election involved, or in accordance with section 30104(a)(2)(A)(i) of this title, the Commission shall notify the person of such failure to file the required reports. If a satisfactory

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

response is not received within 4 business days after the date of notification, the Commission shall, pursuant to section 30111(a)(7) of this title, publish before the election the name of the person and the report or reports such person has failed to file.

(c) Reports by Attorney General of apparent violations

Whenever the Commission refers an apparent violation to the Attorney General, the Attorney General shall report to the Commission any action taken by the Attorney General regarding the apparent violation. Each report shall be transmitted within 60 days after the date the Commission refers an apparent violation, and every 30 days thereafter until the final disposition of the apparent violation.

(d) Penalties; defenses; mitigation of offenses

(1)(A) Any person who knowingly and willfully commits a violation of any provision of this Act which involves the making, receiving, or reporting of any contribution, donation, or expenditure--

(i) aggregating $25,000 or more during a calendar year shall be fined under Title 18, or imprisoned for not more than 5 years, or both; or

(ii) aggregating $2,000 or more (but less than $25,000) during a calendar year shall be fined under such title, or imprisoned for not more than 1 year, or both.

(B) In the case of a knowing and willful violation of section 30118(b)(3) of this title, the penalties set forth in this subsection shall apply to a violation involving an amount aggregating $250 or more during a calendar year. Such violation of section 30118(b)(3) of this title may incorporate a violation of section 30119(b), 30122, or 30123 of this title.

(C) In the case of a knowing and willful violation of section 30124 of this title, the penalties set forth in this subsection shall apply without regard to whether the making, receiving, or reporting of a contribution or expenditure of $1,000 or more is involved.

(D) Any person who knowingly and willfully commits a violation of section 30122 of this title involving an amount aggregating more than $10,000 during a calendar year shall be--

(i) imprisoned for not more than 2 years if the amount is less than $25,000 (and subject to imprisonment under subparagraph (A) if the amount is $25,000 or more);

(ii) fined not less than 300 percent of the amount involved in the violation and not more than the greater of--

(I) $50,000; or

(II) 1,000 percent of the amount involved in the violation; or

(iii) both imprisoned under clause (i) and fined under clause (ii).

(2) In any criminal action brought for a violation of any provision of this Act or of chapter 95 or chapter 96 of Title 26, any defendant may evidence their lack of knowledge or intent to commit the alleged violation by introducing as evidence a conciliation agreement entered into between the defendant and the Commission under subsection (a)(4)(A) which specifically deals with the act or failure to act constituting such violation and which is still in effect.

(3) In any criminal action brought for a violation of any provision of this Act or of chapter 95 or chapter 96 of Title 26, the court before which such action is brought shall take into account, in weighing the seriousness of the violation and in considering the appropriateness of the penalty to be imposed if the defendant is found guilty, whether--

(A) the specific act or failure to act which constitutes the violation for which the action was brought is the subject of a conciliation agreement entered into between the defendant and the Commission under subparagraph (a)(4)(A);

(B) the conciliation agreement is in effect; and

(C) the defendant is, with respect to the violation involved, in compliance with the conciliation agreement.

CREDIT(S)

(Pub.L. 92-225, Title III, § 309, formerly § 314, as added Pub.L. 93-443, Title II, § 208(a), Oct. 15, 1974, 88 Stat. 1284; renumbered § 313 and amended Pub.L. 94-283, Title I, §§ 105, 109, May 11, 1976, 90 Stat. 481, 483; renumbered § 309 and amended Pub.L. 96-187, Title I, §§ 105(4), 108, Jan. 8, 1980, 93 Stat. 1354, 1358; Pub.L. 98-620, Title IV, § 402(1)(A), Nov. 8, 1984, 98 Stat. 3357; Pub.L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub.L. 106-58, Title VI, § 640(a), (b), Sept. 29, 1999, 113 Stat. 476, 477; Pub.L. 107-155, Title III, §§ 312(a), 315(a), (b), Mar. 27, 2002, 116 Stat. 106, 108; Pub.L. 110-433, § 1(a), Oct. 16, 2008, 122 Stat. 4971; Pub.L. 113-72, §§ 1, 2, Dec. 26, 2013, 127 Stat. 1210; Pub.L. 115-386, § 1(a), Dec. 21, 2018, 132 Stat. 5161; Pub.L. 118-26, § 1, Dec. 19, 2023, 137 Stat. 131.)

Footnotes

1 So in original. Probably should be "clause".

2 So in original. Probably should be "subsection".

52 U.S.C.A. § 30109, 52 USCA § 30109
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle III. Federal Campaign Finance
Chapter 301. Federal Election Campaigns
Subchapter I. Disclosure of Federal Campaign Funds

52 U.S.C.A. § 30110
Formerly cited as 2 USCA § 437h

§ 30110. Judicial review

Currentness

The Commission, the national committee of any political party, or any individual eligible to vote in any election for the office of President may institute such actions in the appropriate district court of the United States, including actions for declaratory judgment, as may be appropriate to construe the constitutionality of any provision of this Act. The district court immediately shall certify all questions of constitutionality of this Act to the United States court of appeals for the circuit involved, which shall hear the matter sitting en banc.

CREDIT(S)

(Pub.L. 92-225, Title III, § 310, formerly § 315, as added Pub.L. 93-443, Title II, § 208(a), Oct. 15, 1974, 88 Stat. 1285; renumbered § 314 and amended Pub.L. 94-283, Title I, §§ 105, 115(e), May 11, 1976, 90 Stat. 481, 496; renumbered § 310 and amended Pub.L. 96-187, Title I, §§ 105(4), 112(c), Jan. 8, 1980, 93 Stat. 1354, 1366; Pub.L. 98-620, Title IV, § 402(1)(B), Nov. 8, 1984, 98 Stat. 3357; Pub.L. 100-352, § 6(a), June 27, 1988, 102 Stat. 663.)

52 U.S.C.A. § 30110, 52 USCA § 30110
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document
© 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 30111
Formerly cited as 2 USCA § 438

§ 30111. Administrative provisions

Currentness

(a) Duties of Commission

The Commission shall--

(1) prescribe forms necessary to implement this Act;

(2) prepare, publish, and furnish to all persons required to file reports and statements under this Act a manual recommending uniform methods of bookkeeping and reporting;

(3) develop a filing, coding, and cross-indexing system consistent with the purposes of this Act;

(4) within 48 hours after the time of the receipt by the Commission of reports and statements filed with it, make them available for public inspection, and copying, at the expense of the person requesting such copying, except that any information copied from such reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee. A political committee may submit 10 pseudonyms on each report filed in order to protect against the illegal use of names and addresses of contributors, provided such committee attaches a list of such pseudonyms to the appropriate report. The Secretary or the Commission shall exclude these lists from the public record;

(5) keep such designations, reports, and statements for a period of 10 years from the date of receipt, except that designations, reports, and statements that relate solely to candidates for the House of Representatives shall be kept for 5 years from the date of their receipt;

(6)(A) compile and maintain a cumulative index of designations, reports, and statements filed under this Act, which index shall be published at regular intervals and made available for purchase directly or by mail;

(B) compile, maintain, and revise a separate cumulative index of reports and statements filed by multi-candidate committees, including in such index a list of multi-candidate committees; and

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(C) compile and maintain a list of multi-candidate committees, which shall be revised and made available monthly;

(7) prepare and publish periodically lists of authorized committees which fail to file reports as required by this Act;

(8) prescribe rules, regulations, and forms to carry out the provisions of this Act, in accordance with the provisions of subsection (d); and

(9) transmit to the President and to each House of the Congress no later than June 1 of each year, a report which states in detail the activities of the Commission in carrying out its duties under this Act, and any recommendations for any legislative or other action the Commission considers appropriate.

(b) Audits and field investigations

The Commission may conduct audits and field investigations of any political committee required to file a report under section 30104 of this title. All audits and field investigations concerning the verification for, and receipt and use of, any payments received by a candidate or committee under chapter 95 or chapter 96 of Title 26 shall be given priority. Prior to conducting any audit under this subsection, the Commission shall perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. Such thresholds for compliance shall be established by the Commission. The Commission may, upon an affirmative vote of 4 of its members, conduct an audit and field investigation of any committee which does meet the threshold requirements established by the Commission. Such audit shall be commenced within 30 days of such vote, except that any audit of an authorized committee of a candidate, under the provisions of this subsection, shall be commenced within 6 months of the election for which such committee is authorized.

(c) Statutory provisions applicable to forms and information-gathering activities

Any forms prescribed by the Commission under subsection (a)(1), and any information-gathering activities of the Commission under this Act, shall not be subject to the provisions of section 3512[1] of Title 44.

(d) Rules, regulations, or forms; issuance, procedures applicable, etc.

(1) Before prescribing any rule, regulation, or form under this section or any other provision of this Act, the Commission shall transmit a statement with respect to such rule, regulation, or form to the Senate and the House of Representatives, in accordance with this subsection. Such statement shall set forth the proposed rule, regulation, or form, and shall contain a detailed explanation and justification of it.

(2) If either House of the Congress does not disapprove by resolution any proposed rule or regulation submitted by the Commission under this section within 30 legislative days after the date of the receipt of such proposed rule or regulation or within 10 legislative days after the date of receipt of such proposed form, the Commission may prescribe such rule, regulation, or form.

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

(3) For purposes of this subsection, the term "legislative day" means, with respect to statements transmitted to the Senate, any calendar day on which the Senate is in session, and with respect to statements transmitted to the House of Representatives, any calendar day on which the House of Representatives is in session.

(4) For purposes of this subsection, the terms "rule" and "regulation" mean a provision or series of interrelated provisions stating a single, separable rule of law.

(5)(A) A motion to discharge a committee of the Senate from the consideration of a resolution relating to any such rule, regulation, or form or a motion to proceed to the consideration of such a resolution, is highly privileged and shall be decided without debate.

(B) Whenever a committee of the House of Representatives reports any resolution relating to any such form, rule or regulation, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and is not in order to move to reconsider the vote by which the motion is agreed to or disagreed with.

(e) Scope of protection for good faith reliance upon rules or regulations

Notwithstanding any other provision of law, any person who relies upon any rule or regulation prescribed by the Commission in accordance with the provisions of this section and who acts in good faith in accordance with such rule or regulation shall not, as a result of such act, be subject to any sanction provided by this Act or by chapter 95 or chapter 96 of Title 26.

(f) Promulgation of rules, regulations, and forms by Commission and Internal Revenue Service; report to Congress on cooperative efforts

In prescribing such rules, regulations, and forms under this section, the Commission and the Internal Revenue Service shall consult and work together to promulgate rules, regulations, and forms which are mutually consistent. The Commission shall report to the Congress annually on the steps it has taken to comply with this subsection.

CREDIT(S)

(Pub.L. 92-225, Title III, § 311, formerly § 308, Feb. 7, 1972, 86 Stat. 16; renumbered § 316 and amended Pub.L. 93-443, Title II, §§ 208(a), (c)(7) to (10), 209(a)(1), (b), Oct. 15, 1974, 88 Stat. 1279, 1286, 1287; renumbered § 315 and amended Pub.L. 94-283, Title I, §§ 105, 110, May 11, 1976, 90 Stat. 481, 486; renumbered § 311 and amended Pub.L. 96-187, Title I, §§ 105(4), 109, Jan. 8, 1980, 93 Stat. 1354, 1362; Pub.L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub.L. 104-79, § 3(c), Dec. 28, 1995, 109 Stat. 792; Pub.L. 107-252, Title VIII, § 801(b), Oct. 29, 2002, 116 Stat. 1726.)

Footnotes

1 See References in Text note set out under this section.

52 U.S.C.A. § 30111, 52 USCA § 30111

Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle III. Federal Campaign Finance
Chapter 301. Federal Election Campaigns
Subchapter I. Disclosure of Federal Campaign Funds

52 U.S.C.A. § 30112
Formerly cited as 2 USCA § 438a

§ 30112. Maintenance of website of election reports

Currentness

(a) In general

The Federal Election Commission shall maintain a central site on the Internet to make accessible to the public all publicly available election-related reports and information.

(b) Election-related report

In this section, the term "election-related report" means any report, designation, or statement required to be filed under the Federal Election Campaign Act of 1971.

(c) Coordination with other agencies

Any Federal executive agency receiving election-related information which that agency is required by law to publicly disclose shall cooperate and coordinate with the Federal Election Commission to make such report available through, or for posting on, the site of the Federal Election Commission in a timely manner.

CREDIT(S)

(Pub.L. 107-155, Title V, § 502, Mar. 27, 2002, 116 Stat. 115.)

52 U.S.C.A. § 30112, 52 USCA § 30112
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle III. Federal Campaign Finance
Chapter 301. Federal Election Campaigns
Subchapter I. Disclosure of Federal Campaign Funds

52 U.S.C.A. § 30113
Formerly cited as 2 USCA § 439

§ 30113. Statements filed with State officers; "appropriate State" defined; duties of State officers; waiver of duplicate filing requirement for States with electronic access

Currentness

(a) Statements filed; "appropriate State" defined

(1) A copy of each report and statement required to be filed by any person under this Act shall be filed by such person with the Secretary of State (or equivalent State officer) of the appropriate State, or, if different, the officer of such State who is charged by State law with maintaining State election campaign reports. The chief executive officer of such State shall designate any such officer and notify the Commission of any such designation.

(2) For purposes of this subsection, the term "appropriate State" means--

(A) for statements and reports in connection with the campaign for nomination for election of a candidate to the office of President or Vice President, each State in which an expenditure is made on behalf of the candidate; and

(B) for statements and reports in connection with the campaign for nomination for election, or election, of a candidate to the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress, the State in which the candidate seeks election; except that political committees other than authorized committees are only required to file, and Secretaries of State required to keep, that portion of the report applicable to candidates seeking election in that State.

(b) Duties of State officers

The Secretary of State (or equivalent State officer), or the officer designated under subsection (a)(1), shall--

(1) receive and maintain in an orderly manner all reports and statements required by this Act to be filed therewith;

(2) keep such reports and statements (either in original filed form or in facsimile copy by microfilm or otherwise) for 2 years after their date of receipt;

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(3) make each report and statement filed therewith available as soon as practicable (but within 48 hours of receipt) for public inspection and copying during regular business hours, and permit copying of any such report or statement by hand or by duplicating machine at the request of any person, except that such copying shall be at the expense of the person making the request; and

(4) compile and maintain a current list of all reports and statements pertaining to each candidate.

(c) Waiver; electronic access

Subsections (a) and (b) shall not apply with respect to any State that, as determined by the Commission, has a system that permits electronic access to, and duplication of, reports and statements that are filed with the Commission.

CREDIT(S)

(Pub.L. 92-225, Title III, § 312, formerly § 309, Feb. 7, 1972, 86 Stat. 18; renumbered § 317 and amended Pub.L. 93-443, Title II, § 208(a), (c)(11), Oct. 15, 1974, 88 Stat. 1279, 1287; renumbered § 316, Pub.L. 94-283, Title I, § 105, May 11, 1976, 90 Stat. 481; renumbered § 312 and amended Pub.L. 96-187, Title I, §§ 105(4), 110, Jan. 8, 1980, 93 Stat. 1354, 1364; Pub.L. 104-79, § 2, Dec. 28, 1995, 109 Stat. 791.)

52 U.S.C.A. § 30113, 52 USCA § 30113
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 30114
Formerly cited as 2 USCA § 439a

§ 30114. Use of contributed amounts for certain purposes

Currentness

(a) Permitted uses

A contribution accepted by a candidate, and any other donation received by an individual as support for activities of the individual as a holder of Federal office, may be used by the candidate or individual--

(1) for otherwise authorized expenditures in connection with the campaign for Federal office of the candidate or individual;

(2) for ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office;

(3) for contributions to an organization described in section 170(c) of Title 26;

(4) for transfers, without limitation, to a national, State, or local committee of a political party;

(5) for donations to State and local candidates subject to the provisions of State law; or

(6) for any other lawful purpose unless prohibited by subsection (b) of this section.

(b) Prohibited use

(1) In general

A contribution or donation described in subsection (a) shall not be converted by any person to personal use.

(2) Conversion

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

For the purposes of paragraph (1), a contribution or donation shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office, including--

(A) a home mortgage, rent, or utility payment;

(B) a clothing purchase;

(C) a noncampaign-related automobile expense;

(D) a country club membership;

(E) a vacation or other noncampaign-related trip;

(F) a household food item;

(G) a tuition payment;

(H) admission to a sporting event, concert, theater, or other form of entertainment not associated with an election campaign; and

(I) dues, fees, and other payments to a health club or recreational facility.

(c) Restrictions on use of campaign funds for flights on noncommercial aircraft

(1) In general

Notwithstanding any other provision of this Act, a candidate for election for Federal office (other than a candidate who is subject to paragraph (2)), or any authorized committee of such a candidate, may not make any expenditure for a flight on an aircraft unless--

(A) the aircraft is operated by an air carrier or commercial operator certificated by the Federal Aviation Administration and the flight is required to be conducted under air carrier safety rules, or, in the case of travel which is abroad, by an air carrier or commercial operator certificated by an appropriate foreign civil aviation authority and the flight is required to be conducted under air carrier safety rules; or

(B) the candidate, the authorized committee, or other political committee pays to the owner, lessee, or other person who provides the airplane the pro rata share of the fair market value of such flight (as determined by dividing the fair market value of the normal and usual charter fare or rental charge for a comparable plane of comparable size by the number of candidates on the flight) within a commercially reasonable time frame after the date on which the flight is taken.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(2) House candidates

Notwithstanding any other provision of this Act, in the case of a candidate for election for the office of Representative in, or Delegate or Resident Commissioner to, the Congress, an authorized committee and a leadership PAC of the candidate may not make any expenditure for a flight on an aircraft unless--

(A) the aircraft is operated by an air carrier or commercial operator certificated by the Federal Aviation Administration and the flight is required to be conducted under air carrier safety rules, or, in the case of travel which is abroad, by an air carrier or commercial operator certificated by an appropriate foreign civil aviation authority and the flight is required to be conducted under air carrier safety rules; or

(B) the aircraft is operated by an entity of the Federal government or the government of any State.

(3) Exception for aircraft owned or leased by candidate

(A) In general

Paragraphs (1) and (2) do not apply to a flight on an aircraft owned or leased by the candidate involved or an immediate family member of the candidate (including an aircraft owned by an entity that is not a public corporation in which the candidate or an immediate family member of the candidate has an ownership interest), so long as the candidate does not use the aircraft more than the candidate's or immediate family member's proportionate share of ownership allows.

(B) Immediate family member defined

In this subparagraph (A), the term “immediate family member” means, with respect to a candidate, a father, mother, son, daughter, brother, sister, husband, wife, father-in-law, or mother-in-law.

(4) Leadership PAC defined

In this subsection, the term “leadership PAC” has the meaning given such term in section 30104(i)(8)(B) of this title.

CREDIT(S)

(Pub.L. 92-225, Title III, § 313, as added Pub.L. 107-155, Title III, § 301, Mar. 27, 2002, 116 Stat. 95; amended Pub.L. 108-447, Div. H, Title V, § 532, Dec. 8, 2004, 118 Stat. 3272; Pub.L. 110-81, Title VI, § 601(a), Sept. 14, 2007, 121 Stat. 774.)

52 U.S.C.A. § 30114, 52 USCA § 30114
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle III. Federal Campaign Finance
Chapter 301. Federal Election Campaigns
Subchapter I. Disclosure of Federal Campaign Funds

52 U.S.C.A. § 30115
Formerly cited as 2 USCA § 439c

§ 30115. Authorization of appropriations

Currentness

There are authorized to be appropriated to the Commission for the purpose of carrying out its functions under this Act, and under chapters 95 and 96 of Title 26, not to exceed $5,000,000 for the fiscal year ending June 30, 1975. There are authorized to be appropriated to the Commission $6,000,000 for the fiscal year ending June 30, 1976, $1,500,000 for the period beginning July 1, 1976, and ending September 30, 1976, $6,000,000 for the fiscal year ending September 30, 1977, $7,811,500 for the fiscal year ending September 30, 1978, and $9,400,000 (of which not more than $400,000 are authorized to be appropriated for the national clearinghouse function described in section 30111(a)(10)[1] of this title) for the fiscal year ending September 30, 1981.

CREDIT(S)

(Pub.L. 92-225, Title III, § 314, formerly § 320, as added Pub.L. 93-443, Title II, § 210, Oct. 15, 1974, 88 Stat. 1289; renumbered § 319 and amended Pub.L. 94-283, Title I, §§ 105, 113, May 11, 1976, 90 Stat. 481, 495; Pub.L. 95-127, Oct. 12, 1977, 91 Stat. 1110; renumbered § 314, Pub.L. 96-187, Title I, § 105(5), Jan. 8, 1980, 93 Stat. 1354; Pub.L. 96-253, May 29, 1980, 94 Stat. 398; Pub.L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

Footnotes

1 Repealed by Pub.L. 107-252, Title VIII, § 801(b)(3), Oct. 29, 2002, 116 Stat. 1726.

52 U.S.C.A. § 30115, 52 USCA § 30115
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 30116
Formerly cited as 2 USCA § 441a

§ 30116. Limitations on contributions and expenditures

Effective: December 16, 2014
Currentness

(a) Dollar limits on contributions

(1) Except as provided in subsection (i) and section 30117 of this title, no person shall make contributions--

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $2,000;

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year which, in the aggregate, exceed $25,000, or, in the case of contributions made to any of the accounts described in paragraph (9), exceed 300 percent of the amount otherwise applicable under this subparagraph with respect to such calendar year;

(C) to any other political committee (other than a committee described in subparagraph (D)) in any calendar year which, in the aggregate, exceed $5,000; or

(D) to a political committee established and maintained by a State committee of a political party in any calendar year which, in the aggregate, exceed $10,000.

(2) No multicandidate political committee shall make contributions--

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $5,000;

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year, which, in the aggregate, exceed $15,000, or, in the case of contributions made to any of the accounts described in paragraph (9), exceed 300 percent of the amount otherwise applicable under this subparagraph with respect to such calendar year; or

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(C) to any other political committee in any calendar year which, in the aggregate, exceed $5,000.

(3) During the period which begins on January 1 of an odd-numbered year and ends on December 31 of the next even-numbered year, no individual may make contributions aggregating more than--

(A) $37,500, in the case of contributions to candidates and the authorized committees of candidates;

(B) $57,500, in the case of any other contributions, of which not more than $37,500 may be attributable to contributions to political committees which are not political committees of national political parties.

(4) The limitations on contributions contained in paragraphs (1) and (2) do not apply to transfers between and among political committees which are national, State, district, or local committees (including any subordinate committee thereof) of the same political party. For purposes of paragraph (2), the term "multicandidate political committee" means a political committee which has been registered under section 30103 of this title for a period of not less than 6 months, which has received contributions from more than 50 persons, and, except for any State political party organization, has made contributions to 5 or more candidates for Federal office.

(5) For purposes of the limitations provided by paragraph (1) and paragraph (2), all contributions made by political committees established or financed or maintained or controlled by any corporation, labor organization, or any other person, including any parent, subsidiary, branch, division, department, or local unit of such corporation, labor organization, or any other person, or by any group of such persons, shall be considered to have been made by a single political committee, except that (A) nothing in this sentence shall limit transfers between political committees of funds raised through joint fund raising efforts; (B) for purposes of the limitations provided by paragraph (1) and paragraph (2) all contributions made by a single political committee established or financed or maintained or controlled by a national committee of a political party and by a single political committee established or financed or maintained or controlled by the State committee of a political party shall not be considered to have been made by a single political committee; and (C) nothing in this section shall limit the transfer of funds between the principal campaign committee of a candidate seeking nomination or election to a Federal office and the principal campaign committee of that candidate for nomination or election to another Federal office if (i) such transfer is not made when the candidate is actively seeking nomination or election to both such offices; (ii) the limitations contained in this Act on contributions by persons are not exceeded by such transfer; and (iii) the candidate has not elected to receive any funds under chapter 95 or chapter 96 of Title 26. In any case in which a corporation and any of its subsidiaries, branches, divisions, departments, or local units, or a labor organization and any of its subsidiaries, branches, divisions, departments, or local units establish or finance or maintain or control more than one separate segregated fund, all such separate segregated funds shall be treated as a single separate segregated fund for purposes of the limitations provided by paragraph (1) and paragraph (2).

(6) The limitations on contributions to a candidate imposed by paragraphs (1) and (2) of this subsection shall apply separately with respect to each election, except that all elections held in any calendar year for the office of President of the United States (except a general election for such office) shall be considered to be one election.

(7) For purposes of this subsection--

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(A) contributions to a named candidate made to any political committee authorized by such candidate to accept contributions on his behalf shall be considered to be contributions made to such candidate;

(B)(i) expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate;

(ii) expenditures made by any person (other than a candidate or candidate's authorized committee) in cooperation, consultation, or concert with, or at the request or suggestion of, a national, State, or local committee of a political party, shall be considered to be contributions made to such party committee; and

(iii) the financing by any person of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his campaign committees, or their authorized agents shall be considered to be an expenditure for purposes of this paragraph; and[1]

(C) if--

(i) any person makes, or contracts to make, any disbursement for any electioneering communication (within the meaning of section 30104(f)(3) of this title); and

(ii) such disbursement is coordinated with a candidate or an authorized committee of such candidate, a Federal, State, or local political party or committee thereof, or an agent or official of any such candidate, party, or committee;

such disbursement or contracting shall be treated as a contribution to the candidate supported by the electioneering communication or that candidate's party and as an expenditure by that candidate or that candidate's party; and

(D) contributions made to or for the benefit of any candidate nominated by a political party for election to the office of Vice President of the United States shall be considered to be contributions made to or for the benefit of the candidate of such party for election to the office of President of the United States.

(8) For purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate. The intermediary or conduit shall report the original source and the intended recipient of such contribution to the Commission and to the intended recipient.

(9) An account described in this paragraph is any of the following accounts:

(A) A separate, segregated account of a national committee of a political party (other than a national congressional campaign committee of a political party) which is used solely to defray expenses incurred with respect to a presidential nominating convention (including the payment of deposits) or to repay loans the proceeds of which were used to defray such expenses, or otherwise to restore funds used to defray such expenses, except that the aggregate amount of expenditures the national

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

committee of a political party may make from such account may not exceed $20,000,000 with respect to any single convention.

(B) A separate, segregated account of a national committee of a political party (including a national congressional campaign committee of a political party) which is used solely to defray expenses incurred with respect to the construction, purchase, renovation, operation, and furnishing of one or more headquarters buildings of the party or to repay loans the proceeds of which were used to defray such expenses, or otherwise to restore funds used to defray such expenses (including expenses for obligations incurred during the 2-year period which ends on December 16, 2014).

(C) A separate, segregated account of a national committee of a political party (including a national congressional campaign committee of a political party) which is used to defray expenses incurred with respect to the preparation for and the conduct of election recounts and contests and other legal proceedings.

(b) Dollar limits on expenditures by candidates for office of President of United States

(1) No candidate for the office of President of the United States who is eligible under section 9003 of Title 26 (relating to condition for eligibility for payments) or under section 9033 of Title 26 (relating to eligibility for payments) to receive payments from the Secretary of the Treasury may make expenditures in excess of--

(A) $10,000,000, in the case of a campaign for nomination for election to such office, except the aggregate of expenditures under this subparagraph in any one State shall not exceed the greater of 16 cents multiplied by the voting age population of the State (as certified under subsection (e)), or $200,000; or

(B) $20,000,000 in the case of a campaign for election to such office.

(2) For purposes of this subsection--

(A) expenditures made by or on behalf of any candidate nominated by a political party for election to the office of Vice President of the United States shall be considered to be expenditures made by or on behalf of the candidate of such party for election to the office of President of the United States; and

(B) an expenditure is made on behalf of a candidate, including a vice presidential candidate, if it is made by--

(i) an authorized committee or any other agent of the candidate for purposes of making any expenditure; or

(ii) any person authorized or requested by the candidate, an authorized committee of the candidate, or an agent of the candidate, to make the expenditure.

(c) Increases on limits based on increases in price index

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(1)(A) At the beginning of each calendar year (commencing in 1976), as there become available necessary data from the Bureau of Labor Statistics of the Department of Labor, the Secretary of Labor shall certify to the Commission and publish in the Federal Register the percent difference between the price index for the 12 months preceding the beginning of such calendar year and the price index for the base period.

(B) Except as provided in subparagraph (C), in any calendar year after 2002--

(i) a limitation established by subsections (a)(1)(A), (a)(1)(B), (a)(3), (b), (d), or (h) shall be increased by the percent difference determined under subparagraph (A);

(ii) each amount so increased shall remain in effect for the calendar year; and

(iii) if any amount after adjustment under clause (i) is not a multiple of $100, such amount shall be rounded to the nearest multiple of $100.

(C) In the case of limitations under subsections (a)(1)(A), (a)(1)(B), (a)(3), and (h), increases shall only be made in odd-numbered years and such increases shall remain in effect for the 2-year period beginning on the first day following the date of the last general election in the year preceding the year in which the amount is increased and ending on the date of the next general election.

(2) For purposes of paragraph (1)--

(A) the term "price index" means the average over a calendar year of the Consumer Price Index (all items--United States city average) published monthly by the Bureau of Labor Statistics; and

(B) the term "base period" means--

(i) for purposes of subsections (b) and (d), calendar year 1974; and

(ii) for purposes of subsections (a)(1)(A), (a)(1)(B), (a)(3), and (h), calendar year 2001.

(d) Expenditures by national committee, State committee, or subordinate committee of State committee in connection with general election campaign of candidates for Federal office

(1) Notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, may make expenditures in connection with the general election campaign of candidates for Federal office, subject to the limitations contained in paragraphs (2), (3), and (4) of this subsection.

(2) The national committee of a political party may not make any expenditure in connection with the general election campaign of any candidate for President of the United States who is affiliated with such party which exceeds an amount equal to 2 cents multiplied by the voting age population of the United States (as certified under subsection (e)). Any expenditure under this paragraph shall be in addition to any expenditure by a national committee of a political party serving as the principal campaign committee of a candidate for the office of President of the United States.

(3) The national committee of a political party, or a State committee of a political party, including any subordinate committee of a State committee, may not make any expenditure in connection with the general election campaign of a candidate for Federal office in a State who is affiliated with such party which exceeds--

(A) in the case of a candidate for election to the office of Senator, or of Representative from a State which is entitled to only one Representative, the greater of--

(i) 2 cents multiplied by the voting age population of the State (as certified under subsection (e)); or

(ii) $20,000; and

(B) in the case of a candidate for election to the office of Representative, Delegate, or Resident Commissioner in any other State, $10,000.

(4) Independent versus coordinated expenditures by party

(A) In general

On or after the date on which a political party nominates a candidate, no committee of the political party may make--

(i) any coordinated expenditure under this subsection with respect to the candidate during the election cycle at any time after it makes any independent expenditure (as defined in section 30101(17) of this title) with respect to the candidate during the election cycle; or

(ii) any independent expenditure (as defined in section 30101(17) of this title) with respect to the candidate during the election cycle at any time after it makes any coordinated expenditure under this subsection with respect to the candidate during the election cycle.

(B) Application

For purposes of this paragraph, all political committees established and maintained by a national political party (including all congressional campaign committees) and all political committees established and maintained by a State political party (including any subordinate committee of a State committee) shall be considered to be a single political committee.

(C) Transfers

A committee of a political party that makes coordinated expenditures under this subsection with respect to a candidate shall not, during an election cycle, transfer any funds to, assign authority to make coordinated expenditures under this subsection to, or receive a transfer of funds from, a committee of the political party that has made or intends to make an independent expenditure with respect to the candidate.

(5) The limitations contained in paragraphs (2), (3), and (4) of this subsection shall not apply to expenditures made from any of the accounts described in subsection (a)(9).

(e) Certification and publication of estimated voting age population

During the first week of January 1975, and every subsequent year, the Secretary of Commerce shall certify to the Commission and publish in the Federal Register an estimate of the voting age population of the United States, of each State, and of each congressional district as of the first day of July next preceding the date of certification. The term "voting age population" means resident population, 18 years of age or older.

(f) Prohibited contributions and expenditures

No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of this section. No officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this section.

(g) Attribution of multi-State expenditures to candidate's expenditure limitation in each State

The Commission shall prescribe rules under which any expenditure by a candidate for presidential nominations for use in 2 or more States shall be attributed to such candidate's expenditure limitation in each such State, based on the voting age population in such State which can reasonably be expected to be influenced by such expenditure.

(h) Senatorial candidates

Notwithstanding any other provision of this Act, amounts totaling not more than $35,000 may be contributed to a candidate for nomination for election, or for election, to the United States Senate during the year in which an election is held in which he is such a candidate, by the Republican or Democratic Senatorial Campaign Committee, or the national committee of a political party, or any combination of such committees.

(i) Increased limit to allow response to expenditures from personal funds

(1) Increase

(A) In general

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

Subject to paragraph (2), if the opposition personal funds amount with respect to a candidate for election to the office of Senator exceeds the threshold amount, the limit under subsection (a)(1)(A) (in this subsection referred to as the "applicable limit") with respect to that candidate shall be the increased limit.

(B) Threshold amount

(i) State-by-State competitive and fair campaign formula

In this subsection, the threshold amount with respect to an election cycle of a candidate described in subparagraph (A) is an amount equal to the sum of--

(I) $150,000; and

(II) $0.04 multiplied by the voting age population.

(ii) Voting age population

In this subparagraph, the term "voting age population" means in the case of a candidate for the office of Senator, the voting age population of the State of the candidate (as certified under subsection (e)).

(C) Increased limit

Except as provided in clause (ii), for purposes of subparagraph (A), if the opposition personal funds amount is over--

(i) 2 times the threshold amount, but not over 4 times that amount--

(I) the increased limit shall be 3 times the applicable limit; and

(II) the limit under subsection (a)(3) shall not apply with respect to any contribution made with respect to a candidate if such contribution is made under the increased limit of subparagraph (A) during a period in which the candidate may accept such a contribution;

(ii) 4 times the threshold amount, but not over 10 times that amount--

(I) the increased limit shall be 6 times the applicable limit; and

(II) the limit under subsection (a)(3) shall not apply with respect to any contribution made with respect to a candidate if such contribution is made under the increased limit of subparagraph (A) during a period in which the candidate may accept such a contribution; and

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(iii) 10 times the threshold amount--

(I) the increased limit shall be 6 times the applicable limit;

(II) the limit under subsection (a)(3) shall not apply with respect to any contribution made with respect to a candidate if such contribution is made under the increased limit of subparagraph (A) during a period in which the candidate may accept such a contribution; and

(III) the limits under subsection (d) with respect to any expenditure by a State or national committee of a political party shall not apply.

(D) Opposition personal funds amount

The opposition personal funds amount is an amount equal to the excess (if any) of--

(i) the greatest aggregate amount of expenditures from personal funds (as defined in section 30104(a)(6)(B) of this title) that an opposing candidate in the same election makes; over

(ii) the aggregate amount of expenditures from personal funds made by the candidate with respect to the election.

(E) Special rule for candidate's campaign funds

(i) In general

For purposes of determining the aggregate amount of expenditures from personal funds under subparagraph (D)(ii), such amount shall include the gross receipts advantage of the candidate's authorized committee.

(ii) Gross receipts advantage

For purposes of clause (i), the term "gross receipts advantage" means the excess, if any, of--

(I) the aggregate amount of 50 percent of gross receipts of a candidate's authorized committee during any election cycle (not including contributions from personal funds of the candidate) that may be expended in connection with the election, as determined on June 30 and December 31 of the year preceding the year in which a general election is held, over

(II) the aggregate amount of 50 percent of gross receipts of the opposing candidate's authorized committee during any election cycle (not including contributions from personal funds of the candidate) that may be expended in connection with the election, as determined on June 30 and December 31 of the year preceding the year in which a general election is held.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(2) Time to accept contributions under increased limit

(A) In general

Subject to subparagraph (B), a candidate and the candidate's authorized committee shall not accept any contribution, and a party committee shall not make any expenditure, under the increased limit under paragraph (1)--

(i) until the candidate has received notification of the opposition personal funds amount under section 30104(a)(6)(B) of this title; and

(ii) to the extent that such contribution, when added to the aggregate amount of contributions previously accepted and party expenditures previously made under the increased limits under this subsection for the election cycle, exceeds 110 percent of the opposition personal funds amount.

(B) Effect of withdrawal of an opposing candidate

A candidate and a candidate's authorized committee shall not accept any contribution and a party shall not make any expenditure under the increased limit after the date on which an opposing candidate ceases to be a candidate to the extent that the amount of such increased limit is attributable to such an opposing candidate.

(3) Disposal of excess contributions

(A) In general

The aggregate amount of contributions accepted by a candidate or a candidate's authorized committee under the increased limit under paragraph (1) and not otherwise expended in connection with the election with respect to which such contributions relate shall, not later than 50 days after the date of such election, be used in the manner described in subparagraph (B).

(B) Return to contributors

A candidate or a candidate's authorized committee shall return the excess contribution to the person who made the contribution.

(j) Limitation on repayment of personal loans

Any candidate who incurs personal loans made after the effective date of the Bipartisan Campaign Reform Act of 2002 in connection with the candidate's campaign for election shall not repay (directly or indirectly), to the extent such loans exceed $250,000, such loans from any contributions made to such candidate or any authorized committee of such candidate after the date of such election.

CREDIT(S)

(Pub.L. 92-225, Title III, § 315, formerly § 320, as added Pub.L. 94-283, Title I, § 112(2), May 11, 1976, 90 Stat. 486; renumbered § 315, Pub.L. 96-187, Title I, § 105(5), Jan. 8, 1980, 93 Stat. 1354; amended Pub.L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub.L. 107-155, Title I, § 102, Title II, §§ 202, 213, 214(a), Title III, §§ 304(a), 307(a) to (d), 316, 319(b), Mar. 27, 2002, 116 Stat. 86, 90, 94, 97, 102, 103, 108, 112; Pub.L. 113-235, Div. N, § 101(a), (b), Dec. 16, 2014, 128 Stat. 2772, 2773.)

