

22 *Explainer: Racial polarization in voting*

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To bring a Voting Rights Act (VRA) case on behalf of a minority group, plaintiffs must show that voting patterns are racially polarized, with the minority cohesively supporting one set of candidates while the majority has a different, and prevailing, preference—these are the 2nd and 3rd Gingles criteria. On the national scale, recent presidential elections provide a way to examine racially polarized voting in our country. The sidebar below explores this polarization in exit polls from the two most recent Presidential elections.

22.1 VOTING POLARIZATION TODAY

These sex-by-race figures on presidential support come from CNN exit polls. They show interesting patterns around the country. (In blank cells, the number of people polled from that group was judged to be too small to produce a reliable estimate.)

National	White women	White men	Black women	Black men	Latina women	Latino men	All other
Clinton '16	43	31	94	82	69	63	61
Trump '16	52	62	4	13	25	32	31
Biden '20	44	38	90	79	69	59	58
Trump '20	55	61	9	19	30	36	38

This shows that Trump improved his relative standing in nearly every group from 2016 to 2020, while losing the popular vote by a larger margin. This is possible because White voters were estimated at 67% of the 2020 electorate, down from 71% in 2016.

AL	White women	White men	Black women	Black men	Latina women	Latino men	All other
Biden '20	19	23	93	82	-	-	-
Trump '20	80	74	7	18	-	-	-

CA	White women	White men	Black women	Black men	Latina women	Latino men	All other
Biden '20	51	51	-	75	77	73	68
Trump '20	47	47	-	21	22	24	28

MI	White women	White men	Black women	Black men	Latina women	Latino men	All other
Biden '20	49	39	95	88	-	-	66
Trump '20	51	60	5	11	-	-	30

What's going on here? Some authors have used the term “conjoinment” or “conjoined polarization” to refer to the tight correlation of race with party preference. With the conversion of the “Solid South” from Democratic to Republican now complete, the degree of race/party conjoinment may well be at a 50-year high. As political scientists Bruce Cain and Emily Zhang put it: Since the migration of Southern White conservatives to the Republican Party, party identification has become more consolidated and consistent. As the parties have become more distinct from each other, they have also become more internally ideologically consistent. This assortative political sorting has been accompanied by the strengthening of racial partisan identification, leading to a conjoined polarization of party, ideology, and race. Conjoined polarization complicates and undermines the efforts of an earlier time to protect minority voting rights, most notably through the passage of the Voting Rights Act [3].¹

Here we will look at how that has actually played out in some recent cases.

In his dissenting opinion in a 2017 North Carolina racial gerrymandering case, Justice Samuel Alito noted that “partisan and racial gerrymandering can be made to look much the same on a map.”² However, as Justice Kagan wrote in this same North Carolina decision, “[t]he sorting of voters on the grounds of their race remains suspect even if race is meant to function as a proxy for other (including political) characteristics.” In other words, even if plaintiffs bring a case to challenge a partisan gerrymander, a decision is suspect if the map drawers considered race in determining how constituencies would vote.

Many authors have tried to assess the impact of simple partisan polarization on the work of legislative bodies (for just two examples, see Andris et al. and Dimock et al. [1, 4]). In practice, the challenge of distinguishing between race-based versus party-based voting is a vivid one for advocates working on the ground to advance equal voting opportunities.³ After plaintiffs make an argument that the Gingles

¹Trends in racially polarized voting have historically been particularly strong in jurisdictions previously covered by the Voting Rights Act. As Ansolabehere et al. explain in *Race, Region, and Vote Choice in the 2008 Election* [2], Whites in previously covered jurisdictions voted distinctly more Republican that year than Whites in the noncovered jurisdictions. Only 28% of Whites in jurisdictions previously covered by the Voting Rights Act said they voted for the Democratic nominee—fourteen percentage points lower than their counterparts in the noncovered jurisdictions, where 42% of Whites on average reported voting for Democratic nominees. This is thirty-three percentage points lower than Democratic nominees' average vote share among Latinos (61%) and fifty-six percentage points lower than the average among African Americans (84%) in the covered jurisdictions. Regardless of whether they live in covered or noncovered jurisdictions, racial minorities, in contrast, were not found to differ substantially in the share that reported voting for Democratic nominees.

