New York Law School Census and Redistricting Institute

Summaries of Significant New York Redistricting Court Cases

Cases By Year

Cases By Area of the Law

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WMCA, Inc. v. Lomenzo, 377 U.S 633 (U.S. 1964)

Held: New York's apportionment scheme violated the equal protection clause of the U.S. Constitution, and the equal protection clause requires that both houses of a bicameral state legislature be apportioned substantially on a population basis,

The Appellants that brought this action included individual citizens and voters residing in the Bronx, Kings, New York, and Queens County. WMCA, Inc. v. Lomenzo, 377 U.S 633 (1963). Id at 635. The appellants sought a declaration that the state constitution's provisions that established the formulas for apportioning seats in the two houses of the New York legislature violate the 14th amendment. Id. They also claimed that the apportionment formula advantaged lesser populated rural areas and significantly disadvantaged the densely populated urban areas, resulting in their votes carrying less weight than the population in the rural areas. Id at 636.

The Southern District Court of New York ("S.D.N.Y.") dismissed the case holding that "the issues raised were nonjusticiable." Id at 637.

In an opinion by Chief Justice Earl Warren, the United States Supreme Court found for Appellants, reversing the lower court decision. Id at 655. The Supreme Court found that the equal protection clause requires that both houses of a bicameral state legislature be apportioned substantially on a population basis. Id. After reviewing the New York apportionment formulas governing legislative apportionment, the Court agreed with the appellants in that the weight of the votes of people in living in more populous areas were diluted. Id at 653. The decision mentioned that as the populations grows in urban and suburban areas, legislative representation becomes proportionately less. Id at 654. The court emphasized that an apportionment formula or plan cannot undervalue the weight of the votes of certain citizens based on where they live. Id.

In re Orans, 206 N.E.2d 854 (N.Y. 1965)

Held: New York reapportionment statute increasing the size of the New York Assembly above 150 members violated the New York Constitution, Article III, Section 2.

The Plaintiffs, citizens of New York, brought an action to review reapportionment statutes that were enacted at an extraordinary session of the Legislature held in December of 1964. In re Orans, 206 N.E.2d 854 (1965). The five statutes were composed of 4 separate plans for apportioning and redistricting the state senate and assembly. Id. The Plaintiffs alleged that each of the four plans violated the State Constitution since each plan included an Assembly of more than 150 members. However, Article X, Section X of the State constitution restricts the Assembly to 150 members. Id. The Supreme Court, Special Term found the statutes to be invalid.

The Court of Appeals affirmed the lower court decision. Id at 834.

The court reviewed two issues: (i) whether it was illegal for the Legislature to deal with matters at an extraordinary or special session; and (ii) whether the numbers the of the Assemblymen specified in the plans, being in excess of 150, are rendered invalid due to conflict with the State Constitution. Id at 827.

On the first question, the court considered the permissibility for the New York Legislature to deal with this matter in an extraordinary or special session. Id at 831-832.The court referenced that a prior reapportionment, in 1953, was also voted at a special session, and found it is permissible to consider redistricting in extraordinary or special sessions of the legislature. Id.

On the second question, the court noted that the State Constitution, Article II, section 2 of article III says: "The assembly shall consist of one hundred and fifty members." And the court found that there was a “flat, positive and unmistakable command of the State Constitution that there be 150 members of the State Assembly.” Id. at 826.

Wells v. Rockefeller, 394 U.S. 542 (1969)

Held: New York State's redistricting plan, created in 1968, did not contain justifiable population variances, in violation of the U.S. Constitution.

In response to a court order invalidating the prior congressional districting, New York revised its redistricting plan in 1968. The 1968 plan treated seven sections of the State as homogeneous regions and divided each of these regions into districts of virtually identical population. Thirty-one of the 41 districts were thus constructed, with the remaining 10 composed of groupings of whole counties. The most populous district had more than 26,000 (6.488%) above the mean population while the smallest district had over 27,000 (6.608%) below the mean, ranging in total from about 390,000 to about 435,000.

Plaintiffs argued that the 1968 redistricting plan violated the U.S. Constitution for two reasons: (1) it violates the equal-population principle of Wesberry v. Sanders, 376 U.S. 1 (1964), and (2) it represents a systematic and intentional partisan gerrymander violating Art. I, § 2, of the Constitution and the Fourteenth Amendment.

The District Court sustained the 1968 redistricting plan, allowing it to be used in the 1968 and 1970 congressional elections. The District Court stated that the plan afforded the voters "an opportunity to vote in the 1968 and 1970 elections on the basis of population equality within reasonably comparable districts. And the District Court dismissed the partisan gerrymandering claims.

The U.S. Supreme Court found that the 1968 plan violated the equal-population principle. Given the timing, the Court permitted the plan to be used for the 1968 congressional elections, but ordered a new plan for the 1970 elections. Specifically, the Court found that Art. I, § 2 of the U.S. Constitution requires the States to "create congressional districts which provide equal representation for equal numbers of people permits only the limited population variances which are unavoidable despite a good-faith effort to achieve absolute equality, or for which justification is shown." Id. at 546. Against this standard, there is no claim that New York made a good-faith effort to achieve precise mathematical equality among its 41 districts. And, to "accept population variances, large or small, in order to create districts with specific interest orientations is antithetical to the basic premise of the constitutional command to provide equal representation for equal numbers of people." Id. Finally, population variances cannot be justified by the fact that some districts are constructed of entire counties. Id.

The Court did not reach the plaintiffs' partisan gerrymandering claim.

Schneider v. Rockefeller, 31 N.Y.2d 420 (N.Y. 1972)

Held: New York State redistricting plan, which divided parts of Bronx and Westchester counties, did not violate the New York Constitution.

Plaintiffs, citizens, challenged New York redistricting plan for the State Senate and Assembly, alleging that the plan (1) unnecessarily dividing Bronx and Westchester counties in violation of N. Y. Const., art. III, §§ 4 and 5; (2) constituted a partisan gerrymander in violation of the N.Y. Constitution; and (3) was the result of a misapplication of the constitutional formula for adjusting the size of the senate. Id. at 426.

The court denied all three claims. It found that the legislative plan and concluded that the legislature had achieved a districting plan in substantial conformity with the equal-population principle established in Reynolds v. Sims. And the plan did not "unduly depart" from the State constitutional command that the integrity of counties be preserved because "the Legislature has made a good-faith effort to comply with the mandate of the equal-population principle." Id. at 429. The court noted that procedure followed by the legislature—using best available census data—was valid and did not violation any constitutional provision. In fact, the court went so far as to say that "In terms of equality of population among legislative districts, this plan is the most precise in the history of the State." Id. at 427.

The court found that the plan was not an unconstitutional germander. Section 4 of the New York Constitution requires that Senate districts "be in as compact form as practicable" and "consist of contiguous territory"; and section 5 provides that Assembly districts shall be formed from "convenient and contiguous territory in as compact form as practicable." It found that while "some of the challenged districts are irregular in form, none are so aggravated or outrageous as would warrant the conclusion that the Legislature has completely departed from the constitutional standard." Id. at 430.

Lastly, the court found that the state properly applied the constitutional formula for adjusting the size of the senate, when looking at the historical factors. Id. at 431.

Bay Ridge Community Council v. Carey, 454 N.Y.S.2d 186 (N.Y. Sup. 1982)

Held: The oddly shaped designs of New York State's reapportionment plan did not violate the State Constitution's anti-gerrymander provisions, and Petitioners' challenge on the grounds of "partisan gerrymandering" raised a "nonjusticiable issue.

The plaintiff in this case, the Bay Ridge Community Council, brought an action challenging New York State's district plan for the State senate and assembly of New York. Bay Ridge Community Council v. Carey, 454 N.Y.S.2d 186. The action was brought against the Governor who was represented by the New York State Attorney General. Id at 187.

The plaintiffs alleged the plan was invalid and unconstitutional and violated the State Constitution's anti-gerrymander provisions. Id. (citing NY Const, art III, § 5). They claimed that, "the Assembly districts are neither convenient, contiguous nor compact; that it represented partisan, racial gerrymandering and is . . . an afront to fairness." The plaintiffs sought an order from the court to prevent implementation of law for apportioning and districting. Id at 188.

The Supreme Court of Kings County held that this was a nonjusticiable issue and dismissed the complaint. Id at 190-191.The court explained that challenging of the state law based on "partisan gerrymandering" raises a "non-justiciable issue" since it raises a political question. Id. If the court were to engage in review of shape of legislative districts to determine whether there is partisan gerrymander would consist of the court having to look at population shifts, competing political, social and economic considerations and the relationship of various political factors. Id.

The court emphasized that districting cases require "political value judgments," which is something that should be restricted to legislature for consideration. Id. The court cites opinions from other court decisions that demonstrate the refusal by other courts to hear cases that challenge districting on the grounds of "non-compactness." Id at 189.

Flateau v. Anderson, 537 F. Supp. 257 (S.D.N.Y 1982)

Held: New York State must conduct reapportionment based on the 1980 in time for the 1982 election cycle, not for the 1984 or 1986 cycle, under the equal protection clause of the U.S. Constitution.