Footnotes

1 So in original. The word "and" probably should not appear.

52 U.S.C.A. § 30116, 52 USCA § 30116

Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 30117
Formerly cited as 2 USCA § 441a-1

§ 30117. Modification of certain limits for House candidates in response to personal fund expenditures of opponents

Currentness

(a) Availability of increased limit

(1) In general

Subject to paragraph (3), if the opposition personal funds amount with respect to a candidate for election to the office of Representative in, or Delegate or Resident Commissioner to, the Congress exceeds $350,000--

(A) the limit under subsection (a)(1)(A) with respect to the candidate shall be tripled;

(B) the limit under subsection (a)(3) shall not apply with respect to any contribution made with respect to the candidate if the contribution is made under the increased limit allowed under subparagraph (A) during a period in which the candidate may accept such a contribution; and

(C) the limits under subsection (d) with respect to any expenditure by a State or national committee of a political party on behalf of the candidate shall not apply.

(2) Determination of opposition personal funds amount

(A) In general

The opposition personal funds amount is an amount equal to the excess (if any) of--

(i) the greatest aggregate amount of expenditures from personal funds (as defined in subsection (b)(1)) that an opposing candidate in the same election makes; over

(ii) the aggregate amount of expenditures from personal funds made by the candidate with respect to the election.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(B) Special rule for candidate's campaign funds

(i) In general

For purposes of determining the aggregate amount of expenditures from personal funds under subparagraph (A), such amount shall include the gross receipts advantage of the candidate's authorized committee.

(ii) Gross receipts advantage

For purposes of clause (i), the term "gross receipts advantage" means the excess, if any, of--

(I) the aggregate amount of 50 percent of gross receipts of a candidate's authorized committee during any election cycle (not including contributions from personal funds of the candidate) that may be expended in connection with the election, as determined on June 30 and December 31 of the year preceding the year in which a general election is held, over

(II) the aggregate amount of 50 percent of gross receipts of the opposing candidate's authorized committee during any election cycle (not including contributions from personal funds of the candidate) that may be expended in connection with the election, as determined on June 30 and December 31 of the year preceding the year in which a general election is held.

(3) Time to accept contributions under increased limit

(A) In general

Subject to subparagraph (B), a candidate and the candidate's authorized committee shall not accept any contribution, and a party committee shall not make any expenditure, under the increased limit under paragraph (1)--

(i) until the candidate has received notification of the opposition personal funds amount under subsection (b)(1); and

(ii) to the extent that such contribution, when added to the aggregate amount of contributions previously accepted and party expenditures previously made under the increased limits under this subsection for the election cycle, exceeds 100 percent of the opposition personal funds amount.

(B) Effect of withdrawal of an opposing candidate

A candidate and a candidate's authorized committee shall not accept any contribution and a party shall not make any expenditure under the increased limit after the date on which an opposing candidate ceases to be a candidate to the extent that the amount of such increased limit is attributable to such an opposing candidate.

(4) Disposal of excess contributions

(A) In general

The aggregate amount of contributions accepted by a candidate or a candidate's authorized committee under the increased limit under paragraph (1) and not otherwise expended in connection with the election with respect to which such contributions relate shall, not later than 50 days after the date of such election, be used in the manner described in subparagraph (B).

(B) Return to contributors

A candidate or a candidate's authorized committee shall return the excess contribution to the person who made the contribution.

(b) Notification of expenditures from personal funds

(1) In general

(A) Definition of expenditure from personal funds

In this paragraph, the term "expenditure from personal funds" means--

(i) an expenditure made by a candidate using personal funds; and

(ii) a contribution or loan made by a candidate using personal funds or a loan secured using such funds to the candidate's authorized committee.

(B) Declaration of intent

Not later than the date that is 15 days after the date on which an individual becomes a candidate for the office of Representative in, or Delegate or Resident Commissioner to, the Congress, the candidate shall file a declaration stating the total amount of expenditures from personal funds that the candidate intends to make, or to obligate to make, with respect to the election that will exceed $350,000.

(C) Initial notification

Not later than 24 hours after a candidate described in subparagraph (B) makes or obligates to make an aggregate amount of expenditures from personal funds in excess of $350,000 in connection with any election, the candidate shall file a notification.

(D) Additional notification

After a candidate files an initial notification under subparagraph (C), the candidate shall file an additional notification each time expenditures from personal funds are made or obligated to be made in an aggregate amount that exceeds $10,000. Such notification shall be filed not later than 24 hours after the expenditure is made.

(E) Contents

A notification under subparagraph (C) or (D) shall include--

(i) the name of the candidate and the office sought by the candidate;

(ii) the date and amount of each expenditure; and

(iii) the total amount of expenditures from personal funds that the candidate has made, or obligated to make, with respect to an election as of the date of the expenditure that is the subject of the notification.

(F) Place of filing

Each declaration or notification required to be filed by a candidate under subparagraph (C), (D), or (E) shall be filed with--

(i) the Commission; and

(ii) each candidate in the same election and the national party of each such candidate.

(2) Notification of disposal of excess contributions

In the next regularly scheduled report after the date of the election for which a candidate seeks nomination for election to, or election to, Federal office, the candidate or the candidate's authorized committee shall submit to the Commission a report indicating the source and amount of any excess contributions (as determined under subsection (a)) and the manner in which the candidate or the candidate's authorized committee used such funds.

(3) Enforcement

For provisions providing for the enforcement of the reporting requirements under this subsection, see section 30109 of this title.

CREDIT(S)

(Pub.L. 92-225, Title III, § 315A, as added Pub.L. 107-155, Title III, § 319(a), Mar. 27, 2002, 116 Stat. 109.)

52 U.S.C.A. § 30117, 52 USCA § 30117
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

WESTLAW © 2024 Thomson Reuters. No claim to original U.S. Government Works.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle III. Federal Campaign Finance
Chapter 301. Federal Election Campaigns
Subchapter I. Disclosure of Federal Campaign Funds

52 U.S.C.A. § 30118
Formerly cited as 2 USCA § 441b

§ 30118. Contributions or expenditures by national banks, corporations, or labor organizations

Currentness

(a) In general

It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section, or any officer or any director of any corporation or any national bank or any officer of any labor organization to consent to any contribution or expenditure by the corporation, national bank, or labor organization, as the case may be, prohibited by this section.

(b) Definitions; particular activities prohibited or allowed

(1) For the purposes of this section the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(2) For purposes of this section and section 79*l*(h) of Title 15, the term "contribution or expenditure" includes a contribution or expenditure, as those terms are defined in section 30101 of this title, and also includes any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section or for any applicable electioneering communication, but shall not include (A) communications by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and their families on any subject; (B) nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel and their families, or by a labor organization aimed at its members and their families; and (C) the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(3) It shall be unlawful--

(A) for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other moneys required as a condition of membership in a labor organization or as a condition of employment, or by moneys obtained in any commercial transaction;

(B) for any person soliciting an employee for a contribution to such a fund to fail to inform such employee of the political purposes of such fund at the time of such solicitation; and

(C) for any person soliciting an employee for a contribution to such a fund to fail to inform such employee, at the time of such solicitation, of his right to refuse to so contribute without any reprisal.

(4)(A) Except as provided in subparagraphs (B), (C), and (D), it shall be unlawful--

(i) for a corporation, or a separate segregated fund established by a corporation, to solicit contributions to such a fund from any person other than its stockholders and their families and its executive or administrative personnel and their families, and

(ii) for a labor organization, or a separate segregated fund established by a labor organization, to solicit contributions to such a fund from any person other than its members and their families.

(B) It shall not be unlawful under this section for a corporation, a labor organization, or a separate segregated fund established by such corporation or such labor organization, to make 2 written solicitations for contributions during the calendar year from any stockholder, executive or administrative personnel, or employee of a corporation or the families of such persons. A solicitation under this subparagraph may be made only by mail addressed to stockholders, executive or administrative personnel, or employees at their residence and shall be so designed that the corporation, labor organization, or separate segregated fund conducting such solicitation cannot determine who makes a contribution of $50 or less as a result of such solicitation and who does not make such a contribution.

(C) This paragraph shall not prevent a membership organization, cooperative, or corporation without capital stock, or a separate segregated fund established by a membership organization, cooperative, or corporation without capital stock, from soliciting contributions to such a fund from members of such organization, cooperative, or corporation without capital stock.

(D) This paragraph shall not prevent a trade association or a separate segregated fund established by a trade association from soliciting contributions from the stockholders and executive or administrative personnel of the member corporations of such trade association and the families of such stockholders or personnel to the extent that such solicitation of such stockholders and personnel, and their families, has been separately and specifically approved by the member corporation involved, and such member corporation does not approve any such solicitation by more than one such trade association in any calendar year.

(5) Notwithstanding any other law, any method of soliciting voluntary contributions or of facilitating the making of voluntary contributions to a separate segregated fund established by a corporation, permitted by law to corporations with regard to

stockholders and executive or administrative personnel, shall also be permitted to labor organizations with regard to their members.

(6) Any corporation, including its subsidiaries, branches, divisions, and affiliates, that utilizes a method of soliciting voluntary contributions or facilitating the making of voluntary contributions, shall make available such method, on written request and at a cost sufficient only to reimburse the corporation for the expenses incurred thereby, to a labor organization representing any members working for such corporation, its subsidiaries, branches, divisions, and affiliates.

(7) For purposes of this section, the term "executive or administrative personnel" means individuals employed by a corporation who are paid on a salary, rather than hourly, basis and who have policymaking, managerial, professional, or supervisory responsibilities.

(c) Rules relating to electioneering communications

(1) Applicable electioneering communication

For purposes of this section, the term "applicable electioneering communication" means an electioneering communication (within the meaning of section 30104(f)(3) of this title) which is made by any entity described in subsection (a) of this section or by any other person using funds donated by an entity described in subsection (a) of this section.

(2) Exception

Notwithstanding paragraph (1), the term "applicable electioneering communication" does not include a communication by a section 501(c)(4) organization or a political organization (as defined in section 527(e)(1) of Title 26) made under section 30104(f)(2)(E) or (F) of this title if the communication is paid for exclusively by funds provided directly by individuals who are United States citizens or nationals or lawfully admitted for permanent residence (as defined in section 1101(a)(20) of Title 8). For purposes of the preceding sentence, the term "provided directly by individuals" does not include funds the source of which is an entity described in subsection (a) of this section.

(3) Special operating rules

(A) Definition under paragraph (1)

An electioneering communication shall be treated as made by an entity described in subsection (a) if an entity described in subsection (a) directly or indirectly disburses any amount for any of the costs of the communication.

(B) Exception under paragraph (2)

A section 501(c)(4) organization that derives amounts from business activities or receives funds from any entity described in subsection (a) shall be considered to have paid for any communication out of such amounts unless such organization paid for the communication out of a segregated account to which only individuals can contribute, as described in section 30104(f)(2)(E) of this title.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(4) Definitions and rules

For purposes of this subsection--

(A) the term "section 501(c)(4) organization" means--

(i) an organization described in section 501(c)(4) of Title 26 and exempt from taxation under section 501(a) of such title; or

(ii) an organization which has submitted an application to the Internal Revenue Service for determination of its status as an organization described in clause (i); and

(B) a person shall be treated as having made a disbursement if the person has executed a contract to make the disbursement.

(5) Coordination with Title 26

Nothing in this subsection shall be construed to authorize an organization exempt from taxation under section 501(a) of Title 26 to carry out any activity which is prohibited under such title.

(6) Special rules for targeted communications

(A) Exception does not apply

Paragraph (2) shall not apply in the case of a targeted communication that is made by an organization described in such paragraph.

(B) Targeted communication

For purposes of subparagraph (A), the term "targeted communication" means an electioneering communication (as defined in section 30104(f)(3) of this title) that is distributed from a television or radio broadcast station or provider of cable or satellite television service and, in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate.

(C) Definition

For purposes of this paragraph, a communication is "targeted to the relevant electorate" if it meets the requirements described in section 30104(f)(3)(C) of this title.

CREDIT(S)

(Pub.L. 92-225, Title III, § 316, formerly § 321, as added Pub.L. 94-283, Title I, § 112(2), May 11, 1976, 90 Stat. 490; renumbered § 316 and amended Pub.L. 96-187, Title I, §§ 105(5), 112(d), Jan. 8, 1980, 93 Stat. 1354, 1366; Pub.L. 107-155, Title II, §§ 203, 204, 214(d), Mar. 27, 2002, 116 Stat. 91, 92, 95.)

52 U.S.C.A. § 30118, 52 USCA § 30118
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 30119
Formerly cited as 2 USCA § 441c

§ 30119. Contributions by Government contractors

Currentness

(a) Prohibition

It shall be unlawful for any person--

(1) who enters into any contract with the United States or any department or agency thereof either for the rendition of personal services or furnishing any material, supplies, or equipment to the United States or any department or agency thereof or for selling any land or building to the United States or any department or agency thereof, if payment for the performance of such contract or payment for such material, supplies, equipment, land, or building is to be made in whole or in part from funds appropriated by the Congress, at any time between the commencement of negotiations for and the later of (A) the completion of performance under; or (B) the termination of negotiations for, such contract or furnishing of material, supplies, equipment, land, or buildings, directly or indirectly to make any contribution of money or other things of value, or to promise expressly or impliedly to make any such contribution to any political party, committee, or candidate for public office or to any person for any political purpose or use; or

(2) knowingly to solicit any such contribution from any such person for any such purpose during any such period.

(b) Separate segregated funds

This section does not prohibit or make unlawful the establishment or administration of, or the solicitation of contributions to, any separate segregated fund by any corporation, labor organization, membership organization, cooperative, or corporation without capital stock for the purpose of influencing the nomination for election, or election, of any person to Federal office, unless the provisions of section 30118 of this title prohibit or make unlawful the establishment or administration of, or the solicitation of contributions to, such fund. Each specific prohibition, allowance, and duty applicable to a corporation, labor organization, or separate segregated fund under section 30118 of this title applies to a corporation, labor organization, or separate segregated fund to which this subsection applies.

(c) “Labor organization” defined

For purposes of this section, the term “labor organization” has the meaning given it by section 30118(b)(1) of this title.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

CREDIT(S)

(Pub.L. 92-225, Title III, § 317, formerly § 322, as added Pub.L. 94-283, Title I, § 112(2), May 11, 1976, 90 Stat. 492; renumbered § 317, Pub.L. 96-187, Title I, § 105(5), Jan. 8, 1980, 93 Stat. 1354.)

52 U.S.C.A. § 30119, 52 USCA § 30119
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 30120
Formerly cited as 2 USCA § 441d

§ 30120. Publication and distribution of statements and solicitations

Currentness

(a) Identification of funding and authorizing sources

Whenever a political committee makes a disbursement for the purpose of financing any communication through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising, or whenever any person makes a disbursement for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising or makes a disbursement for an electioneering communication (as defined in section 30104(f)(3) of this title), such communication--

(1) if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee, or[1]

(2) if paid for by other persons but authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication is paid for by such other persons and authorized by such authorized political committee;[1]

(3) if not authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state the name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee.

(b) Charge for newspaper or magazine space

No person who sells space in a newspaper or magazine to a candidate or to the agent of a candidate, for use in connection with such candidate's campaign, may charge any amount for such space which exceeds the amount charged for comparable use of such space for other purposes.

(c) Specification

Any printed communication described in subsection (a) shall--

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(1) be of sufficient type size to be clearly readable by the recipient of the communication;

(2) be contained in a printed box set apart from the other contents of the communication; and

(3) be printed with a reasonable degree of color contrast between the background and the printed statement.

(d) Additional requirements

(1) Communications by candidates or authorized persons

(A) By radio

Any communication described in paragraph (1) or (2) of subsection (a) which is transmitted through radio shall include, in addition to the requirements of that paragraph, an audio statement by the candidate that identifies the candidate and states that the candidate has approved the communication.

(B) By television

Any communication described in paragraph (1) or (2) of subsection (a) which is transmitted through television shall include, in addition to the requirements of that paragraph, a statement that identifies the candidate and states that the candidate has approved the communication. Such statement--

(i) shall be conveyed by--

(I) an unobscured, full-screen view of the candidate making the statement, or

(II) the candidate in voice-over, accompanied by a clearly identifiable photographic or similar image of the candidate; and

(ii) shall also appear in writing at the end of the communication in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least 4 seconds.

(2) Communications by others

Any communication described in paragraph (3) of subsection (a) which is transmitted through radio or television shall include, in addition to the requirements of that paragraph, in a clearly spoken manner, the following audio statement: "________ is responsible for the content of this advertising." (with the blank to be filled in with the name of the political committee or other person paying for the communication and the name of any connected organization of the payor). If transmitted through television, the statement shall be conveyed by an unobscured, full-screen view of a representative of the political committee or other person making the statement, or by a representative of such political committee or other person in voice-over, and

shall also appear in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least 4 seconds.

CREDIT(S)

(Pub.L. 92-225, Title III, § 318, formerly § 323, as added Pub.L. 94-283, Title I, § 112(2), May 11, 1976, 90 Stat. 493; renumbered § 318 and amended Pub.L. 96-187, Title I, §§ 105(5), 111, Jan. 8, 1980, 93 Stat. 1354, 1365; Pub.L. 107-155, Title III, § 311, Mar. 27, 2002, 116 Stat. 105.)

Footnotes

1 So in original. The word "or" probably should appear at the end of par. (2).

52 U.S.C.A. § 30120, 52 USCA § 30120
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 30121
Formerly cited as 2 USCA § 441e

§ 30121. Contributions and donations by foreign nationals

Currentness

(a) Prohibition

It shall be unlawful for--

(1) a foreign national, directly or indirectly, to make--

(A) a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election;

(B) a contribution or donation to a committee of a political party; or

(C) an expenditure, independent expenditure, or disbursement for an electioneering communication (within the meaning of section 30104(f)(3) of this title); or

(2) a person to solicit, accept, or receive a contribution or donation described in subparagraph (A) or (B) of paragraph (1) from a foreign national.

(b) "Foreign national" defined

As used in this section, the term "foreign national" means--

(1) a foreign principal, as such term is defined by section 611(b) of Title 22, except that the term "foreign national" shall not include any individual who is a citizen of the United States; or

(2) an individual who is not a citizen of the United States or a national of the United States (as defined in section 1101(a)(22) of Title 8) and who is not lawfully admitted for permanent residence, as defined by section 1101(a)(20) of Title 8.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

CREDIT(S)

(Pub.L. 92-225, Title III, § 319, formerly § 324, as added Pub.L. 94-283, Title I, § 112(2), May 11, 1976, 90 Stat. 493; renumbered § 319, Pub.L. 96-187, Title I, § 105(5), Jan. 8, 1980, 93 Stat. 1354; amended Pub.L. 107-155, Title III, §§ 303, 317, Mar. 27, 2002, 116 Stat. 96, 109.)

52 U.S.C.A. § 30121, 52 USCA § 30121
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 30122
Formerly cited as 2 USCA § 441f

§ 30122. Contributions in name of another prohibited

Currentness

No person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person.

CREDIT(S)

(Pub.L. 92-225, Title III, § 320, formerly § 325, as added Pub.L. 94-283, Title I, § 112(2), May 11, 1976, 90 Stat. 494; renumbered § 320, Pub.L. 96-187, Title I, § 105(5), Jan. 8, 1980, 93 Stat. 1354.)

52 U.S.C.A. § 30122, 52 USCA § 30122
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 30123
Formerly cited as 2 USCA § 441g

§ 30123. Limitation on contribution of currency

Currentness

No person shall make contributions of currency of the United States or currency of any foreign country to or for the benefit of any candidate which, in the aggregate, exceed $100, with respect to any campaign of such candidate for nomination for election, or for election, to Federal office.

CREDIT(S)

(Pub.L. 92-225, Title III, § 321, formerly § 326, as added Pub.L. 94-283, Title I, § 112(2), May 11, 1976, 90 Stat. 494; renumbered § 321, Pub.L. 96-187, Title I, § 105(5), Jan. 8, 1980, 93 Stat. 1354.)

52 U.S.C.A. § 30123, 52 USCA § 30123
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle III. Federal Campaign Finance
Chapter 301. Federal Election Campaigns
Subchapter I. Disclosure of Federal Campaign Funds

52 U.S.C.A. § 30124
Formerly cited as 2 USCA § 441h

§ 30124. Fraudulent misrepresentation of campaign authority

Currentness

(a) In general

No person who is a candidate for Federal office or an employee or agent of such a candidate shall--

(1) fraudulently misrepresent himself or any committee or organization under his control as speaking or writing or otherwise acting for or on behalf of any other candidate or political party or employee or agent thereof on a matter which is damaging to such other candidate or political party or employee or agent thereof; or

(2) willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to violate paragraph (1).

(b) Fraudulent solicitation of funds

No person shall--

(1) fraudulently misrepresent the person as speaking, writing, or otherwise acting for or on behalf of any candidate or political party or employee or agent thereof for the purpose of soliciting contributions or donations; or

(2) willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to violate paragraph (1).

CREDIT(S)

(Pub.L. 92-225, Title III, § 322, formerly § 327, as added Pub.L. 94-283, Title I, § 112(2), May 11, 1976, 90 Stat. 494; renumbered § 322, Pub.L. 96-187, Title I, § 105(5), Jan. 8, 1980, 93 Stat. 1354; amended Pub.L. 107-155, Title III, § 309, Mar. 27, 2002, 116 Stat. 104.)

52 U.S.C.A. § 30124, 52 USCA § 30124
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle III. Federal Campaign Finance
Chapter 301. Federal Election Campaigns
Subchapter I. Disclosure of Federal Campaign Funds

52 U.S.C.A. § 30125
Formerly cited as 2 USCA § 441i

§ 30125. Soft money of political parties

Currentness

(a) National committees

(1) In general

A national committee of a political party (including a national congressional campaign committee of a political party) may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of this Act.

(2) Applicability

The prohibition established by paragraph (1) applies to any such national committee, any officer or agent acting on behalf of such a national committee, and any entity that is directly or indirectly established, financed, maintained, or controlled by such a national committee.

(b) State, district, and local committees

(1) In general

Except as provided in paragraph (2), an amount that is expended or disbursed for Federal election activity by a State, district, or local committee of a political party (including an entity that is directly or indirectly established, financed, maintained, or controlled by a State, district, or local committee of a political party and an officer or agent acting on behalf of such committee or entity), or by an association or similar group of candidates for State or local office or of individuals holding State or local office, shall be made from funds subject to the limitations, prohibitions, and reporting requirements of this Act.

(2) Applicability

(A) In general

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

Notwithstanding clause (i) or (ii) of section 30101(20)(A) of this title, and subject to subparagraph (B), paragraph (1) shall not apply to any amount expended or disbursed by a State, district, or local committee of a political party for an activity described in either such clause to the extent the amounts expended or disbursed for such activity are allocated (under regulations prescribed by the Commission) among amounts--

(i) which consist solely of contributions subject to the limitations, prohibitions, and reporting requirements of this Act (other than amounts described in subparagraph (B)(iii)); and

(ii) other amounts which are not subject to the limitations, prohibitions, and reporting requirements of this Act (other than any requirements of this subsection).

(B) Conditions

Subparagraph (A) shall only apply if--

(i) the activity does not refer to a clearly identified candidate for Federal office;

(ii) the amounts expended or disbursed are not for the costs of any broadcasting, cable, or satellite communication, other than a communication which refers solely to a clearly identified candidate for State or local office;

(iii) the amounts expended or disbursed which are described in subparagraph (A)(ii) are paid from amounts which are donated in accordance with State law and which meet the requirements of subparagraph (C), except that no person (including any person established, financed, maintained, or controlled by such person) may donate more than $10,000 to a State, district, or local committee of a political party in a calendar year for such expenditures or disbursements; and

(iv) the amounts expended or disbursed are made solely from funds raised by the State, local, or district committee which makes such expenditure or disbursement, and do not include any funds provided to such committee from--

(I) any other State, local, or district committee of any State party,

(II) the national committee of a political party (including a national congressional campaign committee of a political party),

(III) any officer or agent acting on behalf of any committee described in subclause (I) or (II), or

(IV) any entity directly or indirectly established, financed, maintained, or controlled by any committee described in subclause (I) or (II).

(C) Prohibiting involvement of national parties, Federal candidates and officeholders, and State parties acting jointly

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

Notwithstanding subsection (e) (other than subsection (e)(3)), amounts specifically authorized to be spent under subparagraph (B)(iii) meet the requirements of this subparagraph only if the amounts--

(i) are not solicited, received, directed, transferred, or spent by or in the name of any person described in subsection (a) or (e); and

(ii) are not solicited, received, or directed through fundraising activities conducted jointly by 2 or more State, local, or district committees of any political party or their agents, or by a State, local, or district committee of a political party on behalf of the State, local, or district committee of a political party or its agent in one or more other States.

(c) Fundraising costs

An amount spent by a person described in subsection (a) or (b) to raise funds that are used, in whole or in part, for expenditures and disbursements for a Federal election activity shall be made from funds subject to the limitations, prohibitions, and reporting requirements of this Act.

(d) Tax-exempt organizations

A national, State, district, or local committee of a political party (including a national congressional campaign committee of a political party), an entity that is directly or indirectly established, financed, maintained, or controlled by any such national, State, district, or local committee or its agent, and an officer or agent acting on behalf of any such party committee or entity, shall not solicit any funds for, or make or direct any donations to--

(1) an organization that is described in section 501(c) of Title 26 and exempt from taxation under section 501(a) of such title (or has submitted an application for determination of tax exempt status under such section) and that makes expenditures or disbursements in connection with an election for Federal office (including expenditures or disbursements for Federal election activity); or

(2) an organization described in section 527 of such title (other than a political committee, a State, district, or local committee of a political party, or the authorized campaign committee of a candidate for State or local office).

(e) Federal candidates

(1) In general

A candidate, individual holding Federal office, agent of a candidate or an individual holding Federal office, or an entity directly or indirectly established, financed, maintained or controlled by or acting on behalf of 1 or more candidates or individuals holding Federal office, shall not--

(A) solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office, including funds for any Federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act; or

(B) solicit, receive, direct, transfer, or spend funds in connection with any election other than an election for Federal office or disburse funds in connection with such an election unless the funds--

(i) are not in excess of the amounts permitted with respect to contributions to candidates and political committees under paragraphs (1), (2), and (3) of section 30116(a) of this title; and

(ii) are not from sources prohibited by this Act from making contributions in connection with an election for Federal office.

(2) State law

Paragraph (1) does not apply to the solicitation, receipt, or spending of funds by an individual described in such paragraph who is or was also a candidate for a State or local office solely in connection with such election for State or local office if the solicitation, receipt, or spending of funds is permitted under State law and refers only to such State or local candidate, or to any other candidate for the State or local office sought by such candidate, or both.

(3) Fundraising events

Notwithstanding paragraph (1) or subsection (b)(2)(C), a candidate or an individual holding Federal office may attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party.

(4) Permitting certain solicitations

(A) General solicitations

Notwithstanding any other provision of this subsection, an individual described in paragraph (1) may make a general solicitation of funds on behalf of any organization that is described in section 501(c) of Title 26 and exempt from taxation under section 501(a) of such title (or has submitted an application for determination of tax exempt status under such section) (other than an entity whose principal purpose is to conduct activities described in clauses (i) and (ii) of section 30101(20)(A) of this title) where such solicitation does not specify how the funds will or should be spent.

(B) Certain specific solicitations

In addition to the general solicitations permitted under subparagraph (A), an individual described in paragraph (1) may make a solicitation explicitly to obtain funds for carrying out the activities described in clauses (i) and (ii) of section 30101(20)(A) of this title, or for an entity whose principal purpose is to conduct such activities, if--

(i) the solicitation is made only to individuals; and

(ii) the amount solicited from any individual during any calendar year does not exceed $20,000.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(f) State candidates

(1) In general

A candidate for State or local office, individual holding State or local office, or an agent of such a candidate or individual may not spend any funds for a communication described in section 30101(20)(A)(iii) of this title unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act.

(2) Exception for certain communications

Paragraph (1) shall not apply to an individual described in such paragraph if the communication involved is in connection with an election for such State or local office and refers only to such individual or to any other candidate for the State or local office held or sought by such individual, or both.

CREDIT(S)

(Pub.L. 92-225, Title III, § 323, as added Pub.L. 107-155, Title I, § 101(a), Mar. 27, 2002, 116 Stat. 82.)

52 U.S.C.A. § 30125, 52 USCA § 30125
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 30126
Formerly cited as 2 USCA § 441k

§ 30126. Prohibition of contributions by minors

Currentness

An individual who is 17 years old or younger shall not make a contribution to a candidate or a contribution or donation to a committee of a political party.

CREDIT(S)

(Pub.L. 92-225, Title III, § 324, as added Pub.L. 107-155, Title III, § 318, Mar. 27, 2002, 116 Stat. 109.)

52 U.S.C.A. § 30126, 52 USCA § 30126
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle III. Federal Campaign Finance
Chapter 301. Federal Election Campaigns
Subchapter II. General Provisions

52 U.S.C.A. § 30141
Formerly cited as 2 USCA § 451

§ 30141. Extension of credit by regulated industries; regulations

Currentness

The Secretary of Transportation, the Federal Communications Commission, and the Surface Transportation Board shall each maintain,[1] its own regulations with respect to the extension of credit, without security, by any person regulated by the Secretary under subpart II of part A of subtitle VII of Title 49, or such Commission or Board, to any candidate for Federal office, or to any person on behalf of such a candidate, for goods furnished or services rendered in connection with the campaign of such candidate for nomination for election, or election, to such office.

CREDIT(S)

(Pub.L. 92-225, Title IV, § 401, Feb. 7, 1972, 86 Stat. 19; Pub.L. 93-443, Title II, § 201(b)(1), Oct. 15, 1974, 88 Stat. 1275; Pub.L. 103-272, § 4(a), July 5, 1994, 108 Stat. 1360; Pub.L. 104-88, Title III, § 313, Dec. 29, 1995, 109 Stat. 948; Pub.L. 104-287, § 6(g), Oct. 11, 1996, 110 Stat. 3399.)

Footnotes

1 So in original. The comma probably should not appear.

52 U.S.C.A. § 30141, 52 USCA § 30141
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 30142
Formerly cited as 2 USCA § 452

§ 30142. Prohibition against use of certain Federal funds for election activities

Currentness

No part of any funds appropriated to carry out the Economic Opportunity Act of 1964 shall be used to finance, directly or indirectly, any activity designed to influence the outcome of any election to Federal office, or any voter registration activity, or to pay the salary of any officer or employee of the Office of Economic Opportunity who, in his official capacity as such an officer or employee, engages in any such activity.

CREDIT(S)

(Pub.L. 92-225, Title IV, § 402, Feb. 7, 1972, 86 Stat. 19; Pub.L. 93-443, Title II, § 201(b)(2), Oct. 15, 1974, 88 Stat. 1275.)

52 U.S.C.A. § 30142, 52 USCA § 30142
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Title 52. Voting and Elections (Refs & Annos)
Subtitle III. Federal Campaign Finance
Chapter 301. Federal Election Campaigns
Subchapter II. General Provisions

52 U.S.C.A. § 30143
Formerly cited as 2 USCA § 453

§ 30143. State laws affected

Currentness

(a) In general

Subject to subsection (b), the provisions of this Act, and of rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office.

(b) State and local committees of political parties

Notwithstanding any other provision of this Act, a State or local committee of a political party may, subject to State law, use exclusively funds that are not subject to the prohibitions, limitations, and reporting requirements of the Act for the purchase or construction of an office building for such State or local committee.

CREDIT(S)

(Pub.L. 92-225, Title IV, § 403, Feb. 7, 1972, 86 Stat. 20; Pub.L. 93-443, Title III, § 301, Oct. 15, 1974, 88 Stat. 1289; Pub.L. 107-155, Title I, § 103(b)(2), Mar. 27, 2002, 116 Stat. 87.)

52 U.S.C.A. § 30143, 52 USCA § 30143
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 30144
Formerly cited as 2 USCA § 454

§ 30144. Partial invalidity

Currentness

If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the Act and the application of such provision to other persons and circumstances shall not be affected thereby.

CREDIT(S)

(Pub.L. 92-225, Title IV, § 404, Feb. 7, 1972, 86 Stat. 20.)

52 U.S.C.A. § 30144, 52 USCA § 30144
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 30145
Formerly cited as 2 USCA § 455

§ 30145. Period of limitations

Currentness

(a) No person shall be prosecuted, tried, or punished for any violation of subchapter I of this chapter, unless the indictment is found or the information is instituted within 5 years after the date of the violation.

(b) Notwithstanding any other provision of law--

(1) the period of limitations referred to in subsection (a) shall apply with respect to violations referred to in such subsection committed before, on, or after the effective date of this section; and

(2) no criminal proceeding shall be instituted against any person for any act or omission which was a violation of any provision of subchapter I of this chapter, as in effect on December 31, 1974, if such act or omission does not constitute a violation of any such provision, as amended by the Federal Election Campaign Act Amendments of 1974.

Nothing in this subsection shall affect any proceeding pending in any court of the United States on January 1, 1975.

CREDIT(S)

(Pub.L. 92-225, Title IV, § 406, as added Pub.L. 93-443, Title III, § 302, Oct. 15, 1974, 88 Stat. 1289; amended Pub.L. 94-283, Title I, § 115(f), May 11, 1976, 90 Stat. 496; Pub.L. 107-155, Title III, § 313(a), Mar. 27, 2002, 116 Stat. 106.)

52 U.S.C.A. § 30145, 52 USCA § 30145
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

52 U.S.C.A. § 30146
Formerly cited as 2 USCA § 457

§ 30146. Collection and use of conference fees

Currentness

(a) The Federal Election Commission may charge and collect fees for attending or otherwise participating in a conference sponsored by the Commission, and notwithstanding section 3302 of Title 31, any amounts received from such fees during a fiscal year shall be credited to and merged with the amounts appropriated or otherwise made available to the Commission during the year, and shall be available for use during the year for the costs of sponsoring such conferences.

(b) This section shall apply with respect to fiscal year 2007 and each succeeding fiscal year.

CREDIT(S)

(Pub.L. 109-289, Div. B, Title II, § 21078, as added Pub.L. 110-5, § 2, Feb. 15, 2007, 121 Stat. 59.)

52 U.S.C.A. § 30146, 52 USCA § 30146
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

ASSEMBLY, No. 4083

STATE OF NEW JERSEY

221st LEGISLATURE

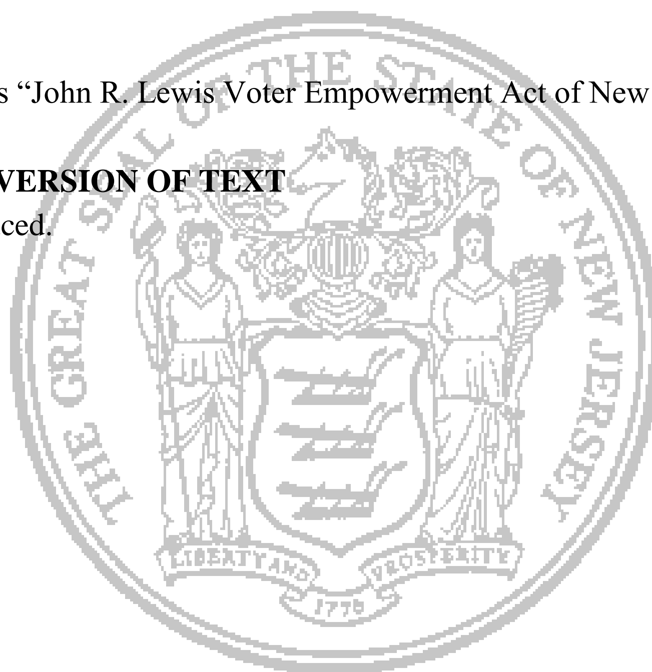
INTRODUCED MARCH 18, 2024

Sponsored by:
Assemblywoman VERLINA REYNOLDS-JACKSON
District 15 (Hunterdon and Mercer)
Assemblyman BENJIE E. WIMBERLY
District 35 (Bergen and Passaic)
Assemblywoman SHAVONDA E. SUMTER
District 35 (Bergen and Passaic)
Assemblyman HERB CONAWAY, JR.
District 7 (Burlington)

Co-Sponsored by:
Assemblyman Sampson, Assemblywoman Speight, Assemblyman Spearman, Assemblywoman Tucker, Assemblyman Atkins, Assemblywoman Carter, Assemblymen Verrelli, Venezia, Assemblywomen McCoy, Hall, Drulis, Assemblyman Danielsen, Assemblywomen Haider and Quijano

SYNOPSIS
Establishes "John R. Lewis Voter Empowerment Act of New Jersey."

CURRENT VERSION OF TEXT
As introduced.



