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The Case Against Allowing Multiracial Coalitions to File Section 2 Dilution Claims

Sebastian Geraci†

Race and politics are intertwined in American society. In the past, white voters openly prevented minorities from participating in the electoral process.1 Although blatant racially motivated interference is less frequent today, the rhetoric of race still exists in American politics. Racial bloc voting,2 and the debates over California’s Proposition 1873 and affirmative action4 are examples of race and politics converging.

Recently, multiracial coalitions have begun to demand that the judiciary consider them to be a single group under the Voting Rights Act of 1965 (“VRA”).5 This demand has given rise to the

† B.S. 1993, University of Pennsylvania; J.D. Candidate 1996, University of Chicago.
1 See Shaw v Reno, 113 S Ct 2816, 2822-23 (1993)(describing past practices of racial discrimination in elections).
2 Michael Lind, The Southern Coup: The South, the GOP and America, New Republic 20, 22 (June 19, 1995)(describing the racial reasons behind recent political trends); About the Gender Gap, Wash Times, A14 (August 30, 1995)(asserting that race, not gender, is the driving force in recent election trends); Jeffrey R. Henig, Race and Voting, 28 Urban Affairs Q 544, 545 (1993)(noting that people tend to vote for candidates who share the voter’s ethnic background); Bryan O. Jackson, The Effects of Racial Group Consciousness on Political Mobilization in American Cities, 1092 W Political Q 631, 632 (March-December 1987)(noting that African-Americans have higher participation rates in the electoral process including campaign activity, voting, cooperative activity, etc.).
3 Charles Lee and Lester Sloan, It’s Our Turn Now, Newsweek 57 (Nov 21, 1994)(describing racial tensions between African-American and Hispanic-American voters in California).
5 See Concerned Citizens of Hardee v Hardee County Bd of Commissioners, 906 F2d 524, 526 (11th Cir 1990)(ruling against a multiracial coalition because the coalition was not politically cohesive); Meek v Metro Dade County, 908 F2d 1540, 1545-46 (11th Cir 1990)(holding that Dade county’s at-large system of voting impermissibly dilutes the voting strength of a coalition of African-American and Hispanic-American voters); League of United Latin American Citizens, Council 4386 v Midland Independent School District, 812 F2d 1494 (5th Cir 1987)("LULAC I") (recognizing a coalition of African-American and
question of whether Section 2 of the VRA ("Section 2") extends to a coalition of racial or language minorities.

This Comment argues that courts should not recognize coalitions of racial or language minorities as plaintiffs with a cognizable claim under Section 2. Part I explains that the legislative history of the VRA suggests that multiracial coalitions are not permissible. Part II notes a split among the courts as to whether Section 2 should recognize multiracial coalitions. Part III discusses three problems with allowing multiracial coalitions to have standing under Section 2.

I. CONGRESS OPPOSED MULTIRACIAL COALITIONS IN PASSING THE VRA.

After the Civil War, the states ratified the Fourteenth and Fifteenth Amendments to the Constitution to ensure that newly freed slaves could not be excluded from the political process. Unfortunately, the Amendments failed to end voting discrimination. Certain white citizens continued to exclude minorities, especially African-Americans, from the political process through racial gerrymandering, poll taxes, and literacy tests. Although no one could actually deny African-Americans the right to vote, these policies diluted their vote and virtually eliminated them as a Hispanic-American voters as a single entity under the VRA); League of United Latin American Citizens, 914 F2d 620 (5th Cir 1990) ("LULAC II") (failing to reach the issue of multiracial coalitions due to finding that judicial election in question was not protected by relevant amendments to the VRA); League of United Latin American Citizens v Clements, 986 F2d 728 (5th Cir 1993) ("LULAC III") (upholding coalition's Section 2 claim without discussing the issue of multiracial coalitions); League of United Latin American Citizens, Council No. 4434 v Clements, 999 F2d 831 (5th Cir 1993), cert denied 114 S Ct 878 (1994) ("LULAC IV") (failing to reach the issue of whether multiracial coalition is permissible because of finding that state's interest outweighed harm caused by vote dilution); Campos v City of Baytown, Texas, 840 F2d 1240 (5th Cir 1988) (holding that Baytown's at-large voting system impermissibly diluted the voting strength of a coalition of African-American and Hispanic-American voters); Overton v City of Austin, 871 F2d 529 (5th Cir 1989) (holding that Austin's at-large system of voting did not violate the Section 2 rights of a coalition of African-Americans and Hispanic-Americans); Brewer v Ham, 876 F2d 448 (5th Cir 1989) (upholding Killeen, Texas's at-large voting system over the objections of a coalition of African-, Hispanic-, and Asian-American voters); Williams v City of Dallas, 734 F Supp 1317 (N D Tex 1990) (holding that Dallas's single-member district system impermissibly dilutes the voting power of a coalition of African-American and Hispanic-American voters). See also the Voting Rights Act of 1965, 42 USC § 1973 (1988) (attempting to end discrimination in elections).

