

# Full Steam Ahead: What's Hot on the Redistricting Litigation Front?

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# *Bartlett v. Strickland*

- In *Bartlett*, the Supreme Court last term held that Section 2 of the Voting Rights Act does not require the creation of “crossover” districts.
- More specifically, a minority group must be capable of constituting a **numerical majority of the voting-age population** in a geographically compact area before Section 2 requires the creation of an electoral district.

# Section 2 of the VRA

- Section 2 of the Voting Rights Act prohibits jurisdictions from using any “standard, practice, or procedure” that “results in the denial or abridgment of the right to vote on account of race.”
  - Section 2 requires, under some circumstances, that majority-minority election districts be drawn so that racial minorities will have an opportunity to elect candidates of choice.

# District Terminology

- ***Majority-minority districts***: where members of a minority group constitute a numerical majority of a district;
- ***Crossover districts***: where members of a minority group, though not a majority of a district, can elect candidates of their choice with the support from a small but reliable group of white voters who “cross over” to the support the minority-preference candidate;
- ***Coalition Districts***: where no single minority constitutes 50 percent of the district by itself, but where members of multiple minority groups vote together and, together, constitute a majority in the district.

# *Bartlett* Facts

- At issue in *Bartlett* was a state legislative district in the North Carolina House of Representatives, in which Blacks comprised 39 percent of the voting-age population.
- Though Blacks were not a majority of the district, they were able, with some crossover support from a limited number of white voters, to elect candidates of their choice the state legislature for two decades.

# Opportunity to Elect

- Evidence in the case showed that African Americans could elect a candidate of their choice from voting districts with a Black voting-age population of as little as 38 percent.
- Indeed, eleven African Americans were elected in 2004 to the North Carolina House from districts in which Blacks comprised at least 39 percent.
- Moreover, all nine of the Black members of the North Carolina Senate were elected from districts that aren't majority Black.

# Implications of Ruling

- *First*, the Court expressly recognized that racial discrimination persists even after the election of President Barack Obama.
- “Racial discrimination and racially polarized voting are not ancient history. Much remains to be done to ensure that citizens of all races have an equal opportunity to share and participate in our democratic processes and traditions.
- This observation underscores the continuing need to adhere to the requirements of the Voting Rights Act.

# Intentional Dismantling of Crossover Districts Actionable?

- *Second*, given this continuing reality of racial discrimination, *Bartlett* is not an open invitation to dismantle effective minority opportunity districts.
- The Court suggested that “serious concerns” would be raised under Section 2 and the Fourteenth and Fifteenth Amendments “if there were a showing that a state intentionally drew district lines in order to destroy otherwise effective crossover districts.”

# Coalition Districts

- *Third, Bartlett* did not address Section 2's application in the context of coalition districts.
- The Court did not address, for instance, whether a coalition of African-American and Latino voters, who, when aggregated constitute a majority of a proposed district, could be entitled to Section 2's protection.

# Creation of Crossover Districts Optional

- *Fourth*, although *Bartlett* held that the creation of crossover districts is not *required* by Section 2, the Court expressly held that state legislatures across the country remain free to create such districts.
- In other words, *Bartlett* does not prohibit states from creating affirmative opportunities for minorities to elect candidates of choice in areas where members of single minority group do not reach the 50 percent threshold—either by creating crossover or coalition districts.

# Section 5 as an Independent Discrimination Checkpoint

- *Finally*, for jurisdictions subject to its coverage, Section 5 of the Voting Rights Act may serve as an independent checkpoint that prevents the dismantling of crossover districts.
- Section 5 ensures that no voting changes will be made that worsen the position of racial minorities with respect to their effective exercise of the vote.

# *Gonzales v. City of Compton*

- In *Gonzales*, filed in December 2010, Plaintiffs argue that the City of Compton's use of an at-large method of electing members to its City Council violates the California Voting Rights Act.
- Plaintiffs, who are Latino/a residents of Compton, argue that despite comprising 67 percent of the City's population overall, and 43 percent of its citizen voting age population, no Latino has ever been elected to the City's 5-member City Council because of its use of at-large elections.

# *Gonzales v. City of Compton*

- Under Compton's at-large election system, all of the eligible voters of the entire City cast their votes for City Council candidates, with the highest vote getters winning the election.
  - Blacks, who are a majority of the registered voters in Compton, hold each position on the City's 5-member city council.

# Remedy Sought

- Plaintiffs argue that, given the sizable population, Latinos should be able to elect candidates of their choice to Compton's City Council.
- Plaintiffs therefore ask the Court to enjoin the City's use of at-large elections, and to instead require district-based elections, which would divide the City into districts from which City Council members are elected.

# Messaging

- *Gonzales* is not about Latinos trying to unseat Blacks, or Brown on Black dissention.
- Indeed, the complaint filed in this action doesn't mention "Black" or seek to identify the racial composition of the City Council.
- Instead, the case is about requiring the racial composition of Compton's City Council to better and more accurately reflect the diversity of the City more broadly.
- Incumbent upon us to resist the divisive Brown on Black narrative, and replace it with an account that harmonizes minority electoral success and accommodates the need for more.