(Sponsorship Updated As Of: 4/15/2024)

1 **AN ACT** establishing the "John R. Lewis Voter Empowerment Act
2 of New Jersey" and supplementing Title 19 of the Revised
3 Statutes.
4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*
7
8 1. This act shall be known and may be cited as the "John R.
9 Lewis Voter Empowerment Act of New Jersey."
10
11 2. a. In recognition of the protections for the right to vote
12 provided by the Constitution of the United States, the Constitution
13 of the State of New Jersey, and under the laws of New Jersey, and
14 in conjunction with the constitutional guarantees of equal
15 protection, freedom of expression, and freedom of association under
16 the law and against the denial or abridgement of the voting rights of
17 members of protected classes, including a race, color, or language-
18 minority group, it is the public policy of the State of New Jersey to:
19 (1) encourage participation in the elective franchise by all
20 eligible voters to the maximum extent; and
21 (2) ensure that eligible voters who are members of protected
22 classes, including racial, color, and language-minority groups shall
23 have an equal opportunity to participate in the political processes of
24 the State of New Jersey, and especially to exercise the elective
25 franchise.
26 b. In further recognition of the protections for the right to vote
27 provided by the Constitution of the State of New Jersey, any
28 provision of state law, regulation, charter, home rule ordinance, or
29 other enactment of the state or any political subdivision relating to
30 the right to vote shall be construed liberally in favor of the factors
31 listed below. To the extent courts are afforded discretion on any
32 issue, including but not limited to with respect to questions of
33 discovery, procedure, admissibility of evidence, or remedies, it is
34 the policy of the state that courts should exercise that discretion,
35 and weigh other equitable discretion, in favor of the following
36 factors:
37 (1) protecting the right to cast a ballot and make the ballot valid;
38 (2) ensuring eligible individuals seeking voter registration are
39 not impaired in being registered;
40 (3) ensuring voters are not impaired in voting, including, but not
41 limited to having their votes counted;
42 (4) making the fundamental right to vote more accessible to
43 eligible voters; and
44 (5) ensuring equitable access for protected class members to
45 opportunities to be registered to vote and to vote.
46 c. The authority to prescribe or maintain voting or elections
47 policies and practices shall not be so exercised as to unnecessarily
48 deny or abridge the right to vote. Policies and practices that burden

1 the right to vote shall be narrowly tailored to promote a compelling
2 policy justification that shall be supported by substantial evidence.
3
4 3. As used in this act, P.L. , c. (C.)(pending before the
5 Legislature as this bill):
6 "Alternative method of election" means a method of electing
7 candidates to the legislative body of a local government or political
8 subdivision other than at-large method of election or a district-
9 based method of election and which may include, but is not limited
10 to, proportional ranked-choice voting, cumulative voting and
11 limited voting;
12 "Deceptive or fraudulent device, contrivance, or communication"
13 means one that contains false information pertaining to:
14 (1) the time, place, and manner of any election;
15 (2) the qualifications or restrictions on voter eligibility for such
16 election; or
17 (3) a statement of endorsement by any specifically named
18 person, political party, or organization.
19 "Disparity" means any variance that is supported by validated
20 methodologies and, where relevant, is statistically significant.
21 "Federal voting rights act" means the federal Voting Rights Act
22 of 1965, 52 U.S.C. s.10301 et seq., as amended.
23 "Government enforcement action" means a denial of
24 administrative or judicial preclearance by the State or federal or
25 local government, pending litigation filed by a federal or State or
26 local entity, a final judgment or adjudication, a consent decree, or
27 similar formal action.
28 "Limited English proficient" means individuals who do not
29 speak English as their primary language and who speak, read, or
30 understand the English language less than "very well," in
31 accordance with United States Census Bureau data or data of
32 comparable quality collected by a governmental entity, including as
33 self-reported by that person to a governmental entity.
34 "Local election office" means any member of the offices of the
35 county clerk, county board of elections, commissioner or
36 registration, or superintendent of elections.
37 "Political subdivision" means a geographic area of representation
38 created for the provision of government services, including, but not
39 limited to, a county, city, town, township, village, borough, school
40 district, or any other district organized pursuant to State or local
41 law.
42 "Preclearance" means the process of obtaining prior approval
43 from the Attorney General or a court of this State of any changes
44 related to a covered policy of a covered entity, as defined under
45 section 13 of this act.
46 "Protected class" means individuals who are members of a racial,
47 color, or language minority, or two or more such groups and
48 includes: (i) individuals who are members of a racial, color, or

1 language minority group as that term has been interpreted under the
2 federal Voting Rights Act; or (ii) individuals who are members of a
3 minimum reporting category that has ever been officially
4 recognized or considered through notice and comment by the
5 United States Census Bureau.
6 "Racially polarized voting" means voting in which there is a
7 divergence in the candidate, political preferences, or electoral
8 choice of members in a protected class from the candidate, political
9 preferences, or electoral choice of other electors.
10
11 4. a. For the purposes of this act, P.L. , c.
12 (C.)(pending before the Legislature as this bill), the Attorney
13 General of the State of New Jersey shall act as the chief legal
14 officer and shall be charged with enforcing the provisions under this
15 act as well as provisions of any federal, state or local law with
16 respect to voting rights and elections.
17 b. The functions, powers, and duties of the Attorney General as
18 chief legal officer for voting rights and election-related matters
19 shall be to ensure the protection and enforcement of federal, state,
20 and local voting rights for all persons within this State. The
21 Attorney General shall do so by enforcing all provisions under this
22 act as well as provisions of any federal, state or local law with
23 respect to voting rights and election-related matters, as well as by
24 carrying out any responsibilities assigned to the Attorney General
25 by this act or taking any action that may be needed to carry out such
26 responsibilities.
27 (1) The Attorney General shall have the authority to conduct
28 investigations and issue subpoenas pursuant to subsections 16 and
29 17 of this act, initiate studies, conduct research, present comments
30 and testimony before governmental bodies, issue reports,
31 promulgate rules or regulations related to voting rights, litigate
32 cases on behalf of individuals or the public, and produce and
33 disseminate guidance on any matters that fall within the Attorney
34 General's jurisdiction.
35 (2) The Attorney General shall have the right to represent the
36 public interest in any federal proceedings, including but not limited
37 to proceedings before the Committee on House Administration,
38 Committee on Rules and Administration, Committee on the
39 Judiciary, the Federal Elections Commission, and any other such
40 federal committees that hold proceedings related to voting rights.
41 c. At least once annually, the Attorney General, or a designee
42 thereof, shall present on voting rights and elections-related matters
43 and actions taken by the Attorney General for the previous calendar
44 year, including any new policies, rules, or changes in procedures or
45 process promulgated by the Attorney General and a summary of
46 actions taken to enforce the provisions of this act, at a hearing in
47 front of the Legislature and answer any questions or provide any
48 information asked for by the Legislature.

1 d. Henceforth, the Attorney General shall not act as the legal
2 adviser, attorney or counsel for any officers, departments, boards,
3 bodies, commissions or instrumentalities of the state government in
4 matters of voting or elections; and may not represent them in any
5 proceedings or actions of any kind related to voting or elections
6 which may be brought for or against them in any court.
7
8 5. Concerning voter suppression, no voting qualification,
9 prerequisite to voting, law, ordinance, standard, practice, procedure,
10 regulation, or policy shall be enacted or implemented by any state
11 agency, local election office, or political subdivision in a manner
12 that results in a denial or abridgement of the right of members of a
13 protected class to vote. This section applies to any action to enact or
14 seek to administer any such voting qualification, prerequisite to
15 voting, law, ordinance, standard, practice, procedure, regulation, or
16 policy taken on or after the effective date of this act.
17 a. Violations of this subsection shall include a stage agency,
18 local election office, or political subdivision imposing any
19 qualification for eligibility to be an elector, imposing any other
20 prerequisite to voting, imposing any ordinance, regulation, or other
21 law regarding the administration of elections, or imposing any
22 standard, practice, procedure, or policy in a manner that results in,
23 will likely result in, or is intended to result in, either of the
24 following:
25 (1) a disparity in voter participation, access to voting
26 opportunities, or the opportunity or ability to participate in the
27 political process between members of a protected class and other
28 members of the electorate; or
29 (2) based on the totality of the circumstances, an impairment of
30 the opportunity or ability of a protected class member to participate
31 in the political process and elect candidates of the elector's choice
32 or otherwise influence the outcome of elections.
33 b. There is a rebuttable presumption that an impairment exists
34 under subsection 5(a)(2) in circumstances that include, but are not
35 limited to, any of the following:
36 (1) A stage agency, local election office, or political subdivision
37 closes, moves, or consolidates 1 or more precincts, polling places,
38 or absent voter ballot drop boxes in a manner that impairs the right
39 to vote of members of a protected class or results in a disparity in
40 geographic access between members of a protected class and other
41 members of the electorate; or
42 (2) A stage agency, local election office, or political subdivision
43 changes the time or date of an election in a manner that impairs the
44 right to vote of members of a protected class, including, but not
45 limited to, making the change without proper notice as required by
46 law; or

1 (3) A stage agency, local election office, or political subdivision
2 fails to provide voting or election materials and assistance in
3 languages other than English as required by federal or state law; or
4 (4) A stage agency, local election office, or political subdivision
5 conducts general or primary elections on dates that do not align
6 with the date of federal or state general or primary elections,
7 resulting in a disparity in levels of participation between protected
8 class voters and other voters that exceeds any disparity in federal or
9 state general or primary elections; or
10 (5) For any state or local office, a special election is called on a
11 date that would reasonably result in a disparity in levels of
12 participation between protected class voters and other voters, and
13 there exists an alternate date in a reasonable timeframe in which the
14 disparity would be materially less significant; or
15 (6) For any state or local office, a special election is not
16 scheduled on a reasonable timeframe for an office in which
17 protected class voters would be able to elect candidates of their
18 choice or otherwise influence the outcome of elections.
19
20 6. Concerning vote dilution, no local election office or political
21 subdivision shall employ any method of election for any office that
22 has the effect, or is motivated in part by the intent, of impairing the
23 equal opportunity or ability of protected class members to
24 participate in the political process by diluting the ability to (1) elect
25 candidates of their choice or (2) influence the outcome of elections.
26 The following shall constitute a violation of this section:
27 a. A local election office or political subdivision employs an at-
28 large method of election, and:
29 (1) Elections in the local election office or political subdivision
30 exhibit racially polarized voting, resulting in an impairment of the
31 equal opportunity or ability of protected class members to nominate
32 or elect candidates of their choice, or, based on the totality of the
33 circumstances, the equal opportunity or ability of members of a
34 protected class to nominate or elect candidates of their choice is
35 impaired; and
36 (2) One or more new methods of election or modifications to the
37 existing method of election exist that the court could order pursuant
38 to section 8 of this act, P.L. , c. (C.)(pending before the
39 Legislature as this bill), that would likely mitigate the impairment
40 of the equal opportunity or ability of protected class members to
41 nominate or elect candidates of their choice. To the extent that the
42 new method of election or modification is a proposed district-based
43 plan that provides members of a protected class with one or more
44 reasonably configured districts in which they would have an equal
45 opportunity or ability to nominate or elect candidates of their
46 choice, it is not necessary to show that members of a protected class
47 comprise a majority in any such district or districts.

1 b. A local election office or political subdivision employs a
2 district-based or alternative method of election and:
3 (1) Elections in the local election office or political subdivision
4 exhibit racially polarized voting, resulting in an impairment of the
5 equal opportunity or ability of protected class members to nominate
6 or elect candidates of their choice, or, based on the totality of the
7 circumstances, the equal opportunity or ability of members of a
8 protected class to nominate or elect candidates of their choice is
9 impaired; and
10 (2) One or more new methods of election or modifications to the
11 existing method of election exist that the court could order pursuant
12 to section 8 of this act, P.L. , c. (C.)(pending before the
13 Legislature as this bill), that would likely mitigate the impairment
14 of the equal opportunity or ability of protected class members to
15 nominate or elect candidates of their choice. To the extent that the
16 new method of election or modification is a proposed district-based
17 plan that provides members of a protected class with one or more
18 reasonably configured districts in which they would have an equal
19 opportunity or ability to nominate or elect candidates of their
20 choice, it is not necessary to show that members of a protected class
21 comprise a majority in any such district or districts.
22 c. For the purposes of demonstrating whether voting patterns of
23 members of a protected class within a political subdivision are
24 racially polarized, evidence shall be weighed and considered as
25 follows:
26 (1) elections conducted prior to the filing of an action pursuant
27 to this act are more probative than elections conducted after the
28 filing of the action;
29 (2) evidence concerning elections for any office in that local
30 government, including executive, legislative, judicial and other
31 offices of that local government, is more probative than evidence
32 concerning elections for other offices, but evidence concerning
33 elections for other offices may still be afforded probative value;
34 (3) statistical evidence is more probative than non-statistical
35 evidence, but non-statistical evidence, including survey data, may
36 still be afforded probative value;
37 (4) where there is evidence that the protected class is comprised
38 of two or more politically cohesive racial, color or language
39 minority groups in the political subdivision, only the combined
40 electoral preferences of the protected class shall be considered and
41 the protected class shall not be required to prove that each racial,
42 color or language group comprising the protected class is separately
43 polarized from the rest of the electorate;
44 (5) evidence concerning the intent on the part of the voters,
45 elected officials, or the local election office or political subdivision
46 to discriminate against a protected class shall be not required;

1 (6) evidence that voting patterns and election outcomes could be
2 explained by factors other than racially polarized voting, including,
3 but not limited to, partisanship, shall not be considered;
4 (7) evidence that sub-groups within a protected class have
5 different voting patterns shall not be considered;
6 (8) evidence concerning whether members of a protected class
7 are geographically compact or concentrated shall not be considered,
8 but may be a factor in determining an appropriate remedy; and
9 (9) evidence concerning projected changes in population or
10 demographics shall not be considered, but may be a factor, in
11 determining an appropriate remedy.
12
13 7. a. In determining whether, under the totality of the
14 circumstances, a violation of sections 5 and 6 of this act, P.L. , c.
15 (C.)(pending before the Legislature as this bill), has occurred,
16 factors that may be considered shall include, but not be limited to:
17 (1) the history of discrimination in or affecting the political
18 subdivision or geographic region in which that political subdivision
19 is located;
20 (2) the extent to which members of the protected class have been
21 elected to office in the political subdivision or geographic region in
22 which that political subdivision is located;
23 (3) the use of any voting qualification, prerequisite to voting,
24 law, ordinance, standard, practice, procedure, regulation, or policy
25 that may enhance the dilutive effects of the election scheme;
26 (4) denying eligible voters or candidates who are members of
27 the protected class to processes determining which groups of
28 candidates receive access to the ballot, financial support, or other
29 support in a given election;
30 (5) the extent to which members of a protected class vote at
31 lower rates than other members of the electorate;
32 (6) the extent to which members of the protected class are
33 disadvantaged in areas including, but not limited to, accessibility,
34 education, employment, health, public safety, housing, land use,
35 involvement with the criminal justice system, access to information
36 in their native language, or environmental protection;
37 (7) the extent to which members of the protected class are
38 disadvantaged in other areas which may hinder their ability to
39 participate effectively in the political process;
40 (8) the use of overt or subtle racial appeals in political
41 campaigns or by government officials;
42 (9) a significant lack of responsiveness on the part of elected
43 officials to the particularized needs of members of the protected
44 class; and
45 (10) whether the political subdivision has a compelling policy
46 justification that is substantiated and supported by evidence for
47 adopting or maintaining a particular process of the election or the

1 voting qualification, prerequisite to voting, law, ordinance,
2 standard, practice, procedure, regulation, or policy.
3 b. Evidence of these factors is most probative if the evidence
4 relates to the political subdivision in which the alleged violation
5 occurred, but still holds probative value if the evidence relates to
6 the geographic region in which that political subdivision is located
7 or to this state.
8 c. Nothing in this section shall preclude any additional factors
9 from being considered, nor shall any one factor, combination of
10 factors, or specified number of factors be required to determine that
11 an impairment has occurred.
12 d. In determining whether a violation of section 6 of this
13 act, P.L. , c. (C.)(pending before the Legislature as this
14 bill), has occurred, a court shall not consider any of the following
15 factors:
16 (1) the total number or share of members of a protected class on
17 whom a challenged method of election, ordinance, resolution, rule,
18 policy, standard, regulation, procedure, or law does not impose a
19 material burden;
20 (2) the degree to which the challenged method of election,
21 ordinance, resolution, rule, policy, standard, regulation, procedure,
22 or law has a long pedigree or was in widespread use at some earlier
23 date;
24 (3) the use of an identical or similar challenged method of
25 election, ordinance, resolution, rule, policy, standard, regulation,
26 procedure, or law in another political subdivision;
27 (4) the availability of other forms of voting un-impacted by the
28 challenged method of election, ordinance, resolution, rule, policy,
29 standard, regulation, procedure, or law to all members of the
30 electorate, including members of the protected class;
31 (5) a prophylactic impact on potential criminal activity by
32 individual electors, if those crimes have not occurred in the political
33 subdivision in substantial numbers, or if the connection between the
34 challenged policy and any claimed prophylactic effect is not
35 supported by substantial evidence;
36 (6) mere invocation of interests in voter confidence or
37 prevention of fraud; or
38 (7) a lack of evidence concerning the intent of electors, elected
39 officials, or public officials to discriminate against protected class
40 members.
41 e. Further, in any action under this act, the federal Voting Rights
42 Act, or a voting-related violation of the New Jersey Constitution or
43 United States Constitution, no sovereign, governmental, executive,
44 legislative, or deliberative immunities and privileges, including any
45 evidentiary privileges, may be asserted to limit the scope of relevant
46 discovery. However, this subsection shall have no effect on any
47 attorney-client or attorney work-product privileges.

1 8. a. Upon a finding of a violation of any provision of this act, a
2 court of this State shall implement appropriate remedies to ensure
3 that members of protected classes have equitable access to fully
4 participate in the electoral process. A court of this State shall
5 consider proposed remedies by any parties and interested non-
6 parties, but shall not provide deference or priority to a proposed
7 remedy offered by the political subdivision. The court shall have
8 the power to require a local election office or political subdivision
9 to implement remedies that are inconsistent with any other
10 provision of law where such inconsistent provision of law would
11 preclude the court from ordering an otherwise appropriate remedy
12 in such matter.
13 b. Upon a finding of a violation of the vote dilution cause of
14 action, the court shall implement appropriate remedies which may
15 include, but shall not be limited to, the following:
16 (1) transitioning to a district-based method of election or an
17 alternative method of election, if an at-large method of election has
18 been found to violate this act;
19 (2) ordering the adoption of new or revised redistricting plans or
20 an alternative method of election, if a district-based method of
21 election or alternative method of election has been found in to
22 violate this act;
23 (3) modifying the election calendar, including ordering a special
24 election or moving the date of an election, consistent with federal
25 and State law, to be concurrent with the primary or general election
26 dates for State, county, or local public office;
27 (4) eliminating staggered elections so that all members of the
28 governing body are elected on the same date;
29 (5) reasonably increasing the size of the governing body;
30 (6) providing for shortened or lengthened terms on a one-time
31 basis if necessary to implement a remedy;
32 (7) ordering alternative methods to conduct an election,
33 including, but not limited to, ranked-choice voting, cumulative
34 voting and limited voting; or
35 (8) retaining jurisdiction for such period of time on a given
36 matter as the court may deem appropriate, during which no voting
37 qualification or prerequisite to voting or standard, practice, or
38 procedure with respect to voting different from that in force or
39 effect at the time the proceeding was commenced shall be enforced
40 unless and until the court finds that such qualification, prerequisite,
41 standard, practice, or procedure does not have the purpose and will
42 not have the effect of denying or abridging the right to vote on the
43 basis of protected class membership, or in contravention of the
44 voting guarantees set forth in this act, except that the court's finding
45 shall not bar a subsequent action to enjoin enforcement of such
46 qualification, prerequisite, standard, practice or procedure.

1 c. Upon a finding of a violation of the voter suppression cause
2 of action, the court shall implement appropriate remedies which
3 may include, but shall not be limited to, the following:
4 (1) modifying the election calendar, including ordering a special
5 election or moving the date of an election, consistent with federal
6 and State law, to be concurrent with the primary or general election
7 dates for State, county, or local public office, if the violation
8 concerns the date of an election;
9 (2) eliminating staggered elections so that all members of the
10 governing body are elected on the same date;
11 (3) extending the timeline for voters to return their ballots;
12 (4) providing for shortened or lengthened terms on a one-time
13 basis if necessary to implement a remedy;
14 (5) ordering additional voting hours or days;
15 (6) ordering additional polling locations, including early voting
16 sites;
17 (7) providing for additional means of voting such as voting by
18 mail or ballot drop boxes;
19 (8) requiring expanded opportunities for voter registration;
20 (9) requiring additional voter education;
21 (10) ordering the restoration or addition of persons to
22 registration lists; or
23 (11) retaining jurisdiction for such period of time on a given
24 matter as the court may deem appropriate, during which no voting
25 qualification or prerequisite to voting or standard, practice, or
26 procedure with respect to voting different from that in force or
27 effect at the time the proceeding was commenced shall be enforced
28 unless and until the court finds that such qualification, prerequisite,
29 standard, practice, or procedure does not have the purpose and will
30 not have the effect of denying or abridging the right to vote on the
31 basis of protected class membership, or in contravention of the
32 voting guarantees set forth in this act, except that the court's finding
33 shall not bar a subsequent action to enjoin enforcement of such
34 qualification, prerequisite, standard, practice, or procedure.
35
36 9. a. Voting qualifications, prerequisites to voting, laws,
37 ordinances, standards, practices, procedures, regulations, or policies
38 are prohibited that burden the right to vote, including registering to
39 vote, for any individual or community on the basis of age,
40 disability, sexual orientation, including gender identity and gender
41 presentation, or criminal history, unless such voting qualifications,
42 prerequisites to voting, laws, ordinances, standards, practices,
43 procedures, regulations, or policies are narrowly tailored to promote
44 a compelling policy justification that is supported by substantial
45 evidence.
46 b. Any person, including any organization on behalf of an
47 impacted person or community, alleging a violation of this
48 subsection shall have the right to bring judicial action in any court

1 of competent jurisdiction, for remedies including, but not limited to,
2 declaratory or injunctive relief or any such other remedies as
3 specified in this actor as may be determined to cure the violation.
4
5 10. a. The governing body of a political subdivision with the
6 authority under this act and all applicable State and local laws to
7 conduct an election, or enact and implement a new apportionment
8 or redistricting plan, shall undertake each of the steps enumerated in
9 this section concerning draft or redistricting plans and, if applicable,
10 NJVEA notification letters, as defined in section 11 of this act,
11 P.L. , c. (C.)(pending before the Legislature as this bill), or
12 the filing of a claim pursuant to this act or the federal Voting Rights
13 Act.
14 b. Before drawing a draft or redistricting plan or plans of the
15 proposed boundaries of the districts, the political subdivision shall
16 hold public hearings, for which it will provide at least seven days
17 notice for each and at which the public is invited to provide input
18 regarding the composition of the districts. As determined by the
19 most recent U.S. census enumeration, political subdivisions with
20 30,000 or more residents shall hold at least four public hearings;
21 political subdivisions with fewer than 30,000 residents and more
22 than 5,000 residents shall hold at least three public hearings; and
23 political subdivisions with 5,000 or fewer residents shall hold at
24 least two hearings. and at least 5,000 residents must hold at least
25 two public hearings. Before these public hearings, the political
26 subdivision shall conduct outreach to the public, including to non-
27 English-speaking communities, to explain the or redistricting
28 process and to encourage public participation.
29 c. After all draft or redistricting plans are drawn, the political
30 subdivision shall publish and make available for release at least one
31 draft or redistricting plan and, if members of the governing body of
32 the political subdivision would be elected in their districts at
33 different times to provide for staggered terms of office, the potential
34 sequence of such elections. The political subdivision shall
35 additionally publish and make publicly available a written report
36 that shall include, but not be limited to, a detailed summary of how
37 the body came to select such apportionment or redistricting plan,
38 and how the selected plan complies with the provisions of this act
39 and with relevant federal law.
40 d. After the release of any draft pursuant to subsection 10(c), the
41 political subdivision shall also hold at least two additional hearings,
42 at which the public, including limited English proficient
43 communities, shall be invited to provide input regarding the content
44 of the draft or redistricting plan or plans and the proposed sequence
45 of elections, if applicable. The draft or redistricting plan or plans
46 shall be published at least seven days before consideration at a
47 hearing. If the draft or redistricting plan or plans are revised at or
48 following a hearing, the revised versions shall be published and

1 made available to the public, including to limited English proficient
2 communities, for at least seven days. Before adoption, the political
3 subdivision shall hold at least one additional public hearing on the
4 revised draft plan or plans. Notice shall be provided to the public,
5 including translated to limited English proficient communities, at
6 least seven days prior to any additional hearing. Each public
7 hearing should provide interpretation services for limited English
8 proficient communities provided that where in-person interpretation
9 services may be unavailable, written testimonies in languages other
10 than English may be submitted for the public record within seven
11 days following the hearing. Any further changes to the revised draft
12 plan following the additional public hearing shall not require a
13 second additional public hearing.
14 e. In determining the final sequence of the district elections
15 conducted in a political subdivision in which members of the
16 governing body will be elected at different times to provide for
17 staggered terms of office, the governing body shall give special
18 consideration to the purposes of this act, and it shall take into
19 account the preferences expressed by members of the districts.
20
21 11. a. Before commencing a judicial action against a political
22 subdivision under this section, a prospective plaintiff shall send by
23 certified mail a written notice to the clerk of the political
24 subdivision, or, if the political subdivision does not have a clerk,
25 the governing body of the political subdivision, against which the
26 action would be brought, asserting that the political subdivision
27 may be in violation of this act. This written notice shall be referred
28 to as a "NJVEA notification letter" in this act. For actions against a
29 school district, the prospective plaintiff shall also send by certified
30 mail a copy of the NJVEA notification letter to the Commissioner
31 of Education.
32 b. A prospective plaintiff shall not commence a judicial action
33 against a political subdivision under this section within 50 days of
34 sending to the political subdivision a NJVEA notification letter.
35 c. Before receiving a NJVEA notification letter, or within 50
36 days of mailing of a NJVEA notification letter, the governing body
37 of a political subdivision may pass a resolution affirming:
38 (1) the political subdivision's intention to enact and implement a
39 remedy for a potential violation of this act;
40 (2) specific steps the political subdivision will undertake to
41 facilitate approval and implementation of such a remedy; and
42 (3) a schedule for enacting and implementing such a remedy.
43 Such a resolution shall be referred to as a "NJVEA resolution" in
44 this act. If a political subdivision passes a NJVEA resolution, such
45 political subdivision shall have 90 days after such passage to enact
46 and implement such remedy, during which a prospective plaintiff
47 shall not commence an action to enforce this section against the
48 political subdivision. For actions against a school district, the

1 Commissioner of Education may order the enactment of a NJVEA
2 resolution.
3 d. If the governing body of a political subdivision lacks the
4 authority under this act or applicable State law or local laws to
5 enact or implement a remedy identified in a NJVEA resolution, or
6 fails to enact or implement a remedy identified in a NJVEA
7 resolution, within 90 days after the passage of the NJVEA
8 resolution, or if the political subdivision is a covered entity as
9 defined under subsection c. of section 13 of this act the governing
10 body of the political subdivision shall undertake the steps
11 enumerated in the following provisions:
12 (1) the governing body of the political subdivision may approve
13 a proposed remedy that complies with this act and submit such a
14 proposed remedy to the Attorney General. Such a submission shall
15 be referred to as a "NJVEA proposal" in this act;
16 (2) prior to passing a NJVEA proposal, the political subdivision
17 shall hold at least one public hearing, at which the public shall be
18 invited to provide input regarding the NJVEA proposal. Before this
19 hearing, the political subdivision may conduct outreach to the
20 public, including to non-English-speaking communities, to
21 encourage public participation;
22 (3) within 45 days of receipt of a NJVEA proposal, the Attorney
23 General shall grant or deny approval of the NJVEA proposal; and
24 (4) the Attorney General shall only grant approval to the
25 NJVEA proposal if it concludes that:
26 (a) the political subdivision may be in violation of this act;
27 (b) the NJVEA proposal would remedy any potential violation
28 of this act;
29 (c) the NJVEA proposal is unlikely to violate the United States
30 Constitution, New Jersey Constitution, or any federal or State law;
31 and
32 (d) implementation of the NJVEA proposal is feasible.
33 (5) if the Attorney General grants approval, the NJVEA
34 proposal shall be enacted and implemented immediately,
35 notwithstanding any other law, rule, or regulation to the contrary;
36 (6) if the political subdivision is a covered entity as defined
37 under subsection c. of section 13 of this act, P.L. , c.
38 (C.)(pending before the Legislature as this bill), the political
39 subdivision shall not be required to obtain preclearance for the
40 NJVEA proposal pursuant to such section upon approval of the
41 NJVEA proposal by the Attorney General;
42 (7) if the Attorney General denies approval, the NJVEA
43 proposal shall not be enacted or implemented, and the Attorney
44 General shall explain the basis for such denial and may, in its
45 discretion, make recommendations for an alternative remedy for
46 which it would grant approval; and
47 (8) if the Attorney General does not respond, the NJVEA
48 proposal shall not be enacted or implemented.

f. If, pursuant to a process commenced by a NJVEA notification letter, a political subdivision enacts or implements a remedy or the Attorney General grants approval to a NJVEA proposal, a prospective plaintiff who sent the NJVEA notification letter may, within 30 days of the enactment or implementation of the remedy or approval of the NJVEA proposal, demand reimbursement for the cost of the work product generated to support the NJVEA notification letter. A prospective plaintiff shall make the demand in writing and shall substantiate the demand with financial documentation, such as a detailed invoice for demography services or for the analysis of voting patterns in the political subdivision. A political subdivision may request additional documentation if the provided documentation is insufficient to corroborate the claimed costs. A political subdivision shall reimburse a prospective plaintiff for reasonable costs claimed, or in an amount to which the parties mutually agree. To the extent a prospective plaintiff who sent the NJVEA notification letter and a political subdivision are unable to come to a mutual agreement, either party may file a declaratory judgment action to obtain a clarification of rights.

g. Notwithstanding the provisions of this section requiring notice before commencing a judicial action, a party may bring a cause of action for a violation of section 7 or section 9 of this act, P.L. , c. (C.)(pending before the Legislature as this bill), under any of the following circumstances:

(1) the action is commenced within 1 year after the adoption of the challenged method of election, ordinance, resolution, rule, policy, standard, regulation, procedure or law;

(2) the prospect of obtaining relief under subsections (1) to (5) would be futile;

(3) another party has already submitted a notification letter under subsection (1) alleging a substantially similar violation and that party is eligible to bring a cause of action under this subsection;

(4) following the party's submission of a notification letter , the local election office or political subdivision has adopted a NJVEA resolution that identifies a remedy that would not remedy the violation identified in the party’s notification letter; or

(5) the party is seeking preliminary relief with respect to an upcoming election.

12. a. The Attorney General shall designate one or more languages, other than English, for which assistance in voting and elections shall be provided by a local election office or a political subdivision that administers elections if, based on the most recent set of data from the United States Census Bureau, American Community Survey, or data of comparable quality collected by a public office, including but not limited to, any data collection required by this act, it is determined that:

1 (1) more than two percent, but in no instance fewer than 100
2 individuals, of eligible voters of a political subdivision speak a
3 particular shared language other than English and are limited
4 English proficient individuals; or
5 (2) more than 4,000 voters of such political subdivision speak a
6 particular shared language other than English and are limited
7 English proficient individuals.
8 b. A local election office political subdivision required to
9 provide language assistance to a particular language-minority group
10 pursuant to this section shall provide physical and online electoral
11 and voting materials, in the covered language, including ballots,
12 registration or voting notices, forms, instructions, assistance, other
13 materials or information relating to the electoral process, and any
14 public-facing materials required by this act, P.L. , c.
15 (C.)(pending before the Legislature as this bill). All such
16 materials shall be provided in the language of the applicable
17 language-minority group as well as in the English language,
18 provided that where the language of the applicable language-
19 minority group is historically oral or unwritten, the local election
20 office or political subdivision shall only be required to furnish oral
21 instructions, assistance, and all other information relating to
22 registration and voting, including the ballot, orally. Any provided
23 translation must translate from one language to another in an
24 effective manner to convey the intent and essential meaning of the
25 original text and communication and must not solely rely on
26 automatic electronic translation services. Language assistance shall
27 also include the presence of bilingual poll workers where available.
28 c. A local election office or political subdivision subject to the
29 requirements of this section which seeks to provide translated
30 materials that do not meet the standard defined in subsection b of
31 this subdivision or English-only materials may file an action against
32 the State for a declaratory judgment permitting such provision. A
33 court of this State shall grant the requested relief if it finds that the
34 determination by the Attorney General was arbitrary and capricious
35 or an abuse of discretion.
36 d. Where the State creates, produces, or disseminates relevant
37 physical and online electoral and voting materials for or to local
38 election offices or to political subdivisions subject to the
39 requirements of this section, the State shall also comply with the
40 requirements of this section.
41
42 13. a. To ensure that the right to vote is not denied or abridged
43 on account of race, color, membership in a language-minority group
44 as defined under the federal Voting Rights Act, the enactment or
45 implementation of a covered policy by a covered entity, as defined
46 in this section, shall be subject to preclearance by the Attorney
47 General or by a designated court as set forth in this section.

1 b. A “covered policy” shall include any new or modified voting
2 qualification, prerequisite to voting, law, ordinance, standard,
3 practice, procedure, regulation, or policy concerning any of the
4 following topics:
5 (1) method of election;
6 (2) form of government;
7 (3) annexation or de-annexation of a political subdivision;
8 (4) incorporation of a political subdivision;
9 (5) consolidation or division of political subdivisions;
10 (6) removal of voters from enrollment lists or other list
11 maintenance activities;
12 (7) number, location, or hours of any election day or early
13 voting poll site;
14 (8) dates of elections and the election calendar, except with
15 respect to special elections;
16 (9) registration of voters;
17 (10) assignment of election districts to election day or early
18 voting poll sites;
19 (11) location of ballot drop boxes;
20 (12) assistance offered to members of a language-minority
21 group, as listed in paragraph (1) of subsection a. of section 12 of
22 this act, P.L. , c. (C.)(pending before the Legislature as this
23 bill);
24 (13) municipal districting or redistricting; and
25 (14) any additional topics designated by the Attorney General,
26 which must be designated pursuant to a rule promulgated under the
27 “New Jersey Administrative Procedure Act,” P.L.1968, c. 410
28 (C.52:14B-1 et seq.), upon a determination by the Attorney General
29 that a new or modified voting qualification, prerequisite to voting,
30 law, ordinance, standard, practice, procedure, regulation, or policy
31 concerning such topics may have the effect of denying or abridging
32 the right to vote on account of race, color, or language-minority
33 group.
34 c. A “covered entity” shall include:
35 (1) any political subdivision that, within the prior 25 years, has
36 been subject to any court order, government enforcement action,
37 final determination of the New Jersey Division on Civil Rights,
38 court-approved consent decree, or any other settlement in which the
39 political subdivision conceded liability, based upon a violation of
40 the provisions of this act, the right to vote under the New Jersey
41 Constitution, the federal Voting Rights Act, the Fifteenth
42 Amendment to the United States Constitution, a voting-related
43 violation of the Fourteenth Amendment to the United States
44 Constitution, or any violation of any other state or federal election
45 law based upon discrimination against members of a protected
46 class;
47 (2) any political subdivision that, within the prior 25 years, has
48 been subject to any court order, government enforcement action,

1 final determination of the New Jersey Division on Civil Rights,
2 court-approved consent decree, or any other settlement in which the
3 political subdivision conceded liability, based upon a violation of
4 any state or federal civil rights law, Article I, paragraph 1 of the
5 New Jersey Constitution, or the Fourteenth Amendment to the
6 United States Constitution concerning discrimination against
7 members of a protected class;
8 (3) any county that contains at least 20,000 eligible voters of
9 any protected class, or in which members of any protected class
10 constitute at least 10 percent of the eligible voter population of the
11 county, and in which, in any year in the prior 10 years, the arrest
12 rate among members of such protected class is more than five times
13 the arrest rate among the population of the county as a whole, or
14 exceeds the arrest rate among the population of the county as a
15 whole by at least 20 percentage points;
16 (4) any political subdivision that contains at least 50,000 eligible
17 voters of any protected class, or in which members of any protected
18 class constitute at least 25 percent of the eligible voter population of
19 the political subdivision, and in which, in any year in the prior 10
20 years, based on data made available by the United States Census,
21 the dissimilarity index of such protected class, calculated using
22 census tracts, is in excess of 50 with respect to the race, color, or
23 language-minority group that comprises a plurality within the
24 political subdivision;
25 (5) any political subdivision that contains at least 50,000 eligible
26 voters of any protected class, or in which members of any protected
27 class constitute at least 25 percent of the eligible voter population of
28 a political subdivision, and in which, in any year in the prior 10
29 years, the poverty rate among members of such protected class
30 exceeds the poverty rate among the population of the political
31 subdivision as a whole by at least 10 percentage points;
32 (6) any political subdivision that contains at least 1,000 eligible
33 voters of any protected class, or in which members of any protected
34 class constitute at least 10 percent of the eligible voter population of
35 a political subdivision, and in which, in any year in the prior 10
36 years, the percentage of voters of any protected class in the political
37 subdivision that participated in any general election for any political
38 subdivision office is at least 15 percentage points lower than the
39 percentage of all voters in the political subdivision that participated
40 in such election;
41 (7) any political subdivision that, during the prior three years,
42 has failed to comply with that political subdivision's obligations to
43 provide data or information to the New Jersey Voting and Elections
44 Institute pursuant to section 19 of this act this act, P.L. , c.
45 (C.)(pending before the Legislature as this bill); or
46 (8) any political subdivision that, during the prior 25 years, was
47 found to have enacted or implemented a covered policy without

1 obtaining preclearance for such covered policy pursuant to this
2 section.
3 d. If any covered entity is a political subdivision in which a
4 local election office has been established, that local election office
5 shall also be deemed a covered entity. If any political subdivision
6 in which a local election office has been established contains a
7 covered entity fully within its borders, that political subdivision and
8 that local election office shall both be deemed a covered entity.
9 e. At least biannually, the Attorney General shall determine
10 which political subdivisions are covered entities pursuant to
11 subsection c of this section. A list of such covered entities shall be
12 published on the Attorney General's website pursuant to subsection
13 d. of section 14 of this act, P.L. , c. (C.)(pending before
14 the Legislature as this bill). A determination of coverage shall be
15 effective upon such publication and may be appealed as a final
16 agency determination.
17
18 14. a. A covered entity may obtain preclearance for a covered
19 policy from the Attorney General pursuant to the following process:
20 (1) The covered entity shall submit the covered policy in writing
21 to the Attorney General. If the covered entity is a county board of
22 elections, it shall contemporaneously provide a copy of the covered
23 policy to the Secretary of State.
24 (2) Upon submission of a covered policy for preclearance, as
25 soon as practicable but no later than within 10 days, the Attorney
26 General shall publish the submission on its website.
27 (3) After publication of a submission, there shall be an
28 opportunity for members of the public to comment on the
29 submission to the Attorney General within the time periods set forth
30 in this section. To facilitate public comment, the Attorney General
31 shall provide an opportunity for members of the public to sign up to
32 receive notifications or alerts regarding submission of a covered
33 policy for preclearance.
34 (4) Upon submission of a covered policy for preclearance, the
35 Attorney General shall review the covered policy, and any public
36 comment, and shall, within the time periods set forth in this section,
37 provide a report and determination as to whether, under this act,
38 preclearance should be granted or denied to the covered policy.
39 Such time period shall run concurrent with the time periods for
40 public comment. The Attorney General shall not make such
41 determination until the period for public comment is closed. The
42 Attorney General may request additional information from a
43 covered entity at any time during its review to aid in developing its
44 report and recommendation. The failure to timely comply with
45 reasonable requests for more information may be grounds for the
46 denial of preclearance. The Attorney General's reports and
47 determination shall be posted on its website.