* Congress and the Nation 1596, 1607 (Congressional Service Quarterly, Vol I 1945-1964) (describing the political reasons behind the Amendments); Shaw v Reno, 113 S Ct 2516, 2522-23 (1993).

7 Congress and the Nation at 1607 (cited in note 6); Shaw, 113 S Ct at 2822-23.
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political force in the deep South.\textsuperscript{8} Racial gerrymandering frequently scattered minorities among several districts or packed them into one district.\textsuperscript{9}

In 1965, Congress passed the Voting Rights Act to prevent state governments from denying or diluting the voting power of racial or language minorities.\textsuperscript{10} The law was contentious and resulted in frequent litigation. Fifteen years later, in \textit{City of Mobile v Bolden},\textsuperscript{11} the Supreme Court construed the VRA to require that plaintiffs bringing suit had to prove that the discrimination they suffered was intentional.\textsuperscript{12}

Congress rejected the \textit{Bolden} intent element in the 1982 amendments to the VRA, which allowed plaintiffs to bring Section 2 claims without showing discriminatory intent.\textsuperscript{13} Congress made it "clear that a violation [of the VRA can] be proved by showing discriminatory effect alone . . . ."\textsuperscript{14} As amended, Section 2 prohibits excluding any citizen from voting because of membership in a racial or language minority.\textsuperscript{15} The VRA prohibits restrictions that effectively prevent a protected class from having an equal opportunity to elect its chosen representatives.\textsuperscript{16}

In a legislative compromise, Congress replaced the \textit{Bolden} "intent" test with a vague multifactor test. The factors listed were: (1) the extent of any history of official voting discrimination; (2) the existence of racially polarized voting; (3) election practices that enhance the opportunity for discrimination against the minority group; (4) denial of access to minority groups in the candidate slating process; (5) the extent to which minority groups bear the effects of discrimination in such areas as education and employment which hinder their ability to participate in politics; (6) racial campaign appeals; and (7) the electoral success of minorities. Additional factors that may have probative value include the responsiveness of elected officials to the members of the mi-

\begin{itemize}
\item \textsuperscript{8} Shaw, 113 S Ct at 2822-23.
\item \textsuperscript{9} Id.
\item \textsuperscript{10} Voting Rights Act Extension, S Rep No 97-417, 97th Cong, 2d Sess 4-5 (1982), reprinted in 1982 USCCAN 177, 206-07.
\item \textsuperscript{11} \textit{City of Mobile v Bolden}, 446 US 55 (1980)(superseded by statute)(holding that Mobile, Alabama's at-large voting system was valid because there was no discriminatory intent).
\item \textsuperscript{12} Id.
\item \textsuperscript{13} S Rep No 97-417 at 28 (cited in note 10).
\item \textsuperscript{14} \textit{Thornburg v Gingles}, 478 US 30, 35 (1986).
\item \textsuperscript{15} 42 USC § 1973b(f)(1) (1988).
\item \textsuperscript{16} Id.
\end{itemize}
minority group and whether voting qualifications are racially motivated. There is no formula for weighing the factors, no single factor is decisive, and the factors themselves are ambiguous.

A close analysis of the VRA’s language and legislative history shows that Congress intended to bar aggregation of minority groups. Although the VRA originally protected only African-American voters, Congress amended it to include “persons of Spanish heritage; all American Indians; Asian Americans including Chinese, Japanese, Korean and Filipino Americans; and Alaskan natives.” The express listing of separate minority groups is significant. The fact that Congress could have included language such as “all minority groups with a history of discrimination,” but instead decided to name specific minority groups is evidence that it viewed each group as distinct and wanted each minority group to be considered separately.

The VRA also provides that when a court is deciding whether to allow a dilution suit, “the extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered.” When Congress listed the classes that were protected by this provision, it included the different minority groups listed above. If Congress had intended to allow coalitions, Section 2 could have read “protected class or classes.” As other commentators have noted, “the fact that both groups are protected does not justify the assumption that a new group composed of both minorities is itself a protected minority.”

