

Opinion of KENNEDY, J.

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**SUPREME COURT OF THE UNITED STATES**

Nos. 05–204, 05–254, 05–276 and 05–439

LEAGUE OF UNITED LATIN AMERICAN CITIZENS,  
ET AL., APPELLANTS

05–204

*v.*

RICK PERRY, GOVERNOR OF TEXAS, ET AL.

TRAVIS COUNTY, TEXAS, ET AL., APPELLANTS

05–254

*v.*

RICK PERRY, GOVERNOR OF TEXAS, ET AL.

EDDIE JACKSON, ET AL., APPELLANTS

05–276

*v.*

RICK PERRY, GOVERNOR OF TEXAS, ET AL.

GI FORUM OF TEXAS, ET AL., APPELLANTS

05–439

*v.*

RICK PERRY, GOVERNOR OF TEXAS, ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF TEXAS

[June 28, 2006]

JUSTICE KENNEDY announced the judgment of the Court and delivered the opinion of the Court with respect to Parts II–A and III, an opinion with respect to Parts I and IV, in which THE CHIEF JUSTICE and JUSTICE ALITO join, an opinion with respect to Parts II–B and II–C, and an opinion with respect to Part II–D, in which JUSTICE

SOUTER and JUSTICE GINSBURG join.

These four consolidated cases are appeals from a judgment entered by the United States District Court for the Eastern District of Texas. Convened as a three-judge court under 28 U. S. C. §2284, the court heard appellants' constitutional and statutory challenges to a 2003 enactment of the Texas State Legislature that drew new district lines for the 32 seats Texas holds in the United States House of Representatives. (Though appellants do not join each other as to all claims, for the sake of convenience we refer to appellants collectively.) In 2004 the court entered judgment for appellees and issued detailed findings of fact and conclusions of law. *Session v. Perry*, 298 F. Supp. 2d 451 (*per curiam*). This Court vacated that decision and remanded for consideration in light of *Vieth v. Jubelirer*, 541 U. S. 267 (2004). 543 U. S. 941 (2004). The District Court reexamined appellants' political gerrymandering claims and, in a second careful opinion, again held for the defendants. *Henderson v. Perry*, 399 F. Supp. 2d 756 (2005). These appeals followed, and we noted probable jurisdiction. 546 U. S. \_\_\_ (2005).

Appellants contend the new plan is an unconstitutional partisan gerrymander and that the redistricting statewide violates §2 of the Voting Rights Act of 1965, 79 Stat. 437, as amended, 42 U. S. C. §1973. Appellants also contend that the use of race and politics in drawing lines of specific districts violates the First Amendment and the Equal Protection Clause of the Fourteenth Amendment. The three-judge panel, consisting of Circuit Judge Higginbotham and District Judges Ward and Rosenthal, brought considerable experience and expertise to the instant case, based on their knowledge of the State's people, history, and geography. Judges Higginbotham and Ward, moreover, had served on the three-judge court that drew the plan the Texas Legislature replaced in 2003, so they were intimately familiar with the history and intricacies

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cies of the cases.

We affirm the District Court's dispositions on the statewide political gerrymandering claims and the Voting Rights Act claim against District 24. We reverse and remand on the Voting Rights Act claim with respect to District 23. Because we do not reach appellants' race-based equal protection claim or the political gerrymandering claim as to District 23, we vacate the judgment of the District Court on these claims.

## I

To set out a proper framework for the case, we first recount the history of the litigation and recent districting in Texas. An appropriate starting point is not the reapportionment in 2000 but the one from the census in 1990.

The 1990 census resulted in a 30-seat congressional delegation for Texas, an increase of 3 seats over the 27 representatives allotted to the State in the decade before. See *Bush v. Vera*, 517 U. S. 952, 956–957 (1996). In 1991 the Texas Legislature drew new district lines. At the time, the Democratic Party controlled both houses in the state legislature, the governorship, and 19 of the State's 27 seats in Congress. Yet change appeared to be on the horizon. In the previous 30 years the Democratic Party's post-Reconstruction dominance over the Republican Party had eroded, and by 1990 the Republicans received 47% of the statewide vote, while the Democrats received 51%. *Henderson, supra*, at 763; Brief for Appellee Perry et al. in No. 05–204, etc., p. 2 (hereinafter Brief for State Appellees).

Faced with a Republican opposition that could be moving toward majority status, the state legislature drew a congressional redistricting plan designed to favor Democratic candidates. Using then-emerging computer technology to draw district lines with artful precision, the legislature enacted a plan later described as the “shrewdest

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gerrymander of the 1990s.” M. Barone, R. Cohen, & C. Cook, *Almanac of American Politics* 2002, p. 1448 (2001). See *Henderson, supra*, at 767, and n. 47. Although the 1991 plan was enacted by the state legislature, Democratic Congressman Martin Frost was acknowledged as its architect. *Session, supra*, at 482. The 1991 plan “carefully constructs democratic districts ‘with incredibly convoluted lines’ and packs ‘heavily Republican’ suburban areas into just a few districts.” *Henderson, supra*, at 767, n. 47 (quoting M. Barone & R. Cohen, *Almanac of American Politics* 2004, p. 1510 (2003) (hereinafter 2004 Almanac)).

Voters who considered this unfair and unlawful treatment sought to invalidate the 1991 plan as an unconstitutional partisan gerrymander, but to no avail. See *Terrazas v. Slagle*, 789 F. Supp. 828, 833 (WD Tex. 1992); *Terrazas v. Slagle*, 821 F. Supp. 1162, 1175 (WD Tex. 1993). The 1991 plan realized the hopes of Democrats and the fears of Republicans with respect to the composition of the Texas congressional delegation. The 1990’s were years of continued growth for the Texas Republican Party, and by the end of the decade it was sweeping elections for statewide office. Nevertheless, despite carrying 59% of the vote in statewide elections in 2000, the Republicans only won 13 congressional seats to the Democrats’ 17. *Henderson, supra*, at 763.

These events likely were not forgotten by either party when it came time to draw congressional districts in conformance with the 2000 census and to incorporate two additional seats for the Texas delegation. The Republican Party controlled the governorship and the State Senate; it did not yet control the State House of Representatives, however. As so constituted, the legislature was unable to pass a redistricting scheme, resulting in litigation and the necessity of a court-ordered plan to comply with the Constitution’s one-person, one-vote requirement. See *Balderas v. Texas*, Civ. Action No. 6:01CV158 (ED Tex., Nov.

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14, 2001) (*per curiam*), summarily aff'd, 536 U. S. 919 (2002), App. E to Juris. Statement in No. 05–276, p. 202a. The congressional districting map resulting from the *Balderas* litigation is known as Plan 1151C.

As we have said, two members of the three-judge court that drew Plan 1151C later served on the three-judge court that issued the judgment now under review. Thus we have the benefit of their candid comments concerning the redistricting approach taken in the *Balderas* litigation. Conscious that the primary responsibility for drawing congressional districts is given to political branches of government, and hesitant to “und[o] the work of one political party for the benefit of another,” the three-judge *Balderas* court sought to apply “only ‘neutral’ redistricting standards” when drawing Plan 1151C. *Henderson*, 399 F. Supp. 2d, at 768. Once the District Court applied these principles—such as placing the two new seats in high-growth areas, following county and voting precinct lines, and avoiding the pairing of incumbents—“the drawing ceased, leaving the map free of further change except to conform it to one-person, one-vote.” *Ibid.* Under Plan 1151C, the 2002 congressional elections resulted in a 17-to-15 Democratic majority in the Texas delegation, compared to a 59% to 40% Republican majority in votes for statewide office in 2000. *Id.*, at 763–764. Reflecting on the *Balderas* Plan, the District Court in *Henderson* was candid to acknowledge “[t]he practical effect of this effort was to leave the 1991 Democratic Party gerrymander largely in place as a ‘legal’ plan.” *Id.*, at 768.

