

THE RELATIONSHIP BETWEEN BLACK POLITICAL PARTICIPATION AND THE VOTING RIGHTS ACT

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I. INTRODUCTION

The accepted view of motivation for political involvement suggests that individuals of higher socioeconomic status are more politically active.¹ This is the traditional explanation for lower levels of political activity among Blacks and is often used to suggest that Blacks are politically apathetic. However, this traditional view has been challenged by the suggestion that as the socioeconomic status of Blacks increases, their political activity increases.² There is a substantial body of social science literature which reveals that when socioeconomic factors are controlled, Blacks are more politically active than

1. L. MILBRATH, PARTICIPATION IN AMERICA 116, 138 (1965); S. VERBA & N. NIE, PARTICIPATION IN AMERICA: POLITICAL DEMOCRACY AND SOCIAL EQUALITY 150, 152 (1972) [hereinafter VERBA & NIE].

2. Olson, *Social and Political Participation of Blacks*, 35 AM. SOC. REV. 682-97 (1970).

Whites.³ Such a finding is relevant to litigating under the 1965 Voting Rights Act, especially since the 1982 amendments which purport to reject the rigid intent standard of *City of Mobile v. Bolden*⁴ and establish a results test to prove a violation. In establishing a violation under the Act, courts consider the levels of Black political participation and electoral successes. The socio-economic characteristics of the population under study are important because they influence political participation which may be reflected in electoral results. There is concern that as Black participation increases, there will be an increased effort to implement indirect barriers to participation through vote dilution tactics such as at-large elections, anti-single shot provisions and redistricting. If litigators on behalf of jurisdictions using such tactics begin to point out the relative political participation of Blacks a compared to Whites when controlling for socioeconomic factors under a results test, the usefulness of Voting Rights legislation may be threatened.⁵

This Comment examines a case, *Collins v. City of Norfolk*,⁶ in which the court initially found that Black participation exceeded that of Whites and how it reached the conclusion that the Voting Rights Act was not violated. The premises on which the court based its decision reveal an interesting paradox: the Black community's effort to overcome political exclusion, the very aim of the Voting Rights Act, was used by the court to overlook evidence of vote dilution.⁷ *Collins* was eventually reversed, thus finding a violation of the Voting Rights Act, in light of new standards introduced by *Thornburg v. Gingles*.⁸ This Comment presents social science theories that suggest explanations for the greater levels of participation by Blacks given their socioeconomic status. The factors that were instrumental in reaching the reversal of *Collins* and their application to other cases following the standards articulated in *Gingles* will also be examined.

II. RELATIONSHIP BETWEEN SOCIAL SCIENCE AND LAW

If voter participation and electoral successes begin to occur in jurisdictions where claims of voter dilution are commonly raised, courts may point to improvement of the position of Blacks within the political arena to counter the claim. These tendencies toward improvement are illustrated in social science research which will later be examined. However, even if Black political participation progresses, the significance of these successes in light of the long history of discrimination and political exclusion is questionable, particularly when viewed abstractly. Instead, a contextualized approach should be taken

3. See Pinderhughes, *Legal Strategies for Voting Rights: Political Science and the Law*, 28 HOW L.J. 515-40 (1985); Antunes & Gaitz, *Ethnicity and Participation: A Study of Mexican-Americans, Blacks and Whites*, 80 AM JOUR. SOC. 1192-1211; Olson, *supra* note 2; Shingles, *Black Consciousness and Political Participation: The Missing Link*, 75 AM. POL. SCI. REV. 76-91 (1981); VERBA & NIE, *supra* note 1, at 157; Williams, Babchuck and Johnson, *Voluntary Associations and Minority Status: A Comparative Analysis of Anglo, Black and Mexican Americans*, 38 AM. SOC. REV. 637-46 (1973).

4. 446 U.S. 55 (1980).

5. Pinderhughes, *supra* note 3, at 537-540. These concerns were expressed by the article which provided the concept for this research.

6. 605 F. Supp. 377 (E.D. Va. 1984), *aff'd* 768 F.2d 572 (4th Cir. 1985), 478 U.S. 1016, *vacated and remanded*, 816 F.2d 932 (4th Cir. 1987) *remanded*, 679 F. Supp. 557 (E.D. Va. 1988) (judgment for defendants).

7. *Collins v. City of Norfolk*, 816 F.2d 932 (4th Cir. 1987).

