SUPREME COURT OF THE UNITED STATES

No. 07–689

GARY BARTLETT, EXECUTIVE DIRECTOR OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS, ET AL., PETITIONERS *v.* DWIGHT STRICKLAND ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

[March 9, 2009]

JUSTICE KENNEDY announced the judgment of the Court and delivered an opinion, in which THE CHIEF JUSTICE and JUSTICE ALITO join.

This case requires us to interpret §2 of the Voting Rights Act of 1965, 79 Stat. 437, as amended, 42 U. S. C. §1973 (2000 ed.). The question is whether the statute can be invoked to require state officials to draw election-district lines to allow a racial minority to join with other voters to elect the minority's candidate of choice, even where the racial minority is less than 50 percent of the voting-age population in the district to be drawn. To use election-law terminology: In a district that is not a majority-minority district, if a racial minority could elect its candidate of choice with support from crossover majority voters, can §2 require the district to be drawn to accommodate this potential?

I

The case arises in a somewhat unusual posture. State authorities who created a district now invoke the Voting

Rights Act as a defense. They argue that §2 required them to draw the district in question in a particular way, despite state laws to the contrary. The state laws are provisions of the North Carolina Constitution that prohibit the General Assembly from dividing counties when drawing legislative districts for the State House and Senate. Art. II, §§3, 5. We will adopt the term used by the state courts and refer to both sections of the state constitution as the Whole County Provision. See *Pender County* v. *Bartlett,* 361 N. C. 491, 493, 649 S. E. 2d 364, 366 (2007) (case below).

It is common ground that state election-law requirements like the Whole County Provision may be superseded by federal law—for instance, the one-person, one-vote principle of the Equal Protection Clause of the United States Constitution. See *Reynolds* v. *Sims*, 377 U. S. 533 (1964). Here the question is whether §2 of the Voting Rights Act requires district lines to be drawn that otherwise would violate the Whole County Provision. That, in turn, depends on how the statute is interpreted.

We begin with the election district. The North Carolina House of Representatives is the larger of the two chambers in the State's General Assembly. District 18 of that body lies in the southeastern part of North Carolina. Starting in 1991, the General Assembly drew District 18 to include portions of four counties, including Pender County, in order to create a district with a majority African-American voting-age population and to satisfy the Voting Rights Act. Following the 2000 census, the North Carolina Supreme Court, to comply with the Whole County Provision, rejected the General Assembly's first two statewide redistricting plans. See *Stephenson* v. *Bartlett*, 355 N. C. 354, 375, 562 S. E. 2d 377, 392, stay denied, 535 U. S. 1301 (2002) (Rehnquist, C. J., in chambers); *Stephenson* v. *Bartlett*, 357 N. C. 301, 314, 582 S. E. 2d 247, 254 (2003).

District 18 in its present form emerged from the General Assembly's third redistricting attempt, in 2003. By that time the African-American voting-age population had fallen below 50 percent in the district as then drawn, and the General Assembly no longer could draw a geographically compact majority-minority district. Rather than draw District 18 to keep Pender County whole, however, the General Assembly drew it by splitting portions of Pender and New Hanover counties. District 18 has an African-American voting-age population of 39.36 percent. App. 139. Had it left Pender County whole, the General Assembly could have drawn District 18 with an African-American voting-age population of 35.33 percent. *Id.*, at 73. The General Assembly's reason for splitting Pender County was to give African-American voters the potential to join with majority voters to elect the minority group's candidate of its choice. *Ibid.* Failure to do so, state officials now submit, would have diluted the minority group's voting strength in violation of §2.

In May 2004, Pender County and the five members of its Board of Commissioners filed the instant suit in North Carolina state court against the Governor of North Carolina, the Director of the State Board of Elections, and other state officials. The plaintiffs alleged that the 2003 plan violated the Whole County Provision by splitting Pender County into two House districts. App. 5–14. The state-official defendants answered that dividing Pender County was required by §2. *Id.*, at 25. As the trial court recognized, the procedural posture of this case differs from most §2 cases. Here the defendants raise §2 as a defense. As a result, the trial court stated, they are "in the unusual position" of bearing the burden of proving that a §2 violation would have occurred absent splitting Pender County to draw District 18. App. to Pet. for Cert. 90a.