Furthermore, the legislative history of the VRA does not support aggregation. The VRA’s purpose was to eliminate barriers to political participation by certain minority groups and to prevent their reoccurrence in another form: “the purpose of the Act is to redress racial or ethnic discrimination which manifests

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17 S Rep No 97-417 at 28-29.
18 Id.
20 “That each of these groups was separately identified indicates that Congress considered members of each group and the group itself to possess homogeneous characteristics.” LULAC IV, 999 F2d at 894.
22 LULAC IV, 999 F2d at 894 (Jones concurring), citing 42 USC § 1973b(f)(1).
itself in voting patterns or electoral structures." The VRA was not designed to cater to interest-group politics. The VRA was intended to end discrimination, not to give coalitions power, even coalitions of distinct protected minority groups. The "Purpose" section of the House Report on the 1982 Amendments specifically states that those amendments were intended to "prohibit any voting qualification, prerequisites, standard, practice, or procedure which results in discrimination." The Senate Reports for both the 1982 amendments and the 1975 amendments includes similar language. The House Report on the 1982 Amendments further states that "Congress expanded the coverage of the [Voting Rights] Act [in 1975] to protect citizens from effective disenfranchisement," and that the original purpose of the 1965 Act was to remove barriers minorities faced in accessing the political system.

The VRA's express purpose has always been to end discrimination and disenfranchisement, not to increase minority representation. Allowing aggregation would simply increase minority political power even where no minority group has been disenfranchised. While the House Report on the 1982 amendments suggests that low minority representation may be evidence of discrimination, the "Purpose" of those amendments leaves no doubt that they were intended only to remove barriers to minority political participation and not actively to promote interest-group politics.

II. COURTS ARE SPLIT OVER THE ISSUE OF MULTIRACIAL COALITIONS

The United States Supreme Court has established some bright-line rules regarding when a minority group can bring a Section 2 dilution claim. It has not ruled on whether multiracial coalitions can be counted as a "group." Lower courts have split over whether to allow multiracial coalitions.

25 LULAC I, 812 F2d 1494, 1504 (5th Cir 1987)(Higginbotham dissenting).
26 Id.
30 Id at 6.
31 Id at 4.
32 Id at 8-11.
A. Deference by the Supreme Court

Lower courts received no guidance from the Supreme Court in applying the multifactored test created by the 1982 Amendments to the VRA until Thornburg v Gingles. In Gingles, the Supreme Court formulated a three-prong threshold test that a Section 2 plaintiff must meet before a court will apply the multifactored test. In order to pass the threshold, the minority group must demonstrate that: (1) it is sufficiently large and geographically compact to constitute a majority in a single-member district, (2) it is politically cohesive, and (3) the white majority votes sufficiently as a bloc such that it usually defeats the minority's preferred candidate.34 The Gingles court did not, however, address the question of whether multiracial coalitions should be allowed to bring a claim under the VRA.

In Growe v Emison, a unanimous Supreme Court refused to decide whether minority groups can be aggregated for purposes of satisfying the Gingles' requirements. In Growe, a group of Minnesota voters challenged the state's decennial reapportionment of congressional and legislative districts alleging that the reapportionment plan violated the state and federal constitutions.35 Two months later, a second group of plaintiffs brought a suit alleging violations of Section 2 of the VRA.37 After the state made technical changes, such as inaccurate street names and compass directions, to the original reapportionment plan, the first group dropped its case.38 The district court, however, determined that these actions did not adequately redress the grievances of the second group of plaintiffs, and rejected the legislature's amended reapportionment plan.39 Instead, the court adopted a plan that created an oddly shaped majority-minority district that was 43 percent African-American and 60 percent nonwhite.40 The legality of this district was the issue on appeal to the Su-

34 Id at 50-51.
36 Id at 1077-78.
37 Id at 1078.
38 Id.
39 Growe, 113 S Ct at 1083.
40 Id.
preme Court. The Court overturned the district court's ruling because whether a compact district could be created was "dubious" and because the plaintiffs were not politically cohesive.

The Growe Court required a heightened standard for the second of the Gingles showings, political cohesiveness.

Assuming (without deciding) that it [is] possible for the District Court to combine distinct ethnic and language minority groups for purposes of assessing compliance with section 2, when dilution of the power of such an agglomerated political bloc is the basis for an alleged violation, proof of minority political cohesion is all the more essential.

As with all Section 2 dilution claims, the plaintiff carries the burden to demonstrate this cohesiveness statistically. The Court held that the plaintiffs failed to meet their burden and thus refused to rule on the issue of multiracial coalitions. While it remains unclear whether the VRA permits Section 2 dilution claims by multiracial coalitions, the Supreme Court has insisted that if such coalitions are allowed, they must still satisfy the Gingles prerequisites.