8. 478 U.S. 30 (1986).

when examining electoral success and participation to avoid attaching great significance to results that are too recent and limited to actually reflect greater access to the political process. Finding that Blacks are more politically involved than Whites, when controlling for socioeconomic status, suggests that access to the political process is not as open as its proponents might argue because this increased activity has not resulted in equal distribution of goods and services.

III. COLLINS V. NORFOLK

In *Collins v. Norfolk*, the plaintiffs argued that the at-large system of electing city council members diluted Black voting strength, violated the Voting Rights Act as amended in 1982, and violated their fourteenth and fifteenth amendment rights. The plaintiffs were seven Black registered voters of Norfolk and members of the Norfolk branch of the NAACP. The defendants were the City of Norfolk, the seven members of the city council, and the three members of the Norfolk Electoral Board.

The standards applied to assess voter participation in *Collins* could appear to facilitate claims of voter dilution. The Voting Rights Act, as amended in 1982, is not a test of discriminatory intent as announced in *City of Mobile v. Bolden*⁹ but a results test, incorporating standards used in such cases as *White v. Regester*¹⁰ and *Zimmer v. McKeithen*.¹¹ The 1982 amendments were a response to the stringent requirements of the intent test. The considerations in assessing the effectiveness of voter participation are a history of official discrimination; racially polarized voting; the presence of unusually large election districts, majority vote requirements or other procedures that encourage discrimination; whether minorities have access to any existing candidate slating process; the extent to which minorities suffer the effects of discrimination in the distribution of goods and services; the presence of racial appeals in campaigns; and the number of minorities holding office.¹² Consideration of these factors takes account of unequal access to the political process, regardless of legislative intent. Additional factors having probative value are a significant lack of response to the needs of the minority group¹³ and whether or not the reasons for voting qualifications are tenuous.

The most important factors for the present research are the discriminatory distribution of goods and services and the number of minorities holding office. These factors are concerned with how the courts will weigh apparent improvements in the provision of goods and services and electoral successes. Sociological studies reveal that in spite of the economic disadvantage, Blacks are more politically active than would be expected. However, if a court were to accept these findings, it may defeat claims brought under the Voting Rights Act, threatening its vitality as a means of protecting minority access to the

9. 446 U.S. 55 (1980).

10. 412 U.S. 755 (1973).

11. 485 F.2d 1297 (5th Cir. 1973), *aff'd sub nom.* East Carrol Parish School Board v. Marshall, 424 U.S. 636 (1976).

12. See VERBA & NIE *supra* note 1, at 160-70. A similar consideration is revealed in the social science literature when the willingness of Blacks to contact government officials is examined as a method of political involvement. The findings suggest that Blacks are less likely to attempt to contact government officials because it involves crossing the racial barrier and the results are viewed as futile.

13. Antunes & Gaitz, *supra* note 3, at 1202 n.9.

political process. The seven factors listed above are to be examined under a totality of the circumstances test. The intent standard of *Mobile v. Bolden* still applies to fourteenth and fifteenth amendment claims. Although the plaintiffs may make constitutional claims, the purpose of this Comment is to examine the application of the results test of the Voting Rights Amendment since it was established as an alternative to the intent standard.

A. Trial Court Level

Although perhaps not most appropriately called a community organization, the NAACP's potential for mobilization has proven critical throughout the civil rights era.¹⁴ It is also an example of cooperative participation which does not require communication across racial groups and fosters a sense of group consciousness. That the NAACP still remains an essential component in accomplishing civil rights legal objectives is suggested by the fact that it was one of the plaintiffs in *Collins*.

The discussion of the Citizens Party in *Collins* is evidence that community participation has been essential to the Black experience for a period of years. In the early part of the twentieth century, the Citizens' Party was a political group in Norfolk whose main concerns were religion and morality. Many Black citizens of Norfolk were involved with the party's objective of achieving municipal reform in 1913.¹⁵

Although community organizations have been essential in furthering the rights of Blacks, the court in *Collins* attempts to use their presence to defeat the vote dilution claim. It points to the Citizens of Norfolk and the City Democratic Committee, political organizations that endorsed potential candidates for office, as two organizations influencing the potential success of both Black and White candidates. The figures cited by the court suggest that neither Black nor White candidates have realistic chances for success without the endorsement of the Concerned Citizens of Norfolk.¹⁶ The court also uses this data to support its argument that Blacks participate equally in the political process.