The trial court first considered whether the defendant state officials had established the three threshold re-

quirements for §2 liability under *Thornburg* v. *Gingles*, 478 U. S. 30, 50–51 (1986)—namely, (1) that the minority group "is sufficiently large and geographically compact to constitute a majority in a single-member district," (2) that the minority group is "politically cohesive," and (3) "that the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate."

As to the first *Gingles* requirement, the trial court concluded that, although African-Americans were not a majority of the voting-age population in District 18, the district was a "de facto" majority-minority district because African-Americans could get enough support from crossover majority voters to elect the African-Americans' preferred candidate. The court ruled that African-Americans in District 18 were politically cohesive, thus satisfying the second requirement. And later, the plaintiffs stipulated that the third *Gingles* requirement was met. App. to Pet. for Cert. at 102a–103a, 130a. The court then determined, based on the totality of the circumstances, that §2 required the General Assembly to split Pender County. The court sustained the lines for District 18 on that rationale. *Id.*, at 116a–118a.

Three of the Pender County Commissioners appealed the trial court's ruling that the defendants had established the first *Gingles* requirement. The Supreme Court of North Carolina reversed. It held that a "minority group must constitute a numerical majority of the voting population in the area under consideration before Section 2 . . . requires the creation of a legislative district to prevent dilution of the votes of that minority group." 361 N. C., at 502, 649 S. E. 2d, at 371. On that premise the State Supreme Court determined District 18 was not mandated by §2 because African-Americans do not "constitute a numerical majority of citizens of voting age." *Id.*, at 507, 649 S. E. 2d, at 374. It ordered the General Assembly to redraw District 18. *Id.*, at 510, 649 S. E. 2d, at 376.

We granted certiorari, 552 U. S. ___ (2008), and now affirm.

II

Passage of the Voting Rights Act of 1965 was an important step in the struggle to end discriminatory treatment of minorities who seek to exercise one of the most fundamental rights of our citizens: the right to vote. Though the Act as a whole was the subject of debate and controversy, §2 prompted little criticism. The likely explanation for its general acceptance is that, as first enacted, §2 tracked, in part, the text of the Fifteenth Amendment. It prohibited practices "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; cf. U. S. Const., Amdt. 15 ("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"); see also S. Rep. No. 162, 89th Cong., 1st Sess., pt. 3, pp. 19–20 (1965). In *Mobile* v. *Bolden*, 446 U. S. 55, 60–61 (1980), this Court held that §2, as it then read, "no more than elaborates upon . . . the Fifteenth Amendment" and was "intended to have an effect no different from that of the Fifteenth Amendment itself."

In 1982, after the *Mobile* ruling, Congress amended §2, giving the statute its current form. The original Act had employed an intent requirement, prohibiting only those practices "imposed or applied . . . to deny or abridge" the right to vote. 79 Stat. 437. The amended version of §2 requires consideration of effects, as it prohibits practices "imposed or applied . . . in a manner which results in a denial or abridgment" of the right to vote. 96 Stat. 134, 42 U. S. C. §1973(a) (2000 ed.). The 1982 amendments also added a subsection, §2(b), providing a test for determining whether a §2 violation has occurred. The relevant text of

the statute now states:

> "(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 membership in a language minority group], as provided in subsection (b) of this section.
>
> "(b) A violation of subsection (a) of this section 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) of this section 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." 42 U. S. C. §1973.

This Court first construed the amended version of §2 in *Thornburg* v. *Gingles*, 478 U. S. 30 (1986). In *Gingles*, the plaintiffs were African-American residents of North Carolina who alleged that multimember districts diluted minority voting strength by submerging black voters into the white majority, denying them an opportunity to elect a candidate of their choice. The Court identified three "necessary preconditions" for a claim that the use of multimember districts constituted actionable vote dilution under §2: (1) The minority group must be "sufficiently large and geographically compact to constitute a majority in a single-member district," (2) the minority group must be "politically cohesive," and (3) the majority must vote "sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." *Id.*, at 50–51.