B. Split in the Lower Courts

Following Growe, some lower courts have allowed minority groups to aggregate for a Section 2 VRA claim; the Fifth Circuit has been the most active in this area. In contrast, several oth-

\[\text{\textsuperscript{41} Id at 1085.} \]
\[\text{\textsuperscript{42} Id.} \]
\[\text{\textsuperscript{43} Growe, 113 S Ct at 1085.} \]
\[\text{\textsuperscript{44} "[A] court may not presume bloc voting within even a single minority group." Id.} \]
\[\text{\textsuperscript{45} Id.} \]
\[\text{\textsuperscript{46} See LULAC IV, 999 F2d 831 (5th Cir 1993), cert denied 114 S Ct 878 (1994); Overton v City of Austin, 871 F2d 529 (5th Cir 1989)(holding that Austin's at-large system of voting did not violate the Section 2 rights of a coalition of African-, Hispanic-, and Asian-American voters); Brewer v Ham, 876 F2d 448 (5th Cir 1989)(upholding Killeen, Texas's at-large voting system over the objections of a coalition of African-, Hispanic-, and Asian-American voters); Campos v City of Baytown, Texas, 840 F2d 1240 (5th Cir 1988)(holding that Baytown's at-large voting system impermissibly diluted the voting strength of a coalition of African-American and Hispanic-American voters); LULAC I, 812 F2d 1494 (5th Cir 1987); Williams, 794 F Supp 1317 (N D Tex 1990).} \]
er circuits have avoided ruling on this issue by deciding these cases on alternate grounds.

The leading pro-aggregation case, *League of United Latin American Citizens v Clements* ("LULAC I") allowed the aggregation of an African-American group and a Hispanic-American group in west Texas. In that case, the plaintiffs alleged that the use of an at-large voting system effectively diluted their votes in local school board elections. The Fifth Circuit upheld the district court's ruling and aggregated the two groups, despite a University of Texas survey which demonstrated that the minority groups had dissimilar attitudes on key local issues, significantly different views on a variety of political issues, and, ultimately, "mutually exclusive interests." In ruling that the coalition passed the cohesiveness test, the *LULAC I* court adopted the lower court's findings that the two groups "shared common experiences in past discriminatory practices . . . [and] have political goals that are inseparable." The Fifth Circuit ruled that the fact that "[African-Americans and Hispanic-Americans] worked together and formed coalitions when their goals were compatible," satisfied the "politically cohesive" prong of the *Gingles* test.

Judge Patrick E. Higginbotham wrote a forceful dissent in *LULAC I*. He pointed out that the district court's only justification for aggregation was its finding that denying aggregation would be "inherently unjust" because the plaintiffs would lose. Judge Higginbotham also criticized the majority for their finding that minorities are inherently cohesive due to their joint history of discrimination. Furthermore, he attacked the majority's decision to ignore the University of Texas survey.

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47 Angelo N. Ancheta and Kathryn K. Imahara, *Multi-Ethnic Voting Rights: Redefining Vote Dilution in Communities of Color*, 27 USF L Rev 815, 842-43 (1993). The courts declined to rule on this issue because they found that the multiracial coalition was not a cohesive group and so could not pass the *Gingles* test even if aggregation were allowed.

48 *LULAC I*, 812 F2d at 1494.

49 Id.

50 Id at 1501.

51 Id at 1500.

52 *LULAC I*, 812 F2d at 1501.

53 Id at 1503-09 (Higginbotham dissenting).

54 Id at 1505.

55 Id at 1506.

56 *LULAC I*, 812 F2d at 1506 (Higginbotham dissenting). Judge Higginbotham wrote: "[T]he district [court's finding] . . . that voter attitudes were not relevant to how people vote [is] a rather startling proposition." Id.
Nevertheless, other Fifth Circuit cases have also acknowledged the possibility of aggregating minorities for Section 2 dilution claims. In *Campos v City of Baytown*, the court explicitly justified its aggregation theory by noting that nothing in the law prohibited aggregation and that African- and Hispanic-Americans have faced a common history of discrimination. The Fifth Circuit again accepted aggregation of distinct minority groups in *League of United Latin American Citizens v Midland Independent School Board* ("LULAC IV") without any further justification.

The Eleventh Circuit has also expressly allowed coalitions, but has offered no justification for aggregation except to note that it has been allowed in the Fifth Circuit. In *Concerned Citizens of Hardee v Hardee Board of Commissioners*, the court stated that "two minority groups may be a single section 2 minority if they can establish that they behave in a politically cohesive manner." However, the Eleventh Circuit’s only support for this conclusion was a citation to *Campos* and *LULAC I*. At least one subsequent Eleventh Circuit case has cited *Hardee* to justify aggregation of distinct minority groups without articulating a new rationale.