The continuing influence of a court-drawn map that “perpetuated much of [the 1991] gerrymander,” *ibid.*, was not lost on Texas Republicans when, in 2003, they gained control of the State House of Representatives and, thus, both houses of the legislature. The Republicans in the legislature “set out to increase their representation in the congressional delegation.” *Session*, 298 F. Supp. 2d, at

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471. See also *id.*, at 470 (“There is little question but that the single-minded purpose of the Texas Legislature in enacting [a new plan] was to gain partisan advantage”). After a protracted partisan struggle, during which Democratic legislators left the State for a time to frustrate quorum requirements, the legislature enacted a new congressional districting map in October 2003. It is called Plan 1374C. The 2004 congressional elections did not disappoint the plan’s drafters. Republicans won 21 seats to the Democrats’ 11, while also obtaining 58% of the vote in statewide races against the Democrats’ 41%. *Henderson, supra*, at 764.

Soon after Texas enacted Plan 1374C, appellants challenged it in court, alleging a host of constitutional and statutory violations. Initially, the District Court entered judgment against appellants on all their claims. See *Session*, 298 F. Supp. 2d, at 457; *id.*, at 515 (Ward, J., concurring in part and dissenting in part). Appellants sought relief here and, after their jurisdictional statements were filed, this Court issued *Vieth v. Jubelirer*. Our order vacating the District Court judgment and remanding for consideration in light of *Vieth* was issued just weeks before the 2004 elections. See 543 U. S. 941 (Oct. 18, 2004). On remand, the District Court, believing the scope of its mandate was limited to questions of political gerrymandering, again rejected appellants’ claims. *Henderson*, 399 F. Supp. 2d, at 777–778. Judge Ward would have granted relief under the theory—presented to the court for the first time on remand—that mid-decennial redistricting violates the one-person, one-vote requirement, but he concluded such an argument was not within the scope of the remand mandate. *Id.*, at 779, 784–785 (specially concurring).

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## II

## A

Based on two similar theories that address the mid-decade character of the 2003 redistricting, appellants now argue that Plan 1374C should be invalidated as an unconstitutional partisan gerrymander. In *Davis v. Bandemer*, 478 U. S. 109 (1986), the Court held that an equal protection challenge to a political gerrymander presents a justiciable case or controversy, *id.*, at 118–127, but there was disagreement over what substantive standard to apply. Compare *id.*, at 127–137 (plurality opinion) with *id.*, at 161–162 (Powell, J., concurring in part and dissenting in part). That disagreement persists. A plurality of the Court in *Vieth v. Jubelirer* would have held such challenges to be nonjusticiable political questions, but a majority declined to do so. See 541 U. S., at 306 (KENNEDY, J., concurring in judgment); *id.*, at 317 (STEVENS, J., dissenting); *id.*, at 343 (SOUTER, J., dissenting); *id.*, at 355 (BREYER, J., dissenting). We do not revisit the justiciability holding but do proceed to examine whether appellants’ claims offer the Court a manageable, reliable measure of fairness for determining whether a partisan gerrymander violates the Constitution.

## B

Before addressing appellants’ arguments on mid-decade redistricting, it is appropriate to note some basic principles on the roles the States, Congress, and the courts play in determining how congressional districts are to be drawn. Article I of the Constitution provides:

“Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States . . . .

“Section 4. The Times, Places and Manner of holding Elections for . . . Representatives, shall be prescribed in each State by the Legislature thereof; but

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the Congress may at any time by Law make or alter such Regulations . . . .”

This text, we have explained, “leaves with the States primary responsibility for apportionment of their federal congressional . . . districts.” *Grove v. Emison*, 507 U. S. 25, 34 (1993); see also *Chapman v. Meier*, 420 U. S. 1, 27 (1975) (“[R]eapportionment is primarily the duty and responsibility of the State through its legislature or other body”); *Smiley v. Holm*, 285 U. S. 355, 366–367 (1932) (reapportionment implicated State’s powers under Art. I, §4). Congress, as the text of the Constitution also provides, may set further requirements, and with respect to districting it has generally required single-member districts. See U. S. Const., Art. I, §4; 81 Stat. 581, 2 U. S. C. §2c; *Branch v. Smith*, 538 U. S. 254, 266–267 (2003). But see *id.*, at 275 (plurality opinion) (multimember districts permitted by 55 Stat. 762, 2 U. S. C. §2a(c) in limited circumstances). With respect to a mid-decade redistricting to change districts drawn earlier in conformance with a decennial census, the Constitution and Congress state no explicit prohibition.

Although the legislative branch plays the primary role in congressional redistricting, our precedents recognize an important role for the courts when a districting plan violates the Constitution. See, e.g., *Wesberry v. Sanders*, 376 U. S. 1 (1964). This litigation is an example, as we have discussed. When Texas did not enact a plan to comply with the one-person, one-vote requirement under the 2000 census, the District Court found it necessary to draw a redistricting map on its own. That the federal courts sometimes are required to order legislative redistricting, however, does not shift the primary locus of responsibility.

“Legislative bodies should not leave their reapportionment tasks to the federal courts; but when those with legislative responsibilities do not respond, or the imminence of a state election makes it impractical for

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them to do so, it becomes the ‘unwelcome obligation’ of the federal court to devise and impose a reapportionment plan pending later legislative action.” *Wise v. Lipscomb*, 437 U. S. 535, 540 (1978) (principal opinion) (quoting *Connor v. Finch*, 431 U. S. 407, 415 (1977)).

Quite apart from the risk of acting without a legislature’s expertise, and quite apart from the difficulties a court faces in drawing a map that is fair and rational, see *id.*, at 414–415, the obligation placed upon the Federal Judiciary is unwelcome because drawing lines for congressional districts is one of the most significant acts a State can perform to ensure citizen participation in republican self-governance. That Congress is the federal body explicitly given constitutional power over elections is also a noteworthy statement of preference for the democratic process. As the Constitution vests redistricting responsibilities foremost in the legislatures of the States and in Congress, a lawful, legislatively enacted plan should be preferable to one drawn by the courts.

It should follow, too, that if a legislature acts to replace a court-drawn plan with one of its own design, no presumption of impropriety should attach to the legislative decision to act. As the District Court noted here, *Session*, 298 F. Supp. 2d, at 460–461, our decisions have assumed that state legislatures are free to replace court-mandated remedial plans by enacting redistricting plans of their own. See, e.g., *Upham v. Seamon*, 456 U. S. 37, 44 (1982) (*per curiam*); *Wise, supra*, at 540 (principal opinion) (quoting *Connor, supra*, at 415); *Burns v. Richardson*, 384 U. S. 73, 85 (1966); *Reynolds v. Sims*, 377 U. S. 533, 587 (1964). Underlying this principle is the assumption that to prefer a court-drawn plan to a legislature’s replacement would be contrary to the ordinary and proper operation of the political process. Judicial respect for legislative plans, however, cannot justify legislative reliance on improper criteria for

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districting determinations. With these considerations in mind, we next turn to consider appellants' challenges to the new redistricting plan.

C

Appellants claim that Plan 1374C, enacted by the Texas Legislature in 2003, is an unconstitutional political gerrymander. A decision, they claim, to effect mid-decennial redistricting, when solely motivated by partisan objectives, violates equal protection and the First Amendment because it serves no legitimate public purpose and burdens one group because of its political opinions and affiliation. The mid-decennial nature of the redistricting, appellants say, reveals the legislature's sole motivation. Unlike *Vieth*, where the legislature acted in the context of a required decennial redistricting, the Texas Legislature voluntarily replaced a plan that itself was designed to comply with new census data. Because Texas had "no constitutional obligation to act at all" in 2003, Brief for Appellant Jackson et al. in No. 05–276, p. 26, it is hardly surprising, according to appellants, that the District Court found "[t]here is little question but that the single-minded purpose of the Texas Legislature in enacting Plan 1374C was to gain partisan advantage" for the Republican majority over the Democratic minority, *Session, supra*, at 470.

A rule, or perhaps a presumption, of invalidity when a mid-decade redistricting plan is adopted solely for partisan motivations is a salutary one, in appellants' view, for then courts need not inquire about, nor parties prove, the discriminatory effects of partisan gerrymandering—a matter that has proved elusive since *Bandemer*. See *Vieth*, 541 U. S., at 281 (plurality opinion); *Bandemer*, 478 U. S., at 127. Adding to the test's simplicity is that it does not quibble with the drawing of individual district lines but challenges the decision to redistrict at all.