The Court later held that the three *Gingles* require-

ments apply equally in §2 cases involving single-member districts, such as a claim alleging vote dilution because a geographically compact minority group has been split between two or more single-member districts. *Growe* v. *Emison*, 507 U. S. 25, 40–41 (1993). In a §2 case, only when a party has established the *Gingles* requirements does a court proceed to analyze whether a violation has occurred based on the totality of the circumstances. *Gingles*, *supra*, at 79; see also *Johnson* v. *De Grandy*, 512 U. S. 997, 1013 (1994).

III

A

This case turns on whether the first *Gingles* requirement can be satisfied when the minority group makes up less than 50 percent of the voting-age population in the potential election district. The parties agree on all other parts of the *Gingles* analysis, so the dispositive question is: What size minority group is sufficient to satisfy the first *Gingles* requirement?

At the outset the answer might not appear difficult to reach, for the *Gingles* Court said the minority group must "demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district." 478 U. S., at 50. This would seem to end the matter, as it indicates the minority group must demonstrate it can constitute "a majority." But in *Gingles* and again in *Growe* the Court reserved what it considered to be a separate question—whether, "when a plaintiff alleges that a voting practice or procedure impairs a minority's ability to influence, rather than alter, election results, a showing of geographical compactness of a minority group not sufficiently large to constitute a majority will suffice." *Growe*, *supra*, at 41, n. 5; see also *Gingles*, *supra*, at 46–47, n. 12. The Court has since applied the *Gingles* requirements in §2 cases but has declined to decide the

minimum size minority group necessary to satisfy the first requirement. See *Voinovich* v. *Quilter*, 507 U. S. 146, 154 (1993); *De Grandy*, *supra*, at 1009; *League of United Latin American Citizens* v. *Perry*, 548 U. S. 399, 443 (2006) (opinion of KENNEDY, J.) *(LULAC)*. We must consider the minimum-size question in this case.

It is appropriate to review the terminology often used to describe various features of election districts in relation to the requirements of the Voting Rights Act. In majority-minority districts, a minority group composes a numerical, working majority of the voting-age population. Under present doctrine, §2 can require the creation of these districts. See, *e.g.*, *Voinovich*, *supra,* at 154 ("Placing black voters in a district in which they constitute a sizeable and therefore 'safe' majority ensures that they are able to elect their candidate of choice"); but see *Holder* v. *Hall*, 512 U. S. 874, 922–923 (1994) (THOMAS, J., concurring in judgment). At the other end of the spectrum are influence districts, in which a minority group can influence the outcome of an election even if its preferred candidate cannot be elected. This Court has held that §2 does not require the creation of influence districts. *LULAC*, *supra,* at 445 (opinion of KENNEDY, J.).

The present case involves an intermediate type of district—a so-called crossover district. Like an influence district, a crossover district is one in which minority voters make up less than a majority of the voting-age population. But in a crossover district, the minority population, at least potentially, 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. 361 N. C., at 501–502, 649 S. E. 2d, at 371 (case below). This Court has referred sometimes to crossover districts as "coalitional" districts, in recognition of the necessary coalition between minority and crossover majority voters. See *Georgia* v. *Ashcroft*, 539 U. S. 461,

483 (2003); see also Pildes, Is Voting Rights Law Now at War with Itself? Social Science and Voting Rights in the 2000s, 80 N. C. L. Rev. 1517, 1539 (2002) (hereinafter Pildes). But that term risks confusion with coalition-district claims in which two minority groups form a coalition to elect the candidate of the coalition's choice. See, *e.g.*, *Nixon* v. *Kent County*, 76 F. 3d 1381, 1393 (CA6 1996) (en banc). We do not address that type of coalition district here. The petitioners in the present case (the state officials who were the defendants in the trial court) argue that §2 requires a crossover district, in which minority voters might be able to persuade some members of the majority to cross over and join with them.