1. Court's Analysis of Black Participation

The court's analysis of Black participation is directed toward supporting the finding that "the current rate of Black voter registration and turnout is proportionately higher than that of the White population."¹⁷ While the levels of Black participation are properly factors to consider, the manner in which the court analyzes them and reaches its conclusion is subject to criticism. The court takes a limited view of Black political participation, finds limited improvements and concludes that the political process is equally open to Blacks. The successes relied upon in reaching this conclusion seem too isolated and recent to substantiate claims of equal access. Had the court placed its analysis in historical and political context its conclusions might be more persuasive.

14. *Collins*, 605 F. Supp. at 379.

15. *Id.* at 383.

16. *Id.* at 379-400.

17. *Id.* at 388.

a. Voting Rights Act

Blacks were disenfranchised in 1902 with the institution of the poll tax and the literacy test. The literacy test remained in effect until the Voting Rights Act was enacted in 1965.¹⁸ Blacks were also precluded by the White primary rule from participating in primaries. The court concludes that because of the Act, the Black registration rate of 52.9% exceeded the White registration rate of 51%.¹⁹

b. Black Voter Turnout

The court points to Black voter turnout rate as exceeding that of Whites but the figures were just from two previous elections in 1982 and 1984.²⁰ It also points to city efforts to increase Black voter registration and to broaden access to the registration process. The court concludes that in spite of a history of discrimination, Blacks participate equally in the electoral process. But in light of the history, this analysis is questionable. Just how much weight should these limited successes receive? The court's analysis is subject to criticism because it has viewed these results as an abstraction and attempts to attach great significance to them. That the opinion relies on the results from only two previous elections is questionable. More appropriately, a contextualized view of this data in light of the prolonged history of discrimination would reflect the political atmosphere more accurately and thus minimize its significance.

c. Racially Polarized Voting

The definition of racially polarized voting accepted by the court has three elements: White backlash, defined as greater White voter turnout to counter the potential of Black candidates; voting patterns of Whites and Blacks over the years; and whether Whites try to limit the field of candidates through slating processes. The opinion concludes that White voters did not turn out in greater numbers than usual to counter the presence of two strong Black candidates in 1984. In fact, it finds the percentage of Whites who turned out was lower than Blacks: "the 1984 turnout rate for whites, as a percentage of the white voting age population, was lower in 1984 than in any of the three previous elections".²¹ Here, the premise that Blacks participate more than Whites is operable. While this conclusion is consistent with the sociological findings, it is dangerous as applied by the court to defeat a vote dilution claim. Rather than consider these results in their political and historical context, the court takes the results in only one election, which hardly seems conclusive.

d. Electoral Procedures

The court believes that larger election districts do not reduce the opportunities for Blacks to be elected and that Blacks do use single-shot provisions successfully. The case concludes that staggered terms in the council do not prevent the election of Blacks because each time there are only three seats of

18. *Id.* at 384.

19. *Id.*

20. *Id.* at 385.

21. *Id.* at 386.

the seven available, a Black is elected.²² There is no finding of a candidate slating process from which Blacks are excluded.

e. Delivery of Goods and Services

The *Collins* opinion cites increases in education, income, improvements in housing conditions but also must address higher unemployment rates and worse health conditions for Blacks. In spite of the latter conditions, the court finds Blacks are registering and voting at rates equal or exceeding Whites. These findings are consistent with the original premises of greater Black participation based upon social science research. The court refers to the opinion of a Black former council member who blames the unfavorable economic conditions on the failure of Black leadership to continue efforts to achieve universal Black suffrage in the 1950s.²³ This explanation is troubling because it is an effort to undermine the plaintiffs' legal claims by the opinion of a former Black elected official whose interests should support voting rights litigation. It seems to be an effort on the part of the court to present the Black community as divided on the issues of devising and achieving political objectives. It also suggests that the court is attempting to shift the blame to Blacks themselves for their conditions. This implication is consistent with other attempts to undermine the plaintiffs' credibility, particularly in the court's criticisms of the plaintiffs' research methodology.