This action was brought by a group of voters, the Speaker of the State Assembly, and Minority Leader of the State Senate, and Puerto Rican Legal Defense Education Fund, Inc., challenging the constitutionality of the apportionment scheme of the New York State Senate, Assembly and congressional districts. Flateau v. Anderson, 537 F. Supp. 257, 259 (1982). The defendants included the Majority Leader of the State Senate, the Senate, State Assembly and leader of State Assembly, the Governor, the Lieutenant Governor, the State Board of Election, and the Legislative Advisory Task Force on Reapportionment including its two co-chairmen. Id at 258.

The plaintiffs argued that New York's legislative and congressional districts were drawn based on the 1970 census—and not the 1980 census—and that violated the "one-person, one-vote" principle and the 14th Amendment's Equal Protection Clause because the 1980 New York census showed a decrease in population and that the census it was not used to draw the districts. Id.

The defendants argued there is no violation of the Equal Protection Clause because there was no constitutional requirement to "effect reapportionment" based on the 1980 census for the 1982 election. Id at 259, 262. The defendants further emphasized that, the tradition in New York was that reapportionment occurred after the first election in the decade (i.e., the 1982 election) and that this tradition was constitutional. Id at 265. All the Plaintiffs, except the Puerto Rican Legal Defense Fund, Inc., asked the court to order the State to enact a constitutional plan of reapportionment, or for the court to provide a reapportionment plan. Id at 259. The Puerto Rican Legal Defense Fund Inc. requested that the court "immediately redistrict the State." Id.

New York's Southern District Court held that the legislature must enact a valid reapportionment statute based on the 1980 census in time for the 1982 elections. Id at 266. The court addressed this issue by stating that even if this tradition does exist, the defendants' reasoning is not sufficient enough to justify why reapportionment would not be accomplished in time for the 1982 general elections. Id at 265. They also did not suggest any valid reason as to why they continue the "tradition." The court noted that "tradition" would hold weight only if the defendants would have been able to show that the state's observance of this tradition was connect to state interests. Id. The court did not reach the plaintiff's other claims because they already directed that a new apportionment plan be submitted in time for the elections. Id at 266.

Mirrione v. Anderson, 717 F. 2d 743 (2d Cir. 1983)

Held: New York State redistricting plan that divided a town in Queens into 4 Assembly districts did not violation the Voting Rights Act or the U.S. Constitution.

An appeal was brought by the plaintiff, Peter Mirrione, requesting an order to invalidate the 1982 New York State legislative reapportionment, particularly due to its effect in Queens County. Mirrione v. Anderson, 717 F. 2d 743, 744 (1983). He claimed that the plan "impermissibly impaired the collective voting power of the voters of the community in Rosedale," which according to him, could have been part of one assembly district without significantly disturbing equality among the districts. Id. Instead, Rosedale was divided into four segments which were joined with other areas in Queens County to form four separate assembly districts.

After the Southern District of New York dismissed the complaint for "failure to state a claim on which relief could be granted," the plaintiff appealed. Id at 744-745. The sole question on appeal was whether the reapportionment diluted the collective voting power of the voters in Rosedale. Id.

The Circuit Court affirmed the decision of the district court. Id at 746. The court cited United Jewish Organizations of Williamsburgh, Inc v. Wilson that held that members of a community had no claim to being grouped together in one district "absent showing of discrimination on grounds of race or color …," in order to support their decision. Id at 745. The court emphasized that it is of little importance Rosedale was sectioned of into four separate assembly districts or whether they were placed in districts that was over 80% minority, there are no cases that would support the finding that "town lines or boundaries of unofficial communities" must be considered under the Voting Rights Act or the Constitution. Id.

Additionally, if the state legislature were prohibited from dividing identifiable communities, it would impede them from reaching the "equality of population among the districts." Id at 746. The court further stated that, if they were to accept the plaintiff's claims, it would require them to determine which communities are protected under the constitution, weigh it against other factors such as compactness, contiguity, and minority voting power. Id.

Board of Estimate of City of New York v. Morris, 489 U.S. 688 (1989)

Held: The U.S. Supreme Court found that the 8-member New York City Board of Estimate—comprised of the mayor (two votes), the comptroller (two votes), the president of the council (two votes), the presidents of the five boroughs (one vote each)—violated the U.S. Constitution's one person, one vote requirement because of the imbalance of population between the five boroughs.

The Board of Estimate was comprised of three at-large, citywide elected officials—the mayor, the comptroller, and the president of the city council—each casting two votes on matters of the board, with the exception that the mayor could not vote on budget matters. Id. at 694. The other Board members were the five elected borough presidents, each having single votes. The Board had the power to govern over a "significant range" of common municipal functions, including the calculation of sewer and water rates, tax abatements, and property taxes on "urban developments." Id. at 694-695. The Board also managed all City property, including franchises and leases of City property; exercised plenary zoning authority; fixed "generally" the salaries of all people that received compensation through City funds; and handled all city contracts. Id. at 695-696.

Registered voters from Brooklyn, the most populous of the boroughs, sued the City of New York and the Board of Estimate, alleging that the composition of the Board violated the "one person, one vote" rule established under the equal protection clause of the Fourteenth Amendment, because giving equal voting power to the presidents of boroughs with widely varying populations diluted the voting rights of Brooklyn resident.

The U.S. Supreme Court agreed, holding that the Board's structure violated the U.S. Constitution's one person, one vote requirement because of the imbalance of population between the five boroughs. This resulted in the formation of the 1989 Charter Revision Commission and the current Mayor-Council form of government.

The Court first found that the Board is subject to the one person, one vote requirement of the Fourteenth Amendment, despite being a quasi-legislative, municipal body. The Court noted that the Board's "powers are general enough and have sufficient impact throughout the district" to justify imposing one person, one vote, citing the Board's "considerable authority" over budget, land use, franchising, and contracting powers. Id. at 696.

The Court then found that the Board's structure violates the one-person, one-vote principle. The court explained that "[m]ost citizens can achieve . . . participation only as qualified voters through the election of legislators to represent them," full and effective participation requires each citizen have an equally effective voice in the election of members of his . . . legislature." Id. at 693.

Even though the citywide members enjoy a 6-to-5 voting majority, the Board's composition does not provide each citizen with an equally effective voice. First, the imbalanced borough presidents control the outcome of board decisions anytime the citywide members do not vote together and always control budgetary decisions because the mayor has no vote on such matters. Second, "in calculating the deviation among districts, the relevant inquiry is whether the vote of any citizen is approximately equal in weight to that of any other citizen," and here, the generally acceptable Reynolds-Abate approach yields a total deviation of 132.9% from voter equality among the electorates While no case has indicated this difference could never be justified, a local government seeking to support such a difference would "bear a very difficult burden". Id. at 702. Finally, the Court affirmed the lower court's decision that the City did not meet that burden, finding that the lower courts "are in a much better position than we to assess the weight of these arguments" and that the "valid interests of the city could be served by alternative ways of constituting the board that would minimize the discrimination in voting power among the five boroughs." Id. at 732-733.

Wolpoff v. Cuomo, 600 N.E. 2d 191 (N.Y. 1992)

Held: New York redistricting plan that divides the Bronx into two State Senate district does not violation the New York State Constitution.

The plaintiffs in this case, residents and registered voters in Bronx County, brought an action challenging the Senate redistricting plan, alleging that the plan unconstitutionally divides parts of Bronx County into separate senatorial districts.

The defendants in this case are members of the New York State Legislature, including Governor Mario Cuomo, Lieutenant-Governor Stan Lundine, Speaker of the New York State Assembly, Saul Weprin, and the temporary President and Majority leader of the New York State Senate, Ralph Marino. Id.

The action was brought when New York Legislature adopted an Assembly and Senate redistricting plan on March 9th, 1992, and signed into law by Governor Cuomo in May. Id. The defendants removed the case to the Southern District Court of New York. However it was remanded to the State Court of Appeals. Id.

Only two districts where actually contained within Bronx County, even though "four wholly self-contained" senate districts could have been drawn. Wolpoff v. Cuomo, 600 N.E. 2d 191, 192 (1992).

The Court of Appeals found in favor of the state, holding the petitioners did not "overcome the presumption of constitutionality that attaches to the redistricting plan." Id at 195. The court was "hesitant" to displace the legislature's statistical evaluations for those of the court. Id. Although the petitioners provided four alternative plans that divided fewer districts, the court emphasized that even if an alternative plan creates higher deviations in conflict with the equal representation principle, but has less of a conflict with Article III, §4 of the State Constitution, it is not a valid reason for rejecting the Senate plan. Id.

The court found that the legislature made valid efforts to comply with federal statutory and constitutional requirements, despite the fact they were not absolutely content with number of divided counties and "bi-county" pairings. Id.

Judge Titone, dissented from majority opinion. He gave more weight to the federal prohibition against diluting minority voting strength and proportional representation, than New York State's constitutional anti-gerrymandering provisions. Wolpoff v Cuomo, 600 N.E.2d 191 [1992]. In his view, satisfying the constitutional requirements without significantly breaching the state constitutional requirements of respecting county lines, can be achieved. Id at 80. Judge Titone also argues that the legislature failed to justify its departure from adhering to the state constitutional

requirement of respecting county lines. Id at 195. Judge Titone reasons that "the Constitution is satisfied when the 'legislative has made a good-faith effort to comply with … the equal-population principle … and has not unduly departed from our State constitutional command that the integrity of the counties be preserved." Id. He further argues that the petitioners submitted at least four alternative plans that satisfied all the requirements set forth by federal law and consisted of dividing few counters and no bi-county districts. Id at 196. The alternative plans submitted to the legislature provide evidence that the legislature's county-dividing choices were not necessary and that mere existence of these viable plans are highly indicative that upholding the plan the Legislature drafted is unconstitutional. Id.