Although the Ninth Circuit has confronted aggregation claims, it has not yet decided the issue. In *Romero v City of Pomona*, the court refused to decide whether aggregation was acceptable. It never reached the issue, deciding instead that the potential coalition failed both the first and second prongs of the Gingles test. Similarly, in *Badillo v City of Stockton*, the court did not reach the issue of aggregation because it found that the coalition was not cohesive.

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57 *Campos*, 840 F2d at 1240; Overton, 871 F2d at 529; Brewer, 876 F2d at 448; LULAC IV, 999 F2d at 831; Williams, 734 F Supp at 1317.
58 *Campos*, 840 F2d at 1240.
59 LULAC IV, 999 F2d at 864.
60 *Concerned Citizens of Hardee v Hardee County Bd of Commissioners*, 906 F2d 524, 526 (11th Cir 1990); *Meek v Metro Dade County*, 908 F2d 1540, 1545-46 (11th Cir 1990).
61 *Hardee*, 906 F2d at 526, citing *Campos*, 840 F2d at 1244, and *LULAC I*, 812 F2d at 1500-02.
62 *Hardee*, 906 F2d at 524.
63 Id at 526, citing *Campos*, 840 F2d at 1244; *LULAC I*, 812 F2d at 1500-02.
64 Id at 526, citing *Campos*, 840 F2d at 1244; *LULAC I*, 812 F2d at 1500-02.
65 *Meek*, 908 F2d at 1540.
66 *Romero v City of Pomona*, 883 F2d 1418 (9th Cir 1989).
67 Id at 890-91.
68 *Badillo v City of Stockton*, 956 F2d 884 (9th Cir 1992).
69 Id at 890-91.
Still there is some evidence that the Ninth Circuit may allow aggregation in some situations. The Ninth Circuit did not take issue with an amended complaint that added African-Americans to a dilution suit brought by Hispanic-Americans. Instead, the coalition's claim eventually failed because it lacked evidence of the coalition's inability to elect its chosen candidates.\(^7\)

The most eloquent opposition to aggregation is Judge Edith Jones' concurrence in *LULAC IV*.\(^7^1\) She argued that "Congress did not authorize the pursuit of Section 2 vote dilution claims by coalitions of distinct ethnic and language minorities."\(^7^2\) To do so would be an extension of the VRA that only Congress can authorize.\(^7^3\) Judge Jones further stated that the VRA's current language showed Congress did not intend Section 2 to cover coalitions.\(^7^4\) Additionally, coalitions hurt minorities by denying differences between distinct ethnic groups and by lumping them into one district where infighting would occur.\(^7^5\) Finally, aggregated multiracial coalitions would be difficult to administer because they would result in an explosion of lawsuits and force courts continually to redraw districts.\(^7^6\)

C. The Slippery Slope of Multiracial Coalitions

Allowing a coalition of distinct minority groups to bring a Section 2 dilution claim would be a radical departure from the VRA's purpose of ending racial discrimination. The VRA was intended to protect a group of racial and ethnic groups.\(^7^7\) However, a multiracial coalition, by definition, is not bound by a common ethnicity. Such coalitions are bound by common ideas, values, and political goals. The real purpose, therefore, in protecting a multiracial coalition, would be to protect ideas, not an historically oppressed racial minority.\(^7^8\)

Allowing multiracial coalitions to bring Section 2 dilution claims would be a significant step towards establishing a right to proportional representation, something the VRA specifically dis-

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\(^7^0\) *Valladolid v City of National City*, 976 F2d 1293, 1294, 1297-98 (9th Cir 1992).
\(^7^1\) *LULAC IV*, 999 F2d at 894 (Jones concurring).
\(^7^2\) Id.
\(^7^3\) Id.
\(^7^4\) Id.
\(^7^5\) Id.
\(^7^6\) Id.
\(^7^7\) Id.
\(^7^8\) Id.
\(^7^9\) HR Rep No 94-196, 94th Cong, 1st Sess 2-3 (1975)(cited in note 29).
avows. If each group in the coalition is facing barriers to its ability to vote, or is having its vote diluted, then each group can bring a separate VRA claim. If there is no active discrimination, the only justification for a dilution claim is that it would cause the state's Congressional delegation to reflect the coalition's race better. But this is nothing more than saying that the racial composition of the state's Congressional delegation should be closer to the state's racial make-up. Proportional representation, however, is a right expressly denied by the VRA. Therefore, the VRA must forbid multiracial coalitions from bringing dilution claims based only on a "right to proportional representation."

