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Abstract

The U.S. Supreme Court's recent decision to strike down a key component of the 1965 Voting Rights Act (VRA) closes one of the most successful chapters in the history of civil rights enforcement. Our country has changed since 1965 and it is an opportune time to examine current political conditions for minority voters. Based on analysis of congressional elections from 1960 to 2010, I assess the central holding of *Shelby County, Alabama v. Holder*, and other controversial areas of VRA enforcement. My results support the Court's finding that the Act's historic coverage formula does not accurately reflect current political conditions. However, my results challenge prevailing views on two points. I conclude that uniform standards are problematic because redistricting guidelines that improve opportunities for African American voters are likely to diminish opportunities for Latino voters (and vice versa). In addition, requiring majority African American districts appears to diminish aggregate African American voting opportunities relative to targeting 45% to 50% African American districts.

Keywords

Voting Rights Act, redistricting, congressional elections

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The U.S. Supreme Court's recent decision to strike down a key component of the 1965 Voting Rights Act (VRA) closes one of the most successful chapters in the history of civil rights enforcement. "Our country has changed," Chief Justice Roberts opined for the majority, "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."¹ The case of *Shelby County, Alabama v. Holder* may close one chapter, but if history is any guide, the story is far from over. Congress and the federal courts will continue to confront the challenge of protecting the right to vote.² Our country has changed since 1965 and it is an opportune time to examine current political conditions for minority voters. How can the VRA speak to current conditions? That question opens a new chapter in civil rights enforcement.

In this article, I offer statistical analysis of congressional election outcomes to answer the most pressing questions about voting rights in multicultural America. I analyze the empirical foundations of the Court's opinion and consider how VRA remedies might be reformulated in light of current political conditions. Although this topic area has been previously addressed by political scientists, I aim to contribute to this research area by applying a model of fairness and equal opportunity that was developed to evaluate partisan redistricting to racial redistricting, updating prior analysis with congressional election results through 2010, and analyzing African American and Latino voters as distinct groups.

I focus my analysis on answering three questions. First, do political conditions in states singled out by the VRA justify the heightened enforcement provisions imposed on them?³ Second, was the VRA coverage formula sufficiently tailored to the problem it targeted? Third, when minority voting rights are properly at issue, what remedy provides minority voters with equal opportunities to elect their preferred candidates of choice?

My answers to the first two questions support the Court's decision. Consistent with the Court's recent decision, I find that the relationship between race and representation has changed significantly over the past five decades. I find the historic coverage formula only loosely fit current conditions for African American and Latino voters in the United States. My results indicate that political conditions for minority voters remain difficult in Deep South states covered by Section 5. However, Section 5 also covered states that are not exceptional (e.g., Arizona) and did not apply to states that have especially challenged minority voters (e.g., Maryland).

My answer to the third question points to several problems in the prevailing approach to VRA enforcement. My research indicates that African American and Latino candidates face distinct electoral conditions. At present,

majority-Latino districts are necessary and trends suggest supermajority-Latino districts may be needed to provide Latino voters equal opportunities to elect their preferred candidates. Conversely, it appears that majority African American districts actually diminish African American voters' ability to elect their preferred candidates relative to targeting districts where African Americans compose 45% to 50% of a district's voting age population (VAP). Accordingly, a single, uniform redistricting standard is problematic. Likewise, minority coalition districts are unlikely to improve the opportunities of either African Americans or Latinos to elect their preferred candidates to Congress.

I use my empirical analysis of minority voter success at the district level to simulate aggregate consequences of various VRA standards on congressional representation nationwide. Simulating real world results is useful because minority voters' opportunities to elect their preferred candidates are constrained by geography and vary among different states. Based on recent congressional election results, 2010 population data, and voting simulations, my research suggests that the objective of the VRA is best accomplished by districts with 45% to 50% African American VAP and districts with 60% to 65% Latino VAP.

Redistricting Guidelines of the VRA

The VRA of 1965 has played a central, often controversial, role in American politics. Although African Americans and Latinos are still underrepresented in Congress relative to their proportions in the general population, the number of African Americans and Latinos in Congress has grown considerably over the past five decades. In 1962, Congress had 3 African American members; in 2012, it had 41 African American members. Congress had only 1 Latino member in 1962. Now, 29 Latinos serve in Congress.

Political scientists have examined a number of the implications of race and redistricting. Cameron, Epstein, and O'Halloran (1996) considered the impact of racial composition on the substantive representation of minority interests in Congress. These authors found that drawing districts to maximize the number of minorities elected diminishes substantive representation of minority interests, largely as a result of reducing electoral support for White Democrats (see also Epstein & O'Halloran, 1999; Grose, 2011; Swain, 1993; but see Minta & Sinclair-Chapman, 2013). Lublin (1997, 1999) has documented the interaction of African American and Latino voters in majority-minority districts, regional differences in racial representation effects, and indirect effects of Republican candidate emergence in districts surrounding majority-minority districts.⁴

Compared with research on African American districts, the literature on Latino districts is relatively nascent. Research indicates that the proportion of Latinos significantly affects the probability a district elects a Latino representative, though this relationship varies by region and professionalization of the legislature considered (Casellas, 2009). Latino voters' ability to elect their preferred candidates to Congress may be constrained by a number of factors. Research suggests that Latino voter turnout trails that of other groups (Santoro & Segura, 2011). A significant share of voting age Latinos are not citizens and therefore not eligible to vote (although they do count for reapportionment and redistricting purposes). Therefore, applying the same redistricting standards to Latino and African American voters may not work. Moreover, eligibility and propensity to vote may vary among distinct nationalities considered Latino or Hispanic by the Census Bureau (Shah, 2010). As a result, one might expect Latino voters' ability to elect their preferred candidates to Congress varies from one state to another.

As the purpose of this study is to inform legal analysis of the VRA, it makes sense to consider the Act in some detail so that the research design addresses real areas of controversy. This is a difficult task. The Court's directives on race and redistricting appear contradictory, muddled, and arbitrary to legal observers and policymakers (e.g., Engstrom, 2012; Fuentes-Rohwer & Durfee, 2009; Kousser, 1999, 2007). Foreshadowing the *Shelby County* decision, a number of authors questioned whether the VRA has outlived its usefulness (Issacharoff, 2004; Swain, 1993; Thernstrom, 1987; but see Ansolabehere, Persily, & Stewart III, 2009; Lublin, Brunell, Grofman, & Handley, 2009).

As a starting point, it is useful to consider who bears the initial burden of proof in VRA cases and distinguish the essential elements of a cause of action under the VRA from the remedies the Act affords minority voters. Confusion arises because Section 2 preconditions inform what remedial measures are appropriate. In addition, the remedies afforded minority voters (i.e., requiring the creation of majority-minority districts) may be the same in cases brought under Section 5 or Section 2.

In Section 5 cases, covered jurisdictions are to preclear changes to their elections laws with the Department of Justice (or the D.C. District Court) before holding elections Congress has determined that the political conditions in Section 5 jurisdictions warrant continuous oversight by the federal government. In cases premised on Section 2 of the VRA, minority voters must prove that the totality of circumstances warrants judicial intervention into the electoral process.

The scope of Section 5 was defined by a coverage formula set forth in Section 4.⁵ In 1965, Congress singled out particular jurisdictions based on

their maintaining tests or other devices as preconditions for registering to vote in 1964 and racial bloc voting (National Conference of State Legislatures, 2009b, pp. 80-84). Covered jurisdictions included Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia.⁶ Section 5 was originally intended to remain in effect only 5 years, but Congress renewed and extended it in 1970, 1975, 1982, and 2006. Following extensive hearings in 2006, the House Judiciary Committee concluded that “instances of discrimination and efforts to discriminate against minority voters continue” in Section 5 jurisdictions.⁷ This coverage formula remained in effect for more than 40 years.⁸

Section 5(a) requires a covered jurisdiction to prove its proposed district map “neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color[.]” Section 5(b) further clarifies that the Act prohibits any change “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 . . . to elect their preferred candidates of choice.” Section 5 does not require covered jurisdictions to create districts that maximize minority voting power, but rather protects minorities from changes that would diminish their opportunities to elect preferred candidates. The key phrase in court opinions is *retrogression*. The nonretrogression requirement that has emerged out of Section 5 litigation assumes that the threshold necessary for minority voters to have equal opportunity to elect their preferred candidates is constant, or at least does not decrease.⁹

Section 2 of the VRA creates a right of action against laws “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[.]”