Judge Titone believes that "the legislature is duty-bound to accommodate [the sometimes competing values of population equality and enhancement of minority voting strength] within [the court's] constitutional framework." Id at 195-196. He also mentions the court has right and responsibility to make sure that the State Constitution's provisons are followed, and the respondents have misconstrued the holding in Schneider v. Rockefeller (where the court ruled that it cannot determine if one plan is superior to another challenged plan. Id (citing Schneider v. Rockefeller, 293 N.E.2d 67 (1972)).

In this case, the court had the right not to choose one of the alternative plans over the challenged plan in this case, but to realize that the mere existence of alternative plans shows that it was not necessary for the Legislature to disregard the requirements established in the state constitution as they did in plan the majority upheld, which according to Judge Titone expresses tolerance for plans that ignores the "integrity of county borders." Id at 198.

Wolpoff v. Cuomo,792 F. Supp. 964 (S.D.N.Y. 1992)

Held: A federal court has no jurisdiction in a suit against state legislatures that alleges violations of state law, under the Eleventh Amendment to the U.S. Constitution. Remand to state court.

The plaintiffs in this case included four Bronx County voters who brought this action against members of the New York State Legislature ("Defendants") including Governor Mario Cuomo, Lieutenant-Governor Stan Lundine, Speaker of the New York State Assembly, Saul Weprin, and the temporary President and Majority leader of the New York State Senate, Ralph Marino, claiming the state enacted a Senate districting plan that created Senate districts that crossed county lines in violation of the Article III § 4 New York State Constitution and section 4221 of New York state law. Wolpoff v. Cuomo, 792 F. Supp. 964, 965 (S.D.N.Y. 1992).

The defendants removed the case to federal court, to which the Plaintiffs objected and argued to remand the case to the New York State Supreme Court, Bronx County. Id.

The federal District Court granted the plaintiffs motion to remand. Id at 968. The court emphasized that the 11th amendment to the U.S. Constitution prohibits federal courts from hearing cases involving the enforcement of state law against state officers. Id at 965.

The defendants argued that since federal defenses triggered federal concerns, federal courts have jurisdiction. Id at 967. The court disagreed and stated that the case is barred from federal court unless the defendants can demonstrate that Congress intended to do away with the 11th amendment. Id. Even if the 11th amendment did not bar the District Court from hearing the case, the refusal clause in 28 U.S.C. §1443(2) that the defendants tried to use to support federal jurisdiction would not be an option to invoke federal jurisdiction because the legislators are being sued exclusively for their vote on a decision before a state legislative body. Id.

Puerto Rican Legal Defense and Educ. Fund, Inc. v. Gantt, 796 F. Supp. 677 (E.D.N.Y. 1992)

Held: Two federal and one state challenge to New York's redistricting plan to be consolidated into a single federal case before a three-judge panel in the Eastern District of New York, with any further state court proceedings enjoined.

After the 1990 census, New York lost three congressional seats, from 34 to 31 seats, requiring a new redistricting plan. The resulting redistricting "eluded compromise through the political processes." This dispute, therefore, found its way into court through three separate cases. Id. at 678.

On March 26, 1992, one of these case Waring v. Gantt, was filed in the United States District Court for the Western District of New York. That same day, the second case, Reid v. Marino, was commenced in the New York Supreme Court, Kings County. On March 31, the third case, PRLDEF v. Gantt, was filed in the United States District Court for the Eastern District of New York. Three-judge panels were appointed by the Chief Judge of the Second Circuit in both the PRLDEF and the Waring actions. Waring was transferred to this court by the three-judge panel of the United States District Court for the Western District of New York on April 9, 1992; both Waring and PRLDEF were thereafter consolidated pursuant to Fed. R. Civ. P. 42(a), because the two actions seek substantially the same relief.

The New York State Senate sought to enjoin the state court case and proceed in federal court. The New York State Assembly sought to remand the case back to state court. And a third party, voter Michel Waring, sought to move the case back to the Western District of New York.

The E.D.N.Y. kept all cases in federal court in the Eastern District. The court found that "the three pending cases can ultimately result only in a single approved congressional redistricting plan for New York State. Consequently, these issues must be resolved in a single forum; two courts simultaneously attempting to redistrict the state would be wasteful, unnecessarily confusing, and inefficient." The court denied abstention and enjoined further state proceedings. It found that "there are no disputed questions of state law at issue"; "[a]ll of the claims presented in all three cases . . . are federal constitutional and Voting Rights Act claims involving the right to vote in an election for federal congressional representatives," and federal courts have a "virtually unflagging" obligation to decide federal claims." Id. at 680-81.

NAACP v. City of Niagara Falls, 913 F Supp 722 (W.D.N.Y 1994)

Held: At-large districts in Niagara Falls did not violation Section 2 of the Voting Rights Act, as the totality of circumstances, including the city's political landscape, did not show that the at-large system limited participation by African-Americans voters.

The plaintiffs are the National Association for Advancement of Colored People ("NAACP"), its Political Action Chairperson Renae Kimble, and nineteen registered African American voters from the City of Niagara Falls, New York. NAACP v. City of Niagara Falls, N.Y., 913 F Supp 722,726, W.D.N.Y (1994). They brought a suit against the City of Niagara Falls and its Mayor, members of the Niagara Falls City Council, and the Niagara Falls City Clerk. The plaintiffs challenged the at-large election system in the City of Niagara Falls. This method was put in place in 1985 and consisted of a staggered election to fill seven spots in the City Council. Id. The plaintiffs claim that the at-large election system violates Section 2 of the Voting Rights Act of 1965 because "…it results in a denial or abridgement of their right to vote on account of their race." Id. They sought for the court to implement a "single-member district method" for the election of members to the City Council and "…an African American majority-minority district." Id.

The Western District Court of New York held that there was not a Section 2 violation of the Voting Rights Act. Id. Both parties conceded that the first two prongs of Gingles were met. Id at 739-740. The plaintiffs had established that a "…viable and geographically compact African American majority-minority district could be created and that African American voters "cast a substantial majority of their votes for African American candidates…" Id at 739. Therefore, the only issue before the court was whether the plaintiffs had met the third prong of the Gingles analysis which required them to show that white-majority bloc voting impeded the minorities from electing their preferred candidate. Id at 740. After looking at all the past elections analyzed by the plaintiffs and the defendants, the court concluded that the white majority did not vote in a way that "…usually defeats the African American voters' candidate of choice." Id. The court specifically looked at recent elections in the City of Niagara Falls where African Americans succeeded in electing their preferred candidate. Id at 741. For example, in 1991 Andrew Walker was the African American voters' "candidate of choice" and he won the City Council Democratic primary and general elections. Id. The court rejected the plaintiffs' argument that those victories were a result of the attempt by white voters to "humiliate" the lawsuit. Id. In addition, the court also concluded based on the "totality of the circumstances," the plaintiffs were not able to show that there was any discrimination as to "…African Americans' right to vote, register to vote, or otherwise participate in the political process." Id at 744. In fact, the plaintiff even testified that "…they never encountered difficulties in voting, registering to vote, or forwarding themselves as candidates for election, and knew of no instances in which others encountered difficulties." Id.

Therefore, the at-large system of electing members to the Niagara Falls City council did not violate §2 of the Voting Rights Act.

Goosby v Town Bd. of Town of Hempstead, N.Y., 180 F3d 476 (2d Cir. 1999)

Held: At-large districts in Hempstead town board elections violated the Voting Rights Act of 1965 because they operated to invidiously exclude black citizens from political life in.

Although decided in 1999, Goosby is an essential case for voting rights in New York. Here, African- American citizens of the Town of Hempstead challenged an at-large voting practice to elect the town board. The town divided the town into one single-member district and one at-large district. The court affirmed such practice in this circumstance violated the equal protection clause and section 2 of the VRA. However, the court most importantly provides the roadmap to analyzing such claims for all subsequent cases in New York.

The facts here begin with the plaintiffs in a class action alleging that Hempstead's at-large voting method within Nassau county diluted their voting power and denied fair representation on the town board because the white majority engulfed their voting strength. The town of Hempstead had a population of 725,639. Since the 1960's the towns black population has grown, as provided:

> "since 1960, when the black population was 3.4% of the total population of 740,738. In 1970, those numbers rose to 5.8% and 801,000 respectively. In 1980, the black population grew to 9.3% of the total population of 738,517 and 7.9% of the town's total voting-age population. In 1990, the black population constituted 12.1% of the town's 725,639 residents and 11.2% of the town's voting population while white voters constituted 84.8%." Id. at 484.

Whites had a higher median household income than African Americans. African Americans also had higher rates of poverty and unemployment. African Americans had a lower level of education, had lower property value, and were less likely to possess a home, a car, and a telephone. African American registered voters equated to 22% Republican and 68% democrats. White voters correlated to 51% Republicans and 26% democrats. Provided that, at the time of trial, African American voters only accounted for 18% of Democratic voters and 4% of Republican voters.

