VRA skinny

Redistricting plans have to comply with the federal Constitution and the Voting Rights Act (VRA). The [14th](https://www.law.cornell.edu/constitution/amendmentxiv) Amendment [requires](https://www.justice.gov/crt/introduction-federal-voting-rights-laws) equal protection of all citizens and the [15th](https://www.law.cornell.edu/constitution/amendmentxv) Amendment prohibits vote denial or abridgement on the basis of race or color. Plans must comply with the [Voting Rights Act](https://www.law.cornell.edu/wex/voting_rights_act) (VRA). This means ensuring that districts do not dilute the ability of minority citizens to elect candidates of their choice.

Under existing VRA jurisprudence in South Carolina, courts look to whether, given the totality of circumstances, a districting plan *results* in a dilution of the ability of minority voters to elect candidates of the choice. The first test is “the Gingles Test”: 1) can you draw a majority-minority district? 2) Do minority voters vote cohesively? And 3) Do white voters usually vote sufficiently as a bloc to defeat candidates of choice of minority voters. If so, you must remedy that, usually by creating a majority-minority district in that part of the state.

Typically vote dilution results from *packing* or *cracking*. *Packing* far more minority voters into a district than is required to elect a candidate of choice reduces the ability of minority voters to elect candidates of choice in other districts. *Cracking* concentrations of minority voters into adjoining districts deprives them of the ability to elect candidates of their choice.

Litigation in the U.S. Supreme Court (*Brnovich v. Democratic National Committee*) could establish an *intent* standard which would require minority citizens to prove that the legislature intended to dilute minority voting strength.

The Voting Rights Act has been weaponized by some map drawers as an excuse to pack minority voters into a few districts in order to make other districts safer for the drawing party. [Courts](http://redistricting.lls.edu/where.php) have overturned many of those districts because 1) race predominated over other traditional districting principles and 2) they failed narrowly to tailor minority-majority districts to cure potential VRA violations. Map drawers still have to avoid minority vote dilution.

Drawers can always consider race. If, however, consideration of race predominates over “traditional districting principles,” drawers would first have to establish that the VRA required the creation of a VRA district in that part of the state. Then the drawer must narrowly tailor the district just to cure the Section 2 problem. This requires a racial bloc voting study to establish the Gingles Test factors and, then, to narrowly tailor the remedy.