Petitioners argue that although crossover districts do not include a numerical majority of minority voters, they still satisfy the first *Gingles* requirement because they are "effective minority districts." Under petitioners' theory keeping Pender County whole would have violated §2 by cracking the potential crossover district that they drew as District 18. See *Gingles*, 478 U. S., at 46, n. 11 (vote dilution "may be caused by the dispersal of blacks into districts in which they constitute an ineffective minority of voters"). So, petitioners contend, §2 required them to override state law and split Pender County, drawing District 18 with an African-American voting-age population of 39.36 percent rather than keeping Pender County whole and leaving District 18 with an African-American voting-age population of 35.33 percent. We reject that claim.

First, we conclude, the petitioners' theory is contrary to the mandate of §2. The statute requires a showing that minorities "have less opportunity than other members of the electorate to . . . elect representatives of their choice." 42 U. S. C. §1973(b) (2000 ed.). But because they form only 39 percent of the voting-age population in District 18, African-Americans standing alone have no better or worse

opportunity to elect a candidate than does any other group of voters with the same relative voting strength. That is, African-Americans in District 18 have the opportunity to join other voters—including other racial minorities, or whites, or both—to reach a majority and elect their preferred candidate. They cannot, however, elect that candidate based on their own votes and without assistance from others. Recognizing a §2 claim in this circumstance would grant minority voters "a right to preserve their strength for the purposes of forging an advantageous political alliance." *Hall* v. *Virginia*, 385 F. 3d 421, 431 (CA4 2004); see also *Voinovich, supra*, at 154 (minorities in crossover districts "could not dictate electoral outcomes independently"). Nothing in §2 grants special protection to a minority group's right to form political coalitions. "[M]inority voters are not immune from the obligation to pull, haul, and trade to find common political ground." *De Grandy*, 512 U. S., at 1020.

Although the Court has reserved the question we confront today and has cautioned that the *Gingles* requirements "cannot be applied mechanically," *Voinovich*, *supra*, at 158, the reasoning of our cases does not support petitioners' claims. Section 2 does not impose on those who draw election districts a duty to give minority voters the most potential, or the best potential, to elect a candidate by attracting crossover voters. In setting out the first requirement for §2 claims, the *Gingles* Court explained that "[u]nless minority voters possess the *potential* to elect representatives in the absence of the challenged structure or practice, they cannot claim to have been injured by that structure or practice." 478 U. S., at 50, n. 17. The *Growe* Court stated that the first *Gingles* requirement is "needed to establish that the minority has the potential to elect a representative of its own choice in some single-member district." 507 U. S., at 40. Without such a showing, "there neither has been a wrong nor can be a remedy." *Id.*, at 41.

There is a difference between a racial minority group's "own choice" and the choice made by a coalition. In *Voinovich*, the Court stated that the first *Gingles* requirement "would have to be modified or eliminated" to allow crossover-district claims. 507 U. S., at 158. Only once, in dicta, has this Court framed the first *Gingles* requirement as anything other than a majority-minority rule. See *De Grandy*, 512 U. S., at 1008 (requiring "a sufficiently large minority population to elect candidates of its choice"). And in the same case, the Court rejected the proposition, inherent in petitioners' claim here, that §2 entitles minority groups to the maximum possible voting strength:

> "[R]eading §2 to define dilution as any failure to maximize tends to obscure the very object of the statute and to run counter to its textually stated purpose. 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." *Id.*, at 1016–1017.

Allowing crossover-district claims would require us to revise and reformulate the *Gingles* threshold inquiry that has been the baseline of our §2 jurisprudence. Mandatory recognition of claims in which success for a minority depends upon crossover majority voters would create serious tension with the third *Gingles* requirement that the majority votes as a bloc to defeat minority-preferred candidates. It is difficult to see how the majority-bloc-voting requirement could be met in a district where, by definition, white voters join in sufficient numbers with minority voters to elect the minority's preferred candidate. (We are skeptical that the bloc-voting test could be satisfied here, for example, where minority voters in District 18 cannot elect their candidate of choice without support from almost 20 percent of white voters. We do not confront that issue,

however, because for some reason respondents conceded the third *Gingles* requirement in state court.)