1 (5) In any determination as to preclearance, the Attorney
2 General shall identify in writing whether it is approving or rejecting
3 the covered policy; provided, however, that the Attorney General
4 may, in its discretion, designate preclearance as "preliminary" in
5 which case the Attorney General may deny preclearance within 60
6 days following the receipt of submission of the covered policy. The
7 Attorney General shall deny preclearance if it determines that the
8 covered policy will diminish the ability of protected class members
9 to participate in the political process and to elect their preferred
10 candidates to office or that the covered policy is more likely than
11 not to violate this Act, the federal Voting Rights Act, or other
12 provisions of state or federal law; otherwise, it shall grant
13 preclearance. If the Attorney General grants preclearance, the
14 covered entity may enact or implement the covered policy
15 immediately. A determination by the Attorney General to grant
16 preclearance to a covered policy shall not be admissible or
17 otherwise considered by any court in any subsequent action
18 challenging such covered policy.
19 (6) If the Attorney General denies preclearance, the Attorney
20 General shall interpose objections explaining its basis and the
21 covered policy shall not be enacted or implemented.
22 (7) If the Attorney General fails to respond within the required
23 time frame as established in this section, the covered policy shall be
24 deemed precleared and the covered entity may enact or implement
25 such covered policy.
26 (8) The time periods for public comment, the Attorney
27 General's review, and the determination of the Attorney General to
28 grant or deny preclearance on submission shall be as follows:
29 (a) For any covered policy concerning the designation or
30 selection of polling locations, the assignment of election districts to
31 a polling location, or the location of ballot drop boxes, whether for
32 election day or the early voting period, the period for public
33 comment shall be five business days. At least seven days prior to
34 any such comment period, notice shall be provided to the public,
35 including translated to limited English proficient communities. The
36 Attorney General shall review the covered policy, including any
37 public comment, and make a determination to deny or grant
38 preclearance for such covered policy within 15 days following the
39 receipt of such covered policy.
40 (b) Upon a showing of good cause, the Attorney General may
41 receive an extension of up to 21 days to make a determination
42 pursuant to this paragraph.
43 (c) For any other covered policy, the period for public comment
44 shall be ten business days, except that in the case of any such
45 covered policy described in this subparagraph that concerns the
46 implementation of a district-based method of election or an
47 alternative method of election or redistricting plans or a change to a
48 municipality's form of government, the period for public comment

1 shall be twenty business days. The Attorney General shall review
2 the covered policy, including any public comment, within 60 days
3 following the receipt of such covered policy and make a
4 determination to deny or grant preclearance for such covered
5 policy. The Attorney General may invoke up to two extensions of
6 90 days each.
7 (9) The Attorney General is hereby authorized to promulgate
8 rules for an expedited, emergency preclearance process in the event
9 of a covered policy occurring during or imminently preceding an
10 election during a state of emergency, public health emergency, or
11 state of local disaster, or other exigent circumstances. Any
12 preclearance granted under this provision shall be designated
13 "preliminary" and the Attorney General may deny preclearance
14 within 60 days following receipt of the covered policy.
15 (10) Any denial of preclearance by the Attorney General may be
16 appealed only by the affected political subdivision in a Superior
17 Court of New Jersey and taken according to the ordinary rules of
18 appellate procedure. No other parties may file an action to appeal a
19 denial of preclearance nor intervene in any such action brought by
20 the affected political subdivision. Due to the frequency and urgency
21 of elections, actions brought pursuant to this section shall be subject
22 to expedited pretrial and trial proceedings and receive an automatic
23 calendar preference on appeal.
24 b. If any covered entity enacts or implements a covered policy
25 without seeking preclearance pursuant to this section, or enacts or
26 implements a covered policy notwithstanding the denial of
27 preclearance, either the Attorney General or any other party with
28 standing to bring an action under this act may bring an action to
29 enjoin the covered policy and to seek sanctions against the political
30 subdivision and officials in violation.
31 c. The Attorney General, in accordance with the "New Jersey
32 Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et
33 seq.), shall adopt such rules and regulations as the Attorney General
34 deems necessary to effectuate the provisions of this act.
35 d. The Attorney General shall additionally maintain a publicly
36 accessible website containing the following information:
37 (1) a list of all covered entities, to be updated biannually;
38 (2) all preclearance submissions each covered entity has made
39 since the effective date of this provision, including any written
40 submission filed by the covered entity;
41 (3) the status and disposition of each preclearance submission
42 by each covered entity.
43 e. (1) An action may be filed by any aggrieved party in a
44 Superior Court of New Jersey in any of the following
45 circumstances:
46 (a) The Attorney General has approved preclearance to a
47 covered policy in violation of the provisions of this section. In any
48 claim under this subdivision, the court has discretion to stay the

1 implementation of the covered policy until it can make a
2 determination with respect to whether preclearance should have
3 been approved. A claim under this subdivision does not preclude,
4 bar, or limit any other claims that may be brought regarding the
5 covered policy in any way, including claims brought under other
6 sections of this act.
7 (b) The Attorney General has identified a list of covered entities
8 that is inconsistent with the requirements of this section.
9 (c) The Attorney General has failed to properly implement any
10 of the provisions of this section.
11 (2) In any such action, the court shall evaluate any claims on a
12 de novo basis and shall not give deference to the Attorney General.
13 The court has broad authority to order adequate remedies consistent
14 with Section 8 of this act, including imposition of any injunctive
15 relief on any party as the court considers necessary to effectuate this
16 section.
17
18 15. a. No person, whether acting under color of law or
19 otherwise, may engage in acts of intimidation, deception, violence
20 or restraint, or obstruction that affects the right of voters to access
21 the elective franchise or the performance of official duties by
22 election workers.
23 b. A violation of paragraph (1) this section shall be established
24 if:
25 (1) a person uses or threatens to use any force, violence,
26 restraint, abduction or duress, or inflicts or threatens to inflict any
27 injury, damage, harm or loss, or in any other manner practices
28 intimidation that causes or will reasonably have the effect of
29 causing any person to vote or refrain from voting in general or for
30 or against any particular person or for or against any public
31 question submitted to voters at such election; to place or refrain
32 from placing their name upon a registry of voters; to request or
33 refrain from requesting a mail-in ballot; or to be impeded in the
34 performance of their official duties if they are an election worker;
35 (2) a person knowingly uses any deceptive or fraudulent device,
36 contrivance or communication, that impedes, prevents or otherwise
37 interferes with the free exercise of the elective franchise by any
38 person, or that causes or will reasonably have the effect of causing
39 any person to vote or refrain from voting in general or for or against
40 any particular person or for or against any public question
41 submitted to voters at such election; to place or refrain from placing
42 their name upon a registry of voters; to request or refrain from
43 requesting a mail-in ballot; or to be impeded in the performance of
44 their official duties if they are an election worker; or
45 (3) a person obstructs, impedes, or otherwise interferes with
46 access to any polling place, ballot drop box, or elections office, or
47 obstructs, impedes, or otherwise interferes with any voter in any
48 manner that causes or will reasonably have the effect of causing any

1 delay in voting or the voting process, including the canvassing,
2 certification, and tabulation of ballots.
3 c. Notwithstanding R.S.19:15-8, any nonpartisan civic
4 organization having an interest in an election's administration may
5 request the local election office or political subdivision that
6 administers the election to allow poll monitors inside any poll site
7 or any place of ballot deposit. The local election office or political
8 subdivision that administers the election shall grant such requests
9 unless granting such request would result in an unreasonable burden
10 on the voting process. Poll monitors may observe voters go through
11 the process of voting, speak with elections officials and interpreters,
12 and monitor for compliance with federal, state, and local election
13 laws. Poll monitors may not interfere with election administration,
14 election workers, voters, or the voting process.
15
16 16. a. Any aggrieved persons or organization whose
17 membership includes aggrieved persons or members of a protected
18 class or who have otherwise been given the right to bring judicial
19 action within this act, or any an organization whose mission, in
20 whole or in part, is to ensure voting access and such mission would
21 be hindered by a violation of this act, or the Attorney General may
22 file an action pursuant to this act in the a Superior Court of the
23 county in which the alleged violation of this act occurred.
24 b. Upon a finding of a violation of any provision of this act, the
25 court shall implement appropriate remedies that are tailored to
26 remedy the violation, including, but not limited to, providing for
27 additional time to cast a ballot that may be counted in the election at
28 issue and granting any declaratory or injunctive relief as may be
29 determined to cure the violation. Any party who shall violate any
30 of the provisions of this act or who shall aid the violation of any of
31 said provisions shall be liable to any prevailing plaintiff party for
32 damages, including nominal damages for any violation, and
33 compensatory or punitive damages for any intentional violation.
34
35 17. a. In any action or investigation to enforce any provision of
36 this act, the Attorney General shall have the authority to take proof
37 and determine relevant facts and to issue subpoenas in accordance
38 with the civil and criminal laws of this State.
39 b. Given the frequency of elections, the severe consequences
40 and irreparable harm of holding elections under unlawful
41 conditions, and the expenditure to defend potentially unlawful
42 conditions that benefit incumbent officials, actions brought pursuant
43 to this act shall be subject to expedited pretrial and trial proceedings
44 and receive an automatic calendar preference. In any action
45 alleging a violation of this section in which a plaintiff party seeks
46 preliminary relief with respect to an upcoming election, the court
47 shall grant relief if it determines that:

(1) plaintiffs are more likely than not to succeed on the merits; and

(2) it is possible to implement an appropriate remedy that would resolve the alleged violation in the upcoming election.

c. In any action to enforce any provision of this act, the court shall allow the prevailing plaintiff party, other than the State or political subdivision thereof, a reasonable attorneys' fee, litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs. A plaintiff will be deemed to have prevailed when, as a result of litigation, the defendant party yields much or all of the relief sought in the suit. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

18. a. The Attorney General, in conjunction with the Secretary of State, shall engage in public education efforts as necessary to inform the voting eligible population about their voting rights under this act, P.L. , c. (C.)(pending before the Legislature as this bill), including which populations are considered protected classes, which rights are available under language access provisions, and any causes of action and avenues of redress available for violations of this act.

b. As part of its public education efforts, the Attorney General, in consultation with the Secretary of State, shall create and distribute posters, flyers, online materials, and other written materials containing information on rights under this act, to be available and displayed prominently at all polling locations. Such public education efforts and any related materials must be made available in any languages in which the political subdivision is required to provide language assistance pursuant to subsection a. of section 12 of this act, P.L. , c. (C.)(pending before the Legislature as this bill).

19. a. There is hereby established the "New Jersey Voting and Elections Institute," at a public university in New Jersey, to maintain and administer a database and central repository of elections and voting data available to the public from all local election offices and political subdivisions in the State of New Jersey and to foster, pursue, and sponsor research on existing laws and best practices in voting and elections.

b. There shall be two co-directors of the Institute, to be selected by the institution responsible for housing the Institute. The co-directors shall jointly manage the Institute and database and fulfill the responsibilities and obligations as required by this section.

c. The Institute shall provide a center for research, training and information on voting systems and election administration, and house a centralized and public database for elections and voting data. The Institute is hereby empowered:

1 (1) to conduct classes both for credit and non-credit;
2 (2) to organize interdisciplinary groups of scholars to research
3 voting and elections in the state;
4 (3) to conduct seminars involving voting and elections;
5 (4) to establish a nonpartisan centralized database in order to
6 collect, archive, and make publicly available at no cost an
7 accessible database pertaining to elections, registered voters, and
8 ballot access in the state;
9 (5) to assist in the dissemination of such data to the public;
10 (6) to publish such books and periodicals as it shall deem
11 appropriate on voting and elections in the state; and
12 (7) to provide nonpartisan technical assistance to political
13 subdivisions, scholars, and the general public seeking to use the
14 resources of the statewide database.
15 d. The Institute shall maintain in electronic format and make
16 available to the public online at no cost at minimum the following
17 data and records for at least the previous twelve year period in a
18 centralized database:
19 (1) estimates of the total population, voting age population,
20 citizen voting age population, and limited English proficiency by
21 race, color, and language-minority group, broken down to the
22 election district level on a year-by-year basis for every political
23 subdivision in the state, based on data from the United States
24 Census Bureau, American Community Survey, or data of
25 comparable quality collected by a public office;
26 (2) election results at the election district level for every
27 Statewide election and every election in every political subdivision;
28 (3) contemporaneous voter registration lists, voter history files,
29 election day poll site locations, ballot dropbox locations, and early
30 voting site locations, for every election in every political
31 subdivision;
32 (4) contemporaneous maps or other documentation of the
33 configuration of districts in any format or formats specified by the
34 director for election districts;
35 (5) election day or early voting poll sites including, but not
36 limited to, lists of election districts assigned to each polling place, if
37 applicable;
38 (6) districting or redistricting plans for every election in every
39 political subdivision; and
40 (7) any other data that the director deems advisable to maintain
41 in furtherance of the purposes of Title 19 of the Revised Statutes.
42 e. Upon the certification of election results and the completion
43 of the voter history file after each election, each school district that
44 holds elections pursuant to this article shall transmit copies of the
45 following to the New Jersey voting and elections database and
46 institute within ninety days after such election:
47 (1) school board election results;
48 (2) contemporaneous voter registration lists;

(3) voter history files;
(4) maps or other documentation of the configuration of districts in any format or formats specified by the director;
(5) lists of election day poll sites, maps or other documentation of the configuration of districts in any format or formats specified by the director assigned to each election day poll site; and
(6) any other publicly available data as requested by such database and institute.

f. Except for any data, information, or estimates that identifies individual voters, the data, information, and estimates maintained by the Statewide database shall be posted online and made available to the public at no cost.

g. The Institute shall prepare any estimates made pursuant to this section by applying the most advanced, peer-reviewed, and validated methodologies.

h. The data, information, and estimates maintained by the New Jersey Voting and Elections Institute shall be granted a rebuttable presumption of validity by any court concerning any claim brought.

20. In reporting information to the Secretary of State pursuant to paragraph (4) of subsection a. of P.L.2019, c.385 (C.52:4-1.2), the Department of Corrections shall give each individual's race, as identified using all racial and ethnic categories included by the United Census, as well as whether the individual identifies with more than one race, whether the individual is of Hispanic or Latino origin, and whether the individual is over the age of 18.

21. The provisions of this act, P.L. , c. (C.)(pending before the Legislature as this bill), shall apply to all elections for any elected public office or electoral choice within the State or any political subdivision. To ensure voters of protected classes, including race, color, and language-minority groups have equitable access to fully participate in the electoral process, the provisions of this act shall apply notwithstanding any other provision of law, rule, or regulation to the contrary.

22. The provisions of this act, P.L. , c. (C.)(pending before the Legislature as this bill), shall be severable and if any section, subsection, paragraph, subparagraph, sentence, or other portion of this act is for any reason held or declared by any court of competent jurisdiction to be unconstitutional or preempted by federal law, or the applicability of that portion to any person or facility is held invalid, the remainder of this act shall not thereby be deemed to be unconstitutional, preempted, or invalid.

23. Any funding required to enact or enforce any provision of this act shall be provided by the State.

1 24. This act shall take effect immediately.
2
3
4 STATEMENT
5
6 This bill establishes the "John R. Lewis Voter Empowerment Act
7 of New Jersey."
8 Under the bill, all statutes, rules, and regulations, in this State
9 including all local laws or ordinances related to the elective
10 franchise must be construed liberally in favor of:
11 (1) protecting the right of voters to have their ballot cast and
12 counted;
13 (2) ensuring that eligible voters are not impaired in registering
14 to vote; and
15 (3) ensuring voters of race, color, and language-minority groups
16 have equitable access to fully participate in the electoral process in
17 registering to vote and voting.
18 The bill prohibits the authority to prescribe or maintain voting or
19 elections policies and practices to be so exercised as to
20 unnecessarily deny or abridge the right to vote. The bill also
21 prohibits a local election office or political subdivision from using a
22 method of election that has the effect of impairing the ability of
23 members of a protected class to elect candidates of their choice or
24 influence the outcome of elections, as a result of vote dilution. The
25 bill requires that any policy and practice that burdens the right to
26 vote must be narrowly tailored to promote a compelling policy
27 justification that must be supported by substantial evidence. The
28 bill provides factors for determining if a violation of the bill has
29 occurred, including if a voter's right to vote has been violated or if
30 the voter has experienced vote dilution.
31 Under the bill, if a violation of the provisions of the bill occurs,
32 the bill provides a remedy process, including for apportionment and
33 redistricting maps. The bill provides that after a New Jersey Voter
34 Empowerment Act (NJVEA) notification letter is mailed from a
35 prospective plaintiff to a political subdivision, the political
36 submission may pass an NJVEA resolution reaffirming: (1) the
37 political subdivision's intention to enact and implement a remedy
38 for a potential violation of the bill; (2) specific steps the political
39 subdivision will undertake to facilitate approval and implementation
40 of such a remedy; and (3) a schedule for enacting and implementing
41 such a remedy.
42 The bill provides that if the governing body of a political
43 subdivision lacks the authority under this act or applicable State law
44 or local laws to enact or implement a remedy identified in the
45 resolution, or fails to enact or implement a remedy identified in the
46 resolution, within 90 days after the passage of the resolution, or if
47 the political subdivision is a covered entity as defined by the bill,
48 the governing body of the political subdivision must coordinate

1 with the Attorney General to resolve the violation, including
2 reaffirming that any proposal is unlikely to violate the United States
3 Constitution, New Jersey Constitution, or any federal or State law;
4 and is feasible to implement.
5 Under the bill, the Attorney General is provided with certain
6 preclearance powers. The bill provides that if certain political
7 subdivisions that have been the subject to court order or
8 government enforcement action based on violations of the bill; the
9 federal Voting Rights Act of 1965, as amended; the 15th
10 amendment to the United States Constitution, or a voting-related
11 violation of the 14th amendment to the United States Constitution,
12 may be subject to preclearance, which is the process of obtaining
13 prior approval from the Attorney General or a court of this State for
14 any changes related to election procedures in that political
15 subdivision.
16 The bill provides assistance to language-minority groups. Under
17 the bill, a local election office or a political subdivision that
18 administers elections must provide language-related assistance in
19 voting and elections to a language-minority group in a political
20 subdivision if, based on data from the United States Census Bureau
21 American Community Survey, or data of comparable quality
22 collected by a public office, that: (1) more than two percent, but in
23 no instance fewer than 100 individuals, eligible voters of a political
24 subdivision are members of a single language-minority group and
25 are limited English proficient; or (2) more than 4,000 of eligible
26 voters of such political subdivision are members of a single
27 language-minority group and are limited English proficient.
28 The bill further provides that a local election office or political
29 subdivision required to provide language assistance to a particular
30 language-minority group pursuant to this section must provide
31 voting materials in the covered language of an equal quality of the
32 corresponding English language materials, including registration or
33 voting notices, forms, instructions, assistance, or other physical or
34 online materials or information relating to the electoral process,
35 including ballots.
36 Under the bill, any aggrieved persons or organization whose
37 membership includes aggrieved persons or members of a protected
38 class, organization whose mission, in whole or in part, is to ensure
39 voting access and such mission would be hindered by a violation of
40 this bill, or the Attorney General may file an action pursuant to the
41 bill in court. The bill provides that any action or investigation to
42 enforce any provision of this bill, the Attorney General would have
43 the authority to take proof and determine relevant facts and to issue
44 subpoenas in accordance with the civil and criminal laws of this
45 State.
46 The bill also establishes the "New Jersey Voting and Elections
47 Institute," at a public university in New Jersey, to maintain and
48 administer a database and central repository of elections and voting

1 data available to the public from all local election offices and
2 political subdivisions in the State of New Jersey and to foster,
3 pursue, and sponsor research on existing laws and best practices in
4 voting and elections.
5 The bill also contains a severability provision. If any section,
6 subsection, paragraph, subparagraph, sentence, or other portion of
7 the bill is for any reason held or declared by any court of competent
8 jurisdiction to be unconstitutional or preempted by federal law, or
9 the applicability of that portion to any person or facility is held
10 invalid, the remainder of the bill would not thereby be deemed to be
11 unconstitutional, preempted, or invalid.
12 The purpose of this bill is to:
13 (1) encourage participation in the elective franchise by all
14 eligible voters to the maximum extent;
15 (2) ensure that eligible voters who are members of racial, ethnic,
16 and language minority groups have an equal opportunity to
17 participate in the political processes of this State and exercise the
18 elective franchise;
19 (3) improve the quality and availability of demographic and
20 election data; and
21 (4) protect eligible voters against intimidation and deceptive
22 practices.
23 This bill would take effect immediately.

EMORY | LAW

Emory Law Journal

Volume 73 | Issue 2

2023

Voting Rights Federalism

Ruth M. Greenwood

Nicholas O. Stephanopoulos

Follow this and additional works at: https://scholarlycommons.law.emory.edu/elj

Part of the Law Commons

Recommended Citation
Ruth M. Greenwood & Nicholas O. Stephanopoulos, *Voting Rights Federalism*, 73 Emory L. J. 299 (2023).
Available at: https://scholarlycommons.law.emory.edu/elj/vol73/iss2/2

This Article is brought to you for free and open access by the Emory Law Journal at Emory Law Scholarly Commons. It has been accepted for inclusion in Emory Law Journal by an authorized editor of Emory Law Scholarly Commons. For more information, please contact law-scholarly-commons@emory.edu.

VOTING RIGHTS FEDERALISM

Ruth M. Greenwood[*]

Nicholas O. Stephanopoulos[**]

ABSTRACT

It's well-known that the federal Voting Rights Act is reeling. The Supreme Court nullified one of its two central provisions in 2013. The Court has also repeatedly weakened the bite of the statute's other key section. Less familiar, though, is the recent rise of state voting rights acts (SVRAs): state-level enactments that provide more protection against racial discrimination in voting than does federal law. Eight states have passed SVRAs so far—five since 2018. Several more states are currently drafting SVRAs. Yet even though these measures are the most promising development in the voting rights field in decades, they have attracted little scholarly attention. They have been the subject of only a handful of political science studies and no sustained legal analysis at all.

In this Article, then, we provide the first descriptive, constitutional, and policy assessment of SVRAs. We first taxonomize SVRAs. That is, we catalogue how they diverge from, and build on, federal protections against racial vote denial, racial vote dilution, and retrogression. Second, we show that SVRAs are constitutional in that they don't violate any branch of equal protection doctrine. They don't constitute (or compel) racial gerrymandering, nor do they classify individuals on the basis of race, nor are they motivated by invidious racial purposes. Finally, while existing SVRAs are quite potent, we present an array of proposals that would make them even sharper swords against racial discrimination in voting. One suggestion is for SVRAs simply to mandate that localities switch to less discriminatory electoral laws—not to rely on costly, time-consuming, piecemeal litigation. Another idea is for SVRAs to allow each

[*] Director, Election Law Clinic at Harvard Law School.

[**] Kirkland & Ellis Professor of Law, Harvard Law School.

The authors would like to thank the following students in the Election Law Clinic at Harvard Law School whose research and work on state voting rights acts informed this article: Aidan Calvelli, Kunal Dixit, Delaney Herndon, Michaela LeDoux, Lucas Rodriguez, and Micah Rosen. The authors are also grateful to Chris Elmendorf, Adam Lioz, Mike Parsons, and workshop participants at the Emory University School of Law, Harvard Law School, Princeton University, and the University of Wisconsin Law School.

plaintiff to specify the benchmark relative to which racial vote dilution should be measured—not to stay mute on the critical issue of baselines.

TABLE OF CONTENTS

INTRODUCTION 301
I. TAXONOMIZING SVRAS 305
A. *Racial Vote Denial* 306
B. *Racial Vote Dilution* 309
C. *Retrogression* 316
II. DEFENDING SVRAS 323
A. *Racial Gerrymandering* 325
B. *Racial Classification* 330
C. *Racially Discriminatory Intent* 337
III. EXTENDING SVRAS 340
A. *Mandates for Localities* 341
B. *Specifications of Benchmarks* 344
C. *Calculations of Racial Polarization* 347
D. *Standards for Racial Vote Denial* 350
E. *Alternatives to Retrogression* 352
F. *State Databases* 355
G. *Electoral Levels* 357
CONCLUSION.. 361

INTRODUCTION

For many years, American voting rights law was federal voting rights law. Between 1965 and 2002, the federal Voting Rights Act (FVRA) stood alone as the country's only statute shielding minority voters from racial discrimination in voting. This situation began to change in 2002 with the enactment of the California Voting Rights Act (CAVRA), the first state voting rights act (SVRA) extending additional protections to minority voters.[1] But it's only more recently that voting rights federalism—the adoption of SVRAs diverging from the baseline of the FVRA—has come into its own. Washington passed a SVRA in 2018.[2] Oregon followed suit in 2019.[3] In 2021, Virginia became the first southern state voluntarily to do more than federal law requires to prevent racial discrimination in voting.[4] In 2022, New York enacted what was then the most ambitious SVRA.[5] The New York model was the basis for Connecticut's even more sweeping SVRA in 2023.[6] The New York model is also the template for pending bills in Maryland,[7] Michigan,[8] and New Jersey.[9]

SVRAs can be far more impactful than the FVRA, whose limitations they seek to transcend. Consider the CAVRA, the oldest and by far the most litigated of the SVRAs.[10] Over the last forty years, only one FVRA suit alleging racial vote dilution has led to a reported decision in favor of a plaintiff in California.[11] In contrast, "[n]o defendant has ever prevailed in a [CAVRA] case."[12] Claims of racial vote dilution under the CAVRA—as well as credible threats of such

---

1 *See* CAL. ELEC. CODE §§ 14025–14032 (West 2002).

2 *See* WASH. REV. CODE §§ 29A.92.005–.900 (2023).

3 *See* OR. REV. STAT. §§ 255.400–.424 (2021).

4 *See* VA. CODE ANN. §§ 24.2-125–131 (2021).

5 *See* N.Y. ELEC. LAW §§ 17-200–222 (McKinney 2023).

6 *See* LEGAL DEF. FUND, LDF APPLAUDS HISTORIC ENACTMENT OF CONNECTICUT VOTING RIGHTS ACT: STRONGEST STATE VRA YET PART OF A GROWING TREND (June 12, 2023), https://www.naacpldf.org/wp-content/uploads/CTVRA-Signed-Release-ln-060623-1.pdf; An Act Concerning the State Budget for the Biennium Ending June 30, 2025, and Making Appropriations Therefor, and Provisions Related to Revenue and Other Items Implementing the State Budget, Pub. Act. No. 23-204, 2023 Conn. Acts 1 (Reg. Sess.) [hereinafter CTVRA].

7 *See* Voting Rights Act of 2023 – Counties and Municipalities, S.B. 878, Reg. Sess. (Md. 2023).

8 *See* S. 401, 102d Leg. (Mich. 2023); S. 402, 102d Leg. (Mich. 2023); S. 403, 102d Leg. (Mich. 2023).

9 *See* John R. Lewis Voting Rights Act of New Jersey, S. 2997, 220th Leg. (N.J. 2023).

10 *See* Perry Grossman, *The Case for State Attorney General Enforcement of the Voting Rights Act Against Local Governments*, 50 U. MICH. J.L. REFORM 565 (2017).

11 *Id.* at 590.

12 David C. Powell, *The California Voting Rights Act and Local Governments*, 10 CAL. J. POL. & POL'Y 1, 2 (2018).

actions—have caused almost 150 school districts[13] and almost 100 cities[14] in California to switch from at-large to districted elections. This level of success under the CAVRA vastly exceeds that under the FVRA in modern California history.

Despite their potentially far-reaching effects, SVRAs have attracted little attention from scholars. In the legal literature, a handful of law review articles have briefly discussed SVRAs.[15] No published law review article has previously treated SVRAs as a distinct subject worthy of sustained examination.[16] In the political science literature, a few studies have documented some of the consequences of the CAVRA. Jurisdictions that switched from at-large to districted elections because of the CAVRA saw increases in minority representation, especially if jurisdictions had larger minority populations and more geographic clustering of minority residents.[17] Jurisdictions that switched their electoral systems also experienced reductions in the racial disparities of their turnout rates, such that eligible white, Hispanic, and Asian voters cast ballots in more similar proportions.[18] In the housing context, however, the CAVRA contributed to a supply-equity tradeoff. Jurisdictions that changed electoral systems because of the CAVRA approved less multifamily housing (a fall in supply) but stopped disproportionately steering multifamily housing into minority neighborhoods (a rise in equity).[19]

---

[13] Carolyn Abott & Asya Magazinnik, *At-Large Elections and Minority Representation in Local Government*, 64 AM. J. POL. SCI. 717, 721 (2020).

[14] Zachary L. Hertz, *Analyzing the Effects of a Switch to By-District Elections in California*, 22 ELECTION L.J. 213, 214 (2023).

[15] *See, e.g.*, Joaquin G. Avila et al., *Voting Rights in California: 1982–2006*, 17 S. CAL. REV. L. & SOC. JUST. 131, 152–53 (2007) (discussing the CAVRA); Kareem U. Crayton, *Reinventing Voting Rights Preclearance*, 44 IND. L. REV. 201, 239–40 (2010) (same); Grossman, *supra* note 10, at 588–90, 606–08 (same); Michael Li & Yurij Rudensky, *Rethinking the Redistricting Toolbox*, 62 HOW. L.J. 713, 730–32 (2019) (discussing state legislation in California, Florida, Illinois, Iowa, Missouri, Oregon, and Washington).

[16] One unpublished student paper (supervised by one of us) has done so. *See* Paige Epstein, *Addressing Minority Vote Dilution Through State Voting Rights Acts* (Univ. of Chi. Pub. L. & Legal Theory, Working Paper No. 474, 2014), https://chicagounbound.uchicago.edu/public_law_and_legal_theory/468/.

[17] *See* Abott & Magazinnik, *supra* note 13, at 725–28; Loren Collingwood & Sean Long, *Can States Promote Minority Representation? Assessing the Effects of the California Voting Rights Act*, 57 URB. AFFS. REV. 731, 748–56 (2021).

[18] *See* Hertz, *supra* note 14, at 221–23.

[19] Michael Hankinson & Asya Magazinnik, *The Supply-Equity Tradeoff: The Effect of Spatial Representation on the Local Housing Supply*, 85 J. POL. 1033, 1041–42 (2023). For similar findings outside the SVRA context, see Richard T. Boylan & Dru Stevenson, *The Impact of District Elections on Municipal Pensions and Investment*, 14 J.L. ECON. & POL'Y 127 (2017) (discussing the effect of switching to single-member districts on municipality spending); and Evan Mast, *Warding Off Development: Local Control, Housing Supply, and NIMBYs*, 106 REV. ECON. & STAT. (forthcoming 2024) (same on local housing supply).

Because of the sparsity of the existing scholarship on SVRAs, we write on a mostly blank slate here. Our initial objective in Part I is to taxonomize these policies—in particular, to identify the axes along which they diverge from, and add to, the FVRA. Simplifying somewhat, the FVRA's protections can be grouped into three categories, guarding against (1) racial vote denial, the disproportionate suppression of minority members' votes; (2) racial vote dilution, the diminution of minority voters' representation by their preferred candidates; and (3) retrogression, the worsening of the electoral position of minority members relative to the status quo ante. With respect to racial vote denial, certain SVRAs go beyond the federal floor by specifying probative factors that are easier for plaintiffs to satisfy than the FVRA's standard.[20] Certain SVRAs also broaden the FVRA's prohibition of voter intimidation by applying it to more acts, enabling more victims to sue, and authorizing more remedies.[21]

With respect to racial vote dilution, SVRAs waive several of the requirements of the FVRA. These waived conditions include establishing the geographic compactness of the minority population, proving that an additional majority-minority district could be created, and showing that the minority population is currently underrepresented.[22] Certain SVRAs further permit claims by minority groups too small to elect their candidates of choice and contemplate remedies other than single-member districts.[23] With respect to retrogression, lastly, it's no longer barred anywhere by the FVRA thanks to a 2013 Supreme Court decision.[24] Certain SVRAs revive a prohibition of retrogression for particular practices[25] or jurisdictions.[26] Where jurisdictions are covered by an anti-retrogression rule, SVRAs innovate by basing coverage partly on factors such as racial disparities in arrest rates and levels of residential segregation.[27]

After classifying SVRAs, we turn in Part II to defending their constitutionality. Ever since the CAVRA was enacted in 2002, SVRAs have been attacked on the ground that they violate the Equal Protection Clause. One such challenge against the CAVRA succeeded at the trial court stage, enjoining

[20] *See, e.g.*, N.Y. ELEC. LAW § 17-206(3) (McKinney 2023).

[21] *See, e.g.*, *id.* § 17-212.

[22] *See, e.g.*, OR. REV. STAT. §§ 255.405–.416 (2021).

[23] *See, e.g.*, *id.* §§ 255.405(1)(a), .411(8)(a).

[24] *See* Shelby Cnty. v. Holder, 570 U.S. 529 (2013) (striking down the formula determining coverage under Section 4 of the FVRA).

[25] *See, e.g.*, VA. CODE ANN. § 24.2-129 (2021).

[26] *See, e.g.*, N.Y. ELEC. LAW § 17-210(3)(c) (McKinney 2023).

[27] *See, e.g.*, *id.* § 17-210(3).

the statute for almost two years, before being reversed on appeal.[28] But SVRAs plainly aren't racial gerrymanders (the charge that has most frequently been leveled against them). Under Supreme Court precedent, only individual districts can be racial gerrymanders, if they're designed predominantly and unjustifiably on the basis of race.[29] Policies about how districts are drawn, like those contained by some SVRAs, can never themselves constitute racial gerrymandering. At most, these policies can result in the adoption of racially gerrymandered districts, either by a court after, or by a jurisdiction to avoid, litigation. In that case, those districts should be struck down, but the antecedent policies should be safe.

Nor do SVRAs trigger heightened scrutiny under conventional equal protection doctrine. They would do so if they used racial classifications or if their purposes were racially discriminatory. But while SVRAs *refer* to race, they don't distribute benefits or burdens to individuals on racial grounds. Instead, when liability is established, they cause unlawful electoral regulations to be replaced by other ones. These rules about how elections are conducted affect thousands to millions of people, regardless of their race. They're nothing like the concrete assets that racial classifications typically distribute to some individuals but not others. As for the motives of SVRAs, they're race-conscious but not racially discriminatory. In fact, SVRAs aim to *prevent* racial discrimination in voting by *stopping* racial vote denial, racial vote dilution, and retrogression. If laws of this kind were subject to heightened scrutiny, then all antidiscrimination policies would be suspect. That outcome would turn the Equal Protection Clause—itself an antidiscrimination policy—on its head.

Our last goal in this article is to consider how SVRAs could be strengthened in the future. Numerous states are currently drafting (or thinking about drafting) SVRAs, so there's clear interest in the elements that could be included in these statutes.[30] We flag two ideas here and discuss several more in Part III. One potential step is simply to dictate the electoral regulations that jurisdictions must use. Existing SVRAs rely on the same enforcement methods as the FVRA, especially case-by-case litigation against practices alleged to suppress or dilute minority votes. However, such litigation is costly and time-consuming and leads to a patchwork of different jurisdictions employing different rules. When a state is confident that it knows the right approach, the strategy that's most likely to

[28] *See* Sanchez v. City of Modesto, 51 Cal. Rptr. 3d 821, 825–26 (Cal. Ct. App. 2006).

[29] *See, e.g.*, Ala. Legis. Black Caucus v. Alabama, 575 U.S. 254, 262 (2015) ("A racial gerrymandering claim . . . applies to the boundaries of individual districts.").

[30] *See supra* notes 7–9.

thwart racial discrimination in voting, the state can simply mandate that approach. The state need not settle for incremental progress over an extended period through one lawsuit after another.

The other suggestion we note at the outset pertains to racial vote dilution claims. Existing SVRAs are ambiguous about the benchmark relative to which dilution should be evaluated. Future SVRAs could resolve this ambiguity by simultaneously requiring the plaintiff to recommend a benchmark and giving the plaintiff the discretion to advocate for any benchmark. As under the FVRA, the standard relative to which the status quo should be judged could be a single-member district plan. That standard could also be a form of proportional representation, a larger legislative body, an election held at a different time, or some other policy selected by the plaintiff. Racial vote dilution can occur in many ways, minority voters have learned over the years. SVRAs would reflect this reality if they allowed the benchmark to shift from case to case—while always insisting on the identification of a benchmark for comparison, without which dilution can't be assessed.

I. TAXONOMIZING SVRAS

Our definition of a state voting rights act is straightforward. A SVRA is a state-level provision (a state constitutional amendment or, more commonly, a state statute) that (1) addresses racial discrimination in voting and (2) provides protections beyond those offered by the federal Voting Rights Act. However, this definition elides one of the most interesting and important issues about SVRAs: *how* exactly they diverge from the FVRA. Highlighting the differences between SVRAs and the FVRA is our aim in this Part. This work is partly descriptive—what do SVRAs do?—and partly taxonomic—how can we classify SVRAs?

