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Legal Sidebar

Redistricting: A Circuit Court Split Over Whether the Voting Rights Act Permits Vote Dilution Claims By Multiple Minority Groups

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There has been a long-standing split in the federal circuit courts of appeals over whether Section 2 of the Voting Rights Act (VRA) permits multiple racial and language minority groups to bring forth vote dilution claims challenging redistricting maps as racially discriminatory. Section 2 prohibits redistricting maps that unlawfully dilute a minority group's voting power. Some federal courts, including the U.S. Courts of Appeals for the Fifth Circuit (Fifth Circuit) in a 1988 ruling and the U.S. Court of Appeals for the Eleventh Circuit (Eleventh Circuit) in 1990, interpreted Section 2 to permit claims brought forth by both a single minority group and by multiple minority groups, also known as minority coalition claims. In the 1996 case of *Nixon v. Kent County*, the U.S. Court of Appeals for the Sixth Circuit (Sixth Circuit), sitting en banc, held that Section 2 does not authorize minority coalition claims, thereby creating a split in the circuit courts. In 2024, the Fifth Circuit, sitting en banc, joined the Sixth Circuit and reached the same conclusion in *Petteway v. Galveston County* and in so doing, overruled its 1988 ruling that took the opposite position in the circuit split.

This Legal Sidebar provides a brief overview of Section 2 of the VRA, discusses relevant Supreme Court precedent, and summarizes the current circuit split as to whether Section 2 permits multiple minority groups to bring vote dilution claims. This Sidebar concludes with considerations for Congress.

Section 2 of the VRA

Congressional and state legislative redistricting maps in every state are required to comply with Section 2 of the VRA. Section 2 authorizes the federal government and private citizens (in most states in the nation) to challenge discriminatory voting practices or procedures, including minority vote dilution. Specifically, Section 2 prohibits any voting qualification or practice applied or imposed by any state or political subdivision (e.g., a city or county), which includes redistricting, that results in the denial or abridgement of the right to vote based on race, color, or membership in a language minority. Section 2 further provides that a violation is established if, based on the totality of circumstances, electoral processes are not equally

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open to participation by members of a racial or language minority group in that the group's members have less opportunity than other members of the electorate to elect representatives of their choice.

The Supreme Court has held that, under certain circumstances, Section 2 may require the creation of one or more "majority-minority" districts in a redistricting map in order to prevent a violation of Section 2. A majority-minority district is one in which a racial or language minority group comprises a voting majority. The Court determined that the creation of such districts can avoid minority vote dilution by helping ensure that racial or language minority groups are not submerged into the majority and, thereby, denied an equal opportunity to elect candidates of choice.

Relevant Supreme Court Precedent

In a 1986 landmark decision, *Thornburg v. Gingles*, the Supreme Court established a three-pronged test for proving vote dilution under Section 2 of the VRA. Under this test, (1) "the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district"; (2) "the minority group must be able to show that it is politically cohesive"; and (3) the minority group must be able to prove that the majority group "votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." The *Gingles* Court also opined that a violation of Section 2 is established if, based on the "totality of the circumstances" and "as a result of the challenged practice or structure[,] plaintiffs do not have an equal opportunity to participate in the political processes and to elect candidates of their choice."

Following *Gingles*, the Supreme Court assumed, but did not explicitly decide, that multiple minority groups can bring Section 2 vote dilution claims. The Court cautioned that if "distinct ethnic and language minority groups" combine to make a Section 2 vote dilution claim, the second prong of the *Gingles* test—proof of political cohesion—"is all the more essential."

The Federal Circuit Court Split

Until 1996, some federal appellate courts had interpreted Section 2 to permit claims by multiple minority groups. For example, in the 1988 case of *Campos v. City of Baytown*, the Fifth Circuit held that Section 2 authorized multiple minority groups to combine their populations for vote dilution claims. In *Campos*, the Fifth Circuit determined that if Black and Hispanic citizens can equal a majority in a single member district, and can prove that they "actually vote together and are impeded in their ability to elect their own candidates," they can satisfy the *Gingles* three-pronged test. Similarly, the Eleventh Circuit in a 1990 ruling, *Concerned Citizens of Hardee County v. Hardee County Board of Commissioners*, determined that two minority groups can combine to make a Section 2 claim "if they can establish that they behave in a politically cohesive manner."

In 1996, the Sixth Circuit, sitting en banc, held that Section 2 of the VRA does not authorize minority coalition claims, thereby creating a split in the circuit courts. In *Nixon v. Kent County*, the Sixth Circuit held that a textual analysis of Section 2 did not "reasonably support[]" the conclusion that Congress intended the statute to permit multiple minority groups to bring suit because Section 2 refers only to a singular class. The court also rejected an argument that interpreting Section 2 to authorize the combining of minority groups was "warranted by its broad remedial purposes." While recognizing the significance of its disagreement with the Fifth Circuit and with the other circuits that had "assumed" that Section 2 authorizes minority coalition claims, the Sixth Circuit concluded that it was "not constrained to follow [those rulings] if ... they are based upon an incomplete or incorrect analysis." In contrast, the Sixth Circuit stressed that its ruling was informed by "settled principles of statutory interpretation," which the other courts had not even "acknowledged, let alone applied."

