series of implementing statutes enacted by Congress,[1724] the administration of election statutes so as to treat white and black voters or candidates differently can constitute a denial of equal protection as well.[1725] Additionally, cases of gerrymandering of electoral districts and the creation or maintenance of electoral practices that dilute and weaken black and other minority voting strength is subject to Fourteenth and Fifteenth Amendment and statutory attack.[1726]

"Affirmative Action": Remedial Use of Racial Classifications

Of critical importance in equal protection litigation is the degree to which government is permitted to take race or another suspect classification into account when formulating and implementing a remedy to overcome the effects of past discrimination. Often the issue is framed in terms of "reverse discrimination," in that the governmental action deliberately favors members of one class and consequently may adversely affect nonmembers of that class.[1727] Although the Court had previously accepted the use of suspect criteria such as race to formulate remedies for specific instances of past discrimination [1728] and had allowed preferences for members of certain non-suspect classes that had been the object of societal discrimination,[1729] it was not until the late 1970s that the Court gave ple-

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[1724] *See* "Federal Remedial Legislation," *infra*.

[1725] *E.g.*, Hadnott v. Amos, 394 U.S. 358 (1971); Hunter v. Underwood, 471 U.S. 222 (1985) (disenfranchisement for crimes involving moral turpitude adopted for purpose of racial discrimination).

[1726] *E.g.*, Gomillion v. Lightfoot, 364 U.S. 339 (1960); United Jewish Orgs. v. Carey, 430 U.S. 144 (1977); Rogers v. Lodge, 458 U.S. 613 (1982).

[1727] While the emphasis is upon governmental action, private affirmative actions may implicate statutory bars to uses of race. *E.g.*, McDonald v. Santa Fe Trail Transp. Co., 427 U.S. 273 (1976), held, not in the context of an affirmative action program, that whites were as entitled as any group to protection of federal laws banning racial discrimination in employment. The Court emphasized that it was not passing at all on the permissibility of affirmative action programs. Id. at 280 n.8. In United Steelworkers v. Weber, 443 U.S. 193 (1979), the Court held that title VII did not prevent employers from instituting voluntary, race-conscious affirmative action plans. *Accord*, Johnson v. Transportation Agency, 480 U.S. 616 (1987). Nor does title VII prohibit a court from approving a consent decree providing broader relief than the court would be permitted to award. Local 93, Int'l Ass'n of Firefighters v. City of Cleveland, 478 U.S. 501 (1986). And, court-ordered relief pursuant to title VII may benefit persons not themselves the victims of discrimination. Local 28 of the Sheet Metal Workers' Int'l Ass'n v. EEOC, 478 U.S. 421 (1986).

[1728] *E.g.*, Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 22–25 (1971).

[1729] Programs to overcome past societal discriminations against women have been approved, Kahn v. Shevin, 416 U.S. 351 (1974); Schlesinger v. Ballard, 419 U.S. 498 (1975); Califano v. Webster, 430 U.S. 313 (1977), but gender classifications are not as suspect as racial ones. Preferential treatment for American Indians was approved, Morton v. Mancari, 417 U.S. 535 (1974), but on the basis that the classification was political rather than racial.