For a number of reasons, appellants' case for adopting

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their test is not convincing. To begin with, the state appellees dispute the assertion that partisan gain was the “sole” motivation for the decision to replace Plan 1151C. There is some merit to that criticism, for the pejorative label overlooks indications that partisan motives did not dictate the plan in its entirety. The legislature does seem to have decided to redistrict with the sole purpose of achieving a Republican congressional majority, but partisan aims did not guide every line it drew. As the District Court found, the contours of some contested district lines were drawn based on more mundane and local interests. *Session, supra*, at 472–473. The state appellees also contend, and appellants do not contest, that a number of line-drawing requests by Democratic state legislators were honored. Brief for State Appellees 34.

Evaluating the legality of acts arising out of mixed motives can be complex, and affixing a single label to those acts can be hazardous, even when the actor is an individual performing a discrete act. See, e.g., *Hartman v. Moore*, 547 U. S. \_\_\_, \_\_\_ (2006) (slip op., at 9–10). When the actor is a legislature and the act is a composite of manifold choices, the task can be even more daunting. Appellants’ attempt to separate the legislature’s sole motive for discarding Plan 1151C from the complex of choices it made while drawing the lines of Plan 1374C seeks to avoid that difficulty. We are skeptical, however, of a claim that seeks to invalidate a statute based on a legislature’s unlawful motive but does so without reference to the content of the legislation enacted.

Even setting this skepticism aside, a successful claim attempting to identify unconstitutional acts of partisan gerrymandering must do what appellants’ sole-motivation theory explicitly disavows: show a burden, as measured by a reliable standard, on the complainants’ representational rights. For this reason, a majority of the Court rejected a test proposed in *Vieth* that is markedly similar to the one

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appellants present today. Compare 541 U. S., at 336 (STEVENS, J., dissenting) (“Just as race can be a factor in, but cannot dictate the outcome of, the districting process, so too can partisanship be a permissible consideration in drawing district lines, so long as it does not predominate”), and *id.*, at 338 (“[A]n acceptable rational basis can be neither purely personal nor purely partisan”), with *id.*, at 292–295 (plurality opinion), and *id.*, at 307–308 (KENNEDY, J., concurring in judgment).

The sole-intent standard offered here is no more compelling when it is linked to the circumstance that Plan 1374C is mid-decennial legislation. The text and structure of the Constitution and our case law indicate there is nothing inherently suspect about a legislature’s decision to replace mid-decade a court-ordered plan with one of its own. And even if there were, the fact of mid-decade redistricting alone is no sure indication of unlawful political gerrymanders. Under appellants’ theory, a highly effective partisan gerrymander that coincided with decennial redistricting would receive less scrutiny than a bumbling, yet solely partisan, mid-decade redistricting. More concretely, the test would leave untouched the 1991 Texas redistricting, which entrenched a party on the verge of minority status, while striking down the 2003 redistricting plan, which resulted in the majority Republican Party capturing a larger share of the seats. A test that treats these two similarly effective power plays in such different ways does not have the reliability appellants ascribe to it.

Furthermore, compared to the map challenged in *Vieth*, which led to a Republican majority in the congressional delegation despite a Democratic majority in the statewide vote, Plan 1374C can be seen as making the party balance more congruent to statewide party power. To be sure, there is no constitutional requirement of proportional representation, and equating a party’s statewide share of the vote with its portion of the congressional delegation is

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a rough measure at best. Nevertheless, a congressional plan that more closely reflects the distribution of state party power seems a less likely vehicle for partisan discrimination than one that entrenches an electoral minority. See *Gaffney v. Cummings*, 412 U. S. 735, 754 (1973). By this measure, Plan 1374C can be seen as fairer than the plan that survived in *Vieth* and the two previous Texas plans—all three of which would pass the modified sole-intent test that Plan 1374C would fail.

A brief for one of the *amici* proposes a symmetry standard that would measure partisan bias by “compar[ing] how both parties would fare hypothetically if they each (in turn) had received a given percentage of the vote.” Brief for Gary King et al. 5. Under that standard the measure of a map’s bias is the extent to which a majority party would fare better than the minority party should their respective shares of the vote reverse. In our view *amici*’s proposed standard does not compensate for appellants’ failure to provide a reliable measure of fairness. The existence or degree of asymmetry may in large part depend on conjecture about where possible vote-switchers will reside. Even assuming a court could choose reliably among different models of shifting voter preferences, we are wary of adopting a constitutional standard that invalidates a map based on unfair results that would occur in a hypothetical state of affairs. Presumably such a challenge could be litigated if and when the feared inequity arose. Cf. *Abbott Laboratories v. Gardner*, 387 U. S. 136, 148 (1967). More fundamentally, the counterfactual plaintiff would face the same problem as the present, actual appellants: providing a standard for deciding how much partisan dominance is too much. Without altogether discounting its utility in redistricting planning and litigation, we conclude asymmetry alone is not a reliable measure of unconstitutional partisanship.

In the absence of any other workable test for judging

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partisan gerrymanders, one effect of appellants' focus on mid-decade redistricting could be to encourage partisan excess at the outset of the decade, when a legislature redistricts pursuant to its decennial constitutional duty and is then immune from the charge of sole-motivation. If mid-decade redistricting were barred or at least subject to close judicial oversight, opposition legislators would also have every incentive to prevent passage of a legislative plan and try their luck with a court that might give them a better deal than negotiation with their political rivals. See *Henderson*, 399 F. Supp. 2d, at 776–777.

#### D

Appellants' second political gerrymandering theory is that mid-decade redistricting for exclusively partisan purposes violates the one-person, one-vote requirement. They observe that population variances in legislative districts are tolerated only if they “are unavoidable despite a good-faith effort to achieve absolute equality, or for which justification is shown.” *Karcher v. Daggett*, 462 U. S. 725, 730 (1983) (quoting *Kirkpatrick v. Preisler*, 394 U. S. 526, 531 (1969); internal quotation marks omitted). Working from this unchallenged premise, appellants contend that, because the population of Texas has shifted since the 2000 census, the 2003 redistricting, which relied on that census, created unlawful interdistrict population variances.

To distinguish the variances in Plan 1374C from those of ordinary, 3-year-old districting plans or belatedly drawn court-ordered plans, appellants again rely on the voluntary, mid-decade nature of the redistricting and its partisan motivation. Appellants do not contend that a decennial redistricting plan would violate equal representation three or five years into the decade if the State's population had shifted substantially. As they must, they concede that States operate under the legal fiction that their plans are

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constitutionally apportioned throughout the decade, a presumption that is necessary to avoid constant redistricting, with accompanying costs and instability. See *Georgia v. Ashcroft*, 539 U. S. 461, 488, n. 2 (2003); *Reynolds*, 377 U. S., at 583. Appellants agree that a plan implemented by a court in 2001 using 2000 population data also enjoys the benefit of the so-called legal fiction, presumably because belated court-drawn plans promote other important interests, such as ensuring a plan complies with the Constitution and voting rights legislation.

In appellants' view, however, this fiction should not provide a safe harbor for a legislature that enacts a voluntary, mid-decade plan overriding a legal court-drawn plan, thus "unnecessarily" creating population variance "when there was no legal compulsion" to do so. Brief for Appellant Travis County et al. in No. 05–254, p. 18. This is particularly so, appellants say, when a legislature acts because of an exclusively partisan motivation. Under appellants' theory this improper motive at the outset seems enough to condemn the map for violating the equal-population principle. For this reason, appellants believe that the State cannot justify under *Karcher v. Daggett* the population variances in Plan 1374C because they are the product of partisan bias and the desire to eliminate all competitive districts.

As the District Court noted, this is a test that turns not on whether a redistricting furthers equal-population principles but rather on the justification for redrawing a plan in the first place. *Henderson, supra*, at 776. In that respect appellants' approach merely restates the question whether it was permissible for the Texas Legislature to redraw the districting map. Appellants' answer, which mirrors their attack on mid-decennial redistricting solely motivated by partisan considerations, is unsatisfactory for reasons we have already discussed.