We consider all the SVRAs we mentioned above: the statutes enacted by California, Connecticut, New York, Oregon, Virginia, and Washington.[31] We also include in our SVRA universe a Florida constitutional amendment ratified in 2010[32] and the Illinois Voting Rights Act of 2011.[33] But we don't cover state statutes that are labeled as voting rights acts but fail to satisfy our definition of

[31] *See supra* notes 1–5.
[32] *See* FLA. CONST. art. 3, §§ 20–21.
[33] *See* 10 ILL. COMP. STAT. 120/5-1 to -5 (2011).

a SVRA.[34] And we comment on unenacted bills only in footnotes.[35] Additionally, we organize our discussion by substantive area, proceeding in order through racial vote denial, racial vote dilution, and retrogression. Again, these are the three principal harms the FVRA seeks to prevent.[36] Lastly, because we focus on these substantive harms, we note procedural differences between SVRAs and the FVRA only in passing and without any claim to comprehensiveness.

A. *Racial Vote Denial*

Racial vote denial refers to the disproportionate suppression of minority voters through voting restrictions that disparately impede minority members from casting ballots. Despite the plain text of the FVRA prohibiting racial vote denial, it wasn't until the 2021 case of *Brnovich v. Democratic National Committee*[37] that the Supreme Court considered this type of racial discrimination in voting. In *Brnovich*, the Court identified a series of factors that are relevant to the disposition of a racial vote denial claim under Section 2 of the FVRA. The most intuitive of these factors is the size of the racial disparity caused by the challenged practice.[38] The other factors are the magnitude of the voting burden imposed by the challenged practice, the prevalence of the challenged practice when Section 2 took its current form in 1982, the strength of the state interests served by the challenged practice, and the overall ease of voting under the jurisdiction's electoral system.[39] *Brnovich* is a recent decision so its full implications aren't yet clear. But there's widespread agreement that it's harder for a racial vote denial plaintiff to prevail under *Brnovich*'s factors than under the test the lower courts used prior to *Brnovich*,[40] which primarily asked if a voting restriction caused a disparate racial impact.[41]

---

[34] *See* 2023 N.M. Laws Ch. 84 (H.B. 4) (enacting reforms such as the enfranchisement of ex-felons, the extension of the period for early voting, and the creation of a permanent absentee voter list).

[35] *See supra* notes 7–9.

[36] We therefore don't address substantive aspects of SVRAs that can't be slotted into the categories of combatting racial vote denial, racial vote dilution, or retrogression. *See, e.g.*, CTVRA, Pub. Act No. 23-204, § 416, 2023 Conn. Acts at 847 (Reg. Sess.) (codifying a "democracy canon" that electoral laws should be construed liberally in favor of protecting the franchise); N.Y. ELEC. LAW § 17-202 (McKinney 2023) (same).

[37] 141 S. Ct. 2321 (2021).

[38] *See id.* at 2339.

[39] *Id.* at 2338–40.

[40] *See, e.g.*, *id.* at 2351 (Kagan, J., dissenting) (criticizing the majority for "limiting Section 2 from multiple directions," "giv[ing] a cramped reading to broad language," and "rewrit[ing]—in order to weaken—a statute that stands as a monument to America's greatness").

[41] *See generally* Nicholas O. Stephanopoulos, *Disparate Impact, Unified Law*, 128 YALE L.J. 1566 (2019) (discussing racial vote denial law before *Brnovich*).

Section 2 is the FVRA's main weapon against racial vote denial. Section 2 is complemented by Section 11(b), the FVRA's prohibition of voter intimidation. Under Section 11(b), no public or private actor may "intimidate, threaten, or coerce" any person for voting, attempting to vote, or helping anyone else to vote.[42] Unlawful intimidation may target members of a particular racial group, of course. But it need not do so—unlike under a predecessor statute that reached only racially discriminatory voter intimidation.[43]

Among SVRAs, only the New York Voting Rights Act (NYVRA) and the Connecticut Voting Rights Act (CTVRA) address racial vote denial (let alone exceed the FVRA's floor in this area). With respect to the NYVRA, it first identifies a series of relevant factors that are distinct from—and more favorable to plaintiffs than—the list of considerations in *Brnovich*.[44] For example, the NYVRA omits *Brnovich*'s factors about the magnitude of the voting burden imposed by the challenged practice, the prevalence of the challenged practice in 1982, and the overall ease of voting under the jurisdiction's electoral system.[45] Similarly, while *Brnovich* deferred to dubious state interests, the NYVRA asks whether the jurisdiction "has a *compelling* policy justification that is *substantiated and supported by evidence*."[46] And while *Brnovich*'s factors placed no weight on the racial discrimination experienced by a minority group, the NYVRA spotlights this issue. The statute's factors include "the history of discrimination in or affecting the [jurisdiction]," "the extent to which members of the protected class are disadvantaged in areas including . . . education, employment, health, criminal justice, housing, land use, or environmental protection," and "the extent to which members of the protected class are disadvantaged in other areas which may hinder their ability to participate effectively in the political process."[47]

Second, the NYVRA specifies some of the remedies that courts may grant in racial vote denial cases. Among these remedies are "additional voting hours or days," "additional polling locations," "additional means of voting such as

---

[42] 52 U.S.C. § 10307(b).

[43] *See id.* § 10101(b); *see also* Ben Cady & Tom Glazer, *Voters Strike Back: Litigating Against Modern Voter Intimidation*, 39 N.Y.U. REV. L. & SOC. CHANGE 173, 192 (2015) (noting that this earlier ban of voter intimidation "contain[ed] a more stringent intent requirement including that the defendant's conduct be racially motivated").

[44] N.Y. ELEC. LAW § 17-206(3) (McKinney 2023).

[45] *See id.*

[46] *Id.* (emphasis added).

[47] *Id.* The NYVRA thus emphasizes racial discrimination even more heavily than the factors in the important Senate report that accompanied Section 2's revision in 1982. *See* S. REP. NO. 97-417, at 28–29 (1982).

voting by mail," "expanded opportunities for voter registration," "additional voter education," and "the restoration or addition of persons to registration lists."[48] By providing this list of remedial options, the NYVRA indicates some of the practices that may be found unlawful under the statute. Limits on when voters can cast ballots, for instance, may plainly violate the NYVRA since the statute contemplates more time to vote as a form of relief. The same point holds for establishing too few polling locations, restricting the modes through which people may vote, supplying insufficient or inaccurate information to voters, and hampering voter registration. All these acts may infringe the NYVRA since the statute anticipates a remedy for each of them.

And third, the NYVRA builds on the FVRA's prohibition of voter intimidation in several ways. Most importantly, the FVRA bars only voter intimidation while the NYVRA also reaches voter deception and voter obstruction.[49] These concepts are helpfully defined, respectively, as "us[ing] any deceptive or fraudulent device, contrivance[,] or communication" to hinder voting, and "obstruct[ing], imped[ing], or otherwise interfer[ing] with" voting or the tallying of votes.[50] Additionally, while the FVRA is silent as to who may allege voter intimidation, the NYVRA confers standing to any aggrieved person or organization, including any group that aims to facilitate voting.[51] And in contrast to the FVRA's muteness about remedies, the NYVRA identifies "additional time to cast a ballot" as a salient form of relief.[52] The NYVRA adds that anyone found liable for voter intimidation may be ordered to pay punitive damages for intentional violations.[53]

For its part, the CTVRA adopts all of the NYVRA's novel safeguards against racial vote denial. Like the NYVRA, the CTVRA lists probative factors that are more advantageous for plaintiffs than *Brnovich*'s list of considerations,[54] names remedies that courts may grant in racial vote denial cases,[55] and adds to the

---

[48] N.Y. ELEC. LAW § 17-206(5)(a). For similar non-exhaustive lists of potential remedies in proposed SVRAs, see Voting Rights Act of 2023 – Counties and Municipalities, S.B. 878, § 15.5-204(b)(1), Reg. Sess. (Md. 2023); S. 401, § 23(1), 102d Leg. (Mich. 2023); and John R. Lewis Voting Rights Act of New Jersey, S. 2997, § 7(a), 220th Leg. (N.J. 2023).

[49] *See* N.Y. ELEC. LAW § 17-212(1).

[50] *Id.* § 17-212(1)(b)(ii)–(iii).

[51] *Id.* § 17-212(2).

[52] *Id.* § 17-212(3).

[53] *Id.* For similar prohibitions of voter intimidation in proposed SVRAs, see S.B. 878, § 15.5-601(d)(2) (Md. 2023); and S. 2997, § 13(2)(a) (N.J. 2023).

[54] CTVRA, Pub. Act No. 23-204, § 411(c)(1), 2023 Conn. Acts at 823–24 (Reg. Sess.).

[55] *See id.* § 411(e)(1).

FVRA's prohibition of voter intimidation.[56] Diverging even further from federal law, the CTVRA forbids any electoral practice that "[r]esults . . . in a disparity between . . . protected class members and the other members . . . in electoral participation, access to voting opportunities or ability to participate in the political process."[57] This is a pure disparate impact provision. It renders unlawful any electoral policy that produces a racial disparity in political participation, whether the totality of circumstances supports maintaining or scrapping the policy.

The CTVRA features one more innovation that we note here but that applies to racial vote denial, racial vote dilution, and retrogression alike. This is the establishment of a statewide database of relevant electoral information.[58] This database includes, among other categories, population estimates (total and by race and ethnicity), election results, voter registration lists, district maps, and polling place locations.[59] Local election officials are also required to transmit information under their control to the Secretary of State, who is responsible for the database.[60] As the CTVRA points out, this data is useful for identifying, litigating, and remedying all kinds of racial discrimination in voting. The data helps with "(1) evaluating whether and to what extent current laws and practices related to election administration are consistent with the [the CTVRA], (2) implementing best practices in election administration to further the purposes of [the CTVRA], and (3) investigating any potential infringement upon the right to vote."[61]

B. Racial Vote Dilution

If most SVRAs don't address racial vote denial, what *do* these laws do? The answer is that they try to prevent racial vote dilution. *Every* SVRA extends protections against racial vote dilution beyond those offered by the FVRA. Racial vote dilution is a term of art for an electoral practice that doesn't stop anyone from voting but that nevertheless diminishes the electoral influence of a minority group.[62] The classic example of a dilutive practice is an at-large

---

56 *See id.* § 415.

57 *Id.* § 411(a)(2)(A). For pure disparate impact provisions targeting racial vote denial in proposed SVRAs, see S.B. 878, § 15.5-201(b)(1)(i) (Md. 2023); and S. 401, § 7(1)(a), 102d Leg. (Mich. 2023).

58 *See* CTVRA § 412(a).

59 *See id.* § 412(c).

60 *See id.* § 412(g).

61 *Id.* § 412(a). For similar provisions in proposed SVRAs, see S.B. 878, § 15.5-505 (Md. 2023); S. 402, § 5 (Mich. 2023); and S. 657, 205th Leg., § 2 (N.Y. 2023).

62 *See* Nicholas O. Stephanopoulos, *Race, Place, and Power*, 68 STAN. L. REV. 1323, 1332–42 (2016).

election for multiple legislators. If members of the white majority vote cohesively, they can sweep every seat and thus consign the minority group to no representation whatsoever. Single-member districts can also be dilutive if they "crack" (disperse) and/or "pack" (overconcentrate) minority voters. In this case, the district map yields less minority representation than would arise if the lines were drawn another way.

To prevail in a racial vote dilution claim under Section 2 of the FVRA, a plaintiff must initially satisfy the three preconditions set forth by the Supreme Court in the 1986 case of *Thornburg v. Gingles*.[63] The first and most onerous of these *Gingles* prongs is that a minority group be large and geographically compact enough to constitute a numerical majority in at least one additional single-member district.[64] The second *Gingles* prong is that a minority group be politically cohesive (in that its members generally support the same candidates).[65] And the third *Gingles* prong requires the white majority also to vote mostly as a bloc—only against the candidates of choice of the minority community.[66] If all three of these preconditions are met, a court proceeds to analyze the totality of the circumstances. These include an array of factors specified by the Senate report that accompanied the 1982 revision of Section 2, focusing on historical and ongoing racial discrimination as well as the jurisdiction's electoral system in its entirety.[67] It's also probative at this stage if existing minority representation falls short of, hits, or exceeds proportional representation.[68]

The most notable way in which certain SVRAs diverge from this framework is by abandoning *Gingles*'s first prong. The CAVRA pioneered this strategy, which has since been imitated by the SVRAs of Connecticut, New York, Oregon, Virginia, and Washington. The CAVRA (and these subsequent SVRAs) abandon *Gingles*'s first prong both by omission and by commission. By omission, these statutes state that *Gingles*'s *second and third* prongs, combined into a single requirement of racial polarization in voting, must be satisfied for

---

[63] 478 U.S. 30, 50–51 (1986).

[64] *See id.* at 50; *see also* Bartlett v. Strickland, 556 U.S. 1, 26 (2009) (plurality opinion) ("Only when a geographically compact group of minority voters could form a majority in a single-member district has the first *Gingles* requirement been met.").

[65] *See Gingles*, 478 U.S. at 51.

[66] *See id.*

[67] *See* S. REP. NO. 97-417, at 28–29 (1982).

[68] *See* Johnson v. De Grandy, 512 U.S. 997, 1020 (1994).

there to be unlawful racial vote dilution.[69] In the CAVRA's terms, "[a] violation . . . is established if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision."[70] The implication of this phrasing is that *Gingles*'s *first* prong need not be proven. By commission, certain SVRAs explicitly reject the condition that plaintiffs demonstrate that another reasonably-compact, majority-minority district could be drawn. As the CAVRA puts it, "[t]he fact that members of a protected class are not geographically compact or concentrated may not preclude . . . a violation of [the statute]."[71]

The reason the renunciation of *Gingles*'s first prong is so significant is that this requirement is often the highest hurdle for plaintiffs under Section 2 of the FVRA. In a series of decisions, the Supreme Court has held that, to satisfy this prong, it must be possible to create another *majority-minority* district (not merely a district that reliably elects the minority-preferred candidate),[72] the minority population must not be overly geographically dispersed,[73] and the minority population must not be overly socioeconomically or culturally heterogeneous either.[74] Thanks to these decisions, many Section 2 suits have foundered at this initial stage of the analysis. Over the last two redistricting cycles, in particular, *thirteen* of thirty-one Section 2 challenges to congressional or state legislative district plans, or more than *one-third*, failed because plaintiffs couldn't make the requisite showings under *Gingles*'s first prong.[75]

In contrast, racial polarization in voting is relatively easy to establish because it continues to exist in most areas. In some parts of the South, the candidate

---

69 The CTVRA and the NYVRA also allow liability to be found under the totality of circumstances, even if racial polarization in voting isn't proven. *See* CTVRA, Pub. Act No. 23-204, § 411(b)(2)(A), 2023 Conn. Acts at 821–22 (Reg. Sess.); N.Y. ELEC. LAW § 17-206(2)(b) (McKinney 2023).

70 CAL. ELEC. CODE § 14028(a) (West 2002); *see also* CTVRA § 411(b)(2)(A); N.Y. ELEC. LAW § 17-206(2)(b); OR. REV. STAT. § 255.411(1) (2021); VA. CODE ANN. § 24.2-130(B) (2021); WASH. REV. CODE § 29A.92.030(1) (2023). For similar provisions in proposed SVRAs, see Voting Rights Act of 2023 – Counties and Municipalities, S.B. 878, § 15.5-202(b), Reg. Sess. (Md. 2023); S. 401, § 9(2), 102d Leg. (Mich. 2023); and John R. Lewis Voting Rights Act of New Jersey, S. 2997, § 5(b), 220th Leg. (N.J. 2023).

71 CAL. ELEC. CODE § 14028(c); *see* ASSEMB. COMM. ON JUDICIARY, 2001–2002 REG. SESS., BILL ANALYSIS of S.B. 976, at 3 (as amended Apr. 9, 2002) (noting that the CAVRA does not require that a minority community be "sufficiently concentrated geographically . . . to create a district in which the minority community could elect its own candidate"); *see also* N.Y. ELEC. LAW §§ 17-206(2)(c)(viii); OR. REV. STAT. § § 255.411(4); VA. CODE ANN. § 24.2-130(B); WASH. REV. CODE § 29A.92.030(5). For similar provisions in proposed SVRAs, see S.B. 878, § 15.5-202(c)(2)(iv) (Md. 2023); S. 401, § 9(3)(g) (Mich. 2023); and S. 2997, § 5(c)(8) (N.J. 2023).

72 *See* Bartlett v. Strickland, 556 U.S. 1, 26 (2009) (plurality opinion).

73 *See, e.g.*, Bush v. Vera, 517 U.S. 952, 979 (1996).

74 *See* League of United Latin Am. Citizens v. Perry, 548 U.S. 399, 432–35 (2006).

75 *See* Brief of *Amici Curiae* Professors Jowei Chen et al. at 14–15, Merrill v. Milligan, No. 21-1086 (U.S. July 18, 2022) [hereinafter Brief of *Amici Curiae* Professors Jowei Chen et al.].

preferences of white and non-white voters diverge by more than sixty percentage points.[76] Even in northeastern and western regions where white voters are more liberal, voting is usually racially polarized to some extent.[77] As a result, the Supreme Court has never ruled against a Section 2 plaintiff because of insufficient racial polarization in voting.[78] Nor has any suit under the CAVRA been unsuccessful for this reason. To the contrary, even in an atypical case where only five of ten city council elections in Santa Clara exhibited substantial racial polarization, California courts held that the CAVRA's polarization requirement was satisfied.[79] The view of political scientists Carolyn Abott and Asya Magazinnik that "the [CAVRA's] low 'racially polarized voting' standard almost ensure[s] victory for the plaintiff" is therefore unsurprising.[80] Because of the prevalence of racially polarized voting, the CAVRA and other similar SVRAs do set a low bar for those alleging racial vote dilution.

The SVRAs of California, Connecticut, New York, Oregon, Virginia, and Washington are alike in that they waive *Gingles*'s first prong. But these statutes differ in whether they impose liability based on racially polarized voting *alone* or racially polarized voting *as well as* minority underrepresentation. The NYVRA takes the first of these approaches, at least with respect to at-large elections. "A violation . . . shall be established upon a showing that a political subdivision . . . use[s] an at-large method of election and . . . voting patterns . . . within the political subdivision are racially polarized."[81] On the other hand, Connecticut's, Oregon's, Virginia's, and Washington's SVRAs endorse the second option. Under the Virginia Voting Rights Act (VAVRA), for example, liability ensues if "racially polarized voting occurs in local elections *and* . . . this . . . dilutes the voting strength of members of a protected class."[82] And under the

[76] *See, e.g.*, Shiro Kuriwaki et al., *The Geography of Racially Polarized Voting: Calibrating Surveys at the District Level*, 2023 AM. POL. SCI. REV. 8; Stephanopoulos, *supra* note 62, at 1358; RPV NEAR ME, https://www.rpvnearme.org/ (last visited Oct. 1, 2023).

[77] *See, e.g.*, Kuriwaki et al., *supra* note 76, at 8.

[78] *Cf. League of United Latin Am. Citizens*, 548 U.S. at 427 (finding racial polarization between Latinos and non-Latinos in south and west Texas); Thornburg v. Gingles, 478 U.S. 30, 52–54 (1986) (same between Black and white voters in North Carolina).

[79] *See* Yumori-Kaku v. City of Santa Clara, 273 Cal. Rptr. 3d 437, 443 (Cal. Ct. App. 2020).

[80] Abott & Magazinnik, *supra* note 13, at 721.

[81] N.Y. ELEC. LAW § 17-206(2)(b) (McKinney 2023). Even though it doesn't have to be shown under the NYVRA, minority underrepresentation in at-large elections does typically arise when voting is racially polarized and the minority group is, in fact, a numerical minority. For similar provisions in proposed SVRAs, see Voting Rights Act of 2023 – Counties and Municipalities, S.B. 878, § 15.5-202(b)(1), Reg. Sess. (Md. 2023); and John R. Lewis Voting Rights Act of New Jersey, S. 2997, § 5(b)(1), 220th Leg. (N.J. 2023).

[82] VA. CODE ANN. § 24.2-130(B) (2021) (emphasis added); *see also* CTVRA, Pub. Act No. 23-204, § 411(b)(2)(A), 2023 Conn. Acts 821–22 (Reg. Sess.); OR. REV. STAT. § 255.411(1) (2021); WASH. REV. CODE § 29A.92.030(1) (2023). For a similar provision in a proposed SVRA, see S. 401, § 9(2) (Mich. 2023).

CAVRA, the statutory text suggests that racially polarized voting suffices,[83] but the California Supreme Court recently held that liability "requires not only a showing that racially polarized voting exists, but also that the protected class thereby has less ability to elect its preferred candidate."[84]

To the extent the NYVRA permits liability to be found solely on the basis of racially polarized voting, the statute departs even further from the doctrine of Section 2 of the FVRA. Under this doctrine, as noted above, how close minority representation comes to proportional representation is one of the factors that must be considered at the totality-of-circumstances stage.[85] To the extent racially polarized voting alone infringes the NYVRA, violations of the statute are also even easier to prove. Again, racial polarization in voting is quite common in modern American elections. If its existence means that plaintiffs necessarily win, then quite few at-large electoral systems can survive challenges under the NYVRA.

An implication of certain SVRAs' waiver of *Gingles*'s first prong is that a minority group should be able to bring a claim even if it's not numerous enough to comprise a majority in an additional district. Several SVRAs confirm this inference by stating outright that a minority group can obtain a remedy other than a majority-minority district—such as a crossover, coalition, or influence district. A crossover district is one in which minority voters make up less than a majority of the electorate but are still able to elect their candidate of choice thanks to some support from white voters. Illinois's and Washington's SVRAs mention a crossover district as a permissible remedy for racial vote dilution. Under the Washington Voting Rights Act (WAVRA), for instance, "[r]emedies shall . . . be available where the drawing of crossover . . . districts is able to address both vote dilution and racial polarization."[86]

Next, a coalition district is one where no single minority group can elect its own preferred candidate—but where two or more minority groups voting cohesively can elect their mutual candidate of choice. Connecticut's, Illinois's, New York's, and Washington's SVRAs authorize multiple minority groups to pursue joint claims of racial vote dilution. Under the NYVRA, for example, "[m]embers of different protected classes may file an action jointly" if "they

---

83 *See* CAL. ELEC. CODE § 14028(a) (West 2002) ("A violation . . . is established if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision . . . .").

84 Pico Neighborhood Ass'n v. City of Santa Monica, No. S263972, 2023 WL 5440486, at *7 (Cal. Aug. 24, 2023).

85 *See supra* note 68 and accompanying text.

86 WASH. REV. CODE § 29A.92.005; *see also* 10 ILL. COMP. STAT. 120/5-5(a) (2011).

demonstrate that the combined voting preferences of the multiple protected classes are polarized against the rest of the electorate."[87] Lastly, an influence district is one where minority voters *can't* elect their preferred candidate (either alone or with the support of some white voters) but *can* still affect which candidate wins. The quintessential influence district has a minority population in the range of twenty to forty percent and elects a Democrat who isn't the first choice of the minority community (but isn't their last choice either). California's, Connecticut's, Illinois's, New York's, Oregon's, and Virginia's SVRAs allow influence claims to be advanced. As in the Oregon Voting Rights Act (ORVRA), this is typically done by defining a statutory violation as an impairment of minority voters' "equal opportunity to elect candidates of their choice *or* [their] equal opportunity to *influence* the outcome of an election."[88]

Certain SVRAs distinguish themselves remedially from Section 2 of the FVRA in one more way. Section 2 is silent as to whether the relief for racial vote dilution can include some version of proportional representation. Historically, by far the most common relief in successful Section 2 suits has been a set of single-member districts (in place of either an at-large electoral system or a different set of single-member districts).[89] In contrast, California's, New York's, Oregon's, and Washington's SVRAs suggest that a form of proportional representation is a proper remedy in certain cases. As in the CAVRA, this suggestion is usually found in the second half of a provision whose first half we quoted earlier. The first half confirms the waiver of *Gingles*'s first prong by making clear that "[t]he fact that members of a protected class are not geographically compact or concentrated *may not* preclude . . . a violation of [the statute]."[90] The second half continues that this fact "*may* be a factor in determining an appropriate remedy."[91]

---

[87] N.Y. ELEC. LAW § 17-206(8) (McKinney 2023); *see also* CTVRA § 411(b)(2)(B)(i)(IV); 10 ILL. COMP. STAT. 120/5-5(a); WASH. REV. CODE § 29A.92.005. For similar provisions in proposed SVRAs, see Voting Rights Act of 2023 – Counties and Municipalities, S.B. 878, § 15.5-202(c)(1)(iv), Reg. Sess. (Md. 2023); S. 401, § 9(3)(d), 102d Leg. (Mich. 2023); and John R. Lewis Voting Rights Act of New Jersey, S. 2997, § 9(h), 220th Leg. (N.J. 2023).

[88] OR. REV. STAT. § 255.405(1)(a) (2021) (emphasis added); *see also* CAL. ELEC. CODE § 14027; CTVRA § 411(b)(1); 10 ILL. COMP. STAT. 120/5-5(a); N.Y. ELEC. LAW § 17-206(2)(a); VA. CODE ANN. § 24.2-130(A) (2021). For similar provisions in proposed SVRAs, see S.B. 878, § 15.5-201(b)(1)(ii) (Md. 2023); S. 401, § 9(1) (Mich. 2023); S. 2997, § 4 (N.J. 2023).

[89] *See, e.g.*, Holder v. Hall, 512 U.S. 874, 909 (1994) (Thomas, J., concurring) (noting that federal courts have "rel[ied] on single-member districting schemes as a touchstone").

[90] CAL. ELEC. CODE § 14028(c) (emphasis added).

[91] *Id.* (emphasis added); *see also* N.Y. ELEC. LAW § 17-206(2)(c)(viii); OR. REV. STAT. § 255.411(4); WASH. REV. CODE § 29A.92.030(5). For similar provisions in proposed SVRAs, see S.B. 878, § 15.5-202(c)(2)(iv) (Md. 2023); S. 401, § 9(3)(g) (Mich. 2023); and S. 2997, § 5(c)(8) (N.J. 2023).

Crucially, where minority voters are geographically dispersed, it's difficult or even impossible to cure racial vote dilution through single-member districts. In this scenario, single-member districts frequently can't accumulate enough minority voters to enable them to elect their preferred candidates, even if the districts are shaped very strangely.[92] On the other hand, the geographic dispersion of minority voters is no obstacle to curing racial vote dilution through proportional representation. It simply makes no difference where minority voters are located if no districts have to be drawn and all voters in a given area participate in the same election.[93] Consequently, proportional representation is the "appropriate remedy" contemplated by the CAVRA and other SVRAs where minority voters aren't "geographically compact or concentrated."[94] Under these conditions, proportional representation is the one policy that can ensure adequate representation for minority voters. And this isn't just our own idiosyncratic view. In 2019, Palm Desert settled a CAVRA suit by switching from at-large elections to a hybrid regime in which four of five city council seats are elected through multimember districts using ranked-choice voting.[95] In 2022, Albany settled a threatened CAVRA suit by instituting ranked-choice voting for the citywide election of all five city council seats.[96] These settlements are proof of concept that the CAVRA (and the other SVRAs that share the CAVRA's language) can result in the adoption of proportional representation.

Finally, Section 2 of the FVRA is applicable to all elections: federal, statewide, state legislative, local, and so on. This dimension of coverage, though, is the one axis along which all SVRAs are less ambitious than Section 2 in their targeting of racial vote dilution. Florida's Fair Districts Amendment (FLFDA)[97] and the Illinois Voting Rights Act (ILVRA)[98] reach statewide district plans but *not* local district maps of any kind. Connecticut's,[99] New York's,[100] and

---

[92] *See* Nicholas O. Stephanopoulos, *Civil Rights in a Desegregating America*, 83 U. CHI. L. REV. 1329, 1384–88 (2016).

[93] *See, e.g.*, *id.* at 1391–93.

[94] CAL. ELEC. CODE § 14028(c).

[95] *See* Sherry Barkas, *Palm Desert Lawsuit Settlement Includes Two-District Elections; Ranked-Choice Voting System Possible for 2020*, PALM SPRINGS DESERT SUN (Dec. 12, 2019, 5:08 PM), https://www.desertsun.com/story/news/local/palm-desert/2019/12/12/palm-desert-reaches-california-voting-rights-act-settlement/4410780002/.

[96] *See* Albany, Pre-Litigation Settlement Agreement and Release of All Claims (Feb. 22, 2022); Mala Subramanian, City Att'y, City of Albany City Council Agenda Staff Report (Feb. 22, 2022).

[97] *See* FLA. CONST. art. 3, §§ 20–21 (applying to congressional and state legislative district plans).

[98] *See* 10 ILL. COMP. STAT. 120/5-5(a) (2011) (applying to state legislative district plans).

[99] *See* CTVRA, Pub. Act No. 23-204, § 410(a)(6)–(7), 2023 Conn. Acts at 819–20 (Reg. Sess.).

[100] *See* N.Y. ELEC. LAW § 17-204(4) (McKinney 2023).

Washington's[101] SVRAs apply to all political subdivisions but *not* to any federal, statewide, or state legislative elections.[102] California's[103] and Virginia's[104] prohibitions of racial vote dilution extend only to political subdivisions that hold at-large elections; the measures exclude jurisdictions that rely on single-member districts. And Oregon's SVRA binds only school districts (and other entities involved in education); the statute exempts all other local governments.[105] In this one respect, then, all SVRAs diverge downward rather than upward from Section 2, which here represents a federal ceiling instead of a federal floor.

C. Retrogression

To this point we've compared SVRAs to Section 2 of the FVRA. The FVRA's other key provision, Section 5, formerly applied not nationwide but rather to certain mostly southern jurisdictions. Under Section 5's coverage formula (which was part of Section 4 of the FVRA), jurisdictions were covered if they had low turnout in the 1964, 1968, or 1972 elections and also used particular voting restrictions in these years.[106] In the 2013 case of *Shelby County v. Holder*, the Supreme Court held that this formula was unconstitutional because it imposed current burdens on jurisdictions based on decades-old data.[107] Thanks to *Shelby County*, Section 5 remains on the books but no longer binds any jurisdictions.

Back when Section 5 was in force, it required covered jurisdictions to submit all changes to their election laws to either the Attorney General or a federal court for preclearance.[108] Preclearance was granted only if a jurisdiction could show that its new electoral policy had neither the purpose nor the effect of denying or abridging the right to vote on account of race or color.[109] In the 1976 case of *Beer v. United States*, the Supreme Court held that this language referred only

---

[101] *See* WASH. REV. CODE § 29A.92.010(4) (2023).

[102] For similar provisions in proposed SVRAs, see Voting Rights Act of 2023 – Counties and Municipalities, S.B. 878, § 15.5-202(a), Reg. Sess. (Md. 2023); S. 401, § 9(2), 102d Leg. (Mich. 2023); and John R. Lewis Voting Rights Act of New Jersey, S. 2997, § 5(a), 220th Leg. (N.J. 2023).

[103] *See* CAL. ELEC. CODE § 14027 (West 2002).

[104] *See* VA. CODE ANN. § 24.2-130(A) (2021). More specifically, the VAVRA simply repeats Section 2 of the FVRA with respect to state and local election laws *generally*, see *id.* § 24.2-126, but then expands Section 2's protections with respect to at-large electoral systems *specifically*, see *id.* § 24.2-130(A).

[105] *See* OR. REV. STAT. § 255.400(4)(a) (2021).

[106] *See* 52 U.S.C. § 10303(b)–(c).

[107] 570 U.S. 529, 553, 557 (2013).

[108] *See* 52 U.S.C. § 10304(a).

[109] *See id.*

to *retrogression*—the *worsening* of the electoral position of minority voters.[110] Because of *Beer*, Section 5 protected against both racial vote denial and racial vote dilution but relied on a different baseline than did Section 2. Section 5's baseline was the status quo ante, the situation immediately before the new electoral policy was enacted. Section 5 prohibited only changes to election laws that made minority voters worse off than they had been under the prior status quo.

Four SVRAs—in order of adoption, Florida's, Virginia's, New York's, and Connecticut's—include preclearance regimes and/or guard against retrogression. As pointed out above, the FLFDA applies to all of Florida's congressional and state legislative districts.[111] The FLFDA therefore sweeps more broadly than did Section 5 of the FVRA, which formerly covered only five of Florida's sixty-seven counties.[112] With respect to all these districts, the FLFDA bars them from "diminish[ing] [minority voters'] ability to elect representatives of their choice."[113] The FLFDA thus forbids retrogression in congressional and state legislative redistricting.[114]

Next, the VAVRA differs from Section 5 of the FVRA in three ways. First, the VAVRA applies to all political subdivisions in Virginia.[115] In contrast, Section 5 formerly exempted a number of Virginia cities and counties that had "bailed out" of coverage.[116] Second, the VAVRA only reaches a named set of "covered practices": changing to at-large elections, changing municipal boundaries such that the minority population declines, redistricting, restricting services or materials for voters in languages other than English, and changing the number or location of polling places.[117] On the other hand, Section 5 used to encompass all new electoral policies, the grand as well as the mundane.[118]

---

[110] 425 U.S. 130, 141 (1976).

[111] *See supra* note 97 and accompanying text.

[112] *See Jurisdictions Previously Covered by Section 5*, U.S. DEP'T OF JUST. (May 17, 2023), https://www.justice.gov/crt/jurisdictions-previously-covered-section-5.

[113] FLA. CONST. art. 3, §§ 20–21. The Amendments also repeat the protections of Section 2. *See id.*; *see also In re* Senate Joint Resolution of Legis. Apportionment 1176, 83 So. 3d 597, 619 (Fla. 2012) (noting that one portion of the Amendments "is essentially a restatement of Section 2 of the Voting Rights Act").

[114] *See In re Senate Joint Resolution of Legis. Apportionment 1176*, 83 So. 3d at 624 ("Florida now has a statewide non-retrogression requirement independent of Section 5.").

[115] *See* VA. CODE ANN. § 24.2-129 (2021).

[116] *See Section 4 of the Voting Rights Act*, U.S. DEP'T OF JUST. (Apr. 5, 2023), https://www.justice.gov/crt/section-4-voting-rights-act.

[117] *See* VA. CODE ANN. § 24.2-129(A).

[118] *See* Allen v. State Bd. of Elections, 393 U.S. 544, 563–71 (1969).

Third, and most importantly, preclearance is *opt-in* under the VAVRA. Virginia jurisdictions get to *choose* whether to submit covered practices to the Virginia Attorney General or to provide the public with notice of these practices, an opportunity to comment, and a window to sue before the practices go into effect.[119] When jurisdictions select the preclearance route, it works essentially the same way as under Section 5 of the FVRA. The Virginia Attorney General has sixty days from submission to object to the covered practice, a period during which the practice may not be enforced.[120] The Virginia Attorney General must deny preclearance if the practice either "has the purpose or effect of denying or abridging the right to vote based on race or color" or "will result in the retrogression in the position of members of a racial or ethnic group with respect to their effective exercise of the electoral franchise."[121] These seem like two separate criteria but actually collapse into a single requirement. The first clause is drawn almost verbatim from Section 5,[122] while the second parrots *Beer*'s holding that Section 5 prohibits retrogression.[123] On an opt-in basis, then, the VAVRA's preclearance regime prevents covered (but not all) practices from being implemented if they're deemed to be retrogressive.

The third SVRA that parallels Section 5 of the FVRA, the NYVRA, *doesn't* apply to all political subdivisions in New York.[124] Instead, the NYVRA bases coverage on a new formula unrelated to the one in Section 4 of the FVRA. Under this formula, a political subdivision is covered if (1) it has been found liable for a voting rights violation over the previous twenty-five years; (2) it has been found liable for at least three (non-voting) civil rights violations over the previous twenty-five years; (3) the share of arrestees who are minority members exceeded the minority share of the population by at least twenty percentage points at any point over the previous ten years; or (4) the dissimilarity index (a common measure of residential segregation) exceeded fifty percent at any point over the previous ten years.[125] This formula responds to *Shelby County*'s concern about current burdens being imposed based on obsolete data (even though that

[119] *See* VA. CODE ANN. § 24.2-129(B)–(D).
[120] *See id.* § 24.2-129(D).
[121] *Id.* § 24.2-129(A).
[122] *See* 52 U.S.C. § 10304(a).
[123] *See* Beer v. United States, 425 U.S. 130, 141 (1976).
[124] However, the NYVRA does apply to more political subdivisions in New York than did Section 5 of the FVRA. *See Jurisdictions Previously Covered by Section 5*, *supra* note 112.
[125] *See* N.Y. ELEC. LAW § 17-210(3) (McKinney 2023). For similar provisions in proposed SVRAs, see Voting Rights Act of 2023 – Counties and Municipalities, S.B. 878, § 15.5-401(b), Reg. Sess. (Md. 2023); S. 401, § 19(19)(a), 102d Leg. (Mich. 2023); and John R. Lewis Voting Rights Act of New Jersey, S. 2997, § 11(c), 220th Leg. (N.J. 2023).

concern pertained only to the federal government).[126] Under the formula, coverage changes on a rolling basis as the various criteria are or aren't satisfied over the specified preceding periods.

For a jurisdiction covered by the formula, the preclearance process is much the same as under Section 5 of the FVRA. The jurisdiction must submit every "covered policy"—meaning more or less every new electoral regulation—to either the New York Civil Rights Bureau or a particular New York court.[127] Whichever institution receives the submission must "grant preclearance only if it determines that the covered policy will not diminish the ability of protected class members to participate in the political process and to elect their preferred candidates to office."[128] "Diminish" is one of the terms that *Beer* used as a synonym for "retrogress."[129] "[P]articipate in the political process" and "elect their preferred candidates to office" are phrases that refer, respectively, to racial vote denial and racial vote dilution. Accordingly, within covered jurisdictions, the NYVRA allows new electoral regulations to go into effect only if they don't retrogress, which they can do either by denying or by diluting the vote on racial grounds.

Lastly, the CTVRA resembles the NYVRA with respect to preclearance and retrogression, except for two notable differences. One is the CTVRA's coverage formula, which is somewhat more inclusive than that of the NYVRA. The CTVRA subjects to preclearance jurisdictions with *any* voting rights *or* (non-voting) civil rights violations over the previous twenty-five years; jurisdictions that failed to transmit necessary information to the statewide database over the previous three years; jurisdictions with racial gaps in arrest rates like those specified by the NYVRA; and jurisdictions with racial gaps in voter turnout above ten percent at any point over the previous ten years.[130] The other contrast is that, for covered jurisdictions, the CTVRA requires proposed electoral policies to be denied preclearance if they're retrogressive *or* if they're "more likely than not to violate the provisions" of the rest of the statute.[131] The CTVRA

[126] *See* Shelby Cnty. v. Holder, 570 U.S. 529, 550–53 (2013).