The at-large voting system here implemented a staggered election practice. Accordingly, only 3 out of 6 members would be up for election at a time. The board members had four-year terms. It was a staggered election and three seats were up for grabs every two years. Each voter may cast one vote or two if he or she chooses. It is prohibited to cast multiple votes for the same candidate. The candidates who receive the highest votes take office. This distinguishable from district voting where each district only votes for their

district's seat or seats, respectively. Accordingly, the town board has the following responsibilities:

> "Town government officials and filling vacant Town government positions, adopting a Town budget and administering Town finances, establishing residential and commercial zoning, acquiring, selling and maintaining Town property, maintaining and repairing Town streets, parks and facilities, removing fire and health hazards and awarding and executing Town contracts. The town employs roughly 2,400 people and had an annual budget of $290 million in 1996." Id. at 485.

Republican candidates are elected through special interest organizations recommending candidates to 69 executive leaders; only three were black. These executive leaders discuss potential candidates with the county party vice-chairmen. Executive leaders forward resumes of candidates to the county chairman. Nassau County African American Republic Coalition (NCAARC) is heavily active in recommending candidates. After the chairman selects potential candidates, they are sent to an executive committee for nomination. The executive committee forwards the recommendations to the entire committee for a final vote. This takes place at a party convention, which embodies 2,000 committee members. “The vote of each delegate at the convention is weighted according to the Republican voter turnout in the previous election in the committee member's election district. “This slating process is the same for town-wide elections, except participation is limited to "executive leaders, vice-chairs, and delegates who represent a constituency in the Town." Note, the county chairman's recommendation has never been rejected by any committee or convention. African Americans have been nominated for elective office, but the republican party only nominated one black town board member. In 1989, NCAARC marched on town hall protesting a failure to elect a black republican to fill two board vacancies. In 1993, during another vacancy, an active African American Attorney, a republican committeeman, Deputy Mayor, and Trustee of the village of Hempstead, was cast to the side when the County Chairman chose to recommend Curtis Fisher because "he paid his dues.” Id. at 486. However, Curtis Fisher was the only African American to sit on the town board. It was evidenced that Fisher was executive assistant to the Town Board and was close friends with the County Chairman. Some African Americans have won election to judicial office in districts that include the town. In a three-year span, two were elected to office. The republican party used the same slating process for judicial office.

Beyond that, the town board has been criticized for being unresponsive to the black community's needs. These incidents included failing to address racial intolerance in town workplaces. The town also does not have a policy prohibiting the use of racial slurs. An example is provided during Curtis Fisher’s — the black townsperson— tenure as an affirmative action officer. This involved a black labor foreman complaining about unfavorable racial assignments and insulted by racial epithets. Fisher made casual

inquiries and then abandoned the black labor man neglecting to make any recommendation, report, nor initiate any disciplinary process of any kind. Again, Fisher received another complaint from a senior black carpet enter who was passed over for a full-time working position for two less senior white carpenters. At this time, Fisher was on the Town Board and just told him there was nothing he could do. However, the carpenter subsequently prevailed in a discrimination claim against the town.

The town was not entirely unresponsive to the concerns of black residents. There had been some development and construction projects. However, many projects were neglected. Residents of Lakeview center repeatedly sought funding for a community center with no success. Again, Fisher was involved and did attempt to obtain any funding. Fisher tried to justify that funding would require funding from several other projects but only one was predominantly black.

Nassau County also required each citizen to present a certificate of literacy to vote. It was apparent this literacy test had impaired the African American communities' ability to vote. African community voters were also disenfranchised via statute, purging any votes who failed to vote for four years prior. African Americans' votes were 70% more likely to be purged.

The Republican campaigns occasionally made subtle racial appeals as well. These racial appeals were likely to stem from African Americans resettling in the town from predominantly black neighborhoods. A specific example was when a republican candidate distributed brochures containing pictures of African American children taking a bus— stating support democrat and it would result in a busing program. Another scenario occurred as follow:

> “[I]n 1987 in the campaign of incumbent Town Board member Joseph Cairo. Cairo, reacting to an influx of blacks into the communities of Elmont and North Valley Stream, distributed campaign literature proclaiming that he was “a major opponent of those who would seek to ‘Queensify' North Valley Stream and its environs." There was evidence that Cairo's claim to have "sensitized local patrolmen to the special concerns of the community" meant that police were to act as an unofficial border patrol, confronting black youths from Queens who ventured into the town. Though the claims in the brochure may be subject to different interpretations, there was testimony that the campaign literature was perceived at least by some in the electorate to be a racial appeal.” Id. at 488.

The trial contained expert testimony illustrating the town could be divided into six districts; one majority-minority and the others single-member districts. This plan was provided in accordance with four districting princples:

> (1) substantial equality of population;
>
> (2) conformity of the districts' boundaries, to the extent possible, to existing political geography;
>
> (3) reasonable compactness; and
>
> (4) after satisfying the first three criteria, grouping the black population in one district to the extent possible. Id. at 488-89.

The districts proposed were all roughly populated with 120,000 people. The largest was 1.67% larger than 120,000. The smallest was 2.53% smaller than 120,000. In opposition, the Town Board attempted to offer justification for the at-large election system including, it promoted less government, not more government, and the open atmosphere was necessary given the Town Boards' responsibility regarding every citizen's welfare. It also might encourage a narrow scope mentality, which would encourage board members to combine votes. However, the defacto systems generally understood that the assigned board member would be responsible for their district. Therefore, no situation would likely arise where a predominantly black community is being neglected because no one lived there. As noted, Curtis Fisher, the only member who was apart of the African American community, often neglected to address his community's needs.

In light of the foregoing , the discussion begins laying out the elements to satisfy a VRA claim:

> (1) a voting standard, practice, procedure, qualification or prerequisite
> (2) imposed by a State or political subdivision
> (3) in a manner that denies or abridges the right of any citizen to vote
> (4) on account of race, color or membership in a language minority group.
> Id. at 491

Next, the court provided the elements that are required for the totality of circumstances analysis:

> (1) the political processes for nomination and election (2) are not equally open to participation by members of the protected class (3) because the class members have less opportunity than others to participate and elect

> their representatives of choice. [And, (4)] one circumstance to be considered in the totality is the extent to which class members have been elected, but there is no right to proportional representation.

Citing the Supreme Court Thornburg *v. Gingles,* 478 U.S. 30, 106 (1986), the court layed out the 3 preconditions necessary for the analysis of a voting strength dilution claim:

> 1. The minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single member district....
> 2. The minority group must be able to show that it is politically cohesive....
> 3. The minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances, such as the minority candidate running unopposed—usually to defeat the minority's preferred candidate. Id. at 491.

Lastly, the court lays out other factors to consider, which are also referred to as the senate factors. The succeeding cases will eventually integrate these factors into the totality of circumstances analysis.

> 1. The history of voting-related discrimination in the state or political subdivision;
> 2. The extent to which voting in the elections of the state or political subdivision is racially polarized;
> 3. The extent to which the State or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority vote requirements, and prohibitions against bullet voting;
> 4. the exclusion of members of the minority group from candidate slating processes; 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;
> 5. the use of overt or subtle racial appeals in political campaigns;
> 6. the extent to which members of the minority group have been elected to public office in the jurisdiction;
> 7. evidence demonstrating that elected officials are unresponsive to the particularized needs of the members of the minority group; and

8. that the policy underlying the State's or the political subdivision's use of the contested practice or structure is tenuous. Id. at 491-92.

The court goes on to provide "no specified number of [senate] factors need be proved, and that it is not necessary for a majority of the factors to favor one position or another. The Senate Report does, however, provide important guideposts for the factual analysis to be undertaken by the trial court… the three *Gingles* preconditions generally must be satisfied, their satisfaction is not alone sufficient to make out a Voting Rights Act violation." Id. at 492 (citing Johnson v. DeGrandy, 512 U.S. 997, 1013 (1994)

Therefore, to begin, the court found the first precondition, which concerns a sufficiently large and compact minority group, was satisfied by the expert testimony alternative district plans. The second precondition, which involves political cohesion minority, was satisfied with no contest. As for the last precondition, a white majority bloc voting frustrating the election of a minority candidate, the district court previously found racially polarized voting based on the following facts:

> (1) A black Democrat candidate who ran for the Town Board always was the most preferred candidate among black voters;
>
> (2) the black Democrat received over 50% of the black vote in every election but one;
>
> (3) in every Town board election but one there was at least one minority-preferred candidate; and
>
> (4) every minority-preferred candidate for the Town Board lost to the majority-preferred candidate as a result of white voters voting for candidates not supported by black voters. Id. at 492.

The court ratifies this approach by the district court that a racially polarized factor can prove the third precondition under the totality of the circumstances analysis. Id. at 493.

The court moved to examine the district court's findings for the totality of circumstances analysis, now also called the senate factors. The district court found historical discrimination from the purging of minority votes and the literacy test. The district court found racial polarization from a regression analysis. This analysis will be discussed more in-depth in a succeeding case. The district court also found the electoral mechanism — at-large voting— made it significantly more difficult to campaign. The district court also found the slating process implemented put " sufficiently beyond the realm of possibility for black Republicans that they never even attempted to obtain one through the normal party mechanisms until 1993. And then they were simply shut out."