As the *Gingles* Court explained, "in the absence of significant white bloc voting it cannot be said that the ability of minority voters to elect their chosen representatives is inferior to that of white voters." 478 U. S., at 49, n. 15. Were the Court to adopt petitioners' theory and dispense with the majority-minority requirement, the ruling would call in question the *Gingles* framework the Court has applied under §2. See *LULAC*, 548 U. S., at 490, n. 8. (SOUTER, J., concurring in part and dissenting in part) ("All aspects of our established analysis for majority-minority districts in *Gingles* and its progeny may have to be rethought in analyzing ostensible coalition districts"); cf. *Metts* v. *Murphy*, 363 F. 3d 8, 12 (CA1 2004) (en banc) *(per curiam)* (allowing influence-district claim to survive motion to dismiss but noting "there is tension in this case for plaintiffs in any effort to satisfy both the first and third prong of *Gingles*").

We find support for the majority-minority requirement in the need for workable standards and sound judicial and legislative administration. The rule draws clear lines for courts and legislatures alike. The same cannot be said of a less exacting standard that would mandate crossover districts under §2. Determining whether a §2 claim would lie—*i.e.*, determining whether potential districts could function as crossover districts—would place courts in the untenable position of predicting many political variables and tying them to race-based assumptions. The judiciary would be directed to make predictions or adopt premises that even experienced polling analysts and political experts could not assess with certainty, particularly over the long term. For example, courts would be required to pursue these inquiries: What percentage of white voters supported minority-preferred candidates in the past? How reliable would the crossover votes be in future elections?

What types of candidates have white and minority voters supported together in the past and will those trends continue? Were past crossover votes based on incumbency and did that depend on race? What are the historical turnout rates among white and minority voters and will they stay the same? Those questions are speculative, and the answers (if they could be supposed) would prove elusive. A requirement to draw election districts on answers to these and like inquiries ought not to be inferred from the text or purpose of §2. Though courts are capable of making refined and exacting factual inquiries, they "are inherently ill-equipped" to "make decisions based on highly political judgments" of the sort that crossover-district claims would require. *Holder*, 512 U. S., at 894 (THOMAS, J., concurring in judgment). There is an underlying principle of fundamental importance: We must be most cautious before interpreting a statute to require courts to make inquiries based on racial classifications and race-based predictions. The statutory mandate petitioners urge us to find in §2 raises serious constitutional questions. See *infra*, at 16–18.

Heightening these concerns even further is the fact that §2 applies nationwide to every jurisdiction that must draw lines for election districts required by state or local law. Crossover-district claims would require courts to make predictive political judgments not only about familiar, two-party contests in large districts but also about regional and local jurisdictions that often feature more than two parties or candidates. Under petitioners' view courts would face the difficult task of discerning crossover patterns in nonpartisan contests for a city commission, a school board, or a local water authority. The political data necessary to make such determinations are nonexistent for elections in most of those jurisdictions. And predictions would be speculative at best given that, especially in the context of local elections, voters' personal affiliations

with candidates and views on particular issues can play a large role.

Unlike any of the standards proposed to allow crossover-district claims, the majority-minority rule relies on an objective, numerical test: Do minorities make up more than 50 percent of the voting-age population in the relevant geographic area? That rule provides straightforward guidance to courts and to those officials charged with drawing district lines to comply with §2. See *LULAC*, *supra*, at 485 (opinion of SOUTER, J.) (recognizing need for "clear-edged rule"). Where an election district could be drawn in which minority voters form a majority but such a district is not drawn, or where a majority-minority district is cracked by assigning some voters elsewhere, then—assuming the other *Gingles* factors are also satisfied—denial of the opportunity to elect a candidate of choice is a present and discernible wrong that is not subject to the high degree of speculation and prediction attendant upon the analysis of crossover claims. Not an arbitrary invention, the majority-minority rule has its foundation in principles of democratic governance. The special significance, in the democratic process, of a majority means it is a special wrong when a minority group has 50 percent or more of the voting population and could constitute a compact voting majority but, despite racially polarized bloc voting, that group is not put into a district.