The court points to the presence of Black elected officials such as members of the city council, the House of Delegates and the sheriff of Norfolk as evidence of the political influence of Blacks. In response to plaintiffs' claim that few Blacks are appointed to boards and commissions, the court responds that members of these organizations must have special credentials which disqualifies many Blacks.²⁴ Again, this is an effort to blame Blacks for their own conditions. However, the court responds by referring to efforts of the police and fire departments to recruit more Blacks and efforts of the police force to improve its relations with the Black community. It also refers to social and health services primarily benefitting Blacks and the fact that Blacks use the parks more than whites, which also parallels its finding of more political participation among Blacks. The court finds no discrimination in the school systems, referring to the fact that housing redevelopment projects have disproportionately displaced the low income Blacks, although there was supposedly no discriminatory intent involved. The objective was to increase the tax base and revitalize the downtown area.²⁵ However, this reasoning is not persuasive. The housing was originally intended as an improvement in low income housing and those displaced during the project were to be relocated. One must ask if it was really necessary for the city to displace the residents and then change the objective for the redevelopment.

2. *Justifications*

The court justifies the maintenance of an at-large electoral scheme by referring to the governments of other cities. In other cities where there is a

22. *Id.* at 389.

23. *Id.* at 392.

24. *Id.* at 394.

25. *Id.* at 398.

managerial form of government, at-large voting schemes are typical.²⁶ The court does not find this justification tenuous. However, although the practice may be typical, this seems to be no reason to compel its maintenance.

3. *Court's Criticisms of Plaintiffs' Methodology*

It seems that one of the underlying objectives of the opinion is to cast doubt on the plaintiffs' credibility. It attacks several of its methods which suggests an effort to cast doubt on the plaintiffs' claim. But this tactic suggests that the court is not persuaded of the validity of its own assertions. For example, the court criticizes plaintiffs for failing to consider factors other than race that might influence voting behavior such as age, ethnicity, education, income, incumbency, campaign expenditures, endorsements and name recognition.²⁷ Another example is the court's reference to the failure of plaintiffs to include the military population on ships docked near Norfolk. Most of this population was White and had low voter turnout. The court suggests that this omission was an effort on the part of plaintiffs to downplay the higher levels of Black participation. The court also refers to the inclusion of non-whites such as Asians and Native Americans as an effort to deemphasize higher levels of Black participation.²⁸

B. *Collins v. Norfolk on Appeal*

The finding of no vote dilution was affirmed. Some of the points raised on appeal²⁹ are troubling.

1. *Conspiracy*

A point made by the appellants in the trial court was that there was a political conspiracy related to the suit. In 1984 there was a seat open on the city council which was won by a Black candidate. However, appellants suggest that this was not a legitimate victory as asserted by the trial court. The appellants suggested that it was part of a scheme to have an incumbent White council member decline to seek reelection to improve the chances of the Black candidate's victory. According to the plaintiffs, the scheme was an attempt to permit a Black candidate to win a position on the city council, thus casting doubt on the plaintiffs' claim in the trial court. The trial court found the allegation of manipulation of the election false³⁰ and the appellate court deferred to that judgment. Under such circumstances, how a court could disregard the potential for vote dilution is highly questionable. However, the possibility that such potential for manipulation exists in relation to the litigation suggests that neither the legal nor political system is functioning in a manner to reflect the interests of the community in the political process.

2. *Single Shot Voting*

The court points to lack of prohibition against single shot voting as

26. *Id.* at 399.

27. *Id.* at 387.

28. *Id.*

29. *Collins v. City of Norfolk*, 768 F.2d 572 (4th Cir. 1985).

30. *Id.* at 574 n.4.

weighing against a claim of vote dilution.³¹ But the very fact that Blacks must resort to single-shot voting to elect their preferred candidates raises questions about the proper functioning of the electoral system. Blacks must rely on their own voting strength to elect their preferred candidates, which makes maximum Black voter participation imperative and also suggests that race is an issue in an election. Of course, judicial remedies cannot influence the private choices individuals make to discriminate. But they can alter a public political process that facilitates and perpetuates the private choice to discriminate. The initial implementation of the Voting Rights Act is an example of the public and private spheres working in a complementary fashion rather than in a contradictory manner to achieve the goals of the legislation. When the Voting Rights Act was passed, the federal government sent examiners into local areas to register Black voters without regard to the local voter registration laws. But the utility of the examiners was limited because they could not effectively communicate voting requirements and even in their presence, violence and intimidation persisted. This led some Blacks to believe the federal government was not really involved in the effort to improve Black voter registration.³² When the examiners were eliminated, local organizations became involved by "politicizing the community, developing the local leadership, expanding political communication and organization in the Black neighborhoods, and consequently with overcoming resistance to political activity".³³ In areas where there had been both federal and local involvement, the impact on voter registration was greatest.³⁴

3. *Higher Voter Turnout*

The court refers to higher levels of Black voter turnout and registration as compared with whites.³⁵ These observations bear an analogy to the premise that given Black socioeconomic status, Blacks are more politically active than Whites of comparable socioeconomic levels. It attempts to suggest that these trends will improve given the city's great efforts to increase Black voter registration and cites the fact that 102 of 371 election officers were Black. The court tries to deemphasize disparities by pointing out that income differences between Whites and Blacks are nationwide, not unique to Norfolk. This argument carries the same persuasive force as the argument that most managerial forms of government have at-large elections. Simply because a practice may be the norm does not serve as a justification for its perpetuation.