The next factor assessed was the factor was the ability of minorities to get elected to political office. This was apparent given Curtis Fisher was the only one. The court emphasized before Curtis Fisher, no African American was ever elected to the legislative body. As for racial appeals, the town lacked any affirmative action policy, and there numerous cases in addition to those mentioned above that involved racial slurs. Regarding responses to the needs of the minority community, the denial and disregard of funding requests for community centers in African American communities by Curtis Fisher illustrated this lack of response. Beyond that, there was evidence of racism by the fire department, which the town provides financial support to.

As for the last two senate factors, the district court found that the at-large voting system in fact was more government, not less, and therefore tenuousness for policy underlying at-large elections. The district court rationalized this through the consequences of weak representation in government. Furthermore, African American communities would have no means to hold elected officials accountable.

The court affirmed with the district court. The court acknowledged that the six district plan proposed by expert testimony was subject to strict scrutiny and, therefore, must be narrowly tailored because race played a role. The plan was held to valid because it was in accordance with traditional districting principles, and the goal here was remedying vote dilution. The court concluded by affirming a special scheduled election in accordance with the new districting plan.

Rodriguez v. Pataki, 308 F. Supp. 2d 346 (S.D.N.Y. 2004)

Held: New York State congressional redistricting plan after the 200- census was valid and did not violate the 14th Amendment or the Voting Rights Act

The plaintiff and plaintiff- intervenors in this case included black, Hispanic, and white New York voters who filed a lawsuit against New York State officials, including Governor George E. Pataki and the Senate and Assembly legislative leaders. Rodriguez v. Pataki, 308 F. Supp. 2d 346, 355 (2004). The plaintiffs and plaintiff-intervenors filed a consolidated complaint challenging the state senate and congressional districts enacted by the state legislature in 2002. Id at 351. The consolidated complaint included constitutional and statutory challenges against the plan. Id. Of the eight complaints, six are Section 2 Voting Rights Act challenges and two of the counts alleged violation of the "one person, one vote" principle established under the 14th amendment and "racial gerrymandering challenges to Senate District 34. Id at 352.

The plaintiffs alleged that the senate redistricting plan "impermissibly and arbitrarily" discriminated against voters in "downstate districts" by overpopulating those districts, and under-populating the "upstate districts." Id at 366.

On November 6th, 2003, the Southern District Court of New York found that "the plaintiffs raised no triable issues of material fact with respect to Count I, II, IV, VI and VIII of the complaint" and granted the defendants summary judgment on those counts. Id at 352. The court found that the alleged discrimination between the districts created downstate versus upstate, the plaintiffs did not provide sufficient evidence to support discriminatory behavior by the Legislature. Id. The Court further held that the "express objective of staying within the ten-percent deviation while pursuing other legitimate goals provides no support to the plaintiffs' claim of invidious or arbitrary discrimination…" Id at 367.

On Count I, the court granted the defendants summary judgment. The plaintiffs alleged that the Senate Plan violated the "one person, one vote" principle. They argued that there were discriminatory effects on downstate residents, which included Senate District 10-38, by overpopulating those districts and essentially under-populating all "upstate" districts, which they allege show discrimination. Id at 366. However, the court found that "[n] o invidious purpose can be inferred" since the defendants managed to stay below the 10% threshold while "pursuing other legitimate goals." Id at 366.

Count II was a "… 'statewide' Section 2 vote-dilution claim." Id at 437. The plaintiffs alleged that more majority-minority districts could have been draw and the 2002 Senate Plan resulted in a voting "practice" or "procedure" that diluted minority-voting strength. Id. The plaintiffs proposed the "creation of an additional majority

district in the Bronx-Westchester region…" Id. The court granted summary judgment because they found that "Count II is duplicative of County III." Id.

The Court found in Count III, involving the Bronx-based districts, that the plaintiffs failed to provide "evidence from the redistricting process" to support their contention that the way the district were drawn would "further a legislative policy that limits the opportunities for minority voters…" Id at 431.

Count IV challenged Senate District 31, which is compromised of the Bronx and Manhattan. Id at 437. They argued that there was a significant overlap between District 31 and 32. They argued that under their proposed District 32, it would have allowed for an increase in the Latino and black voting age population. Id at 438. However, the court rejected this because the plaintiffs had failed to produce enough evidence to show that there was white bloc voting. Id.

In Count V, a challenged Nassau County senate district and in Count VI challenging a Suffolk County senate district, the court found that although there has been a significant growth in the black and Hispanic populations, there is not a "minority group large enough itself to form a majority in the senate district in Nassau County and Suffolk County. Id at 373. The plaintiffs proposed district plan for Nassau, including a white population of 40.7% and black and Hispanic voting age population ("VAP") of 54.3%, failed because there were not enough Hispanic voting age citizens, which meant that the combined black and Hispanic VAP would be 47.6%. Id. In Suffolk County, the plaintiff alleged that there was a Section 2 violation because the defendants failed to create an influence district, however, the court disagreed and said the plaintiffs has "no basis" for stating that the influence district is required to satisfy Section 2. Id at 377

In Count VII, plaintiffs alleged that senate district 34 in the Bronx and Westchester resulted in a racially gerrymandered district in violation of the 14th amendment. Id at 359. The Court held that the plaintiffs failed to show alleged racial gerrymanders in the Bronx and Westchester counties. Id. The plaintiffs were not able to show that redistricting "though race neutral on it face, rationally cannot be understood as anything other than an effort to separate voters into different districts on the basis of race, and that the separation lacks sufficient justification." Shaw v. Reno, 509 U.S. 630, 640 (1993). The defendants demonstrated legitimate political reasons for drawing the districts the way they did. Id at 457. The court, for example, found that preserving majority-black districts and balancing "multiple and sometimes competing interests" were legitimate reasons justifying the plan. Id.

In Count VIII, the plaintiffs-intervenors challenged congressional District 17. Id at 441. The district contains parts of the Bronx, Westchester, and Rockland counties. Id at 442. The plaintiffs proposed an alternative for District 17 where blacks and Hispanics would have the chance to elect their preferred candidate. They also alleged that in not

adopting this alternative plan for District 17, defendants were in violation of Section 2 of the Voting Rights Act. Id. The Court granted summary judgment on this count because they agreed with the defendants' contention that "neither blacks or Hispanics would constitute a majority unto themselves…" and that they "…cannot be show to vote cohesively as one." Id.

U.S. v. Village of Port Chester, 704 F. Supp 2d 411 (S.D.N.Y 2010)

Held: The at-large voting system in the Village of Portchester violated Section 2 of the Voting Rights Act of 1965 because it prevents Hispanic voters from participating equally in the political process in the Village.

The plaintiff in this case is the United States of America and the plaintiff-intervenor is Cesar Ruiz. U.S. v. Village of Portchester, 704 F. Supp 2d 411, 416-417,S.D.N.Y (2010). The defendant in this case is the Village of Portchester. Id at 416. The plaintiffs brought this claim alleging the that at-large voting system in the Village of Portchester, violated Section 2 of the Voting Rights Act of 1965. Id. They claimed that the system, which was used to elect six members on to the Portchester Board of Trustees," denied the Hispanic population of the Village an equal opportunity to participate in the political process and to elect representatives of their choice." Id. The trustees serve staggered year terms and under the original system, voters could vote two votes and it could not be placed on the same candidate. Id at 420.

The Southern District of New York held this violated Section 2 of the Voting Rights Act. Id at 446. The Court concluded that the first Gingles prong was met because the plaintiffs were able to show through expert testimony that the Hispanic community was geographically large and compact and constitute a majority in a single member district. This was demonstrated within two plans, Plan A and Modified Plan A. Plan A was deemed acceptable with a population distribution of 5.71%. Modified plan A was deemed acceptable by only departing Plan A's distribution by 1.50%.. Thus, the total population balance was acceptable for both plans.Id. 422. As for compactness, under Plan A , four districts had the Hispanic's at 83.94 % of the voting age population. Under Modfied Plan A,, Hispanics constituted 82.04 % of the voting age population in four districts as well. Id. 422. Thus, in both plans the Hispanic population constituted a majority in more than one single member district, however, no evidence showed that race was a predominant factor in prescribing boundary lines. Therefore, Precondition one was satisfied 423

The second Gingles prong was also met because the plaintiffs were successful in showing that the Hispanics in Portchester were politically cohesive in "...all 16 election contests in the Village between 2001 and 2007 [because] virtually 100 percent of Hispanics who voted in that election cast one of their votes for Ruiz, the Hispanic candidate. "Id at 428. Furthermore, the record demonstrated that the Hispanic community also voted cohesively when there was no Hispanic candidate as well. Id 428.

The third Gingles prong examined whether the white majority vote sufficiently defeats the minority preferred candidate in absence of special circumstances. In other words, if the whites are voting for other candidates to such a degree that the Hispanic preferred candidates are losing. The court found this was met since there was clear evidence that in 12 of the 16 elections that were observed in this case where the Hispanic

preferred candidate was defeated by the preferred candidate of the non-Hispanic white voters — 75% of the time. Id at 430.