Appellants also contend that the legislature intention-

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ally sought to manipulate population variances when it enacted Plan 1374C. There is, however, no District Court finding to that effect, and appellants present no specific evidence to support this serious allegation of bad faith. Because appellants have not demonstrated that the legislature’s decision to enact Plan 1374C constitutes a violation of the equal-population requirement, we find unavailing their subsidiary reliance on *Larios v. Cox*, 300 F. Supp. 2d 1320 (ND Ga. 2004) (*per curiam*), summarily aff’d, 542 U. S. 947 (2004). In *Larios*, the District Court reviewed the Georgia Legislature’s decennial redistricting of its State Senate and House of Representatives districts and found deviations from the equal-population requirement. The District Court then held the objectives of the drafters, which included partisan interests along with regionalist bias and inconsistent incumbent protection, did not justify those deviations. 300 F. Supp. 2d, at 1351–1352. The *Larios* holding and its examination of the legislature’s motivations were relevant only in response to an equal-population violation, something appellants have not established here. Even in addressing political motivation as a justification for an equal-population violation, moreover, *Larios* does not give clear guidance. The panel explained it “need not resolve the issue of whether or when partisan advantage alone may justify deviations in population” because the plans were “plainly unlawful” and any partisan motivations were “bound up inextricably” with other clearly rejected objectives. *Id.*, at 1352.

In sum, we disagree with appellants’ view that a legislature’s decision to override a valid, court-drawn plan mid-decade is sufficiently suspect to give shape to a reliable standard for identifying unconstitutional political gerrymanders. We conclude that appellants have established no legally impermissible use of political classifications. For this reason, they state no claim on which relief may be granted for their statewide challenge.

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## III

Plan 1374C made changes to district lines in south and west Texas that appellants challenge as violations of §2 of the Voting Rights Act and the Equal Protection Clause of the Fourteenth Amendment. The most significant changes occurred to District 23, which—both before and after the redistricting—covers a large land area in west Texas, and to District 25, which earlier included Houston but now includes a different area, a north-south strip from Austin to the Rio Grande Valley.

After the 2002 election, it became apparent that District 23 as then drawn had an increasingly powerful Latino population that threatened to oust the incumbent Republican, Henry Bonilla. Before the 2003 redistricting, the Latino share of the citizen voting-age population was 57.5%, and Bonilla's support among Latinos had dropped with each successive election since 1996. *Session*, 298 F. Supp. 2d, at 488–489. In 2002, Bonilla captured only 8% of the Latino vote, *ibid.*, and 51.5% of the overall vote. Faced with this loss of voter support, the legislature acted to protect Bonilla's incumbency by changing the lines—and hence the population mix—of the district. To begin with, the new plan divided Webb County and the city of Laredo, on the Mexican border, that formed the county's population base. Webb County, which is 94% Latino, had previously rested entirely within District 23; under the new plan, nearly 100,000 people were shifted into neighboring District 28. *Id.*, at 489. The rest of the county, approximately 93,000 people, remained in District 23. To replace the numbers District 23 lost, the State added voters in counties comprising a largely Anglo, Republican area in central Texas. *Id.*, at 488. In the newly drawn district, the Latino share of the citizen voting-age population dropped to 46%, though the Latino share of the total voting-age population remained just over 50%. *Id.*, at 489.

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These changes required adjustments elsewhere, of course, so the State inserted a third district between the two districts to the east of District 23, and extended all three of them farther north. New District 25 is a long, narrow strip that winds its way from McAllen and the Mexican border towns in the south to Austin, in the center of the State and 300 miles away. *Id.*, at 502. In between it includes seven full counties, but 77% of its population resides in split counties at the northern and southern ends. Of this 77%, roughly half reside in Hidalgo County, which includes McAllen, and half are in Travis County, which includes parts of Austin. *Ibid.* The Latinos in District 25, comprising 55% of the district’s citizen voting-age population, are also mostly divided between the two distant areas, north and south. *Id.*, at 499. The Latino communities at the opposite ends of District 25 have divergent “needs and interests,” *id.*, at 502, owing to “differences in socio-economic status, education, employment, health, and other characteristics,” *id.*, at 512.

The District Court summed up the purposes underlying the redistricting in south and west Texas: “The change to Congressional District 23 served the dual goal of increasing Republican seats in general and protecting Bonilla’s incumbency in particular, with the additional political nuance that Bonilla would be reelected in a district that had a majority of Latino voting age population—although clearly not a majority of citizen voting age population and certainly not an effective voting majority.” *Id.*, at 497. The goal in creating District 25 was just as clear: “[t]o avoid retrogression under §5” of the Voting Rights Act given the reduced Latino voting strength in District 23. *Id.*, at 489.

A

The question we address is whether Plan 1374C violates §2 of the Voting Rights Act. A State violates §2

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“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 racial group] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” 42 U. S. C. §1973(b).

The Court has identified three threshold conditions for establishing a §2 violation: (1) the racial group is ““sufficiently large and geographically compact to constitute a majority in a single-member district””; (2) the racial group is ““politically cohesive””; and (3) the majority ““vot[es] sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate.”” *Johnson v. De Grandy*, 512 U. S. 997, 1006–1007 (1994) (quoting *Grove*, 507 U. S., at 40 (in turn quoting *Thornburg v. Gingles*, 478 U. S. 30, 50–51 (1986))). These are the so-called *Gingles* requirements.

If all three *Gingles* requirements are established, the statutory text directs us to consider the “totality of circumstances” to determine whether members of a racial group have less opportunity than do other members of the electorate. *De Grandy*, *supra*, at 1011–1012; see also *Abrams v. Johnson*, 521 U. S. 74, 91 (1997). The general terms of the statutory standard “totality of circumstances” require judicial interpretation. For this purpose, the Court has referred to the Senate Report on the 1982 amendments to the Voting Rights Act, which identifies factors typically relevant to a §2 claim, including:

“the history of voting-related discrimination in the State or political subdivision; the extent to which voting in the elections of the State or political subdivision is racially polarized; the extent to which the State or political subdivision has used voting practices or pro-

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cedures that tend to enhance the opportunity for discrimination against the minority group . . . ; the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process; the use of overt or subtle racial appeals in political campaigns; and the extent to which members of the minority group have been elected to public office in the jurisdiction. The Report notes also that evidence demonstrating that elected officials are unresponsive to the particularized needs of the members of the minority group and that the policy underlying the State's or the political subdivision's use of the contested practice or structure is tenuous may have probative value." *Gingles, supra*, at 44–45 (citing S. Rep. No. 97–417 (1982) (hereinafter Senate Report); pinpoint citations omitted).

Another relevant consideration is whether the number of districts in which the minority group forms an effective majority is roughly proportional to its share of the population in the relevant area. *De Grandy, supra*, at 1000.

The District Court's determination whether the §2 requirements are satisfied must be upheld unless clearly erroneous. See *Gingles, supra*, at 78–79. Where "the ultimate finding of dilution" is based on "a misreading of the governing law," however, there is reversible error. *De Grandy, supra*, at 1022.

B

Appellants argue that the changes to District 23 diluted the voting rights of Latinos who remain in the district. Specifically, the redrawing of lines in District 23 caused the Latino share of the citizen voting-age population to drop from 57.5% to 46%. The District Court recognized that "Latino voting strength in Congressional District 23

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is, unquestionably, weakened under Plan 1374C.” *Session*, 298 F. Supp. 2d, at 497. The question is whether this weakening amounts to vote dilution.

To begin the *Gingles* analysis, it is evident that the second and third *Gingles* preconditions—cohesion among the minority group and bloc voting among the majority population—are present in District 23. The District Court found “racially polarized voting” in south and west Texas, and indeed “throughout the State.” *Session*, *supra*, at 492–493. The polarization in District 23 was especially severe: 92% of Latinos voted against Bonilla in 2002, while 88% of non-Latinos voted for him. App. 134, Table 20 (expert Report of Allan J. Lichtman on Voting-Rights Issues in Texas Congressional Redistricting (Nov. 14, 2002) (hereinafter Lichtman Report)). Furthermore, the projected results in new District 23 show that the Anglo citizen voting-age majority will often, if not always, prevent Latinos from electing the candidate of their choice in the district. *Session*, *supra*, at 496–497. For all these reasons, appellants demonstrated sufficient minority cohesion and majority bloc voting to meet the second and third *Gingles* requirements.

