Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

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

CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

No. 07–689. Argued October 14, 2008—Decided March 9, 2009

Despite the North Carolina Constitution's "Whole County Provision" prohibiting the General Assembly from dividing counties when drawing its own legislative districts, in 1991 the legislature drew House District 18 to include portions of four counties, including Pender County, for the asserted purpose of satisfying §2 of the Voting Rights Act of 1965. At that time, District 18 was a geographically compact majority-minority district. By the time the district was to be redrawn in 2003, the African-American voting-age population in District 18 had fallen below 50 percent. Rather than redrawing the district to keep Pender County whole, the legislators split portions of it and another county. District 18's African-American voting-age population is now 39.36 percent. Keeping Pender County whole would have resulted in an African-American voting-age population of 35.33 percent. The legislators' rationale was that splitting Pender County gave African-American voters the potential to join with majority voters to elect the minority group's candidate of choice, while leaving Pender County whole would have violated §2 of the Voting Rights Act.

Pender County and others filed suit, alleging that the redistricting plan violated the Whole County Provision. The state-official defendants answered that dividing Pender County was required by §2. The trial court first considered whether the defendants had established the three threshold requirements for §2 liability under *Thornburg* v. *Gingles*, 478 U. S. 30, 51, only the first of which is relevant here: whether the minority group "is sufficiently large and geographically compact to constitute a majority in a single-member district." The court concluded that although African-Americans were not a majority of District 18's voting-age population, the district was a "de

facto" majority-minority district because African-Americans could get enough support from crossover majority voters to elect their preferred candidate. The court ultimately determined, based on the totality of the circumstances, that §2 required that Pender County be split, and it sustained District 18's lines on that rationale. The State Supreme Court reversed, holding that a minority group must constitute a numerical majority of the voting-age population in an area before §2 requires the creation of a legislative district to prevent dilution of that group's votes. Because African-Americans did not have such a numerical majority in District 18, the court ordered the legislature to redraw the district.

Held: The judgment is affirmed.

361 N. C. 491, 649 S. E. 2d 364, affirmed.

JUSTICE KENNEDY, joined by THE CHIEF JUSTICE and JUSTICE ALITO, concluded that §2 does not require state officials to draw election-district lines to allow a racial minority that would make up less than 50 percent of the voting-age population in the redrawn district to join with crossover voters to elect the minority's candidate of choice. Pp. 5–21.

1. As amended in 1982, §2 provides that a violation "is established if, based on the totality of circumstances, it is shown that the [election] processes . . . in the State or political subdivision are not equally open to participation by members of a [protected] class [who] 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). Construing the amended §2 in *Gingles, supra*, at 50–51, the Court identified three "necessary preconditions" for a claim that the use of multimember districts constituted actionable vote dilution. It later held that those requirements apply equally in §2 cases involving single-member districts. *Growe* v. *Emison*, 507 U. S. 25, 40–41. Only when a party has established the requirements does a court proceed to analyze whether a §2 violation has occurred based on the totality of the circumstances. See, *e.g., Johnson* v. *De Grandy*, 512 U. S. 997, 1013. Pp. 5–7.

2. Only when a geographically compact group of minority voters could form a majority in a single-member district has the first *Gingles* requirement been met. Pp. 7–21.

(a) A party asserting §2 liability must show by a preponderance of the evidence that the minority population in the potential election district is greater than 50 percent. The Court has held both that §2 can require the creation of a "majority-minority" district, in which a minority group composes a numerical, working majority of the voting-age population, see, *e.g.*, *Voinovich* v. *Quilter*, 507 U. S. 146, 154–155, and that §2 does not require the creation of an "influence" district, in