A violation . . . 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 [protected] 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*. (italics added)

In addition to demonstrating deprivation of political opportunity, the Supreme Court has held prospective Section 2 plaintiffs must satisfy three preconditions:

(1) the racial group must be “sufficiently large and geographically compact to constitute a majority in a single-member district”; (2) the group must be “politically cohesive”; and (3) the white majority must “vot[e] sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate.”¹⁰

Section 2 is generally applicable and, therefore, applies to states formerly covered by Section 5.

How do Section 2 plaintiffs demonstrate that they have been deprived of equal opportunities to participate in the political process? On this point, the Court offers some guidance for empirical analysis:

It is the difference between the choices made by blacks and whites—not the reasons for that difference—that results in blacks having less opportunity than whites to elect their preferred representatives . . . [O]nly the correlation between race of voter and selection of certain candidates, not the causes of the correlation, matters.¹¹

Subsequent federal decisions have accordingly focused on the correlation between racial composition and electoral success rather than consider whether other district characteristics account for minority voters' success in electing their preferred candidates.¹²

If Section 2 plaintiffs demonstrate that they have been deprived of equal opportunities and meet the *Gingles* preconditions, courts may require states to draw congressional districts in a manner that remedies racial disparity. The question then becomes, What are the appropriate remedies? The "central point of debate" is whether policymakers should implement "rigid numerical thresholds" or apply "a more nuanced analysis of voting behavior and success of candidates of choice" (Persily, 2007, p. 234). The VRA is presently interpreted to require drawing majority-minority districts.¹³ In *Bartlett v. Strickland* (U.S. 2009), the Court held that a state cannot satisfy its obligations to minority groups under Section 2 by creating less-than-majority minority districts. Consistent with this interpretation, the first of the *Gingles* preconditions limits Section 2 relief to minority groups sufficiently numerous to constitute a district majority.

The view that Section 2 requires majority-minority districts is controversial because a number of scholars have argued that minority interests would be better served by creating more influence and minority coalition districts rather than narrowing VRA remedies to majority-minority districts (Cameron et al., 1996; Grofman, 1993).¹⁴ For similar reasons, the view that Section 5 prohibits states from ratcheting down majority-minority districts may stand in the way of minority voters' competing in other districts.

A thorough treatment of the role of race in American politics is beyond the scope of this article, but its theoretical framework would be incomplete without considering why the relationship between race and politics changes over time. One school of thought sees minority politics gradually assimilating into the political mainstream. In his classic study of urban politics, Robert Dahl

(1961, pp. 34-35) maintained that ethnic groups pass through distinct stages during political assimilation. According to this school of thought, the preferences of minority voters become more heterogeneous over time and minority voter support for minority candidates less certain. Another school of thought questions Dahl's conceptualization of group politics and the empirical basis for his view of ethnic identities (e.g., Gimpel & Cho, 2004; Parenti, 1967). Rather than assimilate minorities into the political mainstream, American politics may reinforce racial differences (Hero, 1998). The political gains of minority voters may be offset by majority resistance (Sears, Hetts, Sidanius, & Bobo, 2000). One minority group may gain political and economic power at the expense of other minority groups in competition for scarce resources (Cho & Baer, 2011; Gay, 2006; Kaufmann, 2003). These conflicting accounts of race and politics yield different expectations about redistricting standards. Higher minority proportions may be needed to maintain opportunities if minority voters lose cohesion or face greater resistance. However, if minorities vote cohesively without sparking resistance, they may succeed in districts where they are numeric minorities. There is not necessarily a single answer; the relationship between minority status and representation may vary among states and among minority groups.

I tailor my research hypotheses to the main areas of contention over the implementation of the VRA. Do current political conditions justify the special protections afforded minority voters under the VRA? One presumes the law is justified and considers the hypothesis that political conditions have evolved to the point where VRA redistricting guidelines are unnecessary. Redistricting guidelines would be unnecessary if minority voters could expect proportionate representation from districts drawn in proportion to the general population. Does Section 5 cover states that are exceptionally challenging for minority representation? Again, one presumes the Act's geographic coverage was tailored to the problem it targeted and tests the hypothesis that the political conditions for minorities in Section 5 states are no different than those in the rest of the country. When minority voting rights have been violated, what remedies provide minority voters with equal opportunities to elect their preferred candidates of choice? The prevailing view favors a uniform, bright line rule for majority-minority districts and disfavors minority coalition districts. I hypothesize that the appropriate remedy is different in the case of African American voters than it is for Latino voters. In addition, I hypothesize that minority voters can expect equal opportunities to elect their preferred candidates when they constitute less than half of a district's VAP and that minority coalition districts can fulfill VRA objectives. Evidence in support of any of these research hypotheses would support the Court's invalidating Section 5 or overturning other leading VRA decisions.

Quantifying Equal Opportunity to Elect Preferred Candidates

To implement standards that provide minority voters with equal opportunities to elect their preferred candidates, we must develop some idea of what constitutes fairness. As Justice O'Connor observed in *Gingles*, 478 United States at 88,

in order to decide whether an electoral system has made it harder for minority voters to elect the candidates they prefer, a court must have an idea in mind of how hard it "should" be for minority voters to elect their preferred candidates under an acceptable system.

Although the VRA does not guarantee proportional representation, proportionality features prominently in our normative and legal understandings of fairness.¹⁵ In a hypothetical society that eradicated discrimination in all forms, one would expect a candidate's race to have zero bearing on success in politics. Racial and ethnic groups within society would be represented in proportion to their numbers as if representatives were selected at random from the general population. This hypothetical state can be visualized as 45° lines in the three electoral systems depicted in Figure 1.

The point at (0.5, 0.5) represents a fairness criteria. As G. King and Browning (1987, 1252) stated, an unbiased voting system "requires only one point at which the percentage of votes equals the percentage of seats: when each party receives 50% of the votes, the seats must be divided equally between them." Subsequent works have adopted this view as the benchmark for measuring partisan bias (e.g., Cox & Katz, 2002, p. 34; Gelman & King, 1994; Grofman & King, 2007; Jackman, 1994).

The relevant inquiry should not be whether a minority *candidate* has an equal opportunity for success as his or her opponent, but rather whether minority *voters* have an equal opportunity to elect their preferred candidates compared with other voters' ability to elect their preferred candidates. This distinction is important because, as Figure 1 indicates, a 50% probability of success (which corresponds to 50% of seats in repeated trials) is unbiased only when produced by 50% of votes. Even-odds may offer two candidates equal opportunities for success, but if one candidate's supporters make up more or less than 50% of the district, those voters do not have equal opportunities to elect their preferred candidate.

I apply this model of fairness to racial redistricting on two assumptions that should be made explicit. First, distinct racial groups take the place of political parties. Though not organized as such, groups of African American

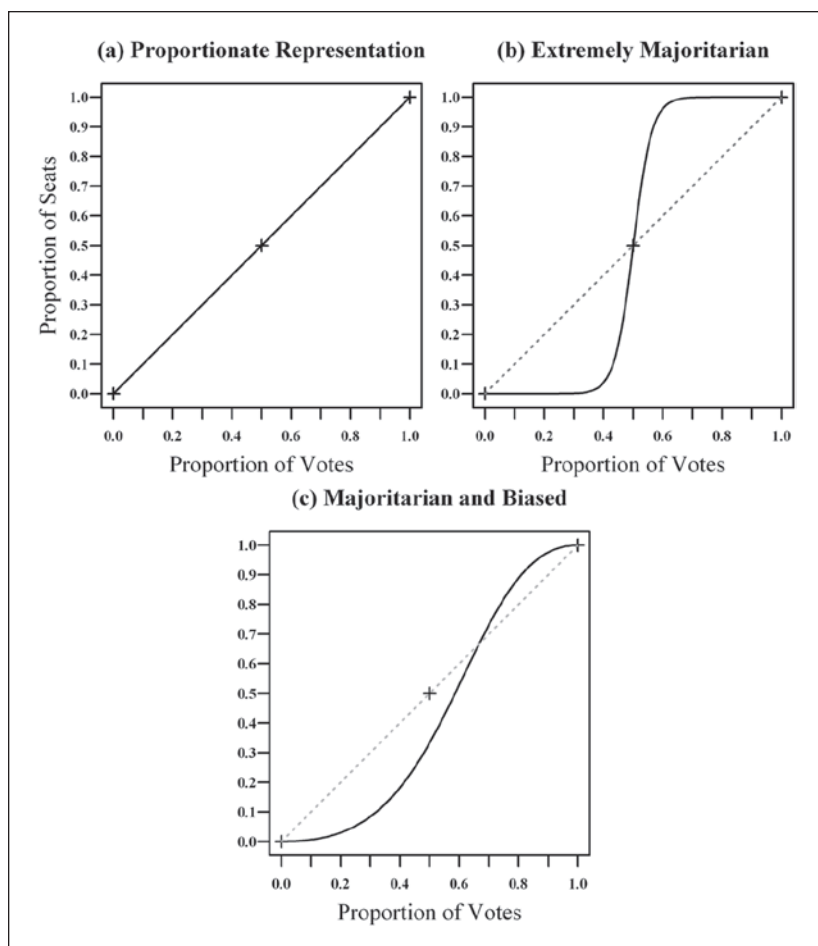


Figure 1. Exemplar vote-to-seat curves.