The first *Gingles* factor requires that a group be “sufficiently large and geographically compact to constitute a majority in a single-member district.” 478 U. S., at 50. Latinos in District 23 could have constituted a majority of the citizen voting-age population in the district, and in fact did so under Plan 1151C. Though it may be possible for a citizen voting-age majority to lack real electoral opportunity, the Latino majority in old District 23 did possess electoral opportunity protected by §2.

While the District Court stated that District 23 had not been an effective opportunity district under Plan 1151C, it recognized the district was “moving in that direction.” *Session*, 298 F. Supp. 2d, at 489. Indeed, by 2002 the Latino candidate of choice in District 23 won the majority

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of the district's votes in 13 out of 15 elections for statewide officeholders. *Id.*, at 518 (Ward, J., concurring in part and dissenting in part). And in the congressional race, Bonilla could not have prevailed without some Latino support, limited though it was. State legislators changed District 23 specifically because they worried that Latinos would vote Bonilla out of office. *Id.*, at 488.

Furthermore, to the extent the District Court suggested that District 23 was not a Latino opportunity district in 2002 simply because Bonilla prevailed, see *id.*, at 488, 495, it was incorrect. The circumstance that a group does not win elections does not resolve the issue of vote dilution. We have said that “the ultimate right of §2 is equality of opportunity, not a guarantee of electoral success for minority-preferred candidates of whatever race.” *De Grandy*, 512 U. S., at 1014, n. 11. In old District 23 the increase in Latino voter registration and overall population, *Session*, 298 F. Supp. 2d, at 523 (Ward, J., concurring in part and dissenting in part), the concomitant rise in Latino voting power in each successive election, the near-victory of the Latino candidate of choice in 2002, and the resulting threat to the Bonilla incumbency, were the very reasons that led the State to redraw the district lines. Since the redistricting prevented the immediate success of the emergent Latino majority in District 23, there was a denial of opportunity in the real sense of that term.

Plan 1374C's version of District 23, by contrast, “is unquestionably not a Latino opportunity district.” *Id.*, at 496. Latinos, to be sure, are a bare majority of the voting-age population in new District 23, but only in a hollow sense, for the parties agree that the relevant numbers must include citizenship. This approach fits the language of §2 because only eligible voters affect a group's opportunity to elect candidates. In sum, appellants have established that Latinos could have had an opportunity district in District 23 had its lines not been altered and that they

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do not have one now.

Considering the district in isolation, the three *Gingles* requirements are satisfied. The State argues, nonetheless, that it met its §2 obligations by creating new District 25 as an offsetting opportunity district. It is true, of course, that “States retain broad discretion in drawing districts to comply with the mandate of §2.” *Shaw v. Hunt*, 517 U. S. 899, 917, n. 9 (1996) (*Shaw II*). This principle has limits, though. The Court has rejected the premise that a State can always make up for the less-than-equal opportunity of some individuals by providing greater opportunity to others. See *id.*, at 917 (“The vote-dilution injuries suffered by these persons are not remedied by creating a safe majority-black district somewhere else in the State”). As set out below, these conflicting concerns are resolved by allowing the State to use one majority-minority district to compensate for the absence of another only when the racial group in each area had a §2 right and both could not be accommodated.

As to the first *Gingles* requirement, it is not enough that appellants show the possibility of creating a majority-minority district that would include the Latinos in District 23. See *Shaw II*, *supra*, at 917, n. 9 (rejecting the idea that “a §2 plaintiff has the right to be placed in a majority-minority district once a violation of the statute is shown”). If the inclusion of the plaintiffs would necessitate the exclusion of others, then the State cannot be faulted for its choice. That is why, in the context of a challenge to the drawing of district lines, “the first *Gingles* condition requires the possibility of creating more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice.” *De Grandy*, *supra*, at 1008.

The District Court found that the current plan contains six Latino opportunity districts and that seven reasonably compact districts could not be drawn. Appellant GI Forum

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presented a plan with seven majority-Latino districts, but the District Court found these districts were not reasonably compact, in part because they took in “disparate and distant communities.” *Session, supra*, at 491–492, and n. 125. While there was some evidence to the contrary, the court’s resolution of the conflicting evidence was not clearly erroneous.

A problem remains, though, for the District Court failed to perform a comparable compactness inquiry for Plan 1374C as drawn. *De Grandy* requires a comparison between a challenger’s proposal and the “existing number of reasonably compact districts.” 512 U. S., at 1008. To be sure, §2 does not forbid the creation of a noncompact majority-minority district. *Bush v. Vera*, 517 U. S., at 999 (KENNEDY, J., concurring). The noncompact district cannot, however, remedy a violation elsewhere in the State. See *Shaw II, supra*, at 916 (unless “the district contains a ‘geographically compact’ population” of the racial group, “where that district sits, ‘there neither has been a wrong nor can be a remedy’” (quoting *Grove*, 507 U. S., at 41)). Simply put, the State’s creation of an opportunity district for those without a §2 right offers no excuse for its failure to provide an opportunity district for those with a §2 right. And since there is no §2 right to a district that is not reasonably compact, see *Abrams*, 521 U. S., at 91–92, the creation of a noncompact district does not compensate for the dismantling of a compact opportunity district.

THE CHIEF JUSTICE claims compactness should be only a factor in the analysis, see *post*, at 16 (opinion concurring in part, concurring in judgment in part, and dissenting in part), but his approach comports neither with our precedents nor with the nature of the right established by §2. *De Grandy* expressly stated that the first *Gingles* prong looks only to the number of “reasonably compact districts.” 512 U. S., at 1008. *Shaw II*, moreover, refused to consider a noncompact district as a possible remedy for a §2 viola-

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tion. 517 U. S., at 916. It is true *Shaw II* applied this analysis in the context of a State's using compliance with §2 as a defense to an equal protection challenge, but the holding was clear: A State cannot remedy a §2 violation through the creation of a noncompact district. *Ibid.* *Shaw II* also cannot be distinguished based on the relative location of the remedial district as compared to the district of the alleged violation. The remedial district in *Shaw II* had a 20% overlap with the district the plaintiffs sought, but the Court stated "[w]e do not think this degree of incorporation could mean [the remedial district] substantially addresses the §2 violation." *Id.*, at 918; see also *De Grandy, supra*, at 1019 (expressing doubt about the idea that even within the same county, vote dilution in half the county could be compensated for in the other half). The overlap here is not substantially different, as the majority of Latinos who were in the old District 23 are still in the new District 23, but no longer have the opportunity to elect their candidate of choice.

Apart from its conflict with *De Grandy* and *Shaw II*, THE CHIEF JUSTICE's approach has the deficiency of creating a one-way rule whereby plaintiffs must show compactness but States need not (except, it seems, when using §2 as a defense to an equal protection challenge). THE CHIEF JUSTICE appears to accept that a plaintiff, to make out a §2 violation, must show he or she is part of a racial group that could form a majority in a reasonably compact district. *Post*, at 15. If, however, a noncompact district cannot make up for the lack of a compact district, then this is equally true whether the plaintiff or the State proposes the noncompact district.

The District Court stated that Plan 1374C created "six *Gingles* Latino" districts, *Session*, 298 F. Supp. 2d, at 498, but it failed to decide whether District 25 was reasonably compact for §2 purposes. It recognized there was a 300-mile gap between the Latino communities in District 25,

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and a similarly large gap between the needs and interests of the two groups. *Id.*, at 502. After making these observations, however, it did not make any finding about compactness. *Id.*, at 502–504. It ruled instead that, despite these concerns, District 25 would be an effective Latino opportunity district because the combined voting strength of both Latino groups would allow a Latino-preferred candidate to prevail in elections. *Ibid.* The District Court’s general finding of effectiveness cannot substitute for the lack of a finding on compactness, particularly because the District Court measured effectiveness simply by aggregating the voting strength of the two groups of Latinos. *Id.*, at 503–504. Under the District Court’s approach, a district would satisfy §2 no matter how non-compact it was, so long as all the members of a racial group, added together, could control election outcomes.