While the VRA, its amendments, and the accompanying reports do not explicitly disallow multiracial coalitions, Professor Joseph Bishop, in a letter to the Senate Judiciary committee included in the Senate report, expressed his belief that the VRA indirectly addresses this issue. Professor Bishop questions "if, for example, [African-Americans] are 20 per cent [sic] of the population of a state, [Hispanic-Americans] 15 per cent [sic], and Indians 2 per cent [sic], then at least 20 per cent [sic] of the members of the legislature must be [African-American], 15 per cent [sic] Hispanic-American, and 2 per cent [sic] Indian." The Senate Judiciary committee rejected this notion, calling it an attempt to impose proportional representation. It is probable, therefore, that the committee would also have rejected the notion that 37 percent of legislators must be from a coalition of distinct minority groups even if districts could be created to ensure this outcome. Allowing multiracial coalitions would, in effect, be saying that the legislature in Professor Bishop's hypothetical state would have to approximate the state's racial composition even if no single group could bring a dilution claim. It would allow coalitions of distinct minority groups to accomplish proportional representation indirectly despite the VRA's language barring them from doing this directly. Under the VRA, minority groups sometimes cannot claim even one representative because they do not

79 42 USC § 1973b.
80 Id. See also HR Rep No 97-227, 97th Cong, 1st Sess 2 (1981)(cited in note 27).
82 Id.
83 Id at 142, 146.
“constitute a majority in a single member district.”\textsuperscript{84} Permitting all local minorities to aggregate themselves artificially would allow each group to surmount this hurdle.\textsuperscript{85}

Moreover, protecting coalitions is similar to protecting political parties. A coalition is a group of people who share common ideas, values, and political goals and work together to elect mutually acceptable candidates, much like a political party.\textsuperscript{86} The courts, therefore, should treat these coalitions as political parties; such parties are not entitled to representation in the government, nor are they protected under the VRA.\textsuperscript{87} If courts accept multi-racial coalitions, should courts also count the number of white votes in the minority group? Those white cross-over voters likely have as much in common with the coalition's members as the coalition's members have in common with each other. At the very least, they share a common ideology. While the background of the white cross-over voters would be different from the backgrounds of the aggregation's minority members, the minority members would also have different backgrounds from each other. The only uniting force is a common set of beliefs. What is such a coalition, therefore, other than a political party? At what point should courts draw a line and refuse to allow new groups to join a coalition? Even if courts could come up with an acceptable answer, once courts head down this path, a flood of litigation will ensue as courts struggle over these very questions.

D. Coalitions Deny the Diversity of Minority Groups

Another problem with aggregation is that allowing coalitions assumes that all minority groups are homogeneous. This assumption is false. Every ethnic group has a unique history, religion, and culture. Although different groups, for different reasons, may reach the same conclusions on certain issues, that goes to the fact that they are distinct groups. “Considerable sociological literature also demonstrates ‘social distance’ between minority groups that seems inconsistent with widespread coalition minority political cohesion . . . . [S]tudies indicate that minorities in fact identify more closely with the dominant group than with other minorities.”\textsuperscript{88} Saying that minority groups are all alike demeans

\textsuperscript{84} Gingles, 478 US at 50.
\textsuperscript{85} LULAC IV, 999 F2d at 896 (Jones concurring).
\textsuperscript{86} In fact, this is the definition of a political party. See Webster's Dictionary of the English Language 733 (Lexicon Publications, 1989).
\textsuperscript{87} 42 USC § 1973b(f)(1).
\textsuperscript{88} LULAC IV, 999 F2d at 897-98 (Jones concurring). See also James Dyer, Arnold
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minorities and contradicts the findings of such social science literature.

A large national survey conducted semiannually reveals considerable political heterogeneity among America's ethnic minorities. For example, the survey tested attitudes towards the Republican party on a scale of 0-100 with 100 being the highest possible score and zero the lowest possible score. African-Americans gave Republicans a "45," indicating overall disapproval while Asian-Americans gave the Republican party a "69," indicating considerable approval. Almost three-quarters (74.3 percent) of African-American respondents disapproved of President Ronald Reagan's and President George Bush's handling of the economy while Southeast-Asians, Indians, and Afghans gave Reagan's and Bush's economic policies a disapproval rating of only 45.3, a considerable difference. The survey also asked respondents which of the following national issues was the most desirable to achieve: (1) maintaining order in the nation; (2) giving the people more say in important political decisions; (3) fighting rising prices; or (4) protecting freedom of speech. African-Americans felt that giving people more say in important political decisions was the most important national priority while Asian- and Hispanic-Americans felt that maintaining order was paramount. The survey also asked respondents which political party, if any, would do a better job in handling the nation's most important issues. While Hispanic- and African-Americans felt that the Democrats would do a better job, Asian-Americans felt that Republicans were preferable.