[127] *See* N.Y. ELEC. LAW § 17-210(2), (4), (5). Because the NYVRA's definition of "covered policies" is significantly broader than the VAVRA's definition of "covered practices," in the table at the end of this Part, we consider the NYVRA not to be limited to specified practices.

[128] *Id.* § 17-210(4), (5). Section 17-210(4) also requires the Civil Rights Bureau to publish and solicit public comments on all submissions. *Id.* § 17-210(4). For similar provisions in proposed SVRAs, see S.B. 878, § 15.5-401(e) (Md. 2023); S. 401, § 19(3)(e) (Mich. 2023); and S. 2997, § 12(a)(5) (N.J. 2023).

[129] *See* Beer v. United States, 425 U.S. 130, 141 (1976).

[130] *See* CTVRA, Pub. Act No. 23-204, § 414(c)(1), 2023 Conn. Acts at 838 (Reg. Sess.).

[131] *Id.* § 414(e)(2)(F)(i), 414(f)(3).

thus abandons sole reliance on retrogression as the standard for denying clearance. Instead, this standard becomes retrogression *or* any other kind of racial discrimination in voting.

***

We realize we've presented a large volume of information about SVRAs in this Part. To make this information more digestible, we include the below table summarizing the key features of each SVRA. Like our discussion, the table distinguishes between the categories of racial vote denial, racial vote dilution, and retrogression. Within each category, the table lists elements with respect to which one or more SVRAs differ from the FVRA. Most of these elements represent extensions of the FVRA's protections, although a few amount to contractions. The SVRAs themselves are listed in the order of their enactment.

The table illustrates several points that were implicit in our above commentary. First, Florida's and Illinois's SVRAs are plainly the least ambitious. In particular, unlike all the other SVRAs, they don't waive *Gingles*'s first prong. Second, California's, Oregon's, and Washington's SVRAs substantially resemble one another. These three SVRAs only address racial vote dilution, and they do so through similar means. The key difference among them is that California's SVRA is limited to at-large elections, while Oregon's and Washington's SVRAs also reach single-member districts. Third, Virginia's SVRA is the most difficult to characterize in terms of ambition. Like California's SVRA, it's restricted to at-large elections. But like Connecticut's and New York's SVRAs, it also seeks to prevent retrogression (though only for jurisdictions that opt into preclearance). Finally, Connecticut's and New York's SVRAs sweep the most broadly. They're the only SVRAs that try to stop racial vote denial, including through voter intimidation, deception, and obstruction. Only the NYVRA imposes liability for racially polarized voting alone (in some cases). And only the CTVRA and the NYVRA use new coverage formulas to force certain jurisdictions to obtain preclearance before changing their electoral policies.

	CAVRA	FLFDA	ILVRA	WAVRA	ORVRA	VAVRA	NYVRA	CTVRA
Racial Vote Denial								
Pro-plaintiff liability factors							✓	✓
Liability for								✓

disparate impact alone								
Specification of remedies							✓	✓
Stronger ban of voter intimidation							✓	✓
Statewide database								✓
Racial Vote Dilution								
Omission of *Gingles*'s first prong	✓			✓	✓	✓	✓	✓
Liability for racially polarized voting alone							✓	
Crossover claims authorized			✓	✓				
Coalition claims authorized			✓	✓			✓	✓
Influence claims authorized	✓		✓		✓	✓	✓	✓
Proportional representation as relief	✓			✓	✓		✓	✓
Applies to statewide district plans		✓	✓					
Applies to all political subdivisions				✓			✓	✓
Applies to at-large elections only	✓					✓		
Applies to school districts only					✓			
Retro-gression								
Broader coverage than Section 5		✓				✓	✓	✓
Limited to specified practices						✓		
Opt-in preclearance						✓		
New coverage formula							✓	✓

Retrogression or other violations								✓

II. DEFENDING SVRAS

The hallmark of state voting rights acts is that they're more expansive than the federal Voting Rights Act. As we've mentioned, one of the pillars of the FVRA was toppled by the Supreme Court in *Shelby County v. Holder*.[132] In light of *Shelby County*, it's natural to ask if SVRAs are constitutionally vulnerable, too. In particular, could they violate the Equal Protection Clause through their alleged focus on race?

In an earlier era, the answer to this question would have been obvious. "[R]acial discrimination in voting," the Court declared in the 1966 case of *South Carolina v. Katzenbach*, is a "blight," an "insidious and pervasive evil which [is] perpetuated . . . through unremitting and ingenious defiance of the Constitution."[133] The FVRA, the Court thus held in *South Carolina*, was lawful because it "effectuate[d] the constitutional prohibition against racial discrimination in voting."[134] Given this conclusion, the validity of SVRAs would have been plainer still. SVRAs are *more* effective than the FVRA in preventing and remedying racial discrimination in voting. If the FVRA is constitutional because it tries to solve this problem *less* successfully, more potent measures directed at the same illicit activity must be permissible.

Times change, however, and so does constitutional interpretation. In *Shelby County*, the Court portrayed racial discrimination in voting not as an "insidious and pervasive evil" but rather as a relic of the past, nearly eliminated in modern American politics. With respect to voting discrimination, "things have changed dramatically," opined the Court.[135] "[O]ur nation has made great strides."[136] "[N]o one can fairly say" that voting discrimination remains "'pervasive,' 'flagrant,' 'widespread,' and 'rampant.'"[137] Largely for this reason, the Court nullified the FVRA's preclearance regime. This regime seemed obsolete to the Court, an "extraordinary" response to conditions that had gradually become ordinary.[138] Also partly on this basis, the Court has expressed skepticism of the FVRA's other pillar, Section 2. Like Section 5, Section 2 is "strong medicine," a "permanent, nationwide ban" of both racial vote denial and racial vote dilution

---

132 570 U.S. 529 (2013).
133 383 U.S. 301, 308–09 (1966).
134 *Id.* at 326.
135 *Shelby Cnty.*, 570 U.S. at 547.
136 *Id.* at 549.
137 *Id.* at 554.
138 *Id.* at 534.

(if certain conditions are met).[139] Thinking the patient no longer needs such aggressive treatment, the Court has imposed limit after limit on Section 2[140] and even suggested the provision might be unconstitutional.[141]

Against this backdrop, it's hardly surprising that some jurisdictions have disputed the validity of SVRAs when sued under these statutes. In an early case of this kind, the city of Modesto convinced a California trial court that the CAVRA violates the Equal Protection Clause, thereby stopping CAVRA enforcement until this ruling was reversed on appeal almost two years later.[142] More recently, a resident of Poway, California advanced a similar challenge in federal court, ultimately filing a cert petition with the Supreme Court.[143] This suit inspired an almost identical claim against the WAVRA, resolved in favor of the statute's validity by the Washington Supreme Court.[144] And while there has been no litigation yet under the NYVRA, Nassau County has invoked the canon of constitutional avoidance to assert (implausibly) in a memorandum that the law is coextensive with Section 2 of the FVRA.[145]

The main argument in these proceedings has been that SVRAs constitute (or compel) unlawful racial gerrymandering. Racial gerrymandering denotes the predominant and unjustified use of race in the design of electoral districts. According to their critics, that's exactly what SVRAs do (or lead to). Another accusation against SVRAs has been that they classify individuals on the basis of their race. Under black-letter doctrine, racial classifications trigger strict scrutiny, which SVRAs' opponents say they can't satisfy. One more charge has

---

[139] *Id.* at 535, 557.

[140] *See, e.g.*, Brief of *Amici Curiae* Professors Jowei Chen et al., *supra* note 75, at 12–21 (describing these doctrinal limits in the area of racial vote dilution).

[141] *See, e.g.*, Bartlett v. Strickland, 556 U.S. 1, 21 (2009) (plurality opinion) (asserting that certain readings of Section 2 would raise "serious constitutional concerns"); *see also* Allen v. Milligan, 143 S. Ct. 1487, 1519 (2023) (noting but not evaluating the argument that "even if Congress in 1982 could constitutionally authorize race-based redistricting under § 2 for some period of time, the authority to conduct race-based redistricting cannot extend indefinitely into the future"). *But see Milligan*, 143 S. Ct. at 1516–17 (holding that Section 2 is constitutional).

[142] *See* Sanchez v. City of Modesto, 51 Cal. Rptr. 3d 821, 825 (Cal. Ct. App. 2006).

[143] *See* Petition for Writ of Certiorari, Higginson v. Becerra, No. 19-1199 (U.S. Apr. 2, 2020).

[144] *See* Portugal v. Franklin Cnty., 530 P.3d 994, 999 (Wash. 2023); *see also* Brief of Law School Clinics Focused on Civil Rights as *Amici Curiae* at 14 n.1, Portugal v. Franklin Cnty., No. 100999-2 (Wash. Mar. 27, 2023) [hereinafter Law School Clinics Brief] (observing that "entire pages of [the petitioner's] argument . . . are word-for-word identical to the Opening Brief of the Appellant in *Higginson*").

[145] *See* Memorandum from Troutman Pepper on Proposed Redistricting Plan for Nassau County Legislature Districts 6 (Feb. 15, 2023) (on file with author); *see also* Radogno v. Ill. State Bd. of Elections, No. 1:11-cv-04884, 2011 WL 5025251, at *8–9 (N.D. Ill. Oct. 21, 2011) (involving a constitutional challenge to the ILVRA); Yumori-Kaku v. City of Santa Clara, 273 Cal. Rptr. 3d 437, 471–72 (Cal. Ct. App. 2020) (involving a constitutional challenge to the CAVRA).

been that, even if SVRAs are facially neutral, their underlying objectives are racially discriminatory. Like racial classifications, racially discriminatory motives result in the application of strict scrutiny, which supposedly dooms SVRAs.

In this Part, we refute these claims that SVRAs violate the Equal Protection Clause. We do so in reliance on the law as it stands at the time of this Article's writing. That is, we don't try to anticipate future changes to equal protection doctrine that might, for instance, require strict scrutiny for all statutes that refer to race in any way—even if they don't classify by race or aim to harm members of a racial group. To simplify our analysis, we also consider primarily the CTVRA here. As we explained in the previous Part, the CTVRA is the most sweeping SVRA enacted to date as well as one of two SVRAs (the other being the NYVRA) that addresses racial vote denial, racial vote dilution, and retrogression. If the CTVRA is constitutionally valid, then so, a fortiori, must be all other SVRAs currently in operation.[146]

A. *Racial Gerrymandering*

To reiterate, the central legal objection to SVRAs has been that they amount to (or mandate) racial gerrymandering. In the first equal protection assault on the CAVRA, Modesto's "arguments [were] based on Supreme Court cases that struck down specific redistricting plans" on racial gerrymandering grounds.[147] In the Poway case, the plaintiff explicitly invoked the standard for racial gerrymandering claims, contending that "[t]he Equal Protection Clause prohibits any state law . . . in which 'racial considerations predominated over others' unless it can 'withstand strict scrutiny.'"[148] Still more bluntly, the intervenor in the WAVRA case maintained that the statute "makes race not merely one factor or the predominant factor, but the *only* factor in triggering WAVRA litigation remedies and redistricting on racial lines."[149]

As these quotes suggest, the critical threshold issue in a racial gerrymandering case is whether race predominated in the creation of the

[146] To further simplify our analysis, we consider only certain notable provisions of the CTVRA here. It would be unmanageable to assess independently each of the CTVRA's many parts. And we refute only the claims that the CTVRA is subject to strict scrutiny for one reason or another. We don't address whether the CTVRA could be upheld under this very demanding standard.

[147] *Sanchez*, 51 Cal. Rptr. 3d at 843–44.

[148] Petition for Writ of Certiorari at 2, *Higginson*, No. 19-1199 (quoting Cooper v. Harris, 581 U.S. 285, 292 (2017)).

[149] Statement of Grounds for Direct Review at 16, Portugal v. Franklin Cnty., No. 100999-2 (Wash. June 17, 2022).

challenged district. As the Supreme Court put it in the 1995 case that articulated this doctrine, the question is whether "race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district."[150] If race did predominate, then "the design of the district must withstand strict scrutiny."[151] On the other hand, if some non-racial factor predominated—compliance with traditional redistricting criteria, the protection of an incumbent legislator, the pursuit of partisan advantage, and so on—then the disputed district need only survive deferential rational basis review.[152]

Under this framework, there's a glaring flaw in the argument that the CTVRA (or any other SVRA) violates the constitutional prohibition of racial gerrymandering. It's that a racial gerrymandering claim can only be brought against *an individual district*. As the Court made clear in a 2015 case, "[a] racial gerrymandering claim . . . applies to the boundaries of individual districts. It applies district-by-district. It does not apply to a State considered as an undifferentiated 'whole.'"[153] However, the CTVRA obviously isn't an individual district. Instead, it's a statute that's partly *about* redistricting, some of whose provisions establish rules that subsequently drawn districts must follow (like not racially diluting the vote and not retrogressing). A law of this kind can't be attacked as a racial gerrymander because it doesn't specify the metes and bounds of any district. Only a law *doing* redistricting—not one stating how redistricting *should be done*—is potentially vulnerable to this type of equal protection challenge.[154]

To see the point, consider the role of the FVRA in racial gerrymandering cases. Many of the districts targeted in these cases were crafted to comply with Section 2 or Section 5 of the FVRA.[155] Yet the Court has never hinted, let alone held, that the FVRA itself constitutes unlawful racial gerrymandering. To the

---

150 Miller v. Johnson, 515 U.S. 900, 916 (1995).

151 *Cooper*, 581 U.S. at 292.

152 *See, e.g.*, *id.* at 291 (listing non-racial factors including "compactness, respect for political subdivisions, [and] partisan advantage").

153 Ala. Legis. Black Caucus v. Alabama, 575 U.S. 254, 262 (2015).

154 *See, e.g.*, Order Denying Motion for Judgement on the Pleadings at 2, Portugal v. Franklin Cnty., No. 21-2-50210-11 (Wash. Sup. Ct. Jan. 3, 2022) (holding that "the issue of unconstitutional racial gerrymandering is, at best, premature" because "the [WAVRA] is not itself a district plan and no specific district boundaries have been adopted"); Sanchez v. City of Modesto, 51 Cal. Rptr. 3d 821, 844 (Cal. Ct. App. 2006) ("It is equally apparent that [the racial gerrymandering doctrine] does not mean the [CAVRA] must pass strict scrutiny in order to withstand a facial challenge.").

155 In *Cooper*, for example, North Carolina argued that it drew one challenged district "to avoid Section 2 liability for vote dilution." 581 U.S. at 301 (internal quotation marks omitted).

contrary, the Court has recognized compliance with the FVRA as a compelling governmental interest, capable of *saving* a district drawn for a predominantly racial reason if the district was, in fact, narrowly tailored to satisfy the FVRA.[156] In the Court's words in a 2017 case, "[w]hen a State justifies the predominant use of race in redistricting on the basis of the need to comply with the Voting Rights Act, 'the narrow tailoring requirement insists only that the legislature have a strong basis in evidence in support of the (race-based) choice that it has made.'"[157] Under this approach, the CTVRA, like the FVRA, can't itself amount to illegal racial gerrymandering. Rather, compliance with the CTVRA, as with the FVRA, can sometimes rescue a district even in the event that strict scrutiny applies to it.[158]

Critics of SVRAs might respond that we're misunderstanding their argument. Their claim isn't that SVRAs *themselves* are racial gerrymanders, they might say, but rather that SVRAs necessarily *cause the creation* of racially gerrymandered districts. Racially gerrymandered districts could be the remedy after liability has been found in a racial vote dilution suit. Or a jurisdiction could preemptively adopt racially gerrymandered districts in order to avoid racial vote dilution litigation.

Unlike the allegation that the CTVRA is a racial gerrymander, the charge that it inevitably leads to the design of racially gerrymandered districts is at least legally cognizable. If it were the case that the CTVRA "can be validly applied under no circumstances," because racially gerrymandered districts are the only way to remedy or avoid violations of the statute, then the CTVRA would indeed be facially unconstitutional.[159] But it's plainly not the case that the CTVRA has no lawful applications. For one thing, the CTVRA never explicitly or implicitly urges the creation of racially gerrymandered districts. The statute calls only for "appropriate remedies that are tailored to address [statutory] violation[s] . . . and to ensure protected class members have equitable opportunities to fully participate in the political process."[160] Such remedies are conceptually distinct from racially gerrymandered districts for the simple reason that minority voters

---

[156] *See, e.g.*, *id.* ("[W]e have long assumed that complying with the VRA is a compelling interest.").

[157] Bethune-Hill v. Va. State Bd. of Elections, 580 U.S. 178, 193 (2017) (quoting *Ala. Legis. Black Caucus*, 575 U.S. at 278).

[158] One could potentially argue that compliance with a SVRA, unlike compliance with the FVRA, isn't a compelling state interest because a SVRA lacks the grounding of the FVRA in the Fourteenth and Fifteenth Amendments. But the law on what constitutes a compelling state interest is opaque and it's far from clear that a constitutional foundation is germane here.

[159] *Sanchez*, 51 Cal. Rptr. 3d at 837.

[160] CTVRA, Pub. Act No. 23-204, § 411(e)(1), 2023 Conn. Acts at 824–26 (Reg. Sess.).

can enjoy equitable opportunity to full participation in the political process even when they reside in districts not drawn on predominantly racial grounds.

Certain SVRAs (though not the CTVRA) further disfavor the adoption of oddly shaped districts enclosing members of a dispersed minority population. Most districts struck down as unlawful racial gerrymanders have had these characteristics.[161] But certain SVRAs state that "evidence concerning whether members of a protected class are geographically compact or concentrated . . . may be a factor in determining an appropriate remedy."[162] The implication is that, where minority members live close to one another, a reasonably-shaped district encompassing this minority population is a proper remedy. But where minority members *aren't* geographically compact or concentrated, a district zigging and zagging to find dispersed minority members *isn't* a suitable cure for racial vote dilution. Such a district is particularly likely to be deemed an illegal racial gerrymander. Such a district, though, is frowned upon by certain SVRAs.

If a single-member district isn't one, then what is an appropriate remedy where minority members aren't geographically compact or concentrated? We answered this question in the previous Part.[163] In this situation, a system of proportional representation is an appropriate remedy because it makes possible adequate minority representation despite the dispersion of the minority population and without requiring the crafting of contorted districts.[164] Crucially, a system of proportional representation generally can't be attacked as a racial gerrymander because it (like the CTVRA) isn't an individual district. Instead, it's an entity that elects multiple legislators and whose boundaries can't be race-based when (as is typical) they coincide with the borders of the jurisdiction as a whole.[165] Consequently, one more reason why the CTVRA has lawful

[161] In the very first racial gerrymandering case, for example, the challenged district slithered "in snakelike fashion through tobacco country, financial centers, and manufacturing areas 'until it gobble[d] in enough enclaves of black neighborhoods.'" Shaw v. Reno, 509 U.S. 630, 635–36 (1993) (citation omitted).

[162] *E.g.*, N.Y. ELEC. LAW § 17-206(2)(c)(viii) (McKinney 2023); *see also, e.g.*, Pico Neighborhood Ass'n v. City of Santa Monica, No. S263972, 2023 WL 5440486, at *11 (Cal. Aug. 24, 2023) (noting that "California law directs that district boundaries comply with the state and federal Constitutions" and "requires, to the extent practicable" contiguity, compactness, and respect for neighborhoods and communities of interest).

[163] *See supra* notes 89–96 and accompanying text.

[164] Importantly, the CTVRA *does* authorize the imposition of proportional representation even though it lacks the language about the geographic distribution of the minority population being relevant for remedial purposes. The CTVRA defines an "[a]lternative method of election" to include "proportional ranked-choice voting, cumulative voting and limited voting," CTVRA § 410(a)(1), and then confirms that "[a]ppropriate remedies may include . . . an alternative method of election," *id.* § 411(e)(1).

[165] *See, e.g.*, Holder v. Hall, 512 U.S. 874, 909–10 (1994) (Thomas, J., concurring) (describing proportional "voting mechanisms—for example, cumulative voting or a system using transferable votes—that can produce proportional results without requiring division of the electorate into racially segregated districts").

applications (and thus isn't facially invalid) is that it authorizes the imposition of proportional representation, a remedy that can rarely, if ever, constitute racial gerrymandering.[166]

A last response to the argument that the CTVRA necessarily results in the design of racially gerrymandered districts could be experiential—based on what has actually occurred since the statute was enacted. However, the CTVRA became law so recently that there has been no litigation (and essentially no other activity) yet under the statute. Under the CAVRA, in contrast, almost 150 school districts and almost 100 cities have been forced to switch from at-large elections to single-member districts.[167] This vast record gives no support at all to the claim that SVRAs necessarily lead to racial gerrymandering. To the best of our knowledge, *not a single district* created to remedy or avoid a CAVRA violation has been found to be an illegal racial gerrymander. In fact, we're aware of only one suit that has even asserted that any districts drawn because of the CAVRA are unconstitutional. This was the suit by the resident of Poway, whose thrust was that the CAVRA itself is invalid, and whose racial gerrymandering objections to individual districts were summarily rejected by two federal courts. As the Ninth Circuit concluded, "the allegations of the operative complaint fail to plausibly state that [the plaintiff] is a victim of racial gerrymandering" since the "[p]laintiff alleges no facts concerning the City's motivations for placing him or any other Poway voter in any particular electoral district."[168]

To be clear, the fact that no district drawn because of the CAVRA (or any other SVRA) has yet been ruled unconstitutional hardly means that no such district could be struck down in the future. If a Connecticut jurisdiction or court sought to remedy a CTVRA violation by crafting a single-member district on a predominantly racial basis, strict scrutiny would apply to—and might well doom—that district. The same rigorous standard would apply to a single-member district with a predominant racial purpose adopted preemptively to avoid CTVRA litigation. Accordingly, our position here is just that the CTVRA isn't *facially* invalid because it doesn't *inevitably* cause the construction of racially gerrymandered districts. If racially gerrymandered districts are nevertheless formed to cure or prevent infringements of the statute, plaintiffs can

---

[166] *See, e.g.* Law School Clinics Brief, *supra* note 144, at 27 (noting that proportional "[n]on-districted remedies . . . sidestep[] racial gerrymandering concerns altogether").

[167] *See supra* notes 13–14 and accompanying text.

[168] Higginson v. Becerra, 786 F. App'x. 705, 706 (9th Cir. 2019); *see also* Higginson v. Becerra, 363 F. Supp. 3d 1118, 1126–27 (S.D. Cal. 2019) ("[The plaintiff's] allegations do not support the inference that state actors . . . classified [him] into a district because of his membership in a particular racial group.").

certainly challenge those districts under the well-established framework for this cause of action.[169]

B. Racial Classification

Critics of SVRAs have only argued that their prohibitions of racial vote dilution—not of racial vote denial or of retrogression—amount to racial gerrymandering.[170] SVRAs' prohibitions of racial vote dilution have also been the exclusive target of a different kind of equal protection claim: that they classify individuals by race and are, for that reason, subject to strict scrutiny. In particular, critics have maintained that SVRA provisions basing liability in part or in whole on the existence of racially polarized voting are racial classifications. As Modesto put it in the city's attack on the CAVRA, "[r]acially polarized voting is an explicit racial classification subject to strict scrutiny under the Equal Protection Clause."[171] Or in the words of the intervenor in the WAVRA case, because the statute "imposes liability . . . based on the presence of racially polarized voting," it "is a paradigmatic racial classification."[172]

As we just noted, SVRAs' prohibitions of racial vote denial and of retrogression haven't yet been disparaged as racial classifications. But they might be in the future. The CTVRA's ban of racial vote denial bases liability on racial disparities in political participation as well as race-related factors like a jurisdiction's history of racial discrimination, racial differences in socioeconomic status, and racial appeals in campaigns.[173] Similarly, the CTVRA's preclearance formula covers jurisdictions due to their civil rights violations, racial differences in arrest rates, or racial differences in voter turnout.[174] The retrogression standard that applies to covered jurisdictions is also race-related in that it asks whether a new electoral policy worsens the electoral position of a racial group.[175] And more generally, SVRAs in their entirety

[169] *See, e.g.*, Portugal v. Franklin Cnty., 530 P.3d 994, 1006 (Wash. 2023) ("Strict scrutiny could certainly be triggered in an *as-applied* challenge to districting maps that sort voters on the basis of race . . . ." (internal quotation marks omitted)); Sanchez v. City of Modesto, 51 Cal. Rptr. 3d 821, 844 (Cal. Ct. App. 2006) ("In reviewing a district-based remedy [to a CAVRA violation], it would be necessary to determine whether race was the predominant factor used in drawing the district lines. If it was, the plan would be subject to strict scrutiny.").

[170] This focus is likely attributable to the fact that most SVRAs only address racial vote dilution. Racially gerrymandered districts are also even less likely to be formed because of prohibitions of retrogression, which merely aim to preserve the status quo ante.

[171] Petition for Writ of Certiorari at 5, City of Modesto v. Sanchez, No. 07-88 (U.S. July 19, 2007).

[172] Brief of Appellant at 42, Portugal v. Franklin Cnty., 530 P.3d 994 (Wash. 2023) (No. 100999-2).

[173] *See supra* notes 54–57 and accompanying text.

[174] *See supra* note 130 and accompanying text.

[175] *See supra* note 131 and accompanying text.

arguably classify by race because they ground eligibility to bring suit in membership in a racial group. Per the plaintiff in the Poway case, "[t]he [CAVRA] focuses exclusively on race[] by putting voters into racial groups."[176] In the interest of thoroughness, we rebut all these potential racial classification claims, too, even though they have been advanced rarely, if at all, to date.

Before proceeding with these rebuttals, we need a working definition of a racial classification. The closest the Supreme Court has come to giving us one[177] is its statement in the 2007 case of *Parents Involved in Community Schools v. Seattle School District No. 1* that "when the government distributes burdens or benefits on the basis of individual racial classifications, that action is reviewed under strict scrutiny."[178] This statement echoes the Court's conclusion in a 1982 case that a law "does *not* embody a racial classification" if "it neither says nor implies that persons are to be treated differently on account of their race."[179] Also analogous is Justice Powell's formulation in a 1978 case that "a [racial] classification denies an individual opportunities or benefits enjoyed by others solely because of his race."[180] Generalizing from these and other passages,[181] a reasonable definition of a racial classification is a legal provision that (1) distributes burdens or benefits (2) to individuals (3) on the basis of individuals' race.[182]

Using this definition, it's apparent the CTVRA doesn't classify by race to the extent it imposes liability because of "divergent voting patterns," that is, racially polarized voting.[183] Liability under this provision means that a *jurisdiction* must change its racially dilutive electoral system—say, from at-large to districted elections or from one district map to another. This shift might be a burden for a jurisdiction, but it surely isn't a cognizable harm or benefit for

[176] Petition for Writ of Certiorari, *supra* note 143, at 27; *see also* Yumori-Kaku v. City of Santa Clara, 273 Cal. Rptr. 3d 437, 471 (Cal. Ct. App. 2020) ("The City generally asserts that the [CAVRA] uses race-based classifications . . . to authorize a challenge by a member of a protected class . . . .").

[177] *Cf.* Reva B. Siegel, *From Colorblindness to Antibalkanization: An Emerging Ground of Decision in Race Equality Cases*, 120 YALE L.J. 1278, 1362 (2011) (complaining that "to date, the Court has never defined what a racial classification is").

[178] 551 U.S. 701, 720 (2007).

[179] Crawford v. Bd. of Educ. of City of Los Angeles, 458 U.S. 527, 537 (1982) (emphasis added).

[180] Regents of Univ. of Cal. v. Bakke, 438 U.S. 265, 305 (1978).

[181] *See, e.g.*, Schuette v. Coal. to Defend Affirmative Action, 572 U.S. 291, 331 (2014) (Scalia, J., concurring) ("A law that 'neither says nor implies that persons are to be treated differently on account of their race' is not a racial classification" (quoting *Crawford*, 458 U.S. at 537)).

[182] *Cf.* Stephen Menendian, *What Constitutes a "Racial Classification"?: Equal Protection Doctrine Scrutinized*, 24 TEMP. POL. & CIV. RTS. L. REV. 81, 102 (2014) (offering a similar definition of a racial classification).

[183] CTVRA, Pub. Act No. 23-204, § 411(b)(2)(A), 2023 Conn. Acts at 821 (Reg. Sess.).

any *individual*. After all, no individual has to do anything in response to a statutory violation. Voters keep voting as they did before, just under a new non-dilutive system rather than the old dilutive one. Moreover, even if a change in electoral structure were somehow an individual injury, it isn't required by the statute on account of any individual's race. A jurisdiction isn't forced to switch electoral systems because any individual (or group of individuals) is Black, Latino, Asian, white, or anything else. Instead, liability ensues only when members of different racial groups vote in different ways—so due to their *behavior*, not their *racial affiliation*.[184]

But isn't a requirement of racially polarized voting a race-conscious criterion? Of course it is, but that's not the test for whether a provision is a racial classification. A provision can acknowledge race, refer to race, call for the analysis of race-related issues, but it's still not a racial classification if it doesn't use race to distribute burdens or benefits to individuals. As the Supreme Court made clear in a 2015 case, a statute's "mere awareness of race in attempting to solve [race-related] problems . . . does not doom that endeavor at the outset."[185] Or as a California court explained in rejecting the city of Modesto's challenge to the CAVRA, "a statute is [not] automatically subject to strict scrutiny because it involves race consciousness even though it does not . . . impose any burden or confer any benefit on any particular racial group."[186]

Additionally, you might think from their critics' emphasis on racially polarized voting that establishing its existence is an innovation of SVRAs. However, nothing could be further from the truth. Proving racially polarized voting was the *Supreme Court's* idea for a precondition for liability in racial vote dilution claims brought under Section 2 of the *FVRA*. In *Gingles*, the Court made the political cohesiveness of the minority group the second prerequisite for a Section 2 violation and white bloc voting the third condition.[187] Together, as we mentioned earlier, the second and third *Gingles* prongs create a requirement of racial polarization in voting.[188] Consequently, if the CTVRA classifies by race

[184] *See, e.g.*, Sanchez v. City of Modesto, 51 Cal. Rptr. 3d 821, 837 (Cal. Ct. App. 2006) (holding that the CAVRA "does not allocate benefits or burdens on the basis of race or any other suspect classification").

[185] Tex. Dep't of Hous. & Cmty. Aff. v. Inclusive Communities Project, Inc., 576 U.S. 519, 545 (2015).

[186] *Sanchez*, 51 Cal. Rptr. 3d at 838; *see also, e.g.*, Radogno v. Ill. State Bd. of Elections, No. 1:11-cv-04884, 2011 WL 5025251, at *8 (N.D. Ill. Oct. 21, 2011) ("[R]edistricting laws *can* take race into consideration."); Order Denying Motion for Judgement on the Pleadings at 4, Portugal v. Franklin Cnty., No. 21-2-50210-11 (Wash. Sup. Ct. Jan. 3, 2022) ("[T]he [WAVRA], while race conscious, does not discriminate based on race.").

[187] *See* Thornburg v. Gingles, 478 U.S. 30, 51 (1986).

[188] *See supra* note 69 and accompanying text.

because it asks for a showing of racially polarized voting, then so does the FVRA. If the CTVRA is subject to strict scrutiny for this reason, then so is the FVRA.[189] But that conclusion is untenable. Not only is it in conflict with more than forty years of FVRA rulings—none of which has suggested that the FVRA is valid only if it can survive the most stringent possible review—it would also represent a virtual death sentence for one of the most important and impactful laws in American history. Moreover, this virtual death sentence would be issued in the wake of the Court's emphatic holding in the 2023 case of *Allen v. Milligan* that Section 2 of the FVRA *is* constitutional.[190]

Turning from racial vote dilution to racial vote denial, the CTVRA relies on a legal standard similar to that of Section 2 of the FVRA. The CTVRA forbids any electoral practice that "results in an impairment of the right to vote for any protected class member."[191] In comparable language, Section 2 bans any electoral practice that "results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color."[192] The above argument about the equivalence of the CTVRA and Section 2 with respect to racially polarized voting therefore applies equally with respect to racial vote denial. If the CTVRA's prohibition of racial vote denial is a racial classification subject to strict scrutiny, then so is the FVRA's parallel provision. But since no court has intimated that the FVRA's prohibition of racial vote denial classifies by race, the CTVRA's parallel provision should also be safe from this charge.[193]

It's true the CTVRA identifies several circumstances probative of liability in racial vote denial cases that are different from *Brnovich*'s list of factors for FVRA litigation, more advantageous for plaintiffs, and related to race.[194] But *Brnovich* never implied, let alone insisted, that its factors were constitutionally compelled. To the contrary, *Brnovich* presented its factors as the products of ordinary statutory interpretation—as "circumstance[s] that ha[ve] a logical bearing on whether voting is 'equally open' and affords equal 'opportunity.'"[195]

---

[189] *See, e.g.*, *Sanchez*, 51 Cal. Rptr. 3d at 838 ("If the [CAVRA] were subject to strict scrutiny because of its reference to race, so would . . . the FVRA . . . .").

[190] *See* 143 S. Ct. 1487, 1516 (2023) ("We also reject Alabama's argument that § 2 as applied to redistricting is unconstitutional under the Fifteenth Amendment.").

[191] CTVRA, Pub. Act No. 23-204, § 411(a)(1), 2023 Conn. Acts at 820–21 (Reg. Sess.).

[192] 52 U.S.C. § 10301(a).

[193] More technically, the CTVRA's prohibition of racial vote denial, like its requirement of racially polarized voting, doesn't distribute any burdens or benefits to *individuals* (as opposed to *jurisdictions*), and doesn't impose liability because any individual (or group of individuals) affiliates with any race. *See supra* notes 183–84 and accompanying text.

[194] *See* CTVRA § 411(c)(1).

[195] Brnovich v. Democratic Nat'l Comm., 141 S. Ct. 2321, 2338 (2021) (quoting 52 U.S.C. § 10301(b)).

That the CTVRA's factors are easier for plaintiffs to establish than are *Brnovich*'s is also constitutionally irrelevant. A statutory provision that doesn't satisfy the definition of a racial classification doesn't turn into one because it puts a thumb on the scale in favor of plaintiffs. And as to that definition, several of the CTVRA's factors may be race-conscious, but none of them actually turns on the race of any individual (or group of individuals). Inquiring into a jurisdiction's history of racial discrimination, the existence of a racial gap in turnout, racial differences in socioeconomic status, or racial appeals in campaigns is entirely different from asking if a person affiliates with a certain race (and then distributing burdens or benefits to that person on that basis).[196]

It's true as well that liability is possible under the CTVRA, but not under the FVRA, solely because an electoral practice produces a racial disparity in political participation.[197] But "[t]he size of any disparities in a rule's impact on members of different racial or ethnic groups" *was* one of *Brnovich*'s factors, just not the *only* one.[198] A disparate impact element doesn't transmute into a racial classification simply because it's unaccompanied by other factors that also have to be analyzed. The Supreme Court recently confirmed, too, that there's nothing constitutionally objectionable about voting rights laws that target racially discriminatory effects. In *Milligan*, the Court "foreclose[d] any argument that Congress may not . . . outlaw voting practices that are discriminatory in effect."[199] According to the Court, such disparate impact provisions are "an appropriate method of promoting the purposes of the Fifteenth Amendment."[200]

Next, the CTVRA's preclearance regime closely resembles the one that used to operate under Section 5 of the FVRA. The main difference of note is that the CTVRA's coverage formula uses rolling and recent—not static and old—data.[201] By now, the reasons why this statutory approach doesn't constitute a racial classification should be familiar. First, no court ever intimated that Section 5's preclearance regime classified by race. If Section 5 didn't do so, then neither does the analogous provision of the CTVRA. Second, this part of the CTVRA

---

196 *See* CTVRA § 411(c)(1).

197 *See id.* § 411(a)(2)(A).

198 *Brnovich*, 141 S. Ct. at 2339.

199 Allen v. Milligan, 143 S. Ct. 1487, 1516 (2023) (internal quotation marks omitted).

200 *Id.* (internal quotation marks omitted).

201 *See* CTVRA § 414(c)(1); *see also supra* note 130 and accompanying text. The other material difference is that the CTVRA allows preclearance to be denied not just for retrogression but also for other kinds of racial discrimination in voting. *See* CTVRA § 414(e)(2)(F)(i), 414(f)(3)(B). As the rest of this section discusses, prohibitions of those other kinds of racial discrimination in voting—racial vote denial and racial vote dilution—aren't racial classifications either.

applies only to jurisdictions. Jurisdictions are covered if they have committed civil rights violations, failed to comply with their data disclosure obligations, or exhibited large racial differences in arrest or voter turnout rates.[202] Covered jurisdictions are barred from changing their election laws if the shifts will worsen the electoral position of a racial group or otherwise violate the statute.[203] As a result, this part of the CTVRA *doesn't* apply to individuals. It doesn't distribute any burdens or benefits to particular people. And third, the race-related aspects of the CTVRA's preclearance regime—its coverage formula and preclearance standard—don't hinge on anyone's racial affiliation. Coverage isn't extended, nor is preclearance denied, because anyone affiliates with one race or another. These events occur, rather, because of empirical realities. A jurisdiction has a poor civil rights record, a jurisdiction has a stark racial gap in voter turnout, a jurisdiction's proposed electoral policy would reduce a racial group's electoral influence, and so on. These facts about the world do pertain to race, but they don't collapse into a criterion of racial affiliation.