The court next conducted a 'totality of the circumstances' analysis, which is also referred to as the senate factors.

- For the first factor —The history of official discrimination— there was a lawsuit in 1970 concerning Spanish assistance at polling places. In 1985 Westchester County had a case concerning housing and education discrimination. In 2005 a consent decree was issued on language assistance at polling places. Furthermore, an election inspector who had inspected 15 times over the last 25 years only once worked alongside a Spanish-speaking inspector. There was testimony from a Spanish-speaking poll worker where she observed Spanish-speaking voters being treated differently on several occasions. In 1991, 40 Hispanic voters were turned away from polls because of poll worker's inability to locate their names. As a consequence, candidate Rodriguez lost by 37 votes. Id.431-433.
- Factor two — racially polarized voting— examines if white candidates would have voted for a different candidate rather than the Hispanic preferred candidate, emphasizing substantial legal significance if the Hispanic preferred candidate usually loses. Dr. Hadley regression estimates provided 69.6% and 96.2% of Hispanics vote for Hispanic preferred candidates. Thus, non-Hispanic voters received little support from Hispanic voters. Furthermore, as mentioned before, the third Gingle precondition also inherently is analyzed in light of this factor.Id.433
- Factor three — electoral practices that enhance discrimination opportunities— the court looked to the staggered electoral structure. The election in concern was hosted in March; however, other exogenous elections are hosted in November. Dr.Hadley's data established Hispanic presence for voting was greater in November. Yet, village chose to hold elections in March, aware of depressed voter participation amongst the Hispanic population. Id.433
- Factor four — access to the candidate slating process— the court looked at how Port Chester selected political office candidates. The village implemented a caucus system administered by political parties. The caucus votes in favor of a particular candidate to formally receive the party's nomination for Trustee. The candidates had to interview before parties before receiving respective nominations. The parties respective nominating committee select two names and forward those names to the parties caucus for ratification. In theory, there was a procedure to review non-approval by caucus by "storming" the caucus with the nomination committee because technically, individuals who received the most support at caucus are to be nominated. No witnesses could identify an instance of "storming". In sum, the system favored those with strong political ties and the Hispanic community had few leadership positions with any political party.Id.434-435
- For factor five— discrimination in areas that hinder Hispanics' ability to participate effectively in the political process — evidence was provided that

Hispanics have lower levels of education and attainment on average lower incomes than non-Hispanics. Lower levels of income result in higher participation in the labor force. This substantial labor participation also impairs political mobilization via campaigns to reach and inform Hispanics. Thus, there were significant socioeconomic disparities, and it did affect political participation Id.435-436

- Factor six — racial appeals in political campaigns — the court pointed to numerous racial flyers appealing to whites. Most noteworthy were the flyers defaming Hispanic candidates. Id.437
- Factor seven — election of Hispanics to public office in the jurisdiction— for all trustee elections up to 2007 only two Hispanics have ever been on the ballot, and both finished last, respectively. Although the village had made an effort to encourage Hispanic participation, the court mentions that this may have likely stemmed from an incentive from the Justice department's investigation. Id.438
- No evidence was produced for the last two Id.439

As a result, the court held, "Plaintiffs have proven the existence of all three Gingles preconditions and have shown clearly that under the totality of the circumstances, the at-large election system for electing members of the Board of Trustees prevents Hispanic voters from participating equally in the political process in the Village." Id. 448

Pope v County of Albany, 687 F3d 565 (2d Cir. 2012)

Held: Albany County's redistricting plan after the 2010 census not preliminarily enjoyed, because plaintiffs failed to demonstrate likely success on the third Gingles factor, white bloc voting.

Albany County consisted of 39 single-member districts. Since the 1990's the county's past redistricting efforts had routinely triggered litigation. These litigations were in concern to Minority Majority Districts (MMD). Litigation resulted in increasing the number of MMDs from one to three.

Albany county implemented a redistricting commission (commission), which was charged with proposing new districts according to 2010 Decennial Census (Census) data provided. The DOJ also released concurrent demographic data according to the Census. The counties voting age population (VAP) at the time was 243,573. The following was the VAP accusing to demographic:

- Hispanic 10,024
- Black atleast 26,196 but no more than 29,435
- White 197,006

The plaintiff alleged the minority communities were not aware of public hearings held by the commission. These hearings revolved around district redrawing proposals by the commission, which were held to be in unfamiliar locations and minimally advertised to the minority community. Defendants relied on a definition of minority as a single race, black. At this time, the population had minority population had grown, minority voters who attended the hearings provided a fifth MMD was warranted. Accordingly, an alternative plan, supplied by Arbor Hill Environmental Justice Plan (AHEJ Plan) provided a solution for five MMDs. However, the commission maintained the numbers what not enough to justify the alteration.

Furthermore, proceedings included analyses from two experts. The first expert analyzed 34 single-member elections, determining 19 of them were racially polarized. This analysis was only regarding black and white voters because there was not enough data for Hispanic voters. This resulted in the finding that black voters were politically cohesive. The second expert concluded African Americans and Latinos lag behind whites in most socioeconomic measures in Albany County. The second also testified AHEJ's plan had complied with the one person one vote principle through a computer software analysis.

Accordingly, the court analyzed the Giggles preconditions next.

> (1) the alleged minority group is sufficiently numerous and geographically compact to compose a majority of a single-member district;

(2) members of the minority group are politically cohesive; and
(3) that white bloc voting is usually sufficient to defeat the minority-preferred candidate.

(Pope v County of Albany, 2014 US Dist LEXIS 10023, at *16 [NDNY Jan. 28, 2014, No. 1:11-cv-0736 (LEK/CFH)])

- First, regarding holding blacks and Hispanics together as a single minority group, the court held plain text of the statute, the purpose, and legislative history do not abridge the right of politically cohesive minority groups to aggregate under the VRA. Reasoning, the broad language of the VRA, specifically affording "protection from denial or abridgement of the right of *any citizen* of the United States to vote on account of race or color." It didn't suggest only a single group may allege a violation of voting rights. However, on the other hand, the court held Gingle factor one was satisfied— the minority group was sufficiently numerous and geographically compact to form five MMDs.

- Second for political cohesion, which is required to show VRA compliance. both parties cited the same case. Bridgeport Coalition for Fair Representation v City of Bridgeport, 26 F3d 271 [2d Cir 1994] . In Bridgeport, the court found a VRA violation with ample evidence provided of black voter cohesion and less cohesion amongst Hispanic voters when there was a Hispanic candidate. Here, in accordance with Bridgeport, the court held it was a material issue not to provide evidence of Hispanic cohesion, noting how numerous minority organizations, including the NAACP, successfully reached the Hispanic communities in public outreach campaigns.

Favors v. Cuomo, 11-cv-05632, 2014 U.S. Dist. LEXIS 70783 (E.D.N.Y. 2014)

Held: New York State redistricting plan after the 2010 census does not violate the one-person one-vote principle of the equal protection clause and plaintiffs have failed to produce any evidence suggesting that the redistricting process was infected by racial prejudice.

The plaintiffs in this case included the "Drayton Intervenors," representing black voters in New York State, and "Ramos Intervenors," representing Hispanic voters in New York State (together, the "Intervenors") who claimed the Senate Plan violated the 14th Amendment's Equal Protection clause.

Senate Minority Leader John L. Sampson and LATFOR member Senator Martin Malavé Dilan filed a cross-claim, also challenging the constitutionality of the Senate Plan. The defendants in this case include Governor Cuomo, Lt. Governor Robert J. Duffy, the President of the Senate, and Senate Majority Leader Dean G. Skelos.

The plaintiffs claimed the Senate Plan violated voters' right to equal representation, since "houses of a state legislature must be apportioned on a population basis." Reynolds v. Sims, 377 U.S. 533,577 (1964). The Intervenors contended that the plan's population deviations were developed to "maximize partisan advantage for the Republicans," whilst attempting to stay under the 10% permissible deviation limit. The Intervenors also claimed that the plan violated of the Equal Protection Clause because they believed the Senate Plan was "the product of impermissible racial animus." The defendants moved for summary judgment.

A three-judge panel of New York's Eastern District Court granted the Senate Majority Defendants' motion for summary judgement, holding that the Senate Plan did not violate the "one-person, one-vote principle," and that redistricting process was not infused with racial prejudice.

The Court explained that since the maximum deviation of the Senate Plan was 8.80% it constitutes "only minor deviations from population equality." Although remaining under the 10% deviation threshold often exempts legislatures from explaining minor deviations, it does not leave the Senate Plan completely safe, because the plaintiffs could show the "process was tainted by an impermissible motive."

However, in this case the plaintiffs failed to produce sufficient evidence to convince the court that there was an "impermissible motive." In addition, the Senate Majority Defendants provided valid explanations for the minor deviations. The Senate Majority Defendants' explanations for the minor deviations weakened the plaintiffs' claim that redistricting plan was racially discriminatory. The Court mentions that the Supreme Court has "rejected the notion that a law is invalid under the Equal Protection

Clause simply because it may affect a greater proportion of one race than another." (citing Rogers v. Lodge, 458 U.S. 613, 618 (1982)).

