Still, the Court continued to afford Congress signficant discretion in alleviating racial discrimination, as more recent decisions read broadly Congress's power to make determinations that appear to define the substantive content of constitutional violations.[2140] For instance, acting under both the Fourteenth and Fifteenth Amendments, Congress has sought to reach state electoral practices that "result" in diluting the voting power of minorities. In these cases, however, the Court apparently requires that it be shown that electoral procedures were created or maintained with a discriminatory animus before they may be invalidated under the two Amendments.[2141]

As noted previously, the standard for review of expansion of constitutional rights in the context of racial and ethnic discrimination was established in *Morgan* as a deferential "rational basis" review. Where remdial legislation regarding suspect classes are not at issue, however, the Court seems to have taken a less deferential approach. In *City of Boerne v. Flores*,[2142] the Court held that the Religious Freedom Restoration Act,[2143] which expressly overturned the Court's narrowing of religious protections under *Employment Division v. Smith*,[2144] exceeded congressional power under § 5 of the Fourteenth Amendment. Although the Court allowed that Congress's power to legislate to deter or remedy constitutional violations may include prohibitions on conduct that is not itself unconstitutional, the Court also held that there must be "a congruence and proportionality" between the means adopted and the injury to be remedied.[2145] Unlike the pervasive suppression of the African-American vote in

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tive constitutional law what situations fall within the ambit of the clause, and what state interests are 'compelling.'" 400 U.S. at 296 (Justices Stewart and Blackmun and Chief Justice Burger). In their view, Congress did not have that power and *Morgan* did not confer it. But in voting to uphold the residency and absentee provision, the Justices concluded that "Congress could rationally conclude that the imposition of durational residency requirements unreasonably burdens and sanctions the privilege of taking up residence in another State" without reaching an independent determination of their own that the requirements did in fact have that effect. Id. at 286.

[2140] *See* discussion of City of Rome v. United States, 446 U.S. 156, 173–83 (1980), under the Fifteenth Amendment, *infra*. *See also* Fullilove v. Klutznick, 448 U.S. 448, 476–78 (1980) (plurality opinion by Chief Justice Burger), and id. at 500–02 (Justice Powell concurring).

[2141] The Voting Rights Act Amendments of 1982, Pub. L. 97–205, 96 Stat. 131, amending 42 U.S.C. § 1973, were designed to overturn City of Mobile v. Bolden, 446 U.S. 55 (1980). A substantial change of direction in Rogers v. Lodge, 458 U.S. 613 (1982), handed down coextensively with congressional enactment, seems to have brought Congress and the Court into essential alignment, thereby avoiding a possible constitutional conflict.

[2142] 521 U.S. 507 (1997).

[2143] Pub. L. 103–141, 107 Stat. 1488, 42 U.S.C. §§ 2000bb *et seq.*

[2144] 494 U.S. 872 (1990).

[2145] 521 U.S. at 533.