The District Court did evaluate compactness for the purpose of deciding whether race predominated in the drawing of district lines. The Latinos in the Rio Grande Valley and those in Central Texas, it found, are “disparate communities of interest,” with “differences in socioeconomic status, education, employment, health, and other characteristics.” *Id.*, at 512. The court’s conclusion that the relative smoothness of the district lines made the district compact, despite this combining of discrete communities of interest, is inapposite because the court analyzed the issue only for equal protection purposes. In the equal protection context, compactness focuses on the contours of district lines to determine whether race was the predominant factor in drawing those lines. See *Miller v. Johnson*, 515 U. S. 900, 916–917 (1995). Under §2, by contrast, the injury is vote dilution, so the compactness inquiry embraces different considerations. “The first *Gingles* condition refers to the compactness of the minority population, not to the compactness of the contested district.” *Vera, supra*, at 997 (KENNEDY, J., concurring); see

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also *Abrams, supra*, at 111 (BREYER, J., dissenting) (compactness to show a violation of equal protection, “which concerns the shape or boundaries of a district, differs from §2 compactness, which concerns a minority group’s compactness”); *Shaw II, supra*, at 916 (the inquiry under §2 is whether “the minority group is geographically compact” (internal quotation marks omitted)).

While no precise rule has emerged governing §2 compactness, the “inquiry should take into account ‘traditional districting principles such as maintaining communities of interest and traditional boundaries.’” *Abrams, supra*, at 92 (quoting *Vera*, 517 U. S., at 977 (plurality opinion)); see also *id.*, at 979 (A district that “reaches out to grab small and apparently isolated minority communities” is not reasonably compact). The recognition of nonracial communities of interest reflects the principle that a State may not “assum[e] from a group of voters’ race that they ‘think alike, share the same political interests, and will prefer the same candidates at the polls.’” *Miller, supra*, at 920 (quoting *Shaw v. Reno*, 509 U. S. 630, 647 (1993)). In the absence of this prohibited assumption, there is no basis to believe a district that combines two far-flung segments of a racial group with disparate interests provides the opportunity that §2 requires or that the first *Gingles* condition contemplates. “The purpose of the Voting Rights Act is to prevent discrimination in the exercise of the electoral franchise and to foster our transformation to a society that is no longer fixated on race.” *Georgia v. Ashcroft*, 539 U. S. 461, 490 (2003); cf. *post*, at 20 (opinion of ROBERTS, C. J.). We do a disservice to these important goals by failing to account for the differences between people of the same race.

While the District Court recognized the relevant differences, by not performing the compactness inquiry it failed to account for the significance of these differences under §2. In these cases the District Court’s findings regarding

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the different characteristics, needs, and interests of the Latino community near the Mexican border and the one in and around Austin are well supported and uncontested. Legitimate yet differing communities of interest should not be disregarded in the interest of race. The practical consequence of drawing a district to cover two distant, disparate communities is that one or both groups will be unable to achieve their political goals. Compactness is, therefore, about more than “style points,” *post*, at 3 (opinion of ROBERTS, C. J.); it is critical to advancing the ultimate purposes of §2, ensuring minority groups equal “opportunity . . . to participate in the political process and to elect representatives of their choice.” 42 U. S. C. §1973(b). (And if it were just about style points, it is difficult to understand why a plaintiff would have to propose a compact district to make out a §2 claim.) As witnesses who know the south and west Texas culture and politics testified, the districting in Plan 1374C “could make it more difficult for thinly financed Latino-preferred candidates to achieve electoral success and to provide adequate and responsive representation once elected.” *Session*, 298 F. Supp. 2d, at 502; see also *id.*, at 503 (Elected officials from the region “testified that the size and diversity of the newly-configured districts could make it more difficult for the constituents in the Rio Grande Valley to control election outcomes”). We do not question the District Court’s finding that the groups’ combined voting strength would enable them to elect a candidate each prefers to the Anglos’ candidate of choice. We also accept that in some cases members of a racial group in different areas—for example, rural and urban communities—could share similar interests and therefore form a compact district if the areas are in reasonably close proximity. See *Abrams*, *supra*, at 111–112 (BREYER, J., dissenting). When, however, the only common index is race and the result will be to cause internal friction, the State

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cannot make this a remedy for a §2 violation elsewhere. We emphasize it is the enormous geographical distance separating the Austin and Mexican-border communities, coupled with the disparate needs and interests of these populations—not either factor alone—that renders District 25 noncompact for §2 purposes. The mathematical possibility of a racial bloc does not make a district compact.

Since District 25 is not reasonably compact, Plan 1374C contains only five reasonably compact Latino opportunity districts. Plan 1151C, by contrast, created six such districts. The District Court did not find, and the State does not contend, that any of the Latino opportunity districts in Plan 1151C are noncompact. Contrary to THE CHIEF JUSTICE’s suggestion, *post*, at 10–11, moreover, the Latino population in old District 23 is, for the most part, in closer geographic proximity than is the Latino population in new District 25. More importantly, there has been no contention that different pockets of the Latino population in old District 23 have divergent needs and interests, and it is clear that, as set out below, the Latino population of District 23 was split apart particularly because it was becoming so cohesive. The Latinos in District 23 had found an efficacious political identity, while this would be an entirely new and difficult undertaking for the Latinos in District 25, given their geographic and other differences.

Appellants have thus satisfied all three *Gingles* requirements as to District 23, and the creation of new District 25 does not remedy the problem.

## C

We proceed now to the totality of the circumstances, and first to the proportionality inquiry, comparing the percentage of total districts that are Latino opportunity districts with the Latino share of the citizen voting-age population. As explained in *De Grandy*, proportionality is “a relevant fact in the totality of circumstances.” 512 U. S.,

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at 1000. It does not, however, act as a “safe harbor” for States in complying with §2. *Id.*, at 1017–1018; see also *id.*, at 1025 (O’Connor, J., concurring) (proportionality “is *always* relevant evidence in determining vote dilution, but is *never* itself dispositive”); *id.*, at 1027–1028 (KENNEDY, J., concurring in part and concurring in judgment) (proportionality has “some relevance,” though “placing undue emphasis upon proportionality risks defeating the goals underlying the Voting Rights Act”). If proportionality could act as a safe harbor, it would ratify “an unexplored premise of highly suspect validity: that in any given voting jurisdiction . . . , the rights of some minority voters under §2 may be traded off against the rights of other members of the same minority class.” *Id.*, at 1019; see also *Shaw II*, 517 U. S., at 916–918.

The State contends that proportionality should be decided on a regional basis, while appellants say their claim requires the Court to conduct a statewide analysis. In *De Grandy*, the plaintiffs “passed up the opportunity to frame their dilution claim in statewide terms.” 512 U. S., at 1022. Based on the parties’ apparent agreement that the proper frame of reference was the Dade County area, the Court used that area to decide proportionality. *Id.*, at 1022–1023. In these cases, on the other hand, appellants allege an “injury to African American and Hispanic voters throughout the State.” Complaint in Civ. Action No. 03C–356 (ED Tex.), pp. 1–2; see also First Amended Complaint in Civ. Action No. 2:03–354 (ED Tex.), pp. 1, 5, 7; Plaintiff’s First Amended Complaint in Civ. Action No. 2:03cv354 etc. (ED Tex.), pp. 4–5. The District Court, moreover, expressly considered the statewide proportionality argument. As a result, the question of the proper geographic scope for assessing proportionality now presents itself.

We conclude the answer in these cases is to look at proportionality statewide. The State contends that the

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seven districts in south and west Texas correctly delimit the boundaries for proportionality because that is the only area of the State where reasonably compact Latino opportunity districts can be drawn. This argument, however, misunderstands the role of proportionality. We have already determined, under the first *Gingles* factor, that another reasonably compact Latino district can be drawn. The question now is whether the absence of that additional district constitutes impermissible vote dilution. This inquiry requires an “intensely local appraisal” of the challenged district. *Gingles*, 478 U. S., at 79 (quoting *Rogers v. Lodge*, 458 U. S. 613, 622 (1982)); see also *Gingles*, *supra*, at 101 (O’Connor, J., concurring in judgment). A local appraisal is necessary because the right to an undiluted vote does not belong to the “minority as a group,” but rather to “its individual members.” *Shaw II*, *supra*, at 917. And a State may not trade off the rights of some members of a racial group against the rights of other members of that group. See *De Grandy*, *supra*, at 1019; *Shaw II*, *supra*, at 916–918. The question is therefore not “whether line-drawing in the challenged area as a whole dilutes minority voting strength,” *post*, at 13 (opinion of ROBERTS, C. J.), but whether line-drawing dilutes the voting strength of the Latinos in District 23.