Pope v County of Albany, 94 F Supp 3d 302 (N.D.N.Y. 2015)

Held: Albany County's redistricting plan after the 2010 census violated Section 2 of the Voting Rights Act of 1965 because it dilutes the voting strength of black voters in the county.

Pope's holding was challenged again in 2015. This time with success. (Pope v County of Albany, 94 F Supp 3d 302 [NDNY 2015]). This time the court considered the totality of the circumstances analysis in depth. which the court are the following senate factors:

1. The history of voting-related discrimination in the state or political subdivision;
2. The extent to which voting in the elections of the state or political subdivision is racially polarized;
3. The extent to which the State or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election **districts**, majority vote requirements, and prohibitions against bullet voting;
4. The exclusion of members of the minority group from candidate slating processes;
5. 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;
6. The use of overt or subtle racial appeals in political campaigns;
7. the extent to which members of the minority group have been elected to public office in the jurisdiction.

   As well as the additional factors

8. The evidence demonstrating that elected officials are unresponsive to the particularized needs of the members of the minority group
9. The policy underlying the State's or the political subdivision's use of the contested practice or structure is tenuous.

- Accordingly, factor 1 — history of racial discrimination — was satisfied because Albany has had a history of discrimination. Factor 2 —Racially polarized voting —

was for defendants. Factor 3 — Dilution enhancing practices — the court found the polling sites in several MMD's were moved, causing issues and discouragement for minority voters. The county also did not offer Spanish language ballots. There was also new testimony bolstering this claim of inaccessibility related to disputed intent on why these polls were actually moved.

- Factor 4 — access slating process —was accompanied with witness testimony expressing difficulties for minorities to receive endorsements. Some minority candidates have won some hard-fought elections, including the democratic county chair position, which was the most powerful position in the election candidacy process. Factor 5— effects on discrimination— the court noted the census data on how minority communities virtually lag behind the county's white majority in nearly all socioeconomic categories. The plaintiffs also presented disparities in socioeconomic health concerns in African American communities. Witness testimony provided minority voters also usually have lower voter turnout rates.
- For factor 6 — Racial Campaigns— the plaintiffs did not allege any overt incidents or candidates who made racial appeals during their Runnings. As for factor 7— past election of minority group members— four minority candidates had been elected for county wide positions. Minority candidates had also seen success outside of MMDs. However, only two minority candidates referenced were selected outside of an MMD. For factor 8 — responsiveness to minority needs— the county has made significant efforts to address the minority community's health issues. They constructed medical facilities, imposed moratoriums, and had health and environmental initiatives. Factor 9— spoliations— relied on plaintiffs had to prove negligence to preserve relevant evidence of the redistricting process, which was not satisfied. However, the plaintiff's requesting maximization of MMDs was not required by the constitution, but the VRA required it in light of the facts.

In conclusion held:

> Plaintiffs have satisfied the three Gingles preconditions, and that the totality of the circumstances—in particular the persistent presence of racial bloc voting, the continued low levels of minority-preferred candidate success, the lingering effects of past discrimination that continue to inhibit minority participation in the electoral process, and the questionable manner in which the county conducted its redistricting process—demonstrate that Local Law C dilutes the voting strength of black voters in the county. (Pope v County of Albany, 94 F Supp 3d 302, 351 [NDNY 2015])

Flores v Town of Islip, 382 F Supp 3d 197 (E.D.N.Y. 2019)

Held: Plaintiffs not entitled to injunction of elections in six months to be held under an at-large system to elect for the Islip town council because plaintiffs are not likely to show that the system precluded Hispanics from equal participation in the electoral process.

In Flores, Hispanic residents brought suit under the VRA against the town, town board, and county board of elections, alleging Hispanics were deprived of any meaningful participation in the electoral process. Put another way, the at-large system utilized for electing councilmembers diluted the voting power of the Hispanic minority.

Islip had a population of 333,701, of which 34.5% is Hispanic., 33% were Salvadorian, 15% were Columbian, 15% were Ecuadorian, 15% were Peruvian, and 11% were Dominican. Islip is governed by 4 councilpersons, serving 4 years, and elections staggered by having two council perrons up to vote at a time. All council members were elected by voters, which was done by an at-large system. This system of voting was chosen by the town via referendum years prior. Put another way, because two people could be up for election at a time, you have the entire town voting on two seats, opposed to districts within the town voting for one seat of their own, respectively.

> The court held the first gingals' precondition was satisfied because of expert testimony establishing the Hispanic community was sufficiently large and geographically compact to be considered a majority in a single-member district. In specific, according to the traditional districting principles, the experts' testimony provided two demonstrative plans illustrating the geographic compactness of the Hispanic community. These plans also demonstrated it was feasible to construct plans in compliance with population equality, contiguity, and compactness while preserving political and geographic subdivisions according to the geographic districting principles. The first plan created had a total population deviation of 1.55%, The purpose of this plan was to preserve the census blocs, which are the smallest geographic unit delineated by the census bureau. Id. at 210. The second plan was based on the preservation of the election districts. This plan equated to only a 1.01% total population deviation.

- The court held precondition two was satisfied because expert testimony was able to illustrate political cohesion amongst the Hispanic community under a regression analysis and ecological inference. A regression analysis, also known as bivariate regression analysis, is derived from a best-fit line, which illustrates the correlation — how closely tied — between elections, racial makeup and votes cast. An ecological inference is derived from drawing educated conclusions from statistical data gathered on an individual in the aggregate. It may be obvious but still important to note, because inference is determined based on statistical

research; such inference is a lot more reliable than mere conjecture.[1] Looking at the seven previous elections, the court found a regression analysis of 52.7% to 77.7% and an ecological inference of 53.9% to 88.8% amongst the Hispanic community. For the previous eight federal elections, the Hispanic candidate of choice "received between 64.1% and 78.6% of the Latino vote using regression analysis and 68.5% and 90.7% using ecological inference." Id. at 213. Accordingly, the court held finding satisfied political cohesion.

- The court held precondition three was satisfied by white bloc voting, usually defeating minority preferred candidate. Again, the court relied on expert testimony, which analyzed the prior 14 elections. In 12 of the previous elections, between 51.2% and 65.6% of white voters did not vote for Hispanic preferred candidates under a regression analysis. Under an ecological inference analysis, 50.1% and 66.0% of white voters did not vote for the minority preferred candidate. Expert testimony also examined crossover voting, which is the number of white voters who voted for a Hispanic candidate in this context. Accordingly, a crossover voting examination provided a range "from 23.8% to 35.9% using regression analysis and 25.0% to 36.5% using ecological inference" for white voters who voted for minority preferred candidates. Id. at 214. Expert testimony also examined voting results at the federal, state and, county levels. In conclusion, the court held the white voting bloc usually defeated minority preferred candidates. Thus, precondition three was satisfied.

Next was the totality of circumstance analysis, also known as the Senate report factors. Here, the court acknowledges Flores is one of the unique cases where all three preconditions were satisfied, but the totality of the circumstances was not. Id. at 234.

- For the first factor, history of discrimination, plaintiffs had to prove town historically restricted Hispanic access to the political process. Despite expert testimony acknowledging numerous requests for voter identification and voter intimidation-like conduct via phone calls, the court emphasized that no witness testified Latinos were prevented from voting. Thus, this factor favored the defendants.

- The second factor considers the extent of racially polarized voting. The court held this factor also in favor of the defendants. The court rationalized according to the federal election results, which focused on the likelihood of a democratic candidate ocbeing elected. In this light, white crossover voting equated to 40% or above on

[1] *Timothy Reagan, Fed. Judicial Ctr., Redistricting Litigation: An Overview of Legal, Statistical, and Case-Management Issues 53 (2002).* In the context of a VRA case, it produces estimates of voting patterns by race by analyzing the bounds of the data to produce maximum likelihood statistics Flores v. Town of Islip, 382 F. Supp. 3d 197, 213 (E.D.N.Y. 2019)

all levels. This showed a majority of white voters supported democratic candidates 23% of the time. As for the town election board, increasing Hispanic voters by a 10% yield resulted in a decrease in votes for Gonzalez, Where increasing democratic voters by a 10% yield increased votes for Gonzalez. Thus, the court held that the Hispanic population had no predictive voting power and factor two favored the defendants.

- Factor three the use of voting practices that enhance discrimination. This factor examines the use of unusually large voting districts to discriminate against minority voters. The plaintiffs relied on evidence that Gonzales and Ortiz found their districts difficult in terms of campaigning. The court points to numerous districts that are larger in Suffolk County than Islip. The court acknowledges the practice that could be discriminatory here is the staggered elections. The court held the plaintiffs didn't produce any evidence concerning the discriminatory effects of the staggered election, and therefore this factor favored the defendants,

- The fourth factor concerns whether members of the minority group were slated from the political process. Analogizing and distinguishing from Goosby, the court found here no attempt from the hispanize republicans to get on the ballot and, therefore, couldn't equate to denying Hispanic hopefuls. Furthermore, the democratic party had selected Hispanic candidates to run. In consequence, no evidence was introduced denying plaintiffs ballot access for any exogeneous election. Thus, this factor was held in favor of the defendants.