What about *Shelby County*? How can the CTVRA's preclearance regime be valid after that decision struck down the FVRA's coverage formula? The answer is that *Shelby County* dealt only with Congress's authority to enact legislation to enforce the Fifteenth Amendment. To do so constitutionally, the Court held, Congress must at least act rationally.[204] In the Court's view, however, it was "irrational for Congress to distinguish between States . . . based on 40-year-old data, when today's statistics tell an entirely different story."[205] This ruling plainly has no bearing on the lawfulness of the CTVRA. Unlike the FVRA, the CTVRA isn't congressional legislation. It's a *state* statute, to which the doctrine about Congress's power to enforce the Fifteenth Amendment is wholly inapplicable.[206] Moreover, even if *Shelby County*'s rule that "a coverage formula [must be] grounded in current conditions"[207] somehow extended to a state statute, the CTVRA would pass with flying colors. Again, the key way in which the CTVRA's preclearance regime differs from the FVRA's is its use of a coverage formula that incorporates rolling, recent data.[208]

---

[202] *See* CTVRA § 414(c)(1).

[203] *See id.* § 414(e)(2)(F), 414(f)(3).

[204] *See* Shelby Cnty. v. Holder, 570 U.S. 529, 531, 546, 550–51, 554, 556 (2013).

[205] *Id.* at 556.

[206] *See, e.g.*, Sanchez v. City of Modesto, 51 Cal. Rptr. 3d 821, 838–39 (Cal. Ct. App. 2006) (observing that doctrine about congressional authority to enforce the Reconstruction Amendments "has nothing to do with strict scrutiny" because "[i]t is about the source of constitutional power for Congress' enactment of certain types of statutes, not the constitutional right of individuals to be free from discrimination").

[207] *Shelby Cnty.*, 570 U.S. at 554.

[208] *See* CTVRA § 414(c)(1).

This leaves only the unfocused allegation that SVRAs in their entirety are racial classifications because they base eligibility to bring suit on membership in a racial group. To begin with, this claim is factually incorrect with respect to the CTVRA. Under the statute, "*[a]ny* individual aggrieved by a violation of this section . . . may file an action" asserting racial vote denial or racial vote dilution—*not* just a person with a particular racial affiliation.[209] And *no* person may launch litigation on account of retrogression since the CTVRA's preclearance regime doesn't authorize private enforcement.[210] In addition, eligibility to bring suit is an odd, even ethereal, individual benefit in this context. That's because of what follows if a SVRA action succeeds. The plaintiff doesn't receive a concrete asset like employment, housing, or admission to an educational institution. Instead, the jurisdiction has to change its challenged electoral policy to one that no longer denies or dilutes the vote on racial grounds. With respect to this jurisdiction-wide remedy, the plaintiff is in the same position as any other voter, or at least any other voter with the same racial affiliation. The remedy is in no way limited to the plaintiff or tailored to the plaintiff's individual circumstances.[211]

Lastly, this argument about race-based eligibility to bring suit, too, falls victim to the analogy to the FVRA. Under Section 2, only members of a particular racial group—the group alleged to suffer racial vote denial or racial vote dilution—have standing to sue. As Heather Gerken writes in a seminal article on Section 2, "[c]ourts . . . grant[] standing to . . . *members of the minority group* who reside . . . within the state or locality."[212] This feature of Section 2 doctrine has never been thought to transform the provision into a racial classification. By the same token, it shouldn't have that effect on SVRAs that racially restrict who may serve as a plaintiff. And this point can be generalized beyond Section 2 to all disparate impact, even all antidiscrimination, laws. Who's injured by, and so has standing to dispute, a practice that causes a racial disparity? A person who affiliates with the racial group that's disadvantaged by that disparity. Likewise, who's harmed by, and can go to court over, intentional racial discrimination? Again, a member of the racial group targeted by the

---

[209] *Id.* § 411(d) (emphasis added).

[210] *See id.* § 414. *But see, e.g.*, CAL. ELEC. CODE § 14032 (West 2002) (stating that, under the CAVRA, "[a]ny voter *who is a member of a protected class* . . . may file an action" (emphasis added)).

[211] *Cf., e.g.*, League of United Latin Am. Citizens v. Abbott, 604 F. Supp. 3d 463, 485–86 (W.D. Tex. 2022) ("A person has standing to bring racial-discrimination, racial-gerrymandering, malapportionment, or Section 2 vote-dilution claims only where she resides, votes, and personally suffers such injuries.").

[212] Heather K. Gerken, *Understanding the Right to an Undiluted Vote*, 114 HARV. L. REV. 1663, 1690 (2001) (emphasis added).

deliberate discriminatory action.[213] If these commonsense rules amounted to racial classifications, then strict scrutiny would apply to—and mark the effective end of—the entire antidiscrimination project.[214]

C. *Racially Discriminatory Intent*

Under current equal protection law, there's one final route through which SVRAs could be subject to strict scrutiny. Even if these policies are neither racial gerrymanders nor racial classifications, they would still be presumptively invalid if their underlying objectives were racially discriminatory. Modesto made exactly this accusation in its attack on the CAVRA. "[E]ven if the [CAVRA] is facially neutral," the city maintained, "it is subject to strict scrutiny because it was enacted *solely* for racial purposes, i.e., to remedy racial bloc voting in at-large voting systems."[215] The plaintiff in the Poway case leveled the same charge against the CAVRA. Supposedly, "there [was] direct evidence of legislative purpose and intent that confirms" the CAVRA's racially discriminatory aims.[216] "The legislature . . . wanted the [CAVRA] to make race a *more* prominent factor than does the federal Voting Rights Act . . . ."[217]

Crucially, current doctrine distinguishes between *invidious* racial purposes, which subject facially neutral laws to strict scrutiny, and other race-conscious purposes, which don't. In the 1976 case that first established this doctrine, the Supreme Court announced "the basic equal protection principle" that "an *invidious* discriminatory purpose" is "forbidden by the Constitution."[218] In the 1977 sequel that identified types of evidence probative of racially discriminatory intent, the Court reiterated the constitutional issue: "whether *invidious* discriminatory purpose was a motivating factor" for the challenged governmental action.[219] More recently, the Court has confirmed the continuing

---

[213] *See, e.g.*, Girardeau A. Spann, *Color-Coded Standing*, 80 CORNELL L. REV. 1422, 1422–23 (1995) (observing that white plaintiffs typically have standing to challenge affirmative action programs).

[214] *See, e.g.*, Portugal v. Franklin Cnty., 530 P.3d 994, 1006 (Wash. 2023) (commenting that if "the [WAVRA] makes 'racial classifications' by recognizing the existence of race, color, and language minority groups[,] . . . then every statute prohibiting racial discrimination or mandating equal voting rights would be subject to facial equal protection challenges triggering strict scrutiny").

[215] Sanchez v. City of Modesto, 51 Cal. Rptr. 3d 821, 843 (Cal. Ct. App. 2006) (internal quotation marks omitted).

[216] Petition for Writ of Certiorari, *supra* note 143, at 28 (internal quotation marks omitted).

[217] *Id.*

[218] Washington v. Davis, 426 U.S. 229, 240, 242 (1976) (emphasis added).

[219] Village of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 266 (1977) (emphasis added); *see also, e.g.*, Personnel Adm'r of Mass. v. Feeney, 442 U.S. 256, 279 (1979) ("'Discriminatory purpose' . . . implies that the decisionmaker [took] a particular course of action at least in part 'because of,' not merely 'in

force of this distinction by holding that facially neutral measures with benign race-conscious purposes don't trigger strict scrutiny. As we pointed out above, the "mere awareness of race" of the Fair Housing Act "does not doom that [statute]" by resulting in the application of strict scrutiny.[220] Similarly, facially neutral but "race conscious" school district policies that "pursue the goal of bringing together students of diverse backgrounds and races" don't "demand strict scrutiny to be found permissible."[221]

Under this framework, SVRAs don't warrant strict scrutiny because their objectives are race-conscious but not invidious. Certain SVRAs helpfully articulate their "[l]egislative purpose[s]," which include defending "against the denial or abridgement of the voting rights of members of a race, color, or language-minority group" and "[e]nsuring that eligible voters who are members of racial, color, and language-minority groups shall have an equal opportunity to participate in the political processes of the state . . . and especially to exercise the elective franchise."[222] These goals refer to race but can't be characterized as malicious or malignant. They don't aspire to deny anyone the right to vote on a racial basis. Nor do they seek the dilution or retrogression of any racial group's electoral influence. To the contrary, SVRAs' aims are to *prevent* and *remedy* racial discrimination in voting—to *cure* and *avoid* racial vote denial, racial vote dilution, and retrogression. These are quintessentially benign purposes, representing attempts to heal rather than to inflict race-related injuries in the electoral arena. As a California court reasoned in the Modesto case, "[a] legislature's intent to remedy a race-related harm" simply doesn't "constitute[] a racially discriminatory purpose."[223]

---

spite of,' its adverse effects upon an identifiable group." (quoting United Jewish Org. v. Carey, 430 U.S. 144, 179 (1977) (plurality opinion))).

[220] Tex. Dep't of Hous. & Cmty. Aff. v. Inclusive Communities Project, Inc., 576 U.S. 519, 545 (2015).

[221] Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 789 (2007) (Kennedy, J., concurring in part and concurring in the judgment); *see also, e.g.*, Fisher v. Univ. of Tex. at Austin, 579 U.S. 365, 385–86 (2016) (assuming the validity of Texas's Top Ten Percent Plan, which, "though facially neutral, cannot be understood apart from its basic purpose, which is to boost minority enrollment"). Racial gerrymandering is an arguable exception to this doctrine in that a *predominant* (not *any*) racial purpose must be proven and this racial purpose need not be invidious to trigger strict scrutiny. *See supra* Part II.A. If this approach became generally applicable, potential strategies for future SVRAs could include (1) enabling members of all kinds of communities, not just racial groups, to bring claims; (2) requiring plaintiffs advancing claims as members of racial groups to show that these groups also have salient nonracial dimensions; and (3) simply mandating proportional representation, under which proportionality ensues with respect to whichever cleavages, racial or nonracial, are most politically significant.

[222] *E.g.*, N.Y. ELEC. LAW § 17-200 (McKinney 2023). The CTVRA doesn't specify its legislative purposes.

[223] Sanchez v. City of Modesto, 51 Cal. Rptr. 3d 821, 843 (Cal. Ct. App. 2006).

Bolstering this conclusion is the fact that the CTVRA doesn't try to limit its safeguards to members of any particular minority group—or even to minority as opposed to nonminority members. *Any* "protected class member" may bring claims of racial vote denial or racial vote dilution.[224] By the same token, retrogression of the electoral position of *any* "protected class members" is prohibited.[225] In turn, "[p]rotected class" is defined as *any* "class of citizens who are members of a race, color, or language minority group."[226] Accordingly, Black, Latino, Asian, and white citizens alike are equally protected by the CTVRA. And so, even if the shielding of minority citizens alone could somehow be seen as invidious—not a proper recognition that these individuals have borne the brunt of racial discrimination in voting historically—that's not what the CTVRA does. Instead, it enables members of all racial groups to win relief, and to get preclearance denied to covered jurisdictions, if the statute's criteria are satisfied. This evenhandedness only reinforces how implausible a finding of intentional malice would be in this context.[227]

Such a finding would be implausible for one last reason: It would be impossible to limit to the CTVRA. Remember that the argument that the CTVRA has an invidious racial purpose is that it strives to end racial discrimination in voting.[228] This logic applies equally to the FVRA, which has the same hope (just pursued through less potent means) of elections untainted by racial vote denial, racial vote dilution, and retrogression.[229] But why stop with the FVRA? Myriad disparate treatment and disparate impact statutes, federal and state, target some kind of racial discrimination. Justice Scalia once alluded to "the evil day" when the Court would "have to confront the question" of whether antidiscrimination laws are "consistent with the Constitution's guarantee of equal protection."[230] Subjecting the CTVRA to strict scrutiny because of its allegedly intentional malice would sharply and unnecessarily hasten the arrival of that evil day. And speaking of the Constitution's equal protection guarantee, what it promises, above all, is that the government won't discriminate on the basis of race. In other words, the Constitution's equal protection guarantee is

[224] CTVRA, Pub. Act No. 23-204, § 411(a)–(b), 2023 Conn. Acts at 820–23 (Reg. Sess.).

[225] *Id.* § 414(e)(2)(F)(i)(I), 414(f)(3)(A).

[226] *Id.* § 410(a)(9).

[227] *See, e.g.*, Portugal v. Franklin Cnty., 530 P.3d 994, 999 (Wash. 2023) (reasoning that because "[t]he [WAVRA] protects *all* Washington voters from discrimination on the basis of race, color, and language minority group, . . . the [WAVRA] does not require race-based favoritism in local electoral systems").

[228] *See supra* notes 215–17 and accompanying text.

[229] *See, e.g.*, South Carolina v. Katzenbach, 383 U.S. 301, 315 (1966) ("The Voting Rights Act of 1965 reflects Congress' firm intention to rid the country of racial discrimination in voting.").

[230] Ricci v. DeStefano, 557 U.S. 557, 594 (2009) (Scalia, J., concurring).

itself an antidiscrimination provision, of the sort that would be suspect if this argument against the CTVRA were to succeed. This argument must therefore fail since no claim *based* on the Equal Protection Clause can imply the Clause's *own* invalidity.

III. EXTENDING SVRAS

So far we've explained how state voting rights acts diverge from the federal Voting Rights Act and why SVRAs are constitutional despite these departures. Our one remaining goal in this Article is to explore how SVRAs could be made (even) more practically effective and less legally vulnerable. The backdrop for this discussion is that SVRAs are still quite novel. Almost all SVRA litigation to date has occurred in just one state: California. All this CAVRA litigation has involved at-large elections because the CAVRA doesn't apply to single-member districts. Outside California, there have been only a handful of racial vote dilution challenges under SVRAs. As far as we're aware, there have been no racial vote denial challenges yet under SVRAs. Nor have any covered jurisdictions' proposed electoral changes yet been denied preclearance.

In light of the paucity and recency of this activity, there's no reason to treat existing SVRAs as sacred cows—fixed policies whose parameters must all be faithfully preserved. The better attitude, we think, is to approach SVRAs flexibly, experimentally, with the aim of improving these measures through iterative trial and error. It's in this spirit that Maryland, Michigan, and New Jersey are currently drafting SVRAs. These states aren't slavishly copying any given statute; instead, they're picking and choosing among existing SVRAs' provisions while devising new elements of their own. It's also in this spirit that states that have already enacted SVRAs are contemplating reforms to their policies. California considered extending the CAVRA to single-member districts in 2014.[231] Washington recently updated its SVRA, among other things, to clarify the analysis of racially polarized voting and to expand organizational standing.[232] New York may soon add to its SVRA a requirement that a statewide electoral database be created.[233]

It's in this spirit, too, that we offer a menu of potential changes to SVRAs in this Part. All our proposals share the fundamental objective of fighting racial

---

[231] *See, e.g.*, ASSEMB. COMM. ON JUDICIARY 2013–2014 REG. SESS., BILL ANALYSIS of S.B. 1365, at 3 (as amended Aug. 7, 2014).

[232] *See* 2023 Wash. Legis. Serv. 3–5 (West).

[233] *See* S. 657, 205th Leg. (N.Y. 2023).

discrimination in voting even more vigorously than do existing SVRAs (let alone the FVRA). All our proposals thus diverge even further from the federal voting rights floor than do the SVRAs now in operation. In addition, our proposals span the three kinds of racial discrimination in voting: racial vote denial, racial vote dilution, and retrogression. Racial vote dilution is our focus, though, reflecting the prioritization of most SVRAs. Furthermore, some of our proposals not only sharpen SVRAs' swords but also strengthen their shields against legal attacks. As we elaborated in the previous Part, these attacks seem fairly feeble to us. But it's still prudent to minimize SVRAs' legal exposure. Lastly, a few of our proposals aren't entirely novel in that they're adopted to some degree by the CTVRA. We still expound on these proposals both because the ink on the CTVRA is barely dry and because the statute includes these measures partly on account of consultations with us.

A. *Mandates for Localities*

Our first idea is for SVRAs simply to *direct* substate jurisdictions to adopt particular electoral practices. Like Section 2 of the FVRA, all SVRAs currently rely on conventional litigation to achieve their ends.[234] Like Section 5 of the FVRA, Connecticut's, New York's, and Virginia's SVRAs also require preclearance for certain policies and localities.[235] Litigation and preclearance are hardly toothless—but they do tend to result in gradual and piecemeal progress. Even successful litigation takes time to unfold. Litigation proceeds jurisdiction by jurisdiction, too, targeting each defendant individually. And when preclearance is paired with a non-retrogression rule, it doesn't necessarily yield *any* progress. Rather, it merely guards against the deterioration of the status quo ante.

In contrast, mandates for substate localities produce essentially immediate and universal change. Being non-sovereign instrumentalities of the state, localities have no choice but to comply when ordered by the state to take some action. For an illustration, think of at-large elections in California. The CAVRA makes it quite easy for plaintiffs to win suits alleging that at-large elections are racially dilutive.[236] Nevertheless, more than twenty years after the passage of the CAVRA, the vast majority of California cities and school districts continue to use at-large elections. We noted earlier that almost 100 cities and almost 150

[234] *See supra* Parts I.A–B.
[235] *See supra* Part I.C.
[236] Indeed, as we previously observed, "[n]o defendant has ever prevailed in a [CAVRA] case." Powell, *supra* note 12, at 2.

school districts have been compelled to switch electoral systems by the CAVRA.[237] These figures sound impressive until you realize how many more localities *haven't* switched electoral systems. Approximately *400* cities and *800* school districts in California still rely on at-large elections, despite decades of CAVRA enforcement under a pro-plaintiff standard.[238] By comparison, suppose the CAVRA had simply required all jurisdictions to abandon at-large elections and to elect representatives using single-member districts. Then more than twenty years of costly litigation would have been avoided, and at-large elections would be a distant memory—not a mainstay of the municipal landscape—in California.

For another example, consider systems of proportional representation. Recall that several SVRAs suggest that proportional representation can be an appropriate remedy after liability for racial vote dilution is established.[239] Exactly two localities, Albany and Palm Desert, have actually implemented forms of proportional representation in response to CAVRA actions.[240] Imagine, however, that a SVRA had directly instructed jurisdictions to switch to proportional representation, not indirectly authorized proportional representation as available relief in the wake of victorious litigation. Then in one fell swoop, that SVRA would have brought proportional representation to more localities than all the efforts of all municipal reformers over all of American history.[241] Proponents of proportional representation would no longer have to be content with the crumbs of the Albany and Palm Desert wins (which were consensual settlements, not court-imposed remedies). Instead, these activists could celebrate an entire state breaking with American tradition and spreading proportional representation to every municipal nook and cranny.[242]

At-large elections are a cause of, and systems of proportional representation are a cure for, racial vote dilution. In the racial vote denial context, Connecticut's and New York's SVRAs further illustrate how much more potent mandates can

[237] *See supra* notes 13–14 and accompanying text.

[238] *See* Abott & Magazinnik, *supra* note 13, at 721 (noting that 138 of 978 California school districts have switched electoral systems); Hertz, *supra* note 14, at 214 (noting that more than 80 California cities have switched electoral systems); *Cities in California*, BALLOTPEDIA, https://ballotpedia.org/Cities_in_California (last visited Aug. 15, 2023) (noting that California has 482 cities).

[239] *See supra* notes 89–94 and accompanying text.

[240] *See supra* notes 95–96 and accompanying text.

[241] *Cf.* JACK SANTUCCI, MORE PARTIES OR NO PARTIES: THE POLITICS OF ELECTORAL REFORM IN AMERICA (2022) (discussing the history of municipal proportional representation in the United States).

[242] Less potent than a mandate that jurisdictions switch to proportional representation, but still more effective than the status quo, would be a presumption that proportional representation is the appropriate remedy in any successful racial vote dilution suit under a SVRA.

be than lawsuits. Remember that the CTVRA and the NYVRA identify several remedies that courts *can* grant after finding unlawful racial vote denial: more time to vote, more polling locations, additional means of voting, additional opportunities to register to vote, and so on.[243] To date, courts *haven't* actually granted any of these remedies, because no racial vote denial claim under the CTVRA or the NYVRA has yet succeeded. But say these statutes had decreed that jurisdictions must facilitate voting in these ways, not merely recognized such facilitation as permissible relief after a determination of liability. Then casting ballots would already be substantially easier throughout Connecticut and New York. All the desired improvement in registering to vote and voting would be a fact of the past, not a hope for the future.

The promise of immediate and universal progress, then, is the primary advantage of mandates over existing SVRAs' procedures. A secondary benefit is that mandates are facially race-neutral. They don't refer to race in any way. They simply order localities to adopt certain electoral practices, like single-member districts, forms of proportional representation, or voting expansions. As a result, mandates can't possibly be accused of *classifying* by race since they don't even *mention* race. They're completely immune from the charge that they're racial classifications subject for that reason to strict scrutiny. Now, we argued at length in the previous Part that existing SVRAs don't classify by race either because they don't distribute burdens or benefits to individuals on the basis of their race.[244] We stand by that argument, but we acknowledge that it hinges on the distinction between classifying by, and referring to, race. In contrast, the claim that mandates aren't racial classifications doesn't depend on that distinction. Rather, it follows from the even more incontrovertible point that mandates are entirely mute about race.[245]

A potential concern about mandates is that they're so procedurally different from litigation and preclearance that they don't belong in SVRAs. It's true that mandates aren't a tactic used by existing SVRAs or by the provisions of the FVRA—Section 2 and Section 5—on which existing SVRAs are modeled.[246]

---

[243] *See supra* notes 48–54 and accompanying text.

[244] *See supra* Part II.B.

[245] Mandates that jurisdictions switch to proportional representation are also essentially immune from the charge that they lead to unlawful racial gerrymandering. As we discussed above, a system of proportional representation isn't a single-member district and doesn't typically rely on any race-based boundaries. *See supra* notes 165–66 and accompanying text.

[246] Though note that, in the same session in which the VAVRA was enacted, the use of at-large elections with residency districts was entirely banned by the legislature through a separate law. *See* VA. CODE ANN. § 24.2-222 (2021).

But *other* parts of both the original FVRA and its subsequent amendments *do* rely on mandates. For instance, Section 4 of the original FVRA prohibits covered jurisdictions from enforcing literacy, educational achievement, and good moral character tests for voting.[247] Likewise, the 1970 amendments to the FVRA require states to enfranchise citizens over the age of eighteen,[248] to eliminate early registration deadlines for presidential elections, and to allow voters to vote absentee in presidential elections.[249] Consequently, there's ample precedent for including mandates in voting rights laws and no basis for thinking that mandates are inappropriate in this context. The FVRA's most famous provisions may not be mandates but several of the statute's other key elements are indeed commands that certain electoral practices be embraced or eschewed.

Of course, such commands aren't advisable in all circumstances. A state may not wish to forbid a policy across the board because the state doesn't believe the policy constitutes racial vote denial or racial vote dilution in all cases. In this scenario, the state is better off deferring the issue of the policy's validity to future judicial or administrative decisionmakers through the vehicles of litigation or preclearance. Or a state may have a normative or even a constitutional commitment to local autonomy over some aspects of elections. If so, mandates are more intrusive and less respectful of local control than are remedies imposed only after successful litigation or denials of preclearance issued only in the event of retrogression. Our argument here, then, isn't that mandates are always preferable to more complex procedures like litigation and preclearance. Our more modest point, instead, is just that mandates belong on the menu of options for drafters of SVRAs.

B. Specifications of Benchmarks

Our next suggestion relates only to racial vote dilution actions. It's that plaintiffs in these suits be required (1) to prove racially polarized voting; *and (2) to identify a benchmark relative to which the dilution of the challenged practice can be determined.* To reiterate, most SVRAs already insist on a showing of racially polarized voting.[250] But these laws then splinter as to what else (if

---

[247] *See* Voting Rights Act of 1965, Pub. L. No. 89-110, § 4(a), (c), 79 Stat. 437, 438–39 (1965).

[248] *See* Voting Rights Act Amendments of 1970, Pub. L. No. 91-285, §§ 301–05, 84 Stat. 314, 318–19 (1970); *see also* Oregon v. Mitchell, 400 U.S. 112, 117–18 (1970) (opinion of Black, J.,) (upholding this provision with respect to federal elections).

[249] *See* Voting Rights Act Amendments of 1970, §§ 201–05, 84 Stat. at 315-18.

[250] *See supra* note 70 and accompanying text. *But see supra* note 69 (observing that the CTVRA and the NYVRA also allow liability to be found under the totality of circumstances, even if racial polarization in voting isn't proven).

anything) plaintiffs have to establish. The NYVRA has no other element if an at-large electoral system is targeted.[251] The CAVRA seems to have no other element,[252] though the California Supreme Court recently held that "dilution is a separate element under the [CAVRA]."[253] The CTVRA and the VAVRA respectively demand proof that the disputed practice "results in a dilutive effect on the vote of protected class members"[254] or "dilutes the voting strength of members of a protected class."[255] And the ORVRA and the WAVRA state that "[m]embers of a protected class" must "not have an equal opportunity to elect candidates of their choice" because of "the dilution or abridgement of the rights" of these individuals.[256]

The formulations of Connecticut's, Oregon's, Virginia's, and Washington's SVRAs are all getting at the same idea. To prevail in a claim of racial vote dilution, plaintiffs must show that they're *underrepresented* under the policy they're attacking. That's what it means for plaintiffs' "vote" or "voting strength" to be "dilut[ed],"[257] for them "not [to] have an equal opportunity to elect candidates of their choice,"[258] and for their "rights" to suffer "dilution or abridgement."[259] Critically, however, none of these statutes specifies *relative to what benchmark* plaintiffs must show that they're underrepresented. In each case, there's a void where, more helpfully, there would be a clearly labeled baseline. Without a baseline, it's anyone's guess what amounts to underrepresentation. Underrepresentation compared to some previously enacted policy? Underrepresentation compared to any configuration of single-member districts? Underrepresentation compared to single-member districts satisfying certain criteria? Underrepresentation compared to proportional representation? The possibilities go on and on.

Our proposal would resolve this ambiguity by simultaneously obligating and liberating racial vote dilution plaintiffs. They would be obligated by having to identify a benchmark relative to which their underrepresentation would be

---

[251] *See* N.Y. ELEC. LAW § 17-206(2)(b)(i) (McKinney 2023).
[252] *See* CAL. ELEC. CODE § 14028(a) (West 2002).
[253] Pico Neighborhood Ass'n v. City of Santa Monica, No. S263972, 2023 WL 5440486, at *7 (Cal. Aug. 24, 2023).
[254] CTVRA, Pub. Act. No. 23-204, § 411(b)(2)(A), 2023 Conn. Acts at 821 (Reg. Sess.).
[255] VA. CODE ANN. § 24.2-130(B) (2021).
[256] OR. REV. STAT. § 255.411(1)(b) (2021); WASH. REV. CODE § 29A.92.030(1)(b) (2023).
[257] CTVRA § 411(b)(2)(A; VA. CODE ANN. § 24.2-130(B).
[258] OR. REV. STAT. § 255.411(1)(b); WASH. REV. CODE § 29A.92.030(1)(b).
[259] OR. REV. STAT. § 255.411(1)(b); WASH. REV. CODE § 29A.92.030(1)(b).

evaluated. This is an element that's absent from every existing SVRA.[260] On the other hand, plaintiffs would be liberated by being able to offer (almost[261]) any benchmark for assessing their underrepresentation. They could put forward one of the policies noted in the paragraph above. Or they could name a governmental entity with more members, an entity with elections held at a different time, an entity elected under a different system, or any other policy as their preferred baseline. It would be plaintiffs' responsibility, but also their prerogative, to explain relative to what alternative approach they're currently underrepresented.[262]

Compared to our proposal, Section 2 of the FVRA is much less flexible with respect to benchmarks. In a 1994 case, a plurality of the Supreme Court held that plaintiffs can never allege that the size of a governmental body is racially dilutive because "there is no objective and workable standard for choosing a reasonable benchmark by which to evaluate" this factor.[263] In its many cases refining the *Gingles* framework, the Court has also rejected both proportional representation and any possible set of single-member districts as appropriate baselines. The only benchmark the Court now recognizes is a set of single-member districts that represent minority voters through reasonably compact,

[260] However, the California Supreme Court recently endorsed this element as a matter of statutory interpretation, holding that "a plaintiff in a [CAVRA] action must identify a reasonable alternative voting practice to the existing at-large electoral system that will serve as the benchmark undiluted voting practice." Pico Neighborhood Ass'n v. City of Santa Monica, No. S263972, 2023 WL 5440486, at *7 (Cal. Aug. 24, 2023) (internal quotation marks omitted).

[261] The one restriction we recommend is that plaintiffs not be permitted to offer a benchmark that would increase the disproportionality of their group's representation. For example, suppose that, under the status quo, a minority group makes up twenty percent of the eligible voter population and controls twenty percent of the seats in the legislature. This group shouldn't be able to satisfy this element by identifying an alternative policy under which the group would control thirty percent of the legislative seats. Under that alternative policy, the disproportionality of the group's representation would increase from zero percent to ten percent.

We think this restriction is warranted for two reasons. First, proportional representation has at least some normative appeal as a baseline for measuring racial vote dilution. Few observers would say a minority group's electoral influence is diluted if the group enjoys proportional, let alone super-proportional, representation. *See, e.g.*, Johnson v. De Grandy, 512 U.S. 997, 1017 (1994) ("One may suspect vote dilution from political famine, but one is not entitled to suspect (much less infer) dilution from mere failure to guarantee a political feast."). Second, this restriction is the most intuitive way to prevent victory for one group from diluting the electoral influence of one or more other groups. Without this restriction, one group could win super-proportional representation, which could entail sub-proportional representation for another group, which in turn could sue for super-proportional representation, and so on in a cycle without end. *See, e.g.*, *id.* at 1004 (observing that a rule along these lines avoids scenarios where "remedies for [multiple minority groups are] mutually exclusive").

[262] An alternative to our proposal is for SVRAs simply to specify all valid benchmarks for determining racial vote dilution. But this is difficult to do ex ante given the many ways (some surely not yet known) in which racial vote dilution can be effectuated.

[263] Holder v. Hall, 512 U.S. 874, 881 (1994) (plurality opinion).

majority-minority districts.[264] Moreover, reasonable compactness encompasses not just district shape but also other criteria like respect for political subdivisions, respect for communities of interest, and the homogeneity of the minority population.[265]

It's clear that most SVRAs reject the Court's crabbed view of valid benchmarks for racial vote dilution claims. That's why these statutes state that there can be liability even if minority voters aren't "geographically compact or concentrated."[266] That's also why these statutes authorize suits even where minority voters are only numerous enough to form new crossover or influence—not majority-minority—districts.[267] And that's why the CTVRA and the NYVRA, in particular, specify a range of permissible remedies other than single-member districts: "an alternative method of election" like a form of proportional representation, "reasonably increasing the size of the governing body," "moving the dates of . . . elections," and so on.[268] These remedies make sense only if liability is first determined using baselines completely different from the Court's unitary reference point.

But while most SVRAs reject the Court's conception of benchmarks, these statutes then fail to finish this thought. They say what baseline they're *against*, but next they don't say what baselines they're *for*. Our proposal supplies this missing conclusion, and it does so in a manner that's consistent with both the concept of racial vote dilution and the intent that animates SVRAs. The concept of racial vote dilution requires a benchmark relative to which dilution can be assessed. So our proposal demands that plaintiffs always identify a benchmark. And the intent that animates SVRAs is a desire to escape the Court's unitary reference point, to acknowledge the many ways in which minority electoral influence can be diluted. So our proposal doesn't substitute one baseline for another but rather empowers plaintiffs to tell their own story of how and why they're underrepresented.

C. Calculations of Racial Polarization

We have one more suggestion regarding racial vote dilution claims, pertaining to SVRAs' common element that plaintiffs prove racial polarization

[264] *See* Bartlett v. Strickland, 556 U.S. 1, 26 (2009) (plurality opinion).
[265] *See* League of United Latin Am. Citizens v. Perry, 548 U.S. 399, 432–35 (2006).
[266] *E.g.*, CAL. ELEC. CODE § 14028(c) (West 2002).
[267] *See, e.g.*, 10 ILL. COMP. STAT. 120/5-5(a) to -5(b) (2011).
[268] *E.g.*, N.Y. ELEC. LAW § 17-206(5)(a) (McKinney 2023); *see also* CTVRA, Pub. Act. No. 23-204, § 411(e)(1), 2023 Conn. Acts at 824–26 (Reg. Sess.).

in voting. Mirroring Section 2 of the FVRA, SVRAs assume that racially polarized voting will be analyzed using a combination of demographic data and past election results. We recommend that this conventional kind of calculation be complemented or even (in appropriate cases) replaced by *surveys* of voters. Surveys can produce accurate information about voters' (and racial groups') preferences among candidates. Surveys can also go beyond candidate preferences and reveal voters' (and racial groups') policy views.[269]

To be fair, some SVRAs already diverge from—and address recurring issues with—the analysis of racial polarization in voting under Section 2 of the FVRA. For instance, racial patterns of voting behavior sometimes change after racial vote dilution litigation has commenced. So Connecticut's, New York's, Oregon's, and Washington's SVRAs all state that "[e]lections conducted prior to the filing of an action . . . are more probative to establishing the existence of polarized voting."[270] Likewise, defendants sometimes assert that racial polarization in voting should be discounted because it stems from partisan, not racial, factors. In response, Connecticut's, New York's, and Washington's SVRAs provide that "[t]he court is not required to consider explanations, including partisanship, for why polarized voting . . . exists . . . ."[271] And the calculation of racial polarization in voting can sometimes be complicated by heterogeneity in voting behavior among members of a given racial group. The NYVRA avoids this difficulty by stipulating that "evidence that sub-groups within a protected class have different voting patterns shall not be considered."[272]

These departures from federal voting rights law are fine as far as they go, but they don't go far enough. The localities to which most SVRAs apply often have only a few voting precincts. In these places, the empirical methods that are used to estimate racially polarized voting become unreliable.[273] The localities subject to most SVRAs are also increasingly racially integrated. This is good news overall, but it again worsens the performance of the tools for evaluating racial

---

269 *See generally* D. James Greiner & Kevin M. Quinn, *Exit Polling and Racial Bloc Voting: Combining Individual-Level and R x C Ecological Data*, 4 ANNALS APP. STAT. 1774 (2010) (urging the use of surveys to analyze racial polarization in voting).

270 OR. REV. STAT. § 255.411(5) (2021); *see also* CTVRA § 411(b)(2)(B)(i)(I); N.Y. ELEC. LAW § 17-206(2)(c)(i); WASH. REV. CODE § 29A.92.030(2) (2023).

271 WASH. REV. CODE § 29A.92.030(2) (2023); *see also* CTVRA § 411(b)(2)(B)(ii); N.Y. ELEC. LAW § 17-206(2)(c)(vi).

272 N.Y. ELEC. LAW § 17-206(2)(c)(vii).

273 *See, e.g.*, Christopher S. Elmendorf et al., *Racially Polarized Voting*, 83 U. CHI. L. REV. 587, 682–89 (2016) (making this point with a stylized three-precinct example).

polarization in voting.[274] However, surveys of voters are unaffected by both small numbers of precincts and greater racial integration. No matter how few precincts there are, surveys can be conducted as long as representative samples of voters can be obtained. Because surveys ask *individuals* for their opinions, they're also insensitive to *group*-level developments like people of different races living closer to one another. In fact, only one condition has to be satisfied for a survey to be a sound technique for estimating racially polarized voting. It must be possible to identify one or more minority-preferred candidates who have recently, or will soon, run for office in a jurisdiction. These are the candidates as to whom the survey will ask voters for their opinions.[275]

What if a jurisdiction lacks even a single minority-preferred candidate? Then racial polarization *in voting* simply can't be assessed, neither with any conventional method nor with a survey.[276] Even in this situation, though, a survey can shed light on the related issue of racial polarization *in policy views*. To do so, a survey merely has to ask voters for their opinions on various policy matters. Voters' answers can then be aggregated and compared by racial group. Where racial polarization in policy views exists, it has many of the same implications as racial polarization in voting. Racially polarized policy views mean that race is a powerful political cleavage in a jurisdiction. Racially polarized policy views also give candidates a strong incentive to cater to the distinct attitudes of one or another racial group, and if elected to enact policies that please one but upset another community. Our proposal takes advantage of these similarities between racial polarization in voting and racial polarization in policy views. It would allow plaintiffs to substitute evidence of the latter for evidence of the former where, because of the absence of minority-preferred candidates, racial polarization in voting can't be calculated.[277]

---

274 *See, e.g.*, Stephanopoulos, *supra* note 92, at 1386–87.

275 *See, e.g.*, Christopher S. Elmendorf & Douglas M. Spencer, *Administering Section 2 of the Voting Rights Act After* Shelby County, 115 COLUM. L. REV. 2143, 2193 (2015) ("[E]ven the most cautious, incrementalist judges are likely to give progressively more weight to survey data because survey-based estimates do not suffer from the problems [with conventional methods of calculating racially polarized voting].").

276 However, even in this situation, an *experiment* could be conducted, asking voters about their views of a *hypothetical* minority-preferred candidate. *See, e.g.*, Marisa A. Abrajano et al., *Using Experiments to Estimate Racially Polarized Voting* 2 (U.C. Davis Legal Rsch. Paper Series, 2015).

277 *See, e.g.*, Elmendorf & Spencer, *supra* note 275, at 2210 fig.1 (calculating and displaying levels of racial polarization in policy views at the county level for the entire country). Note that another option, where it's difficult for practical reasons to estimate racial polarization in voting, is simply to drop this requirement in favor of analysis under the totality of the circumstances. *See supra* note 69.