Given the text of §2, our cases interpreting that provision, and the many difficulties in assessing §2 claims without the restraint and guidance provided by the majority-minority rule, no federal court of appeals has held that §2 requires creation of coalition districts. Instead, all to consider the question have interpreted the first *Gingles* factor to require a majority-minority standard. See *Hall*, 385 F. 3d, at 427–430 (CA4 2004), cert. denied, 544 U. S. 961 (2005); *Valdespino* v. *Alamo Heights Independent School Dist.*, 168 F. 3d 848, 852–853 (CA5 1999), cert.

denied, 528 U. S. 1114 (2000); *Cousin* v. *Sundquist*, 145 F. 3d 818, 828–829 (CA6 1998), cert. denied, 525 U. S. 1138 (1999); *Sanchez* v. *Colorado*, 97 F. 3d 1303, 1311–1312 (CA10 1996), cert. denied, 520 U. S. 1229 (1997); *Romero* v. *Pomona*, 883 F. 2d 1418, 1424, n. 7, 1425–1426 (CA9 1989), overruled on other grounds, 914 F. 2d 1136, 1141 (CA9 1990); *McNeil* v. *Springfield Park Dist.*, 851 F. 2d 937, 947 (CA7 1988), cert. denied, 490 U. S. 1031 (1989). Cf. *Metts*, 363 F. 3d, at 11 (expressing unwillingness "at the complaint stage to foreclose the *possibility*" of influence-district claims). We decline to depart from the uniform interpretation of §2 that has guided federal courts and state and local officials for more than 20 years.

To be sure, the *Gingles* requirements "cannot be applied mechanically and without regard to the nature of the claim." *Voinovich*, 507 U. S., at 158. It remains the rule, however, that a party asserting §2 liability must show by a preponderance of the evidence that the minority population in the potential election district is greater than 50 percent. No one contends that the African-American voting-age population in District 18 exceeds that threshold. Nor does this case involve allegations of intentional and wrongful conduct. We therefore need not consider whether intentional discrimination affects the *Gingles* analysis. Cf. Brief for United States as *Amicus Curiae* 14 (evidence of discriminatory intent "tends to suggest that the jurisdiction is not providing an equal opportunity to minority voters to elect the representative of their choice, and it is therefore unnecessary to consider the majority-minority requirement before proceeding to the ultimate totality-of-the-circumstances analysis"); see also *Garza* v. *County of Los Angeles*, 918 F. 2d 763, 771 (CA9 1990). Our holding does not apply to cases in which there is intentional discrimination against a racial minority.

B

In arguing for a less restrictive interpretation of the first *Gingles* requirement petitioners point to the text of §2 and its guarantee that political processes be "equally open to participation" to protect minority voters' "opportunity . . . to elect representatives of their choice." 42 U. S. C. §1973(b) (2000 ed.). An "opportunity," petitioners argue, occurs in crossover districts as well as majority-minority districts; and these extended opportunities, they say, require §2 protection.

But petitioners put emphasis on the word "opportunity" at the expense of the word "equally." The statute does not protect any possible opportunity or mechanism through which minority voters could work with other constituencies to elect their candidate of choice. Section 2 does not guarantee minority voters an electoral advantage. Minority groups in crossover districts cannot form a voting majority without crossover voters. In those districts minority voters have the same opportunity to elect their candidate as any other political group with the same relative voting strength.

The majority-minority rule, furthermore, is not at odds with §2's totality-of-the-circumstances test. The Court in *De Grandy* confirmed "the error of treating the three *Gingles* conditions as exhausting the enquiry required by §2." 512 U. S., at 1013. Instead the *Gingles* requirements are preconditions, consistent with the text and purpose of §2, to help courts determine which claims could meet the totality-of-the-circumstances standard for a §2 violation. See *Growe*, 507 U. S., at 40 (describing the "*Gingles* threshold factors").