- The fifth factor looks at the members of the minority group bears the effect of discrimination in such areas as education, employment, and health. Expert testimony had acknowledged disparities exist: Hispanics are less likely "to be citizens, speak English, go to college, own a home, and work in a professional or managerial capacity. Hispanics also have a lower median household income." Id. at 239. Harping on the language barrier, 40% of whites are more likely to communicate in English comprehensively. In regard to socioeconomic factors, Hispanics earned 6.87% less than the median income of the town. And, 10.5% of Hispanic population was below the poverty level. The court notes the aforementioned statistic is only 3% higher than the national rate. As a result, the court held the mild socioeconomic difference did not impair Hispanics' participation in the political process.

- The sixth factor examines the overt or subtle racial appeals during political campaigns, The court looked at the evidence from a campaign using the slogan "He's one of us." However, the plaintiffs offered no reason this was racial other than a gut feeling. There was also a video of a campaign statement made about Ganzlez providing: "He lives in Central **Islip**. He's not from here. He doesn't understand what our concerns are in this part of the town." The court refrained

from drawing conclusions due to lack of context. As for written materials, there mail that "was not intended solely for white residents of Islip, but rather all of Suffolk County," depicting a Latino with the gang affiliated MS tattooed on his forehead. However, the court held that it could not conclude MS-13 affiliation without more evidence looking to convey racial stereotypes in Suffolk county's Hispanic community. The court further reasoned illegal immigration and gang violence are legitimate concerns to race appeal with only minor changes. Thus, given flyer was addressing reasonable circumstances, the material cannot reasonably be perceived as discriminatory. As for rhetoric against the immigrant community, this was hearsay evidence and had no indication it was connected to the election. This factor was also in favor of the defendants.

- The seventh factor considers if there is a significant lack of responsiveness on the part of elected officials to particularized needs of the minority community. The courts provided it challenging to decipher what policy steps can be considered as responses to the minority community. The court observed resources invested predominantly in Hispanic areas of the town. These investments included a renovated pool within the town park, a refurbished walking path within the town park, and refurbished playgrounds and basketball courts with floodlights. The plaintiffs evidenced maintenance concerns over snow removal and street paving in minority areas compared to other town areas. Furthermore, two unelected town officials plead guilty to criminal charges for their involvement in dumping 40,000 tons of toxic debris in Roberto Clemente Park years prior. However, here, the court determined there was no evidence that the dumping was connected to discrimination. Furthermore, the court acknowledged that Spanish interpretation and translation services could have been improved, but these deficiencies are not so severe as to outweigh the wide-ranging efforts the town has made improving Hispanic areas of the town. The efforts included the foregoing and 6 million bond to clean Roberto Clemente Park, which two unelected town officials were involved in. Thus, factor seven was also in favor of the defendants.

- The last factor considered was whether the underly state or political subdivision's procedures regarding voting tenuous. In other words, if the voting practices were used produced discriminatory results. The plaintiffs relied on demonstrating tenuous by utilizing political corruption and that there was no dedicated individual represents the Hispanic minority community. Regarding corruption, the court pointed out 65% of all cities and towns in the country use the same system — at large elections. The town also had a referendum where 45% of the Hispanic community voted in favor of it. The plaintiffs argue salaried in support of political corruption. However, the court directs its attention to a contested vote regarding

the appointment of politically connected individuals.[2] As for a dedicated member to the Hispanic community, the court held this was a contradiction because both parties noted that there were benefits and drawbacks of the at-large system. They also point to instances of dialogue between the Town Board and Hispanic community , as well as the town's commitment to improving the lives of residents. Thus, this factor was also in favor of the defendants.

In conclusion, the court held that "After conducting a systematic and exhaustive analysis, as required by the VRA, the Plaintiffs have not shown that, under the totality of circumstances, that they are substantially likely to succeed in their claim that the at-large election system for electing members of the Town Board precludes Hispanics from equal participation in the electoral process." Id. at 245

[2] "Plaintiffs point to the Town Board's salaries and alleged cronyism in support of their political corruption argument. In 2018, the Town Board voted to replace certain members of the CDA board with board members who purportedly supported the appointment of a politically connected individual to the Executive Director's position. However, this vote was highly contested, with two of the five board members voting against it. There is no indication that this vote is connected in any way to the at-large system. Without further incidents of potential political corruption, the court is unable to conclude that a handful of isolated incidents indicate any pervasive corruption, let alone corruption connected to the at-large system." — 382 F.Supp.3d 197, 244-45

NAACP v E. Ramapo Cent. Sch. Dist., 462 F Supp 3d 368 (S.D.N.Y. 2020)

Held: The at-large system to elect East Ramapo's nine school board members violated Section 2 of the Voting Rights Act because it resulted in vote dilution for Black and Latino resident.

Here, a VRA violation occurred when Black and Latino residents suffered voting dilution by having less opportunity than other electorate members to participate in the political process for their particular school election, under East Ramapo's at-large system.

In a preconditions context, the Black and Latino voter population was sufficiently large and geographically compact to constitute a majority, the voters were sufficiently cohesive, and the white majority voted sufficiently as a bloc to usually defeat the minority.

The case revolved around two minority registered voters running for the school board. Both allegedly lost by approximately 5,000 votes. The population was approximately 65.7% white, 19.1% black, 10.7% Latino, and 3.3% Asian. 65%. The white residents equate to 80% and live in 95 % or more white districts. However, of the minority residents, 55%, which includes three towns, live in district groups of 83.6% and 98.3% minorities. The public school district was only 95% black and latino, while private schools were mostly 98% white. There were nine board members. The elections were independent of local, state, and federal elections, with a staggered three-year election scheme. The plaintiffs satisfied all three precondition factors expert witness testimony and scientific publications of community data.

Second, the plaintiffs satisfied the totality of the circumstances analysis by examining the senate factors. Rationalizing, the court found senate factor one — the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process— was not satisfied.

- However, senate factor two —the extent to which voting in the elections of the state or political subdivision is racially polarized— the plaintiffs made a strong showing that racially polarizing voting controlled the election outcome. The court discussed the consequences of such results. For example, if the white community votes down the budget stemming from a tax increase, minority children lose access to services. Furthermore, given circumstances, public school cuts already exclusively affected black and Latino children, where private school services, which were not tethered to such New York State mandates that exclusively benefited whites. The court held race and policy could not be isolated in a community where public schools are almost only black and Latino (92%), and private schools are pretty much all white with (98%.). As a result, the court found senate factor two was satisfied because one could not disentangle race from school affiliation and the convince in

neglecting the children negatively affected by their votes. Indeed, as the court put it, “To the extent it is fair to infer that parents who send their children to private **schools** (and other like-minded individuals) want lower taxes, and parents who send their children to public **schools** (and other like-minded individuals) want more spending on public education.”

- As for senate factor 3— examining “ the extent to which the State or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election **districts**, majority vote requirements, and prohibitions against bullet voting…[and] Where members of a racial minority group vote as a cohesive unit, . . . at-large electoral systems can reduce or nullify minority voters' ability, as a group, to elect the candidate of their choice."— the court found it in favor of the plaintiffs. The court reasoned that the district used only thirteen polling places, yet state and federal elections had twenty-four. Voting material was only English neglecting the language minority, given 37% of students were English learners, and 56% were Latino. The school also implemented procurers like staggered off-cycle elections with numbered posts, diluting the minority vote.

- Senate factor 4 calls the court to consider “if there is a candidate slating process, whether the members of the minority group have been denied access to that process.[and] system that provides only a theoretical avenue for minority candidates to get their names on the ballot while for all practical purposes making it extremely difficult for such candidates to have a meaningful opportunity to participate contribute[s] to a violation of [the VRA]". Therefore, the court considers if minorities can get on the ballot and if they have substantial input in the slating process. The court held this factor in favor of the plaintiffs as well. The court reasoned that the public school process is open to the community, unlike private schools. There was no special access needed, and anyone could participate. Minority communities were virtually locked out of a winning slate because they represent the numeric minority and can never overcome the more powerful slate.

- Senate factor 5 looks to “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." Also, senate factor 5 places the burden on the defendants to prove no casual nexus between socioeconomic status and political participation where the minority group had suffered from prior discrimination and the level of minority participation in politics was depressed. Hinging on the senate factor 4 — minority participation in the political process— this factor also weighed in favor of the plaintiffs.

- Senate factor 6 found “the use of overt or subtle racial appeals in political campaigns” for the defendants because of a lack of evidence.

- Factor 7 looks to "the extent to which members of the minority group have been elected to public office in the jurisdiction." Minority candidates had one 7/32 elections. Out of 32 elections, there were only 18 minority candidates. Only three minority candidates won. The court held the defendant's argument was meritless and hinted that even the three wins could have been arranged. Senate factor 7 was in favor of the plaintiffs.

- The court considered the additional factors: 8) "evidence demonstrating that elected officials are unresponsive to the particularized needs of the members of the minority group" and 9) "whether the policy underlying the political subdivision's use of the contested practice or procedure is tenuous." Accordingly, senate factor 8 was in favor of the plaintiffs because the defendants never produced any evidence. Instead, providing proof for improvements in education and state oversight. Senate factor 9 was satisfied, holding that the defendants excused that such large elections were required to comply with the VRA were insufficient.

Thus, voting dilution was proven all three preconditions factors were satisfied and the totality of the circumstances weighed in the plaintiffs' favor.