D. Standards for Racial Vote Denial

Turning from racial vote dilution to racial vote denial, we suggest rewriting the standard for liability in the NYVRA, one of the two SVRAs (along with the CTVRA) that tries to stop this kind of racial discrimination in voting. To recap, the NYVRA's "[p]rohibition against voter suppression" almost perfectly copies Section 2 of the FVRA.[278] Like Section 2, it forbids any electoral practice that "results in a denial or abridgement of the right of members of a protected class to vote."[279] Also like Section 2, it states that a violation occurs if, "based on the totality of the circumstances, members of a protected class have less opportunity than the rest of the electorate to elect candidates of their choice or influence the outcome of elections."[280] Only after replicating Section 2 in these ways does the NYVRA diverge from it by listing several novel factors probative of liability and favorable to plaintiffs. These factors emphasize racial disparities in the political process[281] and whether a jurisdiction has "a compelling policy justification" for its challenged practice "that is substantiated and supported by evidence."[282]

The primary problem with this part of the NYVRA is its mimicry of Section 2 of the FVRA. In *Brnovich*, the Supreme Court announced a series of probative factors for racial vote denial claims under Section 2 that are difficult for plaintiffs to demonstrate.[283] The strong resemblance between this part of the NYVRA and Section 2 creates a risk that *Brnovich*'s pro-defendant factors will be extended to racial vote denial claims under the NYVRA. If this were to happen, the NYVRA's legislative purpose of "[e]ncourag[ing] participation in the elective franchise . . . to the maximum extent" would be undermined.[284] Conflict would also ensue between *Brnovich*'s pro-defendant factors and the pro-plaintiff factors the NYVRA says are relevant to "determining whether . . . a violation . . . has occurred."[285] Secondarily, we think it's incongruous for a "[p]rohibition against voter suppression" to emphasize voters' opportunity "to

[278] *Compare* N.Y. ELEC. LAW § 17-206(1) (McKinney 2023), *with* 52 U.S.C. § 10301(a) (2018).
[279] *Compare* N.Y. ELEC. LAW § 17-206(1)(a), *with* 52 U.S.C. § 10301(a) (forbidding any electoral practice that "results in a denial or abridgement of the right . . . to vote on account of race or color").
[280] *Compare* N.Y. ELEC. LAW § 17-206(1)(b), *with* 52 U.S.C. § 10301(b) (stating that a violation occurs if, "based on the totality of circumstances . . . [racial group] members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice").
[281] *See* N.Y. ELEC. LAW § 17-206(3)(b), (d)–(f), (h)–(j).
[282] *Id.* § 17-206(3)(k).
[283] *See* Brnovich v. Democratic Nat'l Comm., 141 S. Ct. 2321, 2338–40 (2021).
[284] N.Y. ELEC. LAW § 17-200(1).
[285] *Id.* § 17-206(3).

elect candidates of their choice or influence the outcome of elections."[286] Less opportunity to elect preferred candidates or influence electoral outcomes is the hallmark of racial vote *dilution*. It's different from less opportunity to *vote* or otherwise *participate* in the political process, which is the crux of racial vote *denial*.

Accordingly, we recommend scrapping the NYVRA's current standard for racial vote denial liability. In its place, we advise something like the following language: No electoral practice shall be enacted or implemented in a manner that results in *a substantial and unjustified disparity in voting or otherwise participating in the political process between members of a protected class and the rest of the electorate*. The terms in italics are our contribution; the non-italicized words merely paraphrase the statute as it now stands. This approach would clearly distinguish this part of the NYVRA from Section 2 of the FVRA. The risk that *Brnovich*'s pro-defendant factors might be exported to racial vote denial claims under the NYVRA would therefore be eliminated. This approach would also drop the statute's odd references to electing candidates of choice and influencing electoral outcomes. This part of the NYVRA would thus address only racial vote denial, not a confusing mix of racial vote denial and racial vote dilution.

What about the key adjectives in our proposed language—a *substantial* and *unjustified* racial disparity in voting or otherwise participating in the political process? The substantiality criterion is drawn straight from Justice Kagan's memorable dissent in *Brnovich*. It ensures that liability arises when a racial disparity is statistically and practically significant but not when it's "just too trivial for the legal system to care about."[287] And the justifiability criterion is an abbreviated version of the analogous factor that's identified a couple subsections later by the NYVRA's list of relevant circumstances. Again, that factor asks whether a jurisdiction has a compelling justification for its challenged practice that's substantiated by evidence.[288] The justifiability criterion foreshadows the subsequent factor, while also calling for an inquiry into whether a jurisdiction's compelling interest could be achieved in some other way that results in a smaller racial disparity. If so, that's another basis for concluding that the actual racial disparity caused by the challenged practice is unjustified.[289]

---

[286] *Id.* § 17-206(1).

[287] *Brnovich*, 141 S. Ct. at 2358 n.4 (Kagan, J., dissenting).

[288] *See* N.Y. ELEC. LAW § 17-206(3)(k).

[289] For a similar proposal for adjudicating racial vote denial claims, see generally Stephanopoulos, *supra* note 41 at 1570–71.

Recall that, in addition to the NYVRA, the CTVRA tackles racial vote denial too. We have fewer nits to pick with this portion of the CTVRA because, unlike the NYVRA, it doesn't slavishly follow the lead of Section 2 of the FVRA. Instead, the CTVRA omits the familiar phrase, "denial or abridgement of the right" to vote, and replaces it with the new term, "impairment of the right to vote."[290] "Impairment" may not be dramatically different from "denial or abridgement," but it doesn't evoke Section 2 in the same way. Consequently, it reduces the likelihood that unfavorable Section 2 law will migrate into doctrine about the CTVRA. Even more importantly, the CTVRA allows liability for racial vote denial to be found not just based on the totality of the circumstances (like the NYVRA and Section 2) but also if an electoral practice results in a racial disparity in political participation.[291] This second option for establishing liability sharply distinguishes the CTVRA from Section 2, under which a disparate racial impact is merely one of *Brnovich*'s factors.[292]

However, the CTVRA isn't perfect either. Like the NYVRA, one of its liability prongs refers to voters' opportunity to "elect candidates of their choice or otherwise influence the outcome of elections."[293] Again, this is the characteristic language of racial vote dilution, which is out of place in a provision dealing with racial vote denial. Additionally, we're uncomfortable with the lack of qualifiers for the critical statutory word, "disparity."[294] Without any limits, this part of the CTVRA appears to be a pure disparate impact provision, imposing liability whenever an electoral policy produces any racial disparity—even a very small gap or one warranted by a compelling state interest. We therefore support inserting the same adjectives we noted above, "substantial" and "unjustified," into this liability prong. That way, the CTVRA would only prohibit electoral regulations that cause material racial disparities whose necessity can't be demonstrated. It wouldn't insist, unrealistically, that no electoral rule have any disparate impact at all.

E. Alternatives to Retrogression

The last kind of racial discrimination in voting is retrogression: the worsening of the electoral position of members of a given racial group. Three of the four SVRAs that prohibit retrogression—Connecticut's, New York's, and

[290] *Compare* CTVRA, Pub. Act. No. 23-204, § 411(a)(1), 2023 Conn. Acts at 820–21 (Reg. Sess.), *with* 52 U.S.C. §10302(a) (2018).
[291] CTVRA § 411(a)(2)(A).
[292] *See Brnovich*, 141 S. Ct. at 2339.
[293] CTVRA, § 411(a)(2)(B).
[294] *Id.* § 411(a)(2)(A).

Virginia's, but not Florida's—pair this prohibition with a preclearance process. Covered jurisdictions (in Connecticut and New York) or all jurisdictions that opt into the process with respect to covered practices (in Virginia) can implement new electoral measures only if an executive branch official (in all three states) or a court (in Connecticut and New York) first finds them non-retrogressive.[295] Our suggestion here (recently heeded by Connecticut) is to break the linkage between preclearance and retrogression. Specifically, we think the non-retrogression requirement for preclearance under the NYVRA and the VAVRA should be supplemented or replaced by other, more stringent conditions.

The linkage between preclearance and retrogression in these SVRAs is another manifestation of the gravitational pull of the FVRA. Decades ago, in *Beer*, the Supreme Court held that preclearance should be denied under Section 5 only if new electoral measures are retrogressive.[296] Ever since, the concepts of preclearance and retrogression have been associated with each other. This association, however, is neither inevitable nor desirable. It's not inevitable because Section 5's text makes no mention, explicit or implicit, of retrogression.[297] Lacking any textual support, the *Beer* Court was forced to base the non-retrogression rule on nothing sturdier than a few snippets of legislative history.[298] Three dissenters furiously objected on this very ground: that the non-retrogression rule unjustifiably deviates from the language of Section 5.[299] The association between preclearance and retrogression isn't desirable, either, because retrogression is relatively weak tea. Banning it prevents covered jurisdictions from *backsliding* but doesn't compel them to make any *forward* progress. As Justice Marshall bemoaned in his *Beer* dissent, the non-retrogression rule "dilutes the meaning of [Section 5] to the point that the congressional purposes . . . are no longer served and the sacred guarantees of the Fourteenth and Fifteenth Amendments emerge badly battered."[300]

If the bond between preclearance and retrogression isn't indissoluble (or even advisable), to what could preclearance be tied instead (or in addition)? Compliance with SVRAs' *other* provisions—their prohibitions of racial vote denial and/or racial vote dilution—is our first idea, and the one recently adopted by the CTVRA. Covered jurisdictions could be precleared to implement new electoral practices only if an appropriate decisionmaker first finds that these

---

295 *See supra* notes 115–31 and accompanying text.
296 Beer v. United States, 425 U.S. 130, 141 (1976).
297 *See* 52 U.S.C. § 10304 (2018).
298 *See Beer*, 425 U.S. at 140–41.
299 *See id.* at 143 (White, J., dissenting); *id.* at 149–56 (Marshall, J., dissenting).
300 *Id.* at 146 (Marshall, J., dissenting).

measures aren't unlawful under SVRAs' non-preclearance sections. This approach would heavily fortify the weak tea of retrogression. Unlike retrogression, the theories of racial vote denial and racial vote dilution don't valorize the status quo ante. Their baselines are aspirational, not retrospective, so they can obligate jurisdictions to improve, not just to maintain, their current electoral policies. This approach also wouldn't be redundant, as it might initially seem. Yes, if preclearance could be denied for racial vote denial and/or racial vote dilution, then the same standard would apply to both litigation and preclearance. But the same substantive standard would have different consequences in these different procedural contexts. In litigation, the onus would be on the plaintiff to prove a violation, and a new electoral practice would go into effect until and unless it was ruled illegal. In a preclearance proceeding, in contrast, there would be no plaintiff to bear the burden of proof, and a new measure would be blocked until and unless it was approved.[301]

Our other idea (not yet endorsed by any state) hearkens back to our first proposal in this Part: mandates for substate localities. We observed earlier that a state might not want to issue mandates because it might think that different rules are better suited to different jurisdictions. The option of mandates *for covered jurisdictions alone* could be appealing to such a state because it would avoid one-size-fits-all uniformity and distinguish between localities on a sensible basis, namely their histories of racial discrimination. For example, suppose New York doesn't mind most jurisdictions relying on at-large elections but does worry about this electoral system being used by localities that are serial racial discriminators (which are the localities captured by the NYVRA's coverage formula[302]). Then a directive that only these localities must switch to districted elections could be both politically feasible and normatively defensible. In case it isn't obvious, note also how this idea discards retrogression *and preclearance*. Mandates for covered jurisdictions alone don't depend on a racial group's worsened electoral position. Nor do they require any decisionmaker to approve any electoral practice before it goes into operation. Rather, the only vestige of Section 5 of the FVRA retained by selective mandates is a coverage formula, on whose basis some localities but not others are ordered to take certain actions.

[301] *See, e.g.*, Nicholas O. Stephanopoulos, *The South After* Shelby County, 2013 SUP. CT. REV. 55, 62–73 (discussing the procedural differences between preclearance and litigation under the FVRA).

[302] *See* N.Y. ELEC. LAW § 17-210(3) (McKinney 2023).

F. State Databases

Establishing any kind of racial discrimination in voting requires data. Racial vote denial, racial vote dilution, and retrogression are partly or wholly concepts about the effects of electoral practices. These effects can be determined only when the right information is analyzed with the right tools. So our next suggestion—also recently incorporated into the CTVRA[303]—is that SVRAs require states to create databases containing fine-grained demographic, electoral, and administrative data. SVRAs could further require local jurisdictions to provide information for these databases. The necessary data would vary based on SVRAs' substantive provisions—a SVRA that doesn't prohibit racial vote denial, for instance, might not mandate the production of information about voter registration or turnout rates. Some types of data that could be included in databases are (1) precinct-level population estimates by racial group; (2) precinct-level federal, state, and local election results; (3) geocoded voter registration lists; (4) geocoded voter history files; (5) shapefiles of district plans; (6) shapefiles of precinct boundaries; and (7) geocoded polling place and ballot drop box locations.[304]

The obvious rationale for compelling the creation of databases is to assist parties (and courts) in SVRA litigation. Think of a plaintiff, under the status quo where no SVRA outside Connecticut demands the collection of any information, who wishes to challenge a locality's electoral practice for denying or diluting the vote on racial grounds. The plaintiff needs data to substantiate these claims. But the necessary data might be (indeed, often is) publicly unavailable. The necessary data might not be available at all if the jurisdiction hasn't compiled it. And even if the jurisdiction has compiled it, the plaintiff might have to file time-consuming discovery or freedom of information requests to obtain it. Publicly accessible demographic, electoral, and administrative databases would obviate all these difficulties. Instead of scrounging together less reliable data from other sources or haranguing jurisdictions for information, plaintiffs could simply download the necessary data with a few keystrokes. By the same token, localities could use information from databases to assess ex ante their vulnerability to SVRA litigation. If one or more of their electoral policies appeared to result in

303 CTVRA, Pub. Act No. 23-204, § 411(c)(1), 2023 Conn. Acts at 823–24 (Reg. Sess.).

304 For similar lists of useful data types in proposed SVRAs, see Voting Rights Act of 2023 – Counties and Municipalities, S.B. 878, § 15.5-505(a)(1), Reg. Sess. (Md. 2023); S. 402, 102d Leg. § 5(4) (Mich. 2023); and S. 657, 205th Leg., § 2 (N.Y. 2023).

substantial racial disparities, they could preemptively amend these measures to avoid suits.[305]

The data we've mentioned so far either exists already or could be gathered reasonably easily. A somewhat more novel informational strategy (absent from the CTVRA) would be for SVRAs to ask individuals to identify their race and ethnicity when they register to vote. This approach isn't unheard of; a few southern states do exactly that.[306] The Census also asks people to state their race and ethnicity (although not in connection with voter registration).[307] And private vendors predict the race of voter registrants with reasonable accuracy when this data isn't disclosed.[308] Individual-level racial affiliation would be most helpful in racial vote denial cases. These cases often hinge on racial differences in voter registration or turnout rates.[309] These differences could be directly calculated using voter files if individual-level racial affiliation was available—not more roughly approximated through other methodologies. In racial vote dilution cases, individual-level racial affiliation would also make possible better estimates of precincts' racial compositions. Precincts' racial compositions are one of the two key inputs for conventional techniques of measuring racially polarized voting (the other being precincts' election results). At present, precincts' racial compositions are usually determined using Census data. But Census data captures all people or, at best, all *eligible* voters. In contrast, voter files with individual-level racial information zero in on all *registered* or all *actual* voters. This data, when combined with precincts' election results, yields more reliable conclusions about racial patterns of voting behavior.[310]

---

[305] *See, e.g.*, Written Testimony of Election Law Clinic at Harvard Law School in Support of Senate Bill 1226, An Act Concerning State Voting Rights in Recognition of John Lewis (Mar. 19, 2023), https://www.hlselectionlaw.org/s/ELC_CT-_VRA_Testimony.pdf (discussing these and other rationales for SVRA-mandated databases).

[306] *See, e.g.*, *Availability of State Voter File and Confidential Information*, U.S. ELECTION COMM'N (Oct. 29, 2020), https://www.eac.gov/sites/default/files/voters/Available_Voter_File_Information.pdf (North and South Carolina).

[307] *See, e.g.*, *Why We Ask Questions About . . . Race*, U.S. CENSUS BUREAU, https://www.census.gov/acs/www/about/why-we-ask-each-question/race/ (last visited May 1, 2023).

[308] *See, e.g.*, RUTH IGIELNIK ET AL., COMMERCIAL VOTER FILES AND THE STUDY OF U.S. POLITICS 34–36 (2018).

[309] *See, e.g.*, Complaint at ¶¶ 46–50, Citizens Project v. City of Colorado Springs, No. 1:22-cv-01365 (D. Colo. June 1, 2022) (citing racial differences in turnout rates in a FVRA Section 2 challenge to the timing of Colorado Springs's municipal elections).

[310] *See, e.g.*, Ari Decter-Frain et al., *Comparing Methods for Estimating Demographics in Racially Polarized Voting Analyses*, SOCARXIV (Apr. 21, 2022), https://osf.io/preprints/socarxiv/e854z/ (referring to this data as the "known truth" and using it to assess other methods of estimating precincts' racial compositions).

G. *Electoral Levels*

Our final proposal is our most straightforward one. It's simply that SVRAs should apply to all elections, for all positions. At present, no SVRA achieves universal electoral coverage. Florida's[311] and Illinois's[312] SVRAs regulate statewide district plans but not executive branch or substate elections. Connecticut's,[313] New York's,[314] and Washington's[315] SVRAs govern all substate but no federal or state elections.[316] And California's,[317] Oregon's,[318] and Virginia's[319] SVRAs are limited to subsets of substate elections: at-large elections in California and Virginia, and school district elections in Oregon. Compared to this status quo, universal electoral coverage would be both simpler and more effective. Simpler because every election, not some fraction thereof, would be subject to SVRAs' prohibitions of racial vote denial, racial vote dilution, and/or retrogression. And more effective because these prohibitions would prevent and remedy racial discrimination in voting throughout the electoral system. This "insidious and pervasive evil"[320] wouldn't be allowed to persist in some elections despite being extirpated from others.

A potential concern about a SVRA applying to federal or state elections, in particular, is that a past state legislature can't tie the hands of a future state legislature. A future legislature, that is, can always revise or rescind a law enacted by a past legislature.[321] This basic rule of parliamentary procedure is true enough, but it hardly negates the value of a SVRA extending to federal or state elections. That's because, even though such a SVRA *could* be amended or annulled, such amendment or annulment wouldn't happen automatically. Instead, a future legislature (and governor) would have to agree to weaken or waive the SVRA's terms, and that agreement could be hard to reach. To illustrate the point, consider the state-level criteria that regulate congressional and state

[311] *See* FLA. CONST. art. 3, §§ 20–21 (applying to congressional and state legislative district plans).
[312] *See* 10 ILL. COMP. STAT. 120/5-5(a) (2011) (applying to state legislative district plans).
[313] *See* CTVRA, Pub. Act. No. 23-204, § 410(a)(6)–(7), 2023 Conn. Acts at 819–20 (Reg. Sess.).
[314] *See* N.Y. ELEC. LAW § 17-204(4) (McKinney 2023).
[315] *See* WASH. REV. CODE § 29A.92.010(5) (2023).
[316] With the caveat that Connecticut's and New York's racial vote denial (in contrast to their racial vote dilution) provisions arguably apply to the local administration of *all* elections. *See* CTVRA § 411(a); N.Y. ELEC. LAW § 17-206(1).
[317] *See* CAL. ELEC. CODE § 14027 (2002).
[318] *See* OR. REV. STAT. § 255.400(4)(a) (2021).
[319] *See* VA. CODE ANN. § 24.2-130(A) (2021); *see also supra* note 104.
[320] South Carolina v. Katzenbach, 383 U.S. 301, 309 (1966).
[321] Alternatively, a future legislature can state that its new electoral regulations are in compliance with any old requirements imposed by a past legislature. *See, e.g.*, 10 ILL. COMP. STAT. 120/5-15 (2011) ("The General Assembly Redistricting Act of 2021 . . . complies with all of the requirements of [the ILVRA].").

legislative redistricting. In many states, these criteria are merely statutory: nothing more than the products of past state legislatures.[322] Nevertheless, these criteria tend to endure from one redistricting cycle to the next, and political actors typically abide by them notwithstanding their formal authority to alter or abolish these limits on their line-drawing discretion.[323]

Moreover, if the status quo bias in favor of enacted legislation is thought insufficient, a SVRA could be constitutionalized. A SVRA embedded in a state constitution, of course, would necessarily bind the elected branches, not just provisionally constrain them until and unless they could agree on new legislation. In our universe of eight SVRAs, one of them—Florida's—is constitutional rather than statutory. The Fair Districts Amendment became part of the Florida Constitution after it was approved by Florida voters in 2010.[324] Since its adoption, the FLFDA has indeed had sharp teeth, resulting in the repeated judicial invalidation of congressional and state legislative districts. Several of these cases have involved the FLFDA's anti-retrogression provision, often applying it in ways opposed by the Florida legislature.[325] Had the FLFDA been only a statute, the Florida legislature could perhaps have edited or erased its requirements (with the governor's cooperation). Because of the FLFDA's constitutional stature, however, the elected branches have had no choice but to submit to it.

Our subject in this Part has been the extension of SVRAs: making them more potent and thus more distinct from the FVRA. But we also want to flag a couple areas where existing SVRAs arguably go too far and so might benefit from some paring back.[326] We want to throw some cold water, too, on the notion that SVRAs are, or could realistically become, a full substitute for the FVRA. The first way in which certain SVRAs (specifically, New York's) may be overzealous is by rendering at-large elections unlawful solely on the basis of racially polarized voting.[327] This approach seems unwise to us because it leads to liability even where no racial group is underrepresented or can obtain more

---

[322] *See Redistricting Criteria*, NAT'L CONF. ST. LEGIS. (July 16, 2021), https://www.ncsl.org/redistricting-and-census/redistricting-criteria.

[323] *Compare id.*, *with* NAT'L CONF. ST. LEGIS., REDISTRICTING LAW 2010, at 172–217 (2009) (listing the very similar state-level criteria used in the 2010 redistricting cycle).

[324] *See In re* Senate Joint Resolution of Legis. Apportionment 1176, 83 So. 3d 597, 598 (Fla. 2012).

[325] *See, e.g.*, League of Women Voters of Fla. v. Detzner, 179 So. 3d 258, 284–87 (Fla. 2015); League of Women Voters of Fla. v. Detzner, 172 So. 3d 363, 403–05 (Fla. 2015).

[326] In addition to the areas we discuss here, we noted above that, in our view, the CTVRA should be amended to prohibit only electoral practices that result in *substantial* and *unjustified* racial disparities in political participation. *See supra* note 294 and accompanying text.

[327] *See supra* notes 81–85 and accompanying text.

representation. Suppose an at-large electoral system consistently yields proportional representation by racial group (an unlikely but plausible scenario). Under the NYVRA, this fact doesn't save the system from invalidation. Or say a racial group is so small that it can't win representation under any electoral system—not at-large elections, nor single-member districts, nor any form of proportional representation.[328] Again, under the NYVRA, this fact has no legal significance. Accordingly, to ensure that liability arises only where underrepresentation exists and can be corrected, we think all SVRAs should implement the second proposal we outlined above. Under all SVRAs, that is, plaintiffs should have to prove racially polarized voting *and* identify a benchmark relative to which they're currently underrepresented.

Our other reservation about most SVRAs (all but Florida's and Washington's) is their full-throated endorsement of influence district claims.[329] We have no objection to an influence district claim where a minority group constitutes a genuine, geographically defined community but isn't numerous enough to elect its preferred candidate in any reasonable district. In this circumstance, crafting a district that comprises this group enables a real community to hold some sway over its representative. However, we worry about conceiving of an influence district more broadly as *any* district where a nontrivial minority population can't elect its preferred candidate but can secure the election of its second-choice candidate.[330] In many parts of the country, minority voters' preferred candidate is a minority Democrat and their second-choice candidate is a white Democrat.[331] In these areas, authorizing influence district claims is tantamount to authorizing claims for as many Democratic districts as possible, at least where the population is racially diverse. Such authorization conflicts with the norm (if not the law in many states) against partisan gerrymandering. It also departs from any common understanding of racial discrimination in voting. We therefore recommend that influence district

[328] This was the crucial fact in *Pico Neighborhood Ass'n v. City of Santa Monica*, 265 Cal. Rptr. 3d 530, 547 (Cal. Ct. App. 2020), *vacated*, *rev'd*, No. S263972, 2023 WL 5440486 (Cal. Aug. 24, 2023), where Latinos were fourteen percent of the eligible voter population in Santa Monica but could comprise at most thirty percent of the eligible voter population of any single-member district.

[329] *See supra* note 88 and accompanying text.

[330] *See, e.g.*, 10 ILL. COMP. STAT. 120/5-5(b) (2011) ("The phrase 'influence district' means a district where a racial minority or language minority can influence the outcome of an election even if its preferred candidate cannot be elected.").

[331] *See, e.g.*, Rose v. Raffensperger, 619 F. Supp. 3d 1241, 1252 (2022); *see also* Kuriwaki et al., *supra* note 76, at 9–12 (showing that most minority voters preferred a white Democrat to a Republican in the 2016 presidential election).

claims be either dropped from SVRAs or cabined to discrete, geographically bounded minority communities.

As for tempering enthusiasm for SVRAs as an adequate substitute for the FVRA, our skepticism has nothing to do with the merits of SVRAs. It stems, instead, from the limited numbers of states that have enacted, or are likely to enact, SVRAs. To date, only states with unified Democratic governments have passed statutory SVRAs. (The voters of Florida also approved a constitutional SVRA without the involvement of the state's elected branches.[332]) Only states with unified Democratic governments are currently debating the passage of new statutory SVRAs.[333] No state under unified Republican control has seriously considered, let alone adopted, a statutory SVRA. Nor has any state under divided government done so.

Unfortunately, as long as SVRAs remain blue state policies, their benefits will be unable to reach many of the country's minority voters. States with unified Republican or divided governments and more than one million Black residents include Alabama, Georgia, Louisiana, Mississippi, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, and Texas.[334] Similarly, Arizona, Georgia, North Carolina, Pennsylvania, and Texas are states with unified Republican or divided governments and more than one million Hispanic residents.[335] None of these states has enacted a SVRA or is apt to do so anytime soon. In all these states, in all probability, minority voters will have to make do without SVRAs' prohibitions of racial vote denial, racial vote dilution, and/or retrogression for the foreseeable future. Lacking these protections, minority voters in this large swath of the country will have to settle for the FVRA's defenses against racial discrimination in voting. These defenses are less robust than the analogous provisions of SVRAs. But for many minority voters, these weaker federal defenses are, and will be, the only defenses available.

---

[332] *See supra* note 324 and accompanying text.

[333] *See supra* notes 7–9 and accompanying text.

[334] *See List of U.S. States and Territories by African-American Population*, WIKIPEDIA, https://en.wikipedia.org/wiki/List_of_U.S._states_and_territories_by_African-American_population (last visited Sept. 4, 2023).

[335] *See List of U.S. States by Hispanic and Latino Population*, WIKIPEDIA, https://en.wikipedia.org/wiki/List_of_U.S._states_by_Hispanic_and_Latino_population (last visited Sept. 4, 2023).

CONCLUSION

Despite their confinement so far to blue states (and Florida), state voting rights acts are the most exciting development in the voting rights field in years. As we have discussed, SVRAs diverge from, and build on, the federal Voting Rights Act in many respects, above all in their more vigorous safeguards against racial vote dilution. SVRAs are also constitutional under current equal protection law because they neither racially gerrymander, nor racially classify, nor have invidious racial purposes. And SVRAs could be made more potent still, for instance, by mandating certain measures or by allowing plaintiffs to select any benchmark for assessing racial vote dilution. In light of the pessimism of the last two paragraphs, this possibility of extending SVRAs is a happier note on which to close. After all, it's not just SVRAs that could be extended but also the FVRA. The same reforms that would make SVRAs more effective would also render the FVRA a stronger bulwark against racial discrimination in voting. And crucially, if it was the FVRA that was bolstered in these ways, the enhanced protections *wouldn't* be restricted to blue state residents. Rather, voters of every race, throughout the country, would be the beneficiaries of this voting rights renaissance.

Yael Bromberg
Yael Bromberg is a constitutional rights attorney with over twenty years of experience in campaigns and public interest litigation. A New Jersey native, she counsels and represents individuals, organizations, and unions in state and federal courts across the country. Her docket includes election law, voting rights, free speech, ethics, civil rights, and labor cases and projects.

A nationally leading legal scholar of the Twenty-Sixth Amendment, Bromberg developed her scholarship while teaching and supervising litigation in the Georgetown University Law Center Civil Rights Clinic and Voting Rights Institute, where she received an LLM in Advocacy with distinction. Her resulting article, *Youth Voting Rights and the Unfulfilled Promise of the Twenty-Sixth Amendment*, is widely cited and has been dubbed a "groundbreaking study" and a "legal and organizing call for arms." She is an architect of the Youth Voting Rights Act, comprehensive federal legislation to enforce the Twenty-Sixth Amendment.

At Rutgers Law, Bromberg teaches *Election Law & The Political Process*, and served as faculty advisor for Rutgers University Law Review's 2022 symposium, *Voting Rights Reform: The 26th Amendment, Youth Power, and the Potential for a Third Reconstruction* – the first-ever legal volume dedicated to the Amendment since its ratification over half a century ago. She authored the Introduction to the volume, entitled *The Future Is Unwritten: Reclaiming the Twenty-Sixth Amendment.* In the Fall, she will deliver the prestigious annual Birch Bayh Lecture at Indiana University McKinney School of Law, in honor of the long-time Senator and Chairman of the Senate Subcommittee on Constitutional Amendments. Her work is featured in the Birch Bayh Archives and Twenty-Sixth Amendment Collection housed at Indiana University.
A Rutgers Law School graduate and former *Kinoy/Stavis Fellow* of the Rutgers Constitutional Litigation Clinic, Bromberg returned to the Rutgers Law Clinic in spring 2023 to supervise students on voting rights and election law cases and projects in the International Human Rights Clinic. Her ongoing academic collaborations include engagements with The Harvard Kennedy School William Trotter Collaborative for Social Justice, and a Mellon Foundation-supported applied learning research curricular project premised on her Twenty-Sixth Amendment scholarship with Bard College and HBCUs across three states: Prairie View Texas A&M University, North Carolina A&T University, and Tuskegee University. She is also a Visiting Associate with the Eagleton Institute of Politics.

Bromberg is Principal of Bromberg Law LLC where she primarily practices democracy law. She previously served as chief counsel for voting rights and strategic advisor (outside counsel) for The Andrew Goodman Foundation, a national organization in over 25 states across 85 campuses dedicated to making youth votes and voices a powerful force in democracy. Bromberg is of counsel to NJ labor law firm Weissman & Mintz LLC, where she litigates for equal pay and supports union members in labor arbitration. Bromberg serves on the cross-partisan advisory board of American Promise, a national organization which seeks to ratify a new constitutional amendment to restore the rights of Americans to regulate election money, protect free speech and representation, and combat systemic corruption.

She previously worked in the Washington, D.C. headquarters of good government watchdog Common Cause, and clerked for nearly three years with The Honorable Dickinson R. Debevoise in the United States District Court for the District of New Jersey.

A double-Rutgers alumna, Bromberg graduated from Douglass College where she double-majored in Applied Environmental Sciences and Political Science. She then joined the Rutgers School of Management & Labor Relations as the principal researcher on a study led by labor historian Prof. David Bensman, examining the working lives and employment conditions of New Jersey port truckers, funded

by the National Science Foundation and the NJ Department of Labor. It was the largest study of its kind, and its findings widely reported, revealing significant employment misclassification in the industry.

Upon graduation from Rutgers Law School, Bromberg received the *Eli Jarmel Memorial Award* for greatest interest and proficiency in public interest law. In 2015, she received the *Eric Neisser Public Service Alumni Award*, of which she is the youngest recipient. In 2022, she received the *Champion Award* by the Bard College Center for Community Engagement in honor of tireless efforts to ensure student voting rights in New York State. In 2024, she recently received the first, inaugural *Reclaiming Our Democracy Award* by New Jersey Citizen Action for legal leadership that led to abolishment of the county line on Democratic ballots in the 2024 primary election and an anticipated permanent end to the practice, which will help transform New Jersey's democracy by giving power back to voters and opening up more opportunities for candidates with diverse backgrounds to run successfully for political office.

Bromberg is a regular commentator and contributor on democracy issues, and has been featured on CSPAN, Washington Post, The Hill, Slate, NPR, The Guardian, WBAI, CBS News, The National Constitution Center's *We The People* podcast, Inside Higher Ed, and other publications and news outlets.

This summer, she is relocating back to Washington, D.C. with her two young boys and husband Rabbi Scott Perlo who will be the Rabbi at Adat Shalom Reconstructionist Congregation. She will continue her national efforts, including those advancing common cause in New Jersey.

Sophia Lin Lakin

Sophia Lin Lakin (@sophlin229) is the Director of the ACLU's Voting Rights Project, and directs and supervises the ACLU's voting rights litigation strategy nationwide.

Sophia has an active docket protecting voting rights and combatting voter suppression across the country and has led or worked on successful challenges to discriminatory voting laws in Georgia, Indiana, Kansas, Missouri, North Carolina, Pennsylvania, Texas, and Virginia. Currently, Sophia is lead counsel in *Alpha Phi Alpha v. Raffensperger*, a redistricting challenge to Georgia's state legislative maps, *Arkansas State Conference NAACP v. Arkansas Board of Apportionment*, a redistricting challenge to Arkansas's state House plan, and the ACLU's lead counsel in *Sixth District of The African Methodist Episcopal Church v. Kemp*, a federal lawsuit challenging multiple provisions of Georgia's sweeping 2021 voter suppression law S.B. 202.

Her other cases have included: *Common Cause Indiana v. Lawson* (lead counsel in case successfully challenging an unlawful purge program in Indiana); *Hotze v. Hollins* (co-lead counsel in case defending against attack on the use of drive-thru voting in Harris County, Texas); *Trump Campaign v. Boockvar* (represented voters against attempt to block certification of 2020 presidential election results); *Texas v. Crystal Mason* (representing Ms. Mason in her appeal of her conviction and 5-year sentence for allegedly improperly casting a provisional ballot); *Missouri NAACP v. Missouri* (lead counsel in case challenging the in-person notary requirement for mail voting in Missouri during the COVID-19 pandemic, which she argued before the Missouri Supreme Court twice); *League of Women Voters of Tennessee v. Hargett* (co-lead counsel in successful challenge to a Tennessee law that imposed onerous requirements and substantial criminal and civil penalties on community based organizations that conduct voter registration drives); and *Fish v. Kobach* (successful challenge to the documentation requirements for voter registration in Kansas).

Sophia has testified on election law issues before Congress and has presented at conferences and conducted voting rights trainings nationwide. She is a frequent commentator on voting rights issues, appearing on television programs including The ReidOut and the 11th Hour; and has written opinion pieces for *The Hill* and *The Boston Globe*.

Before joining the ACLU, Sophia clerked for the Honorable Raymond J. Lohier, Jr. of the U.S. Court of Appeals for the Second Circuit and the Honorable Carol Bagley Amon of the U.S. District Court for the Eastern District of New York.

Sophia received her J.D. from Stanford Law School. She also received her M.S. in Management Science & Engineering and B.A. in Political Science from Stanford University.

Henal Patel, Esq.
Henal Patel is Law & Policy Director at the New Jersey Institute for Social Justice.

Before joining the Institute, Henal was an associate at McElroy, Deutsch, Mulvaney & Carpenter. Previously, Henal had the honor of serving as a law clerk to Chief Justice Stuart Rabner on the New Jersey Supreme Court. While in law school, Henal was an Eagleton Institute of Politics fellow, participated in the Constitutional Litigation Clinic, and served as an assistant to the Chairman of the New Jersey Redistricting Commission. Henal received her J.D. from the Rutgers University School of Law – Newark and B.A. from Rutgers University.

Henal serves on the Board of Directors at the League of Women Voters of New Jersey.

Michael Pernick

Michael Pernick is Redistricting Counsel at the Legal Defense Fund (LDF). Michael uses litigation, advocacy, and public education strategies to advance racial justice in voting, with a particular focus on redistricting. Michael regularly investigates and litigates voting rights and redistricting violations across the country. Michael frequently testifies before state legislatures and speaks to the press on a wide range of voting rights issues. Michael has been instrumental in developing and advocating for state voting rights acts, including the John R. Lewis Voting Rights Act of New York, which was signed into law in 2021. Michael has led numerous election protection programs across the country, including LDF's election protection work in Florida and Georgia in recent elections.

Prior to joining LDF, Michael was a litigation associate at Paul, Weiss, Rifkind, Wharton & Garrison LLP, where he maintained an active voting rights practice. Michael has also served on the Nassau County Board of Ethics, on the Nassau County Temporary Districting Advisory Commission, and on the Board of Directors of the Adult Congenital Heart Association.

Michael is a graduate of New York University School of Law and Wesleyan University. Michael is a member of the New York State Bar.

Caren E. Short
Caren E. Short is the Director of Legal and Research for the League of Women Voters of the United States. In this role, Caren manages a team of legal and technical experts working to oversee, innovate, and support the League's state and federal litigation dockets. She also works in coordination with the Director of Government Affairs to ensure that the League's legislative and litigation strategies are aligned toward the mission, vision, and values of the organization.

Prior to joining the League, Caren served as Interim Deputy Legal Director of Voting Rights at the Southern Poverty Law Center (SPLC). There, she led a team of voting rights experts working across the Deep South to mobilize voters, restore voting rights to people with felony convictions, pursue state and federal policy reforms, and challenge discriminatory voting practices. Caren also worked as a staff attorney in SPLC's Economic Justice Project advocating on behalf of people working to make ends meet in the Deep South, particularly in communities of color. She also represented immigrant children and their families in education matters across the Deep South and investigated conditions faced by youth and adults in Alabama's overcrowded jails and prisons.

Caren has worked as Assistant Counsel at the NAACP Legal Defense & Educational Fund, Inc., and as staff attorney in the Voter Protection Program of Advancement Project (Washington, DC), and she clerked for the Honorable Robert J. Cordy on the Massachusetts Supreme Judicial Court in Boston. She graduated magna cum laude from Howard University School of Law, where she served as a student attorney in the Civil Rights Clinic and on the editorial board of the Howard Law Journal. She received her B.A. in Political Science from Purdue University.

Caren lives in Atlanta with her dogs, who have a blossoming career as Instagram influencers @khotso_and_baldwin. She currently teaches a course on voting rights law at Georgia State College of Law in Atlanta.