or Latino voters often have cohesive preferences for particular candidates. Second, I contend that the district-level probabilities of a group's candidates winning can be aggregated to determine a group's expected proportion of representation in the legislature. In other words, the votes-to-seats curve depicted in Figure 1 is the aggregation of district-level probability curves. The fairness condition is modified because there are more than two racial groups that are relatively well bounded. In addition, unlike the bias of an unfair partisan gerrymander, racial bias cannot be solved directly, merely

corrected. A fair opportunity for a minority group lies at the intersection of its election probability curve and the 45° proportionality line. When the probability of electing its preferred candidate is equal to the group's proportion in a district, a group enjoys equal opportunity and can expect proportionate representation. Given the remedial purpose of the VRA, the may be viewed as the minimum required opportunity to be afforded minority voters.

Estimating the Probabilities of Minority Voters' Success

In this section, I estimate the relationship between a congressional district's racial composition and the probability its minority voters elect their preferred candidate. I consider election outcomes as a function of racial composition, incumbency, and the variation in political conditions among U.S. states. I pool congressional election results from 1960 to 2010 to estimate national trends and use a multilevel strategy to estimate variation among states. In the following subsections, I describe how my dependent and independent variables are operationalized, my data sources, and my results. Finally, I discuss the results of my probability of minority candidate success model before moving on, in the next section, to another model that builds on these results to simulate the effect of varying VRA standards.

Operationalization and Data Sources

I use David Lublin's data for the 87th to 104th Congresses (1960-1994). I extend this dataset to cover elections to the 105th through 112th Congresses (1996-2010). Each district provides one observation per 2-year congressional election cycle.

The dependent variables in this analysis are whether African American and Latino voters succeeded in electing their preferred candidates to Congress.¹⁶ Although the precise meaning of "preferred candidates of choice" is difficult to ascertain, determining whether minority voters succeeded in electing representatives of their choice is crucial to assessing the VRA.¹⁷ I start with the assumption that the preferred candidate of minority voters typically is a member of that minority group. The Supreme Court endorsed this premise in *Gingles*, 478 U.S. at 68:

Because both minority and majority voters often select members of their own race as their preferred representatives, it will frequently be the case that a black candidate is the choice of blacks, while a white candidate is the choice of whites. . . . Thus, as a matter of convenience, we . . . may refer to the preferred

representative of black voters as the “black candidate” and to the preferred representative of white voters as the “white candidate.”

The Office of the Clerk of the U.S. House of Representatives maintains data on African American members of Congress.¹⁸ The Library of Congress makes comparable data available on Latino members.¹⁹

The assumption that minority candidate success equates to minority voter success is closely examined when minority candidates prevailed in districts with few minority voters or White candidates succeeded in majority–minority districts. In these unusual cases, I consult secondary sources.²⁰ Were minority voters’ preferences decisive or a nonfactor in the election? Did a White incumbent hold on to his or her seat despite the district becoming majority minority? Based on these considerations, I do not consider the victories of four African American and three Latino candidates’ instances of minority voter success.²¹ In addition, I consider Steve Cohen (D-TN-9) the preferred candidate of African American voters based on the endorsements he has received from African American leaders.²² Although other majority–minority districts have elected White representatives, these are not considered instances of minority voters electing their preferred candidates.²³ These exceptional elections represent a modest share of the entire set of observations (12 out of 8,700 elections). I consider the impact of these unusual elections prior to concluding this article.

The dependent variable in this analysis represents a slight modification of the outcome of interest in prior research. The outcome of interest to those interested in descriptive representation (i.e., Lublin et al., 2009) would be the winning candidate’s race or ethnicity. As detailed above, a minority candidate’s victory does not always signify minority voter success. Models of substantive representation would focus our attention on legislative success (i.e., Cameron et al., 1996), but the outcome of interest here is limited to whether minority voters’ preferred candidates win elections.

As far as possible, I operationalize district variables following the leads of Cameron et al. (1996), Epstein and O’Halloran (1999), and Lublin (1997, 1999). The Census Bureau compiles district-level VAP data subdivided by race and ethnicity every 10 years. VAP include individuals above age 18 who are noncitizens ineligible to vote. Mid-decade estimates pose a challenge because Latino populations grew substantially from 1990 to 2000 and from 2000 to 2010 (Peralta & Larkin, 2011).²⁴ Therefore, I interpolate mid-decade estimates of Latino VAP as linear trends between districts’ Census measures.²⁵ Although total population estimates are more readily available, particularly for mid-decade elections, federal courts have determined that VAP is the relevant consideration in VRA litigation (National Conference of State Legislatures, 2009b, p. 98).

Because “Latino” is an ethnic, rather than racial classification, comparing Latinos as a group to racial groups is problematic (Michelson, 2010; Schildkraut, 2012). Whether shared ethnicity outweighs potentially cross-cutting differences among Latino voters is an important question. Relatively few congressional districts presently conglomerate multiple Latino nationalities to create Latino majorities, but this practice may become a point of future controversy as planners attempt to create more Latino-majority districts.²⁶ Under the VRA, racial minorities are treated in the same manner as “language minorities” (per 1975 amendments), but these groups are not strictly comparable.

Given the high rates of reelection to Congress, the probability that a district elects a minority to Congress may depend on the race of an incumbent who seeks reelection (Grofman, Handley, & Lublin, 2000, p. 1411). Accordingly, I determine whether a White or minority incumbent sought reelection, or the seat was open.²⁷

I estimate probabilities of African American and Latino voter success as a function of district racial composition controlling for incumbency status based on all elections to the U.S. House of Representatives. Because the dependent variables are binary, I use logistic regression analysis.

I then use a multilevel model to estimate differences among states. A multilevel model allows the intercept and regression coefficient of district racial composition to vary by state.²⁸ This approach to the question of state variation is particularly well suited to the present research because the change in the probability of minority voter success in states that elected no minority representatives from 2002 to 2010 cannot be estimated in a standard logistic regression model using state dummy variables because minority voters’ failure is predicted perfectly in those states. In the multilevel model, state-varying slopes and intercepts are assumed to be drawn from a common normal distribution (estimated from the data) and the variation is informed by the observed successes and failures in each state.

State-varying slopes and intercepts should indicate whether current conditions in states are relatively hospitable or hostile to minority voters. As noted above, the VRA coverage formula was premised on the assumption that conditions in covered jurisdictions were more onerous for minority voters than conditions in other states. The contribution of minority voters to electoral success may be lower in states that discourage minorities from registering to vote, turning out to support their preferred candidates, or seeking office. In addition, the probability of minority voter success depends on how strongly minority candidates are resisted by other voters. Specifically, White voters in some states may be less inclined to vote for a minority candidate than White voters in other states.²⁹

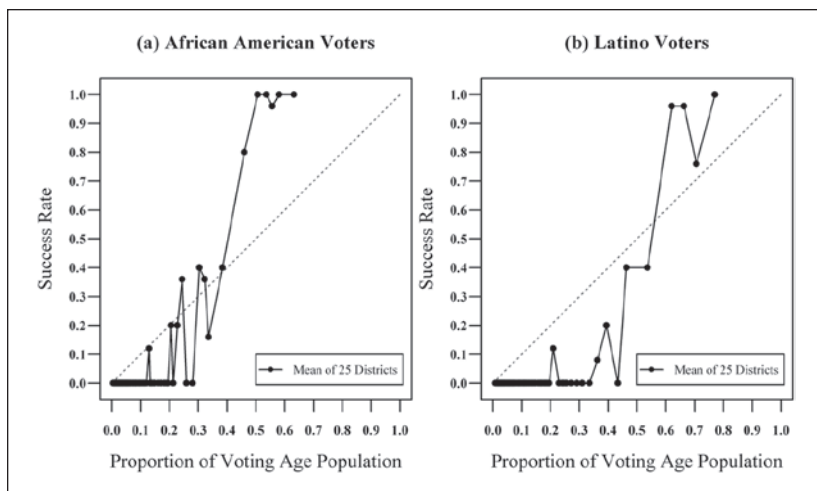


Figure 2. Correlation of minority voter success and district composition, 2002-2010 congressional elections.