²Alito continued, “This phenomenon makes it difficult to distinguish between political and race-based decision-making. If around 90% of African American voters cast their ballots for the Democratic candidate, as they have in recent elections, a plan that packs Democratic voters will look very much like a plan that packs African American voters. “[A] legislature may, by placing reliable Democratic precincts within a district without regard to race, end up with a district containing more heavily African American precincts, but the reasons would be political rather than racial.” *Cooper v. Harris*, 137 S.Ct. 1455, 1488 (U.S.N.C., 2017) (citing *Easley v. Cromartie*, 121 S.Ct. 1452, 1455, 532 U.S. 234, 235 (U.S.N.C., 2001)). The tension between partisan and racial claims is discussed further by Charles and Spencer in Chapter 9.

³Compare *Easley v. Cromartie*, 532 U.S. 234, 239 (2001) with *Hunt v. Cromartie*, 526 U.S. 541, 550 (1999) (struggling to determine whether North Carolina District 12 was a racial gerrymander due to “a strong correlation between racial composition and party preference”); *Bush v. Vera*, 517 U.S. 952, 968 (1994) (O'Connor, J., principal opinion) (“If district lines merely correlate with race because they are

preconditions are satisfied, including a showing of racially polarized voting, defendant jurisdictions often respond by arguing that voting trends are based on party allegiance, rather than race. For instance, San Juan County, Utah was sued multiple times because of discriminatory voting practices making it harder for its Navajo residents to vote, particularly by cutting down in-person voting to a single (poorly located) polling place and providing inadequate language support for voting materials. Defendants argued in a brief that voting trends were explained best by the alleged fact that “Navajo [residents] vote along party lines.” The county asserted that “political party affiliation among Navajo voters in San Juan County is so strong that they will vote for a non-American-Indian Democratic candidate rather than a Navajo Republican candidate” and that “non-Navajo Democratic candidates prevailed over Navajo Republican candidates.”⁴ This case was ultimately settled with an agreement to maintain at least three polling places close to Navajo Nation and to provide increased translation and interpretation support for voters.

Similarly, in a Lawyers’ Committee case challenging Alabama’s method of electing judges to a number of the state’s courts, the Middle District of Alabama found that, while “there is a significant correlation between race and voting behavior in Alabama,” the real question was why that was the case. The court queried, “[i]s it on account of race, as condemned by § 2 of the VRA, or on account of some other cause or causes, such as partisan politics?”⁵ In answering this question, and ultimately ruling against plaintiffs, the court pointed to a number of factors—other than a race-based unwillingness to vote for people of color—contributing to White bloc voting. For instance, the court noted that the relative weakness of the Alabama Democratic Party “makes it [] harder for any Democratic candidate — white or black — to get elected.” The court also noted the fact that “appellate judges must run under a party banner” and the prevalence of straight ticket voting (voting for a single party up and down the ballot) as additional evidence that “judicial election results are driven [] by the party of the candidate, not the race of the candidate.”

The court’s decision in the Alabama case reflected the finding in *LULAC v. Clements*, a case challenging a single-district system of electing state trial judges in Texas. In considering the Gingles preconditions, the Fifth Circuit found that:

“The race of the candidate did not affect the pattern. White voters’ support for black Republican candidates was equal to or greater than their support for white Republicans. Likewise, black and white Democratic candidates received equal percentages of the white vote. Given these facts, we cannot see how minority-preferred judicial candidates were defeated ‘on account of race or color.’ Rather, the minority-preferred candidates were consistently defeated because they ran as members of the weaker of two partisan organizations. We are not persuaded that this is racial bloc voting as required by *Gingles*.”⁶

drawn on the basis of political affiliation, which correlates with race, there is no racial classification to justify”); Richard L. Hasen, *Race or Party?* [5].

⁴ *Navajo Nation Hum. Rts. Commn. et al v. San Juan County et al*, 2:16-cv-00154-JNP D. Utah, Def. Opp. to Pls’ Mot. for Prelim. Inj.

⁵ *Alabama State Conference of National Association for Advancement of Colored People v. Alabama*, 2020 WL 583803 (M.D. Ala., 2020).

⁶ *League of United Latin American Citizens, Council No. 4434 v. Clements*, 999 F.2d 831, 879 (C.A.5

Opinions and arguments like the ones surveyed here can put voting rights advocates in the position of needing to argue that race-party conjoinment is an expression of racially polarized voting, not the other way around. In other words, the preference of White voters for Republicans is driven in part by the increasing association of the Republican party with overt and covert appeals to racial resentment.

REFERENCES

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