The role of proportionality is not to displace this local appraisal or to allow the State to trade off the rights of some against the rights of others. Instead, it provides some evidence of whether “the political processes leading to nomination or election in the State or political subdivision are not equally open to participation.” 42 U. S. C. §1973(b). For this purpose, the State’s seven-district area is arbitrary. It just as easily could have included six or eight districts. Appellants have alleged statewide vote dilution based on a statewide plan, so the electoral opportunities of Latinos across the State can bear on whether the lack of electoral opportunity for Latinos in District 23

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is a consequence of Plan 1374C's redrawing of lines or simply a consequence of the inevitable 'win some, lose some' in a State with racial bloc voting. Indeed, several of the other factors in the totality of circumstances have been characterized with reference to the State as a whole. *Gingles, supra*, at 44–45 (listing Senate Report factors). Particularly given the presence of racially polarized voting—and the possible submergence of minority votes—throughout Texas, it makes sense to use the entire State in assessing proportionality.

Looking statewide, there are 32 congressional districts. The five reasonably compact Latino opportunity districts amount to roughly 16% of the total, while Latinos make up 22% of Texas' citizen voting-age population. (Appellant GI Forum claims, based on data from the 2004 American Community Survey of the U. S. Census Bureau, that Latinos constitute 24.5% of the statewide citizen voting-age population, but as this figure was neither available at the time of the redistricting, nor presented to the District Court, we accept the District Court's finding of 22%.) Latinos are, therefore, two districts shy of proportional representation. There is, of course, no "magic parameter," *De Grandy*, 512 U. S., at 1017, n. 14, and "rough proportionality," *id.*, at 1023, must allow for some deviations. We need not decide whether the two-district deficit in these cases weighs in favor of a §2 violation. Even if Plan 1374C's disproportionality were deemed insubstantial, that consideration would not overcome the other evidence of vote dilution for Latinos in District 23. "[T]he degree of probative value assigned to proportionality may vary with other facts," *id.*, at 1020, and the other facts in these cases convince us that there is a §2 violation.

District 23's Latino voters were poised to elect their candidate of choice. They were becoming more politically active, with a marked and continuous rise in Spanish-surnamed voter registration. See Lichtman Report, App.

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142–143. In successive elections Latinos were voting against Bonilla in greater numbers, and in 2002 they almost ousted him. Webb County in particular, with a 94% Latino population, spurred the incumbent’s near defeat with dramatically increased turnout in 2002. See 2004 Almanac 1579. In response to the growing participation that threatened Bonilla’s incumbency, the State divided the cohesive Latino community in Webb County, moving about 100,000 Latinos to District 28, which was already a Latino opportunity district, and leaving the rest in a district where they now have little hope of electing their candidate of choice.

The changes to District 23 undermined the progress of a racial group that has been subject to significant voting-related discrimination and that was becoming increasingly politically active and cohesive. Cf. *De Grandy, supra*, at 1014 (finding no §2 violation where “the State’s scheme would thwart the historical tendency to exclude Hispanics, not encourage or perpetuate it”); *White v. Regester*, 412 U. S. 755, 769 (1973) (looking in the totality of the circumstances to whether the proposed districting would “remedy the effects of past and present discrimination against Mexican-Americans, and to bring the community into the full stream of political life of the county and State by encouraging their further registration, voting, and other political activities” (citation and internal quotation marks omitted)). The District Court recognized “the long history of discrimination against Latinos and Blacks in Texas,” *Session*, 298 F. Supp. 2d, at 473, and other courts have elaborated on this history with respect to electoral processes:

“Texas has a long, well-documented history of discrimination that has touched upon the rights of African-Americans and Hispanics to register, to vote, or to participate otherwise in the electoral process. Devices

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such as the poll tax, an all-white primary system, and restrictive voter registration time periods are an unfortunate part of this State's minority voting rights history. The history of official discrimination in the Texas election process—stretching back to Reconstruction—led to the inclusion of the State as a covered jurisdiction under Section 5 in the 1975 amendments to the Voting Rights Act. Since Texas became a covered jurisdiction, the Department of Justice has frequently interposed objections against the State and its subdivisions.” *Vera v. Richards*, 861 F. Supp. 1304, 1317 (SD Tex. 1994) (citations omitted).

See also *Vera*, 517 U. S., at 981–982; *Regester, supra*, at 767–769. In addition, the “political, social, and economic legacy of past discrimination” for Latinos in Texas, *Session, supra*, at 492, may well “hinder their ability to participate effectively in the political process,” *Gingles*, 478 U. S., at 45 (citing Senate Report factors).

Against this background, the Latinos’ diminishing electoral support for Bonilla indicates their belief he was “unresponsive to the particularized needs of the members of the minority group.” *Ibid.* (same). In essence the State took away the Latinos’ opportunity because Latinos were about to exercise it. This bears the mark of intentional discrimination that could give rise to an equal protection violation. Even if we accept the District Court’s finding that the State’s action was taken primarily for political, not racial, reasons, *Session, supra*, at 508, the redrawing of the district lines was damaging to the Latinos in District 23. The State not only made fruitless the Latinos’ mobilization efforts but also acted against those Latinos who were becoming most politically active, dividing them with a district line through the middle of Laredo.

Furthermore, the reason for taking Latinos out of District 23, according to the District Court, was to protect

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Congressman Bonilla from a constituency that was increasingly voting against him. The Court has noted that incumbency protection can be a legitimate factor in districting, see *Karcher v. Daggett*, 462 U. S., at 740, but experience teaches that incumbency protection can take various forms, not all of them in the interests of the constituents. If the justification for incumbency protection is to keep the constituency intact so the officeholder is accountable for promises made or broken, then the protection seems to accord with concern for the voters. If, on the other hand, incumbency protection means excluding some voters from the district simply because they are likely to vote against the officeholder, the change is to benefit the officeholder, not the voters. By purposely redrawing lines around those who opposed Bonilla, the state legislature took the latter course. This policy, whatever its validity in the realm of politics, cannot justify the effect on Latino voters. See *Gingles, supra*, at 45 (citing Senate Report factor of whether “the policy underlying” the State’s action “is tenuous”). The policy becomes even more suspect when considered in light of evidence suggesting that the State intentionally drew District 23 to have a nominal Latino voting-age majority (without a citizen voting-age majority) for political reasons. *Session, supra*, at 497. This use of race to create the façade of a Latino district also weighs in favor of appellants’ claim.

Contrary to THE CHIEF JUSTICE’s suggestion that we are reducing the State’s needed flexibility in complying with §2, see *post*, at 15–16, the problem here is entirely of the State’s own making. The State chose to break apart a Latino opportunity district to protect the incumbent congressman from the growing dissatisfaction of the cohesive and politically active Latino community in the district. The State then purported to compensate for this harm by creating an entirely new district that combined two groups of Latinos, hundreds of miles apart, that represent differ-

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ent communities of interest. Under §2, the State must be held accountable for the effect of these choices in denying equal opportunity to Latino voters. Notwithstanding these facts, THE CHIEF JUSTICE places great emphasis on the District Court's statement that "new District 25 is 'a more effective Latino opportunity district than Congressional District 23 had been.'" *Post*, at 2–3 (quoting *Session*, 298 F. Supp. 2d, at 503). Even assuming this statement, expressed in the context of summarizing witnesses' testimony, qualifies as a finding of the District Court, two points make it of minimal relevance. First, as previously noted, the District Court measured the effectiveness of District 25 without accounting for the detrimental consequences of its compactness problems. Second, the District Court referred only to how effective District 23 "had been," not to how it would operate today, a significant distinction given the growing Latino political power in the district.

Based on the foregoing, the totality of the circumstances demonstrates a §2 violation. Even assuming Plan 1374C provides something close to proportional representation for Latinos, its troubling blend of politics and race—and the resulting vote dilution of a group that was beginning to achieve §2's goal of overcoming prior electoral discrimination—cannot be sustained.