Results of Electoral Success Model

I start with a simple bivariate plot of results of 2002-2010 congressional elections. Because scatterplots of binary outcomes are uninformative (the outcome is either 0 or 1), I calculate average outcomes and district compositions of groups of 25 elections ordered by increasing minority VAP (Figure 2).

One observes more election results in districts with few minority voters compared with districts with significant minority populations. Nevertheless, African American voters appear to enjoy equal opportunities when they constitute less than half of a district's VAP while Latinos must compose more than half to do so.

Table 1 reports the results of logistic regression analysis of minority voter success electing preferred candidates as a function of district racial composition, incumbency, and state. For African American and Latino voters, I report the results of nationally pooled analyses as well as multilevel models with state-varying slopes and intercepts. I include the results for prior decades of congressional elections in the online appendixes.

The coefficients reported in Table 1 cannot be directly interpreted in terms of probabilities of electoral success.³⁰ Using Table 1 values, however, one can easily estimate expected probabilities of minority voters prevailing based on their proportion of district VAP and incumbency status.³¹ In congressional elections between 2002 and 2010, a district with 50% African American VAP

Table 1. Logistic Regression of Minority Voters' Ability to Elect Preferred Congressional Candidates, 2002-2010.

Variable	African American voters		Latino voters	
	Pooled nationally	State varying	Pooled nationally	State varying
BVAP	19.58*** (1.99)	34.69*** (5.06)	-13.40*** (2.52)	-16.21*** (4.04)
LVAP	-0.31 (1.65)	-6.68 (4.18)	14.05*** (1.41)	21.12*** (2.96)
White incumbent	-5.47*** (0.85)	-7.66*** (1.53)	-4.13*** (0.54)	-4.42*** (0.66)
Open seat	-2.81*** (0.77)	-2.89** (1.10)	-1.33* (0.67)	-1.34* (0.78)
Intercept	-4.32*** (0.76)	-8.41*** (1.56)	-4.14*** (0.54)	-7.12*** (1.28)
State-level effects				
BVAP		13.91 (6.45)		
LVAP				1.04 (1.54)
Intercept		1.06 (1.13)		1.31 (0.71)
N	2,175	2,175	2,175	2,175
Log likelihood	-87.693	-26.51	-90.318	-51.20
Pseudo R ²	.868	.960	.808	.886
Predict correctly	0.986	0.995	0.984	0.991
PRE=proportional reduction in error.	0.844	0.944	0.721	0.837

Note. Robust standard errors in parentheses; standard deviations of state-varying intercepts and slopes reported. BVAP = African American proportion of voting age pop; LVAP = Latino proportion of voting age pop.

* $p < .05$. ** $p < .01$. *** $p < .001$ (one-tailed tests).

had a .92 probability of electing the African Americans' preferred candidate to an open seat in Congress. The comparable probability for a district with 50% Latino VAP was .61. The probabilities of success were higher when minority representatives sought reelection and less when White incumbents ran.

Are opportunities for minority voters in congressional elections significantly different today than they were in past decades? Figure 3 shows the changing effect of racial composition on the probabilities of African American and Latino voters' success.³² The upper panels map the estimated probabilities of minority voter success in open-seat elections at varying district compositions over time. The lower panels plot the compositions corresponding to 50% probability of success as well as the compositions corresponding to the fairness condition discussed above in each election cycle.

Figure 3 shows that the relationship between district composition and minority voters' success is not fixed but rather fluctuates over time. While it is difficult to discern clear trends with respect to African American voters outside of particular decades (i.e., upward trends in the 1990s), it appears that the proportion of Latino voter age population corresponding to even-odds or parity have trended upward since the late 1970s.

How do the prospects for minority voters in states covered by Section 5 compare with those in states that were only subject to Section 2? I use the

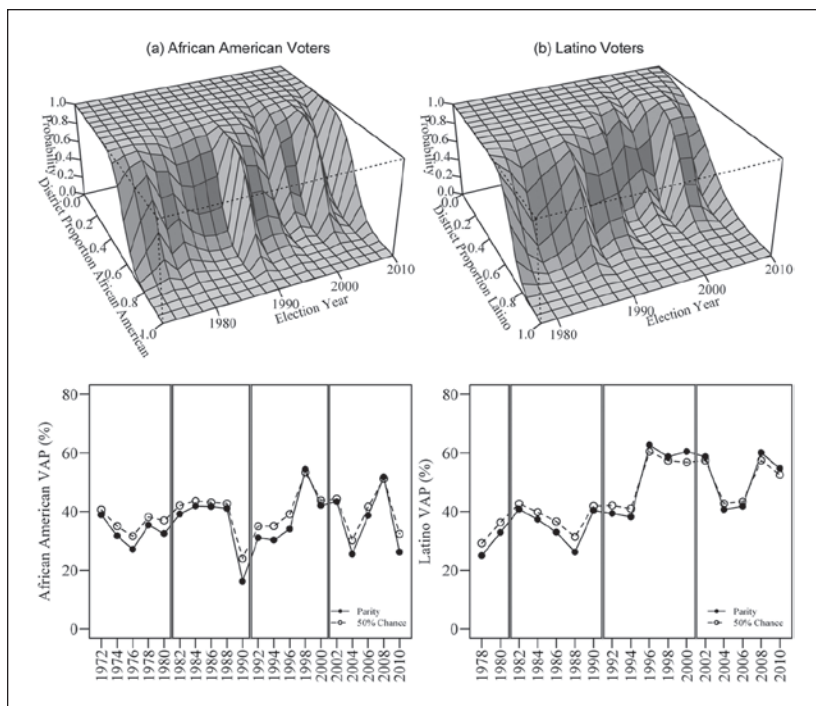


Figure 3. Changing effect of minority voter populations on electoral success in elections without White incumbent running for reelection.

Note. VAP = voting age population.

multilevel model results to make state-by-state comparisons. The estimated proportions necessary to provide minority voters equal opportunities in each state are displayed in descending order with horizontal dashed lines representing the uncertainty of these estimates.

The probabilities of minority voters' electing their preferred candidates in Alaska cannot be distinguished from the nationally pooled results because Alaska (a Section 5 state) has only one congressional district with relatively few minority voters.

Discussion of Electoral Success Model

The data show that the racial composition of a congressional district significantly affects the probability that minority voters succeed in electing their preferred candidates. In this respect, the results support existing research on

race and representation. Although the nationally pooled model uses few explanatory variables, it correctly predicts African American and Latino voters' success in more than 98% of elections from 2002 to 2010.

The results also indicate that the relationship between race and representation has changed substantially since the 1960s. However, political conditions have not evolved to the point that the VRA redistricting guidelines are unnecessary. Consider what one would expect if all districts were microcosms of the United States (12.3% African American and 12.5% Latino voters). Based on recent elections, the probability that a nationally representative district elects an African American to an open seat in Congress is 0.85%, a Latino, 0.47%. One would expect 435 such districts to elect four African Americans and two Latinos to Congress; the proportion of minorities in the general population would be more than 14 times greater than in Congress.³³ The hypothesis that current conditions in the nation as a whole or in Section 5 states no longer justify VRA redistricting guidelines is soundly rejected.

According to this analysis, the geographic coverage of Section 5 was related to the particular challenges that minority voters face in some states, but not tailored to contemporary conditions. Arizona is covered by Section 5, but the prospects for African American voters appear no worse there than they are nationally and the opportunity for Latino voters, relatively promising. Opportunities for minority voters in the Deep South states of Alabama, Georgia, Mississippi, and Louisiana are worse than they are nationally. Texas presents a mixed case; it appears to be a relatively positive state for African American voters but not for Latino voters. Current conditions in Maryland appear particularly challenging for African American and Latino voters, but Maryland was not covered by Section 5. Although African American voters in Pennsylvania have had a relatively difficult time electing their preferred candidates to Congress, it was not subject to heightened enforcement. One cannot reject the hypothesis that political conditions for minority voters in Section 5 states (other than Alabama, Georgia, Mississippi, and Louisiana) are distinct from those in the rest of the country. These results call the historic coverage formula into question and support the *Shelby County* decision.