Most social-science data reflect this heterogeneity between minority groups. The LULAC I court noted one survey, performed by the University of Texas. That survey showed that African- and Hispanic-Americans in Midland, Texas have different and

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87 Id at 224.
88 Id (defining Asian-Americans as Americans of Chinese, Japanese, Korean, Southeast Asian, Indian, and/or Afghani descent).
89 Id at 9008.
90 Id at V9019.
91 Id.
92 Id at 9012.
93 Id at 9012.
94 Id (cited in note 89).
95 Id at 9012.
96 Id (cited in note 89).
97 LULAC I 812 F2d at 1501.
mutually exclusive interests. It demonstrated that voters in each distinct minority group would be more likely to vote for a candidate of their own race than any other candidate, including one from a different minority group.

The divergent attitudes of Hispanic- and African-Americans in Miami are also a testament to the heterogeneity of different ethnic minorities. Almost two-thirds of Miami’s residents are of Cuban descent and 27 percent are African-American. "There’s a rivalry and resentment between the two communities." As one African-American activist noted following the January, 1989 riots, "[e]verything was planned and targeted: protect black businesses and get the white man, the Hispanic and the Arab out of our community." The evidence supports this claim.

The hostility is partially caused by economics. Marvin Dunn, an African-American activist and psychologist, hypothesized that economic frustrations toward other races led to the Miami riots noted above. The unemployment rate in the African-American community is triple the rate among Hispanic-Americans. African- and Hispanic-American leaders encourage members of their communities to refrain from buying from businesses owned by members of other races, including other minorities. In 1990, a group of African-Americans commenced a boycott of some Miami businesses until they hired more young African-Americans.

These resentments run deep in Miami’s different communities. When Nelson Mandela visited Miami in 1990, five Dade County mayors, including Xavier Suarez of Miami, refused to meet him because Mr. Mandela refused to denounce the human-

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99 Id.
100 Id.
101 Id.
102 Id.
103 Miami Reflective as Calm Returns, Chi Trib 5 (Jan 20, 1989)(describing the Miami riots of 1989).
104 For example, an Associated Press reporter described seeing an unharmed African-American-owned open-air market a few feet next to a gutted Cuban-owned meat market. Id.
105 Id.
107 Id at 3.
108 Mike Clary, Police in Miami Brace For Violence, LA Times A16 (June 29, 1991)(describing racial tensions in Miami and a planned boycott).
rights policies of Fidel Castro." Black leaders were outraged and called the mayors' actions a shameful and disgraceful snub. They organized a boycott of Miami's convention and tourist businesses and held a press conference at which they released a videotape "comparing conditions in Miami to those of Selma, in the 1960s."

In California, the recent debate over Proposition 187 also helps demonstrate the heterogeneity of different races. An African-American voter was twice as likely to support the measure as an Hispanic-American voter. But the divisions in southern California run far deeper than any one issue. Ethnic struggles between Hispanic- and African-Americans are dividing Compton, California, a poor city located south of Watts in Los Angeles. Although Hispanic-Americans form a majority in Compton, no Hispanic-American has ever served on the city council, and only 14 of 127 city police officers are Hispanic-American. This last statistic became especially important recently when an African-American police officer was videotaped using excessive force while arresting an Hispanic-American suspect. Compton's African-American leaders have responded by noting the low voter turnout in Hispanic-American neighborhoods. "'African-Americans fought for the right to vote,' says Compton Mayor Omar Bradley. 'Is it [our] responsibility to elect Latinos?"

At the University of California at Berkeley, verbal hostilities recently broke out between Asian-, African-, and Hispanic-Americans over the issue of affirmative action. Asian-Americans were outraged by what they perceived as Berkeley's attempt to achieve proportional representation of all races by denying admission to Asian-Americans in favor of African- and Hispanic-Americans. Nevertheless, support for affirmative action re-
mains strong among many minority-group members. Similar disputes have broken out at Harvard University and the University of California at Los Angeles.