D

Because we hold Plan 1374C violates §2 in its redrawing of District 23, we do not address appellants' claims that the use of race and politics in drawing that district violates the First Amendment and equal protection. We also need not confront appellants' claim of an equal protection violation in the drawing of District 25. The districts in south and west Texas will have to be redrawn to remedy the violation in District 23, and we have no cause to pass on the legitimacy of a district that must be changed. See *Session*, *supra*, at 528 (Ward, J., concurring in part and

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dissenting in part). District 25, in particular, was formed to compensate for the loss of District 23 as a Latino opportunity district, and there is no reason to believe District 25 will remain in its current form once District 23 is brought into compliance with §2. We therefore vacate the District Court's judgment as to these claims.

## IV

Appellants also challenge the changes to district lines in the Dallas area, alleging they dilute African-American voting strength in violation of §2 of the Voting Rights Act. Specifically, appellants contend that an African-American minority effectively controlled District 24 under Plan 1151C, and that §2 entitles them to this district.

Before Plan 1374C was enacted, District 24 had elected Anglo Democrat Martin Frost to Congress in every election since 1978. *Session, supra*, at 481–482. Anglos were the largest racial group in the district, with 49.8% of the citizen voting-age population, and third largest were Latinos, with 20.8%. State's Exh. 57, App. 339. African-Americans were the second-largest group, with 25.7% of the citizen voting-age population, *ibid.*, and they voted consistently for Frost. The new plan broke apart this racially diverse district, assigning its pieces into several other districts.

Accepting that African-Americans would not be a majority of the single-member district they seek, and that African-Americans do not vote cohesively with Hispanics, *Session, supra*, at 484, appellants nonetheless contend African-Americans had effective control of District 24. As the Court has done several times before, we assume for purposes of this litigation that it is possible to state a §2 claim for a racial group that makes up less than 50% of the population. See *De Grandy*, 512 U. S., at 1009; *Voivovich v. Quilter*, 507 U. S. 146, 154 (1993); *Gingles*, 478 U. S., at 46–47, n. 12. Even on the assumption that the first

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*Gingles* prong can accommodate this claim, however, appellants must show they constitute “a sufficiently large minority to elect their candidate of choice with the assistance of cross-over votes.” *Voinovich, supra*, at 158 (emphasis omitted).

The relatively small African-American population can meet this standard, according to appellants, because they constituted 64% of the voters in the Democratic primary. Since a significant number of Anglos and Latinos voted for the Democrat in the general election, the argument goes, African-American control of the primary translated into effective control of the entire election.

The District Court found, however, that African-Americans could not elect their candidate of choice in the primary. In support of this finding, it relied on testimony that the district was drawn for an Anglo Democrat, the fact that Frost had no opposition in any of his primary elections since his incumbency began, and District 24’s demographic similarity to another district where an African-American candidate failed when he ran against an Anglo. *Session*, 298 F. Supp. 2d, at 483–484. “In short, that Anglo Democrats control this district is,” according to the District Court, “the most rational conclusion.” *Id.*, at 484.

Appellants fail to demonstrate clear error in this finding. In the absence of any contested Democratic primary in District 24 over the last 20 years, no obvious benchmark exists for deciding whether African-Americans could elect their candidate of choice. The fact that African-Americans voted for Frost—in the primary and general elections—could signify he is their candidate of choice. Without a contested primary, however, it could also be interpreted to show (assuming racial bloc voting) that Anglos and Latinos would vote in the Democratic primary in greater numbers if an African-American candidate of choice were to run, especially given Texas’ open primary

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system. The District Court heard trial testimony that would support both explanations, and we cannot say that it erred in crediting the testimony that endorsed the latter interpretation. Compare App. 242–243 (testimony of Tarrant County Precinct Administrator that Frost is the “favored candidate of the African-American community” and that he has gone unopposed in primary challenges because he “serves [the African-American community’s] interests”), with *id.*, at 262–264 (testimony of Congresswoman Eddie Bernice Johnson that District 24 was drawn for an Anglo Democrat (Martin Frost, in particular) in 1991 by splitting a minority community), and *id.*, at 277–280 (testimony of State Representative Ron Wilson that African-Americans did not have the ability to elect their preferred candidate, particularly an African-American candidate, in District 24 and that Anglo Democrats in such “influence [d]istricts” were not fully responsive to the needs of the African-American community).

The analysis submitted by appellants’ own expert was also inconsistent. Of the three elections for statewide office he examined, in District 24 the African-American candidate of choice would have won one, lost one, and in the third the African-American vote was split. See Lichtman Report, *id.*, at 75–76, 92–96; State’s Exh. 20 in Civ. Action No. 2:03–CV–354 (ED Tex.), p. 138; State’s Exh. 21 in Civ. Action No. 2:03–CV–354 (ED Tex.). The District Court committed no clear error in rejecting this questionable showing that African-Americans have the ability to elect their candidate of choice in favor of other evidence that an African-American candidate of choice would not prevail. See *Anderson v. Bessemer City*, 470 U. S. 564, 574 (1985) (“Where there are two permissible views of the evidence, the factfinder’s choice between them cannot be clearly erroneous”).

That African-Americans had influence in the district, *Session, supra*, at 485, does not suffice to state a §2 claim

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in these cases. The opportunity “to elect representatives of their choice,” 42 U. S. C. §1973(b), requires more than the ability to influence the outcome between some candidates, none of whom is their candidate of choice. There is no doubt African-Americans preferred Martin Frost to the Republicans who opposed him. The fact that African-Americans preferred Frost to some others does not, however, make him their candidate of choice. Accordingly, the ability to aid in Frost’s election does not make the old District 24 an African-American opportunity district for purposes of §2. If §2 were interpreted to protect this kind of influence, it would unnecessarily infuse race into virtually every redistricting, raising serious constitutional questions. See *Georgia v. Ashcroft*, 539 U. S., at 491 (KENNEDY, J., concurring).

Appellants respond by pointing to *Georgia v. Ashcroft*, where the Court held that the presence of influence districts is a relevant consideration under §5 of the Voting Rights Act. The inquiry under §2, however, concerns the opportunity “to elect representatives of their choice,” 42 U. S. C. §1973(b), not whether a change has the purpose or effect of “denying or abridging the right to vote,” §1973c. *Ashcroft* recognized the differences between these tests, 539 U. S., at 478, and concluded that the ability of racial groups to elect candidates of their choice is only one factor under §5, *id.*, at 480. So while the presence of districts “where minority voters may not be able to elect a candidate of choice but can play a substantial, if not decisive, role in the electoral process” is relevant to the §5 analysis, *id.*, at 482, the lack of such districts cannot establish a §2 violation. The failure to create an influence district in these cases thus does not run afoul of §2 of the Voting Rights Act.

Appellants do not raise a district-specific political gerrymandering claim against District 24. Even if the claim were cognizable as part of appellants’ statewide challenge,

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it would be unpersuasive. Just as for the statewide claim, appellants would lack any reliable measure of partisan fairness. JUSTICE STEVENS suggests the burden on representational rights can be measured by comparing the success of Democrats in old District 24 with their success in the new districts they now occupy. *Post*, at 31–32 (opinion concurring in part and dissenting in part). There is no reason, however, why the old district has any special claim to fairness. In fact, old District 24, no less than the old redistricting plan as a whole, was formed for partisan reasons. See *Session*, 298 F. Supp. 2d, at 484; see also *Balderas v. Texas*, Civ. Action No. 6:01CV158 (ED Tex., Nov. 14, 2001) (*per curiam*), summarily aff'd, 536 U. S. 919 (2002), App. E to Juris. Statement in No. 05–276, p. 208a. Furthermore, JUSTICE STEVENS' conclusion that the State has not complied with §5 of the Voting Rights Act, *post*, at 33–37—effectively overruling the Attorney General without briefing, argument, or a lower court opinion on the issue—does not solve the problem of determining a reliable measure of impermissible partisan effect.

\* \* \*

We reject the statewide challenge to Texas' redistricting as an unconstitutional political gerrymander and the challenge to the redistricting in the Dallas area as a violation of §2 of the Voting Rights Act. We do hold that the redrawing of lines in District 23 violates §2 of the Voting Rights Act. The judgment of the District Court is affirmed in part, reversed in part, and vacated in part, and the cases are remanded for further proceedings.

*It is so ordered.*