Why are some states more challenging than others? It may be a legacy of discrimination. Although the most obvious barriers to voting, such as poll taxes and literacy tests, have been outlawed, the effect of these practices may linger. Another reason may be differences in Latino populations. While Mexican Americans represent the majority of nation's Latino population, Puerto Ricans are the largest Latino group in several New York districts and Cubans, the majority in some Florida districts. To the extent that Latino nationalities vary in their eligibility to vote, turnout rates, and political cohesiveness, one would expect the marginal impact of Latino voters to electoral

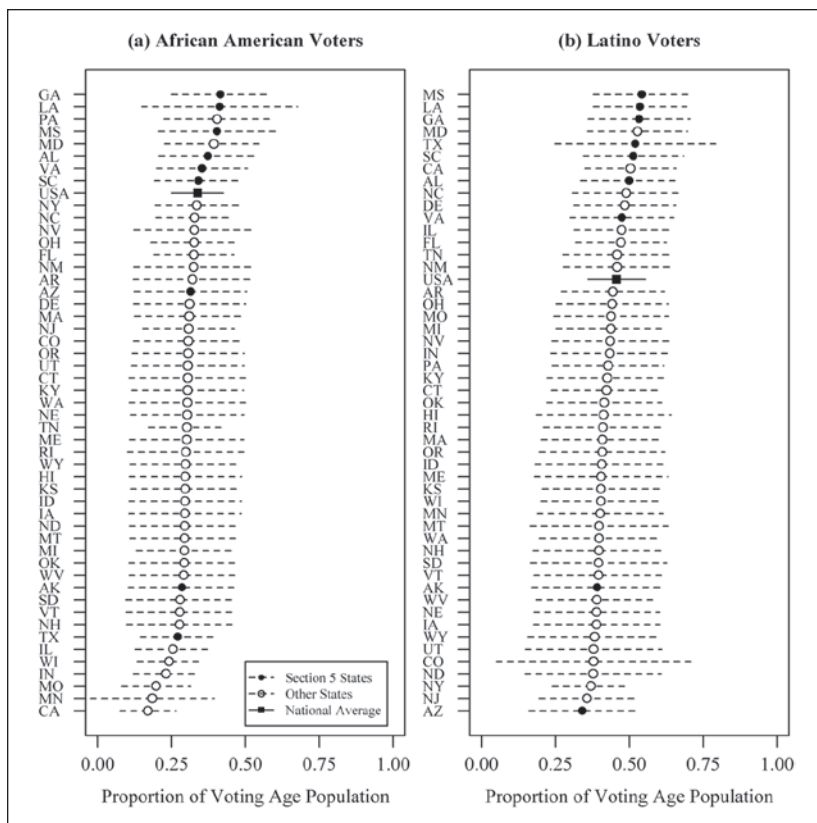


Figure 4. State-by-state comparison of district proportions providing minority voters equal opportunities in open-seat elections, 2002-2010.

success to vary among states. While these considerations may help explain the differences we observe in Figure 4, it is worth reiterating that for purposes of implementing the VRA, the focus is on correlation rather than causation.³⁴

The model of electoral success reported above helps address the issue of minority coalition districts. Some have argued that the VRA should protect coalitions of African American and Latino voters despite neither group composing a district majority on its own (e.g., Grofman, 1993).³⁵ This argument assumes that Latino voters help African American candidates and that African American voters do the same for Latino candidates. These results, however, call the value of minority coalition districts into question. In recent elections,

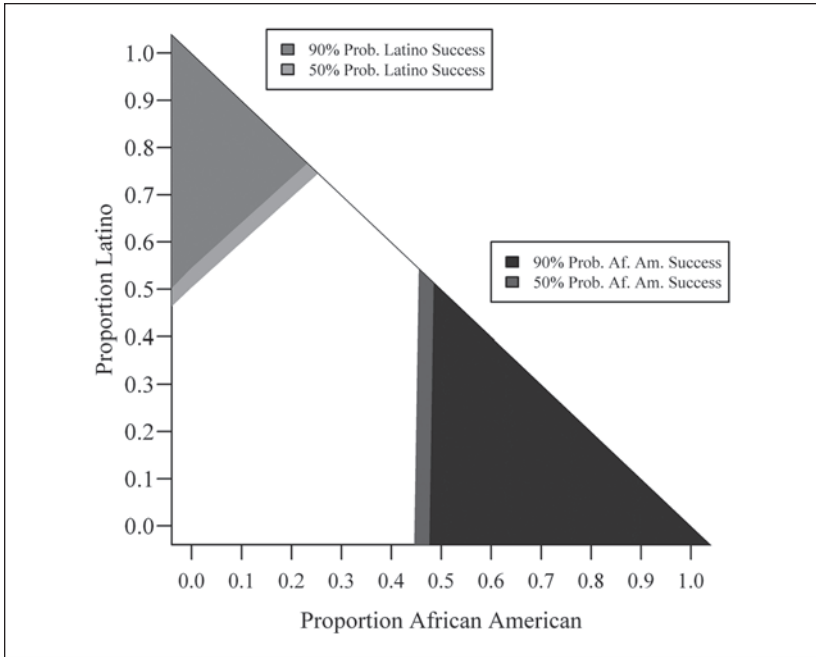


Figure 5. Probabilities of African American and Latino voters electing preferred candidates in open-seat elections in minority coalition districts.

Latino voters have no statistically significant effect on the probability that African American voters prevailed. Conversely, controlling for incumbency, African American voters decreased the probability of Latino voter success during the same period. Figure 5 shows the probabilities a district with mixed minority populations would elect either the African American or a Latino voters' preferred candidate between 2002 and 2010.

Although Lublin (1997, 1999) determined that Latino voters bolstered the probability of African Americans being elected in the elections he analyzed (1960-1994), Latino voters do not appear to complement African American voters in more recent elections. African American voters appear to gain at the expense of Latino voters. Accordingly, I reject the hypothesis that minority coalition districts improve minority voters' opportunities to elect their preferred candidate to Congress. It should be noted, however, that this analysis of minority coalition districts is limited to open-seat elections and does not explicitly address whether minority coalitions help keep African American and/or Latino legislators in office.

Simulating the Aggregate Effect of Varying VRA Standards

To this point, I have developed and tested empirical models of minority voter electoral success at the district level. If district lines were perfectly malleable and district characteristics uniform, one could derive VRA standards based on pooled coefficients and average district characteristics. Translating empirical results into practical redistricting guidelines, however, is complicated by the variation of political conditions for minority among states, state demographics and geography. In some states, African American and Latino voters have succeeded in electing their preferred candidates and now enjoy incumbency advantages; in other states, minority voter success may require dislodging a White incumbent. District lines cannot cross state boundaries and must contain equal populations. In this section, I forecast expected electoral outcomes for African American and Latino voters from a range of VRA thresholds given varying state characteristics.

At present, many states cannot create majority-minority districts. Based on the 2010 Census, the Latino VAP in 32 states (with 151 seats in Congress) is insufficient to create a single majority-Latino district, even if it were possible to incorporate every Latino voter in the state in one district. African American voters are not sufficiently numerous in 28 states (with 105 seats) to constitute a district majority. The number of districts effectively exempt from the VRA is greater than the number of districts that were covered by Section 5 (95 seats). Moreover, states with sufficient population to create majority-minority districts may find it practically impossible to draw geographically dispersed populations into contiguous, compact districts. Recognizing these constraints is important. If minority voters are to achieve equal opportunities they must make up for a substantial number of seats that are not currently “in play” for minorities.

Specifications of Simulation

With these considerations in mind, I estimate aggregate outcomes for minority voters at varying thresholds for minority districts. For a given percentage threshold, I determine how many minority districts each state could create satisfying the threshold, taking into account demographic and geographic considerations, and calculate the corresponding probabilities of minority electoral success in each district.³⁶

An example clarifies how electoral conditions are specified to simulate election results. Alabama's 4.8 million citizens (24.12% African American, 3.88% Latino) elect seven representatives to Congress. As is true in many

states, some of Alabama's African American residents live in overwhelmingly African American neighborhoods, while others live in largely White communities. If 40.0% African American districts were the rule, Alabama could meet this threshold in four districts.³⁷ The percentage of African American voters in each of Alabama's three other districts would be 3.54%. Assuming the other voters in each district are proportionate to the state's general population, Alabama's 40% African American districts would have 2.59% Latino VAP and its three other districts, 4.17% Latino VAP.³⁸ At present, one of Alabama's representatives is African American; the remainder, White. I assume that the state's incumbent African American representative would be drawn into one of the districts that meet the VRA target, leaving three White incumbents in 40% African American districts and three White incumbents in 3.54% African American districts. Although a simplification, this approximates how VRA standards are implemented as redistricting guidelines. In addition, I incorporate a 10% chance of an open-seat election in each district.³⁹ Based on these district characteristics and the multilevel model results reported in Table 1, the probabilities of African American voters succeeding in Alabama's 40% African American districts would be .948 with an African American incumbent running for reelection, .505 in an open-seat election, and .009 with a White incumbent running for reelection. Probabilities of success would be less than .001 in the other four districts (even when a seat opens).