Los Angeles also has a long history of political fighting between minority groups. Following the race riots of 1965, Hispanic-Americans and conservative whites formed an alliance to counter the growing political power of African-Americans and white liberals. By 1973, however, Hispanic- and African-Americans had forged a political alliance sufficiently strong to overcome conservative white opposition and win the city's mayoral elections. But severe strains developed in the African-American/Hispanic-American alliance. During the first 12 years of the alliance, no Hispanic-American served on the city's council and, in 1982, a group of Hispanic-Americans filed a lawsuit challenging Los Angeles's redistricting plan. African-American/Hispanic-American relations became so strained that by 1992 a survey revealed that African-Americans in Los Angeles were more likely to feel "very close" or "fairly close" to whites than Hispanic-Americans.

When distinct minority groups' political successes increase, interminority conflicts often develop. Even within races, di-

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Precursors' Success, NY Times 16 (July 10, 1988)(describing Asian anger at Berkeley's affirmative action program).


Sonenschein, W Political Q at 341-42 (cited in note 123).

Id at 342-43; Hahn, W Political Q at 514 (cited in note 123).


Id at 347.


vergent attitudes resulting from different groups' experiences can divide races. For instance, Miami's Hispanic-Americans, who are mostly of Cuban descent, are overwhelmingly Republicans,\textsuperscript{130} while California's Hispanic-Americans, who are primarily of Mexican descent, are mostly Democrats.\textsuperscript{131}

This lack of homogeneity supports disallowing multiracial coalitions. These coalitions treat minorities as homogeneous and ignore their real differences. The Supreme Court stated in *Growe* that even if such coalitions were acceptable, a "higher-than-usual" burden is on multiracial coalitions to demonstrate their political cohesiveness.\textsuperscript{132} If the Court were to allow aggregation of different ethnic groups for Section 2 claims, the bulk of social-science data demonstrates that different ethnic groups would not be able to satisfy the normal *Gingles* political cohesiveness test, let alone the more stringent *Growe* test.

It should not be enough that some minority groups may form temporary alliances. To sue under Section 2, *Gingles* requires political cohesion within the group.\textsuperscript{133} Support for a candidate who is not the first choice of either group but who is a compromise candidate should not be taken as evidence of cohesion. In his *Gingles* opinion, Justice Brennan noted that "under Section 2 [of the VRA], it is the status of the candidate as the chosen representative of a particular racial group . . . that is important."\textsuperscript{134} Therefore, for a coalition's candidate to pass the *Gingles* test, the candidate would have to be the first choice of both groups. This may be true in some circumstances, but the more likely scenario is that both groups have their own candidates and the larger of the two groups would win in a run-off or primary election. The groups in that case are not really cohesive; they have merely

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\textsuperscript{132} *Growe*, 113 S Ct at 1085.

\textsuperscript{133} *Gingles*, 478 US at 51.

\textsuperscript{134} Id at 68 (emphasis in original).
formed a temporary political alliance that will end when the group's political agendas diverge or when another racial group offers one group an alliance on better terms.

Thus, even aggregations which appear on the surface to be politically cohesive should not be allowed to aggregate in a Section 2 claim. Although different ethnic groups have different cultures, values and political agendas, temporary alliances between groups may be possible to promote certain items. However, such alliances do not pass the Gingles test unless the coalition's candidate was the first choice of both groups. This is unlikely given the groups' differences. It is also questionable whether the cost of the extra litigation produced by expanding Section 2 to allow multiracial coalitions would be worth only an occasional plaintiff's victory.

Aggregations may also hurt minority groups by creating clashes between aggregated minority groups vying for control of the coalition's political agenda. Both minority groups will suffer as a result. The political infighting that would result from aggregating could destroy the fragile coalitions which have proven so crucial in the civil-rights struggle. For example, in Miami Hispanic-Americans of Cuban descent have largely become Republicans in what could be seen as a political alliance with whites against Miami's African-Americans. Thus, Miami, a city which is at most 8 percent white, continues to elect candidates favored by conservative whites for many state and federal positions.

CONCLUSION

Minority groups in America have long been discriminated against with respect to their right to vote. The VRA, as amended, was an important step towards ending that discrimination. Unfortunately, the VRA and subsequent Supreme Court cases have failed to answer the question of whether multiracial coalitions are equivalent to minority groups when alleging vote-dilution claims under Section 2 of the VRA. In lieu of express guidance from either the Supreme Court or Congress, the lower courts have come to conflicting results.

Multiracial aggregation should be rejected. To do otherwise

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135 Id.
137 Id at 1.
would not only contradict the purpose of the VRA, but would also demean minorities by treating them as fungible commodities. In addition, allowing aggregation under the auspices of the VRA might actually hurt the very people the VRA intended to protect, by spurring increased gerrymandering and infighting among minority groups. Refusing to recognize multiracial coalitions for vote-dilution claims would prevent these problems and would best serve the interests of the groups the VRA was designed to protect.