To the extent there is any doubt whether §2 calls for the majority-minority rule, we resolve that doubt by avoiding serious constitutional concerns under the Equal Protection Clause. See *Clark* v. *Martinez*, 543 U. S. 371, 381–382 (2005) (canon of constitutional avoidance is "a tool for

choosing between competing plausible interpretations of a statutory text, resting on the reasonable presumption that Congress did not intend the alternative which raises serious constitutional doubts"). Of course, the "moral imperative of racial neutrality is the driving force of the Equal Protection Clause," and racial classifications are permitted only "as a last resort." *Richmond* v. *J. A. Croson Co.*, 488 U. S. 469, 518, 519 (1989) (KENNEDY, J., concurring in part and concurring in judgment). "Racial classifications with respect to voting carry particular dangers. 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—a goal that the Fourteenth and Fifteenth Amendments embody, and to which the Nation continues to aspire." *Shaw* v. *Reno*, 509 U. S. 630, 657 (1993). If §2 were interpreted to require crossover districts throughout the Nation, "it would unnecessarily infuse race into virtually every redistricting, raising serious constitutional questions." *LULAC*, 548 U. S., at 446 (opinion of KENNEDY, J.); see also *Ashcroft*, 539 U. S., at 491 (KENNEDY, J., concurring). That interpretation would result in a substantial increase in the number of mandatory districts drawn with race as "the predominant factor motivating the legislature's decision." *Miller* v. *Johnson*, 515 U. S. 900, 916 (1995).

On petitioners' view of the case courts and legislatures would need to scrutinize every factor that enters into districting to gauge its effect on crossover voting. Injecting this racial measure into the nationwide districting process would be of particular concern with respect to consideration of party registration or party influence. The easiest and most likely alliance for a group of minority voters is one with a political party, and some have suggested using minority voters' strength within a particular party as the proper yardstick under the first *Gingles*

requirement. See, *e.g.*, *LULAC*, *supra,* at 485–486 (opinion of SOUTER, J.) (requiring only "that minority voters . . . constitute a majority of those voting in the primary of . . . the party tending to win in the general election"). That approach would replace an objective, administrable rule with a difficult "judicial inquiry into party rules and local politics" to determine whether a minority group truly "controls" the dominant party's primary process. McLoughlin, *Gingles* in Limbo: Coalitional Districts, Party Primaries and Manageable Vote Dilution Claims, 80 N. Y. U. L. Rev. 312, 349 (2005). More troubling still is the inquiry's fusion of race and party affiliation as a determinant when partisan considerations themselves may be suspect in the drawing of district lines. See *Vieth* v. *Jubelirer*, 541 U. S. 267, 317 (2004) (STEVENS, J., dissenting); *id.*, at 316 (KENNEDY, J., concurring in judgment); see also Pildes 1565 (crossover-district requirement would essentially result in political party "entitlement to . . . a certain number of seats"). Disregarding the majority-minority rule and relying on a combination of race and party to presume an effective majority would involve the law and courts in a perilous enterprise. It would rest on judicial predictions, as a matter of law, that race and party would hold together as an effective majority over time—at least for the decennial apportionment cycles and likely beyond. And thus would the relationship between race and party further distort and frustrate the search for neutral factors and principled rationales for districting.

Petitioners' approach would reverse the canon of avoidance. It invites the divisive constitutional questions that are both unnecessary and contrary to the purposes of our precedents under the Voting Rights Act. Given the consequences of extending racial considerations even further into the districting process, we must not interpret §2 to require crossover districts.

C

Our holding that §2 does not require crossover districts does not consider the permissibility of such districts as a matter of legislative choice or discretion. Assuming a majority-minority district with a substantial minority population, a legislative determination, based on proper factors, to create two crossover districts may serve to diminish the significance and influence of race by encouraging minority and majority voters to work together toward a common goal. The option to draw such districts gives legislatures a choice that can lead to less racial isolation, not more. And as the Court has noted in the context of §5 of the Voting Rights Act, "various studies have suggested that the most effective way to maximize minority voting strength may be to create more influence or [crossover] districts." *Ashcroft*, 539 U. S., at 482. Much like §5, §2 allows States to choose their own method of complying with the Voting Rights Act, and we have said that may include drawing crossover districts. See *id.*, at 480–483. When we address the mandate of §2, however, we must note it is not concerned with maximizing minority voting strength, *De Grandy*, 512 U. S., at 1022; and, as a statutory matter, §2 does not mandate creating or preserving crossover districts.