By this method, I calculate the probabilities of minority voter success at other thresholds and in other states' districts and estimate the expected results as the sum of successes from 435 Bernoulli trials with varying probabilities of success. This process is repeated 5,000 times at each 0.1% increment of possible VRA standards from 0% to 100%.⁴⁰

Simulation Results

Figure 6 plots expected aggregate African American and Latino voter success from varying VRA redistricting standards.

African American voter success is maximized by a nationwide standard of 46.8% African American VAP. Supermajority African American districts diminish voting power relative to targeting districts in the 45% to 50% range; setting VRA targets higher than 55% can be expected to reduce voting power for African American nationwide. These results challenge the Supreme Court's opinion in *Bartlett v. Strickland* (U.S. 2009), which rejected an appeal to create a submajority African American district.⁴¹

Figure 6(b) shows the contrasting results for Latino representation. Here, I assume that states create majority African American districts at the same

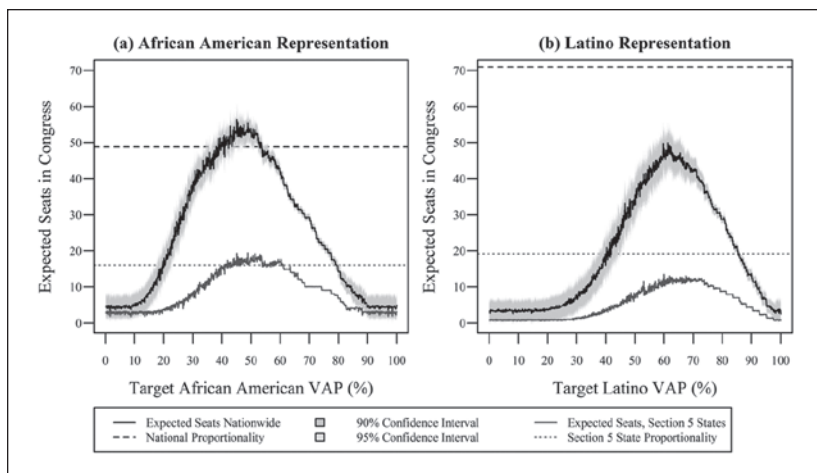


Figure 6. Expected minority representation at varying VRA targets.

Note. VRA = Voting Rights Act; VAP = voting age population.

time they draw Latino districts (see above discussion of minority coalition districts).⁴² Latino representation is maximized targeting 61.2% Latino VAP.⁴³ At this threshold, Latino voters succeed in electing roughly 50 of their preferred candidates to Congress. Although well short of proportionate Latino representation, this would constitute a dramatic gain in Latino representation (there are 29 Latino members in the 113th Congress).

Discussion of Simulation Model

The prevailing legal interpretation of the VRA favors a bright line rule for majority–minority districts and uniform treatment of minority voters. My results indicate that a single standard is unlikely to offer African American and Latino voters equal opportunities. A 46.8% standard is ideal for African American voters while targeting 61.2% districts provides Latino voters the best opportunity for equal representation.⁴⁴ Significantly, setting uniform standards between 46.8% and 61.2% improves electoral prospects for one group by dampening prospects for the other group. While African American and Latino voters benefit from avoiding extremely low or high redistricting standards, there does not appear to be a standard district composition that provides both groups with equal opportunities. Therefore, one cannot reject the hypothesis that the appropriate remedy for African American voters is different than it is for Latino voters.

Why do we observe such different expected results for African American and Latino voters at varying VRA standards? As suggested above, scholars have identified a number of differences between the political behavior of African American and Latino voters. The primary difference is lower voter turnout by Latinos compared with that of African Americans or other population groups. Because voting age Latinos are generally less likely to vote than voting age African Americans, the marginal contribution of a unit increase in Latino VAP to electoral success is less than a unit increase in African American VAP. As a result, relatively high VRA targets presently appear necessary to allow Latino voters to fairly compete in congressional elections. Below, I discuss how these results would be affected by increased Latino voter turnout.

Simulating the aggregate effect of VRA standards also informs the nonretrogression and vote dilution concepts in VRA litigation. The dynamic relationship between race and representation implies that judicial benchmarks for measuring retrogression in Section 5 cases or equal opportunity in Section 2 litigation should be revisited periodically. In 2002-2010 congressional elections, African American voters achieved a 50% chance of electing their preferred candidates without constituting district majorities. 46.8% African American districts netted more seats for African American voters than 50% districts did in 70.8% of the simulated election results. The probability of success in a single district increases with higher African American populations, but African American voters' aggregate ability to elect their preferred candidates to Congress is diminished when African American districts are too safe. In fact, targeting districts with more than 55% African American VAP can be expected to decrease African American voters' opportunities nationwide. This result suggests the need to unpack majority African American districts to provide African American voters more opportunities to compete. The prevailing view that VRA relief should be limited to cases where minority voters are compact and numerous enough to constitute a majority of a single district is partly mistaken. Based on these results, I fail to reject the hypothesis that African American voters can expect equal opportunities when they constitute less than half of a district. I do, however, reject the hypothesis that Latino voters can achieve equal opportunities in less than majority-minority districts.

The finding that African American voters can win proportionate representation outside of majority-minority districts is significant for states like Connecticut, Kentucky, Oklahoma, and Wisconsin that currently could not create majority African American districts, but could potentially create districts with 30% to 50% African American voters. The finding that African American voters can succeed outside of majority-minority districts also calls the *Bartlett v. Strickland* (2009) decision into question. In that case, voters in a proposed 39.4% African American VAP district were thought to "have no

better or worse opportunity to elect a candidate than . . . any other group of voters with the same relative voting strength.” Based on these results, however, the proposed 39.4% African American district in North Carolina had a .896 probability of electing the African American voters’ preferred candidate to an open-seat (.993 probability of reelecting a minority incumbent, and a .068 probability of unseating a White incumbent). It appears that the Court’s analysis denied African Americans in North Carolina a substantial opportunity for congressional representation.

Limitations of This Research

In this section I consider some potential limitations of this analysis. These considerations are meant to help the reader put these results in proper context and understand how future developments may change the results reported here. Specifically, I consider the number of districts with intermediate proportions of minority voters, the impact of African American and Latino Republicans, and Latino turnout on this research.⁴⁵ We can evaluate predictive power by determining how well the empirical models reported in the online appendixes would have predicted elections in subsequent decades. For example, the empirical models of African American and Latino voter success in 1970s elections correctly predict the outcomes of 98.48% of elections in the 1980s; estimates based on 1980s elections correctly predict the outcomes of 98.31% of elections in the 1990s; the 1990s models correctly predict 98.32% of election outcomes in 2002-2010. Although the dynamics of race and politics make long-term predictions suspect, the models seem rather reliable in the short-term.

One source of uncertainty is the relatively small number of observations that anchor predicted probabilities in districts with intermediate minority VAP. One tends to observe districts with very high or low proportions of minority voters. In recent election cycles, roughly one tenth of districts had 25% to 50% African American VAP and one tenth, 25% to 50% Latino VAP. These numbers suggest one should not view the results of a single election cycle as conclusive. In this analysis, I pool multiple election cycles together to predict probabilities based on a large number of observations, including districts with intermediate proportions of minority voters.

It is also important to consider the success of African American and Latino candidates in overwhelmingly White districts. If one treats every minority candidate’s victory as an instance of minority voter success (a descriptive representation model), the estimated contribution of minority VAP to success decreases and the simulation model suggests lower VRA targets. The present research is not greatly affected by these exceptional elections, but the

counterfactuals suggest that the interpretation of “preferred candidate” may become an increasingly controversial issue in future VRA litigation.