More recently, in the 2024 case of *Petteway v. Galveston County*, a divided Fifth Circuit, sitting en banc, overruled its earlier decision in *Campos* and became the second appellate court to decide that Section 2 of the VRA does not authorize minority coalition claims. In a textual analysis, the en banc majority in *Petteway* held that by identifying the subject of a vote dilution claim in the singular, that is, as "a class," and not the plural, Section 2 does not authorize claims by multiple minority groups. The majority reasoned that "a class" cannot be interpreted to encompass two separate minority groups, and therefore, Section 2 requires that vote dilution claims by distinct minority groups "be analyzed separately." The court also rejected the argument that Section 2 should be read more expansively and that such an interpretation is "warranted by the statute's broad remedial purpose." Invoking Supreme Court precedent counseling that "vague notions" about the purpose of a statute are "inadequate to overcome the words of its text," the Fifth Circuit concluded that its rejection of minority coalitions claims was necessitated by Congress opting not to expressly authorize such claims in the language of Section 2. Similarly, the Fifth Circuit rejected the argument that when Congress last amended Section 2 in 1982, it was aware of court cases involving minority coalitions claims and nonetheless chose not to expressly restrict claims to single-minority groups. Plaintiffs argued that this expressed omission was "intended to authorize coalition claims." According to the Fifth Circuit, plaintiffs' argument was "riddled with distortion and error" because the court cases that plaintiffs relied upon were not cited in the legislative history for this proposition, did not hold that multiple minority groups could bring Section 2 claims, and did not involve Section 2 vote dilution claims.

The Fifth Circuit in *Petteway* also determined that its holding was supported by the Supreme Court's 2008 decision in *Bartlett v. Strickland*. The Fifth Circuit observed that a plurality of the Supreme Court in *Bartlett* reaffirmed the first *Gingles* precondition that a minority group prove that it is large and geographically compact enough to equal a majority in a district. In so doing, the *Bartlett* plurality determined that Section 2 does not authorize claims involving "crossover districts," in which a minority group does not equal a majority but "is large enough to elect the candidate of its choice with help from voters who are members of the majority and who cross over to support the minority's preferred candidate." As the *Bartlett* plurality explained, claims involving crossover districts would prove difficult for courts to adjudicate because they "would place courts in the untenable position of predicting many political variables and tying them to race-based assumptions." By extension, the Fifth Circuit reasoned, and for the same reasons articulated by the plurality in *Bartlett*, Section 2 does not authorize claims by multiple minority groups.

Accordingly, the Fifth Circuit in *Petteway* expressly overruled its 1988 ruling in *Campos v. Baytown*. The court held that its prior decision in *Campos* "got things precisely backwards" when it determined that, by not expressly prohibiting Section 2 claims by multiple minority groups, Congress meant to authorize such claims.

Considerations for Congress

As discussed, the federal circuit courts are split on whether Section 2 of the VRA authorizes vote dilution claims by multiple racial and language minority groups. Specifically, the Fifth and Sixth Circuits have concluded that Section 2 does not provide for multiple minority group claims, while the Eleventh Circuit has expressly permitted such claims. The Supreme Court and other federal courts have not ruled directly on the issue. Should the circuit court split persist and those courts that have not ruled directly decide to address the issue, the Supreme Court could decide to grant certiorari of an appeal to resolve this issue.

Whether Section 2 authorizes vote dilution claims by multiple minority groups involves a question of statutory interpretation, and therefore, Congress could decide to either maintain the current interpretations or amend the VRA in response to the circuit court split. For example, Congress could decide to clarify that Section 2 permits vote dilution claims to redistricting maps that are brought by multiple racial and

language minority groups by amending the law to provide expressly for such a cause of action. In contrast, if Congress decides that Section 2 suits are most appropriately brought by single-racial and single-language minority groups, it could likewise amend the law accordingly. By way of historical example, following the Supreme Court's 1980 decision in *City of Mobile v. Bolden*, Congress amended Section 2 in 1982 to overturn the effects of that ruling. Any such legislation would have to be consistent with the Constitution, as interpreted by the Court. Although the Supreme Court has recently rejected arguments to overrule *Gingles*, the Court has arguably construed the scope and effect of the VRA more narrowly in recent decades. Hence, the practical consequence of Congress amending Section 2 to clarify its application to vote dilution claims raised by single or multiple minority groups could be affected by future Supreme Court rulings interpreting the law, including how stringently the Court determines that each prong of the *Gingles* test is to be applied.

Legislation introduced in Congress would address the VRA. For example, H.R. 14 (119th Congress), the John R. Lewis Voting Rights Advancement Act of 2025, among other things, would amend Section 2 of the VRA to codify the *Gingles* three-pronged test for Section 2 vote dilution claims, but it would not expressly amend the law to clarify the authority of claims by multiple minority groups. H.R. 14 would also establish a new coverage formula for identifying jurisdictions throughout the country that would be subject to the VRA's Section 5 preclearance requirements, which have been inoperable since 2013 following the Supreme Court's invalidation of the VRA's coverage formula as unconstitutional.

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