which a minority group can influence the outcome of an election even if its preferred candidate cannot be elected, see *League of United Latin American Citizens* v. *Perry*, 548 U. S. 399, ___ (*LULAC).* This case involves an intermediate, "crossover" district, in which the minority makes up less than a majority of the voting-age population, but is large enough to elect the candidate of its choice with help from majority voters who cross over to support the minority's preferred candidate. Petitioners' theory that such districts satisfy the first *Gingles* requirement is contrary to §2, which requires a showing that minorities "have less opportunity than other members of the electorate to . . . elect representatives of their choice," 42 U. S. C. §1973(b). Because they form only 39 percent of District 18's voting-age population, African-Americans standing alone have no better or worse opportunity to elect a candidate than any other group with the same relative voting strength. Recognizing a §2 claim where minority voters cannot elect their candidate of choice based on their own votes and without assistance from others would grant special protection to their right to form political coalitions that is not authorized by the section. Nor does the reasoning of this Court's cases support petitioners' claims. In *Voinovich*, for example, the Court stated that the first *Gingles* requirement "would have to be modified or eliminated" to allow crossover-district claims. 507 U. S., at 158. Indeed, mandatory recognition of such claims would create serious tension with the third *Gingles* requirement, that the majority votes as a bloc to defeat minority-preferred candidates, see 478 U. S., at 50–51, and would call into question the entire *Gingles* framework. On the other hand, the Court finds support for the clear line drawn by the majority-minority requirement in the need for workable standards and sound judicial and legislative administration. By contrast, if §2 required crossover districts, determining whether a §2 claim would lie would require courts to make complex political predictions and tie them to race-based assumptions. Heightening these concerns is the fact that because §2 applies nationwide to every jurisdiction required to draw election-district lines under state or local law, crossover-district claims would require courts to make predictive political judgments not only about familiar, two-party contests in large districts but also about regional and local elections. Unlike any of the standards proposed to allow crossover claims, the majority-minority rule relies on an objective, numerical test: Do minorities make up more than 50 percent of the voting-age population in the relevant geographic area? Given §2's text, the Court's cases interpreting that provision, and the many difficulties in assessing §2 claims without the restraint and guidance provided by the majority-minority rule, all of the federal courts of appeals that have interpreted the first *Gingles* factor have

required a majority-minority standard. The Court declines to depart from that uniform interpretation, which has stood for more than 20 years. Because this case does not involve allegations of intentional and wrongful conduct, the Court need not consider whether intentional discrimination affects the *Gingles* analysis. Pp. 7–15.

(b) Arguing for a less restrictive interpretation, petitioners point to §2's guarantee that political processes be "equally open to participation" to protect minority voters' "opportunity . . . to elect representatives of their choice," 42 U. S. C. §1973(b), and assert that such "opportunit[ies]" occur in crossover districts and require protection. But petitioners emphasize the word "opportunity" at the expense of the word "equally." The statute does not protect any possible opportunity through which minority voters could work with other constituencies to elect their candidate of choice. Section 2 does not guarantee minority voters an electoral advantage. Minority groups in crossover districts have the same opportunity to elect their candidate as any other political group with the same relative voting strength. The majority-minority rule, furthermore, is not at odds with §2's totality-of-the-circumstances test. See, *e.g., Growe, supra*, at 40. Any doubt as to whether §2 calls for this rule is resolved by applying the canon of constitutional avoidance to steer clear of serious constitutional concerns under the Equal Protection Clause. See *Clark* v. *Martinez*, 543 U. S. 371, 381–382. Such concerns would be raised if §2 were interpreted to require crossover districts throughout the Nation, thereby "unnecessarily infus[ing] race into virtually every redistricting." *LULAC*, *supra,* at 446. Pp. 16–18.

(c) This holding does not consider the permissibility of crossover districts as a matter of legislative choice or discretion. Section 2 allows States to choose their own method of complying with the Voting Rights Act, which may include drawing crossover districts. See *Georgia* v. *Ashcroft*, 539 U. S. 461, 480–482. Moreover, the holding should not be interpreted to entrench majority-minority districts by statutory command, for that, too, could pose constitutional concerns. See, *e.g., Miller* v. *Johnson*, 515 U. S. 900. Such districts are only required if all three *Gingles* factors are met and if §2 applies based on the totality of the circumstances. A claim similar to petitioners' assertion that the majority-minority rule is inconsistent with §5 was rejected in *LULAC, supra*, at ___. Pp. 19–21.

JUSTICE THOMAS, joined by JUSTICE SCALIA, adhered to his view in *Holder* v. *Hall*, 512 U. S. 874, 891, 893 (opinion concurring in judgment), that the text of §2 of the Voting Rights Act of 1965 does not authorize any vote dilution claim, regardless of the size of the minority population in a given district. The *Thornburg* v. *Gingles,* 478 U. S. 30, framework for analyzing such claims has no basis in §2's

text and "has produced . . . a disastrous misadventure in judicial policymaking," *Holder, supra,* at 893. P. 1.

KENNEDY, J., announced the judgment of the Court and delivered an opinion, in which ROBERTS, C. J., and ALITO, J., joined. THOMAS, J., filed an opinion concurring in the judgment, in which SCALIA, J., joined. SOUTER, J., filed a dissenting opinion, in which STEVENS, GINSBURG, and BREYER, JJ., joined. GINSBURG, J., and BREYER, J., filed dissenting opinions.