Finally, the results reported here are sensitive to Latino voter turnout. As discussed above, lower rates of Latino voter turnout largely explain the difference between the probabilities of African American and Latino voter success. This turnout differential may be attributed to cultural norms, significant numbers of noncitizen Latinos, and the relatively high proportion of the Latino population below 18 years of age. As Latino politics evolves, turnout rates are likely to change (Santoro & Segura, 2011). Moreover, the turnout rate of Latino voters may be affected by citizenship rules and the probability their preferred candidates win office (Barreto, Segura, & Woods, 2004; Shah, 2010). If Latino voter turnout significantly increases, one would expect the marginal contribution of Latino VAP to electoral success to increase. Assuming greater turnout is not offset by reduced cohesion, one would expect Latino voters to compete successfully in bare-majority-Latino districts or even submajority-Latino districts.

Although not a source of uncertainty, alternate causes minority voter electoral success bear mention. The empirical models at the heart of this analysis do not control for district characteristics other than racial composition that potentially explain why the minority voters’ preferred candidate succeeds or fails. This research design is based on several considerations. First, causation does not factor highly in VRA litigation; in fact, courts have emphasized correlation and deemed evidence of alternate causes irrelevant. Second, the models correctly predict upward of 98% of outcomes based on racial characteristics and incumbency status; adding independent variables does not substantially improve model fit or predictive power. Finally, if other district characteristics, such as income and partisanship, are incorporated in the analysis predicting the effect of racial composition on election outcomes becomes problematic. If district partisanship were added to the model as a control variable, one would attempt to estimate the effect of changing racial composition without varying district partisanship. Because district racial composition and partisanship are highly correlated, however, the predicted probability of minority voter success holding partisanship constant is overestimated in districts with few minority voters and underestimated in majority-minority districts. Similar problems arise if one attempts to assess the effect of district composition controlling for income, education, or citizenship status. The sparse empirical models used here are believed to generate more realistic assessments of current political conditions than do models that attempt to control for additional district characteristics. Of course, one should not make inferences about individual voters’ motivations from the aggregate level data analyzed in this research.

Conclusion

The primary purpose of this article is to inform the legal analysis of the VRA provisions regarding minority voters' opportunities to elect their preferred candidates of choice. I focus on the issues that seem most relevant to the VRA's future following the Supreme Court's landmark decision in *Shelby County, Alabama v. Holder*, which found a key enforcement mechanism unconstitutional. Using a dataset spanning five decades of congressional elections, I show that the impact of district racial composition on the probability of minority voter success has changed substantially over time, but VRA redistricting guidelines remain necessary to provide minority voters with equal opportunities to elect their preferred candidates to Congress. Consistent with the Court's opinion, I find that Section 5 covers states that remain particularly challenging for minority voters, but does not cover some of the states that have proven most difficult for minority voters.

I also attempt to identify redistricting guidelines that remedy bias and provide minority voters with equal opportunities to elect their preferred candidates. I simulate the consequences of varying VRA interpretations on congressional representation, taking into account geographic boundaries and state demographics. I determine that districts with 46.8% African American VAP and districts with approximately 61.2% Latino VAP are most likely to provide minority voters with equal opportunities for representation. These results challenge the Court's prevailing interpretation of the VRA in two respects. First, a uniform standard is unlikely to facilitate equal opportunities for African American and Latino voters. Second, the results indicate that limiting the remedies afforded African American voters to majority-minority districts has likely frustrated their efforts to achieve equal representation in Congress. The empirical evidence suggests significant changes may be in order as the nation continues to confront the difficult issues of race and representation. Moving forward, policymakers appear advised to take current conditions for minority voters into account while formulating VRA remedies.

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Notes

1. *Shelby County, Alabama v. Holder*, U.S. Supreme Court Slip Opinion, No. 12-96 (decided June 25, 2013).
2. After the 2000 Census, lawsuits challenging congressional boundaries were filed in 37 states. Ten of these lawsuits culminated in U.S. Supreme Court decisions, including several decisions in the Court's 2009 term (National Conference of State Legislatures, 2009a). By all indications, the 2010 Census has precipitated a new wave of litigation. According to Levitt (2012), 160 redistricting lawsuits were filed in 39 different states after the 2010 Census.
3. The Court framed the debate over Section 5 in *Northwest Austin Municipal Utility District Number One v. Holder*, 129 S.Ct. 2504 (2009). In that case, the Court determined the Utility District was eligible to bailout of Section 5 coverage and thereby deferred answering these questions.
4. While some scholars focus on substantive representation of minority interests, other scholars emphasize descriptive representation. In this view, electing minority legislators is not a means to an end, but rather an end to be pursued in its own right (Swain, 1993; Tate, 2001; but see Guinier, 1991; James, 2011).
5. Significantly, the *Shelby County* decision deemed the Section 4 coverage formula invalid, but did not strike down Section 5. Presumably, if Congress passed a coverage formula tailored to current conditions, Section 5 remains a viable enforcement provision.
6. In addition to these fully covered states, a number of local governments were subject to Section 5 preclearance requirements (see National Conference of State Legislatures, 2009b, pp. 80-84 for listing).
7. See the opinion of the D.C. District Court in *Shelby County, Alabama v. Holder*, 811 F.Supp.2d 424 (2011) for a detailed review of the legislative history of the Voting Rights Act (VRA) and its reauthorizations.
8. A covered jurisdiction may "bailout" from Section 5 by meeting statutory criteria proving it has not discriminated against minority voting rights in the past 10 years.
9. Although the Supreme Court's decision in *Georgia v. Ashcroft*, 539 U.S. 461 (2003) may have allowed states to stop "ratcheting" up minority populations in majority-minority districts, the "Ashcroft fix" passed by Congress in 2006 likely limited the effect of this decision (Bullock, 2010; Kousser, 2007; Persily, 2007).
10. See *Thornburg v. Gingles*, 478 U.S. 30 (1986).
11. 478 U.S. at 54. In 1982, Congress amended Section 2 to enable plaintiffs to challenge election laws, including redistricting, without proving states or localities intended to discriminate against them, showing only discriminatory effect. This amendment effectively overruled the Court's opinion in *City of Mobile v. Bolden*, 446 U.S. 55 (1980) that Section 2 required plaintiffs to show intentional discrimination.
12. See for example *U.S. v. Charleston County*, 318 F.Supp.2d 302 (D.S.C. 2002).
13. Early cases held that the minority population in a district had to reach about 65% to provide minorities an opportunity to elect their preferred candidate (National Conference of State Legislatures, 2009b, p. 68). Recent federal court opinions

- have called the “65 percent rule” into question. In *Cottier v. City of Martin et al.*, 604 F.3d 533 (8th Cir. 2010), the Eighth Circuit observed that the standard was arbitrary, not founded on empirical evidence, and suggested that a 50% population would satisfy Section 2’s liability and remedy requirements.
14. In influence districts, minority voters cannot elect their preferred candidate but may influence who wins office (candidates therefore should be responsive to minority voters). In minority coalition districts, no single minority group is sufficiently numerous to constitute a majority but collectively minorities make up the majority of voters in the district. The Supreme Court appeared to endorse influence districts in *Georgia v. Ashcroft* (U.S. 2003), but 2006 amendments to the VRA probably overruled this decision, emphasizing “ability to elect” rather than ability to influence (Canon, 2008). For critical review of the concept of influence districts, see Engstrom (2012).
 15. 42 U.S.C. § 1973(b) expressly states, “nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.” At the same time, Court opinions have implicitly or candidly adopted a rule of “roughly proportional representation.” See *Holder v. Hall*, 512 U.S. 874, 903 (J. Thomas concurring).
 16. By limiting my analysis to the largest minority groups in the United States, I neglect other minority populations that merit more consideration than offered here.
 17. The phrase is subject to numerous interpretive difficulties. It is not clear, for example, how one determines who minority voters would have preferred had all choices been available to them, rather than just two major party candidates. Although the race of the candidate per se is irrelevant, the assumption that minority voters prefer minority candidates is very often shorthand for identify minority voters’ preferred candidates (Persily, 2007, pp. 220-223).
 18. Available online at <http://baic.house.gov/member-profiles>
 19. Available online at <http://www.loc.gov/rr/hispanic/congress/contents.html>
 20. In VRA litigation, a court would not presume that a particular candidate is preferred by minority voters because of his or her race, but rather would require evidence, such as survey data or testimony by minority leaders. Discussing the application rule, the Third Circuit stated: “[P]laintiffs must introduce some additional evidence showing that the particular minority candidate is minority-preferred. The additional evidence required to meet the threshold, however, is not very substantial, and the burden may be satisfied with a variety of evidence, including lay testimony or statistical analyses of voting patterns.” *Jenkins v. Red Clay Consolidated School District et al.*, 4 F.3d 1103 (3d. Cir. 1993). Litigants can offer witnesses and evidence on this point in VRA litigation, but I am limited to secondary sources of information.
 21. I exclude the following cases: Gary Franks (R-CT-5, 4.4% African American district), Tim Scott (R-SC-1, 18.1% African American), Allen West (R-FL-22, 6.4% African American), J.C. Watts (R-OK-4, 6.8% African American), Bill Flores (R-TX-17, 17.4% Latino), Jaime Herrera-Beutler (R-WA-3, 5.7% Latino), and Raul Labrador (R-ID-1, 7.8% Latino). This is not meant to imply that Republicans fail