Our holding also should not be interpreted to entrench majority-minority districts by statutory command, for that, too, could pose constitutional concerns. See *Miller* v. *Johnson, supra*; *Shaw* v. *Reno, supra.* States that wish to draw crossover districts are free to do so where no other prohibition exists. Majority-minority districts are only required if all three *Gingles* factors are met and if §2 applies based on a totality of the circumstances. In areas with substantial crossover voting it is unlikely that the plaintiffs would be able to establish the third *Gingles* precondition—bloc voting by majority voters. See *supra*, at 11. In those areas majority-minority districts would not

be required in the first place; and in the exercise of lawful discretion States could draw crossover districts as they deemed appropriate. See Pildes 1567 ("Districts could still be designed in such places that encouraged coalitions across racial lines, but these districts would result from legislative choice, not . . . obligation"). States can—and in proper cases should—defend against alleged §2 violations by pointing to crossover voting patterns and to effective crossover districts. Those can be evidence, for example, of diminished bloc voting under the third *Gingles* factor or of equal political opportunity under the §2 totality-of-the-circumstances analysis. And if there were a showing that a State intentionally drew district lines in order to destroy otherwise effective crossover districts, that would raise serious questions under both the Fourteenth and Fifteenth Amendments. See *Reno* v. *Bossier Parish School Bd.*, 520 U. S. 471, 481–482 (1997); Brief for United States as *Amicus Curiae* 13–14. There is no evidence of discriminatory intent in this case, however. Our holding recognizes only that there is no support for the claim that §2 can require the creation of crossover districts in the first instance.

Petitioners claim the majority-minority rule is inconsistent with §5, but we rejected a similar argument in *LULAC,* 548 U. S., at 446 (opinion of KENNEDY, J.). The inquiries under §§2 and 5 are different. Section 2 concerns minority groups' opportunity "to elect representatives of their choice," 42 U. S. C. §1973(b) (2000 ed.), while the more stringent §5 asks whether a change has the purpose or effect of "denying or abridging the right to vote," §1973c. See *LULAC*, *supra*, at 446; *Bossier Parish, supra,* at 476–480. In *LULAC*, we held that although the presence of influence districts is relevant for the §5 retrogression analysis, "the lack of such districts cannot establish a §2 violation." 548 U. S., at 446 (opinion of KENNEDY, J.); see also *Ashcroft*, 539 U. S., at 482–483.

The same analysis applies for crossover districts: Section 5 "leaves room" for States to employ crossover districts, *id.*, at 483, but §2 does not require them.

IV

Some commentators suggest that racially polarized voting is waning—as evidenced by, for example, the election of minority candidates where a majority of voters are white. See Note, The Future of Majority-Minority Districts in Light of Declining Racially Polarized Voting, 116 Harv. L. Rev. 2208, 2209 (2003); see also *id.*, at 2216–2222; Pildes 1529–1539; Bullock & Dunn, The Demise of Racial Districting and the Future of Black Representation, 48 Emory L. J. 1209 (1999). Still, racial discrimination and racially polarized voting are not ancient history. Much remains to be done to ensure that citizens of all races have equal opportunity to share and participate in our democratic processes and traditions; and §2 must be interpreted to ensure that continued progress.

It would be an irony, however, if §2 were interpreted to entrench racial differences by expanding a "statute meant to hasten the waning of racism in American politics." *De Grandy, supra*, at 1020. Crossover districts are, by definition, the result of white voters joining forces with minority voters to elect their preferred candidate. The Voting Rights Act was passed to foster this cooperation. We decline now to expand the reaches of §2 to require, by force of law, the voluntary cooperation our society has achieved. 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.

The judgment of the Supreme Court of North Carolina is affirmed.

It is so ordered.