- to serve minority interests in Congress. I code the election of Latino Republicans as instances of minority voters electing their preferred candidates where the district's proportion of Latino voters makes this inference plausible.
22. Steve Cohen, who is Jewish, won an open-seat election in majority African American district in 2006. Cohen has defeated African American challengers in democratic primaries and received endorsements from African American leaders (Bacon, 2010). "I vote like a black woman," he says, "I don't know the black experience, but I know about being a minority and being discriminated against because of religion" (Brown, 2009).
 23. In most of these cases, we find White incumbents holding on to their districts and an African American or Latino candidate winning office once vacancies develop. Wyche Fowler's 1977 special election victory in a majority African American district presents an interesting case. Although Fowler, a White Democrat, won reelection four times and was viewed as sympathetic to African American interests, reports clearly identify John Lewis (his successor) as the preferred candidate of the district's African American voters (Atlanta Election Figures Viewed as Favorable to White in Runoff, 1977; W. King, 1977). Accordingly, Fowler's victories in 1978, 1980, 1982, and 1984 are not coded as instances of minority voters' succeeded in electing their preferred candidate to Congress.
 24. Latino voters and candidates are not distinguished by nation of origin. This is potentially problematic because political preferences may vary by nation of origin with Cuban Americans having greater affinity to the Republican Party than other Latinos. The Census Bureau has only recently denominated nations of origin. To analyze elections over time in the same manner, I follow the Bureau's initial categorization scheme (Humes, Jones, & Ramirez, 2011).
 25. This method fails for districts eliminated by reapportionment. I code Latino voting age populations (VAP) in such districts at the same level for the entire decade. These districts are located in slow-growing states and generally have relatively small Latino populations.
 26. According to the 2010 Census, only three majority-Latino congressional districts were composed such that no single nationality constituted a majority of the Latino population. In these districts, where the Latino majorities are actually coalitions of Puerto Rican, Cuban, Dominican, and South American populations, it is reasonable to ask whether Latinos of different nationalities prefer the same candidate such that the election a Latino candidate, regardless of his or her nation of origin, should be viewed as the success of all Latinos in the district. Manzano and Sanchez (2010) analysis of a national survey of Latino voters suggests that Latino voters tend to support coethnic candidates but that this support is tempered by perceived candidate quality. Unfortunately, the data utilized here do not permit a conclusive answer to this question.
 27. If an incumbent sought reelection but was defeated in a primary election, the district is considered an open seat.
 28. I use the WinBugs program to estimate a multilevel model with slopes and intercepts that vary by state. The mean values of state-varying slopes and intercepts are set to zero to derive each state's variation from a fixed slope and intercept.

- The program offers a computational method of estimating a multilevel that has the highest probability of generating the observed data. The prior distributions of parameters of interests are set as uninformative normal distributions and the starting values for two Markov chains are based on the nationally pooled model. I allow a burn-in of 10,000 iterations to allow the sampling chains to converge and analyze a sample of 5,000 iterations (for an effective sample size of 10,000). The diagnostic tools available in the WinBugs program indicate successful convergence.
29. Although this model can illuminate whether political conditions for minority voters vary among states, it is not designed to estimate why conditions vary among states. Specifically, one should not infer that differences are caused by racism, as opposed to partisan preferences or other factors. I do not incorporate state-level variables into this multilevel model because the question presented in VRA cases is the existence of racial differences rather than their causes.
 30. One can estimate the probability of electoral success as $e^{XB} / (1 + e^{XB})$ where XB equals the linear prediction calculated from Table 1 coefficients.
 31. Given an increase in the proportion of African American voters in a district necessarily decreases the proportion of its other voters, I predict probabilities assuming that the proportion of Latino voters decreases as that of African American voters increases and vice versa.
 32. African American voters failed to elect their preferred candidates to open seats in 1972 and 1974 and Latino voters failed to do so in 1986, 1990, 1994, and 2000 elections. During these election cycles, African American and Latino candidates did not have opportunities to run for open seats in any majority-minority districts. Because open-seat elections are relatively rare, this is not surprising. Logistic regression analysis cannot estimate the effect of an open seat in these cycles because seat status perfectly predicts failure. For these cycles, I estimate open-seat partial regression coefficients using the pooled results from the corresponding decade to avoid the misleading impression minority voters had no chance of winning open-seat elections in these particular years.
 33. Similarly, if the racial compositions of each state's congressional districts were in line with state demographics, one would expect very few minority voters to succeed in electing their preferred candidates (see Figures 6).
 34. See *Thornburg v. Gingles*, 478 U.S. at 54 (1986).
 35. The Court rejected this argument in *Bartlett v. Strickland* (U.S. 2009) and recently, in *Perry v. Perez* (U.S. 2012), held a district court "had no basis" to create a minority coalition district.
 36. If the proportion of African Americans or Latinos in a state exceeds the threshold, the state's districts are considered racially proportionate to the state population.
 37. The number of districts that meet a given VRA standard is influenced by the geographic dispersion of a state's minority population. One can discern the general pattern of geographic dispersion from Census data. According to 2010 Census data, 91.3% of African Americans in Alabama live in zip codes with sufficient density to be drawn into 40% African American districts. To approximate observed geographic dispersion patterns, I calculate the proportion of a state's minority population excluded from targeted districts due to geographic dispersion as a function

- of the state's African American and Latino populations ($AfAmPop_j$ or $LatinoPop_j$) and the target VRA threshold (VRA_x). This geographic dispersion parameter = 0 if $VRA_x < AfAmPop_j$, otherwise = $(VRA_x - AfAmPop_j) / (1 - AfAmPop_j)^2$. $LatinoPop_j$ substitutes for $AfAmPop_j$ in simulating election results for Latino voters.
38. A state's districts must contain equal populations, but VAPs may vary among districts. For example, 78.28% of Alabama's African American population is above age 18, but only 63.76% of its Latino population is voting age. An Alabama district with 40% African American voters would be 39.02% African American by population.
 39. Open-seat elections are relatively rare; 9.15% of congressional elections from 2002 to 2010 did not feature an incumbent running for reelection.
 40. Extremely high threshold targets (i.e., more than 90%) for congressional districts are functionally equivalent to imposing no redistricting standards because minority populations are too dispersed to draw districts with such high minority voter proportions.
 41. This result challenges Lublin, Brunell, Grofman, and Handley (2009) recent finding that majority-minority districts remain necessary for African American representation but does not directly contradict their conclusion because those authors focused on descriptive representation in recent state legislative elections while this research considers minority voters' success electing their preferred candidates in recent congressional elections.
 42. The expected results for African American voters do not significantly change assuming Latino voters drawn into other districts. The probability of African American voters' success is not significantly affected by the proportion of Latino voters (see Table 1 and Figure 4).
 43. This result is consistent with prior works that suggest majority-Latino districts are essential for Latino representation (i.e., Casellas, 2009; Lublin, 1997; Lublin et al., 2009). As the discussion of Figure 3 suggests, redistricting standards necessary to provide Latino voters fair opportunities to elect their preferred candidates to Congress appear to be trending upward over the last four decades.
 44. It is noteworthy that district composition standards above and below ideal standards yield the same expected aggregate results through contrasting approaches. These standards may be equivalent with respect to descriptive representation. For example, 35% and 60% district composition targets could be expected to produce roughly the same number of representatives for African American voters; a 35% standard provides voters an opportunity to compete in many districts while a 60% standard makes victory relatively certain in a handful of districts.
 45. It may be noted that this research is based on congressional election results and whether these results extend to other types of elections, such as state legislative elections, is unknown and not considered here.

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