The court's findings that the political process is accessible to Blacks presents the observer with the question of the legitimacy of the political process. One must ask if these findings suggest that the political process reflecting the interests of the communities affected by it. Even under a contextualized approach to a case such as *Collins*, the observer needs a directive to determine when conditions do actually reveal a political process which does provide realistic access. One factor would be that courts would not strive to take recent

31. *Id.* at 574.

32. Terchek, *Political Participation and Political Structures: The Voting Rights Act of 1965*, 41 *PHYLON* 29 (1980).

33. *Id.* at 31.

34. *Id.* at 33.

35. *Collins*, 768 F.2d at 574-75.

and limited successes out of context, as the court does in *Collins*, to justify a tenuous position. At this point, it may be helpful to look at some of the social science methodologies, controlling for socioeconomic status to simulate the expected results if the levels of Black socioeconomic status were to increase and approach that of Whites. If Blacks were able to use the political process to meet their interests, this simulation should be unnecessary because the conditions between the groups would in actuality be more comparable.

IV. SOCIAL SCIENCE THEORIES

There are two basic theories used to explain the greater political participation of Blacks. They are the compensation theory and the ethnic community theory.³⁶ According to the compensation theory, since Blacks have been excluded from mainstream political activities, they establish their own alternatives. The ethnic community theory holds that Blacks exert pressure on one another to become involved in activities to meet their community objectives. A study by Olson³⁷ found that age as well as socioeconomic factors were significant in determining minority participation. Age can be a decisive factor because a greater proportion of the Black population tends to be below forty and this group is typically less politically active. The study challenged the validity of the compensation theory by questioning why Blacks would participate in activities that would bring them in contact with Whites such as voting and media exposure if they are simply trying to escape racism.³⁸ This study predicted that those who consider themselves ethnic identifiers will be more politically active than nonidentifiers. However, a later study by Antunes and Gaitz³⁹ found no basis for this distinction. A study by Williams, Babchuk and Johnson⁴⁰ defined the compensatory theory as merely satisfying the egos of minorities and providing them status. This characterization seems to belittle the purpose of compensatory groups by making their efforts toward political involvement seem trivial. In actuality both compensatory and ethnic community objectives can be filled by the same organization.

An alternative theory concerns levels of political efficacy and mistrust.⁴¹ A significant form of participation within Black communities involves grass roots political organizations such as voter registration campaigns. Such organizations are a useful means of participation for individuals with high levels of mistrust of the existing political scheme who yet have feelings of political efficacy. In other words, individuals who doubt the ability of the existing system to address their needs feel they can provide their own alternatives outside the system are more politically active.

A. *Comparison with Mexican Americans*

If the theory is correct that disadvantaged minorities will be more politically active because of their greater social consciousness and sense of community, it should predict that the same patterns exist with regard to the

36. Williams, Babchuck and Johnson, *supra* note 3, at 638.

37. Olson, *supra* note 2, at 688.

38. Tercheck, *supra* note 32, at 1204.

39. *Id.*

40. Williams, Babchuck and Johnson, *supra* note 3.

41. Shingles, *supra* note 3.

participation of Mexican Americans. However, this was not found to be the case.⁴² Blacks were found to have the highest levels of political participation, Whites the second highest and Mexican Americans the lowest. One explanation was that both groups perceive their distance from Whites differently. Blacks believe that Whites are less tolerant of social interaction than they really are; thus Blacks are more politically active in response to this perceived distance. In contrast, Mexican Americans perceive the social distance between themselves and Whites realistically; thus it does not serve as an impetus for increased participation. While it is an interesting theory, the authors⁴³ rejected it as a plausible explanation.

Although the literature varies in its approach to determining why minorities are more politically active, the theory cannot be generally applied to all minority groups because if it was predictive it should apply to Mexican Americans. However, the studies seem to agree that the theory is valid in the case of Blacks because of the long-standing existence of Black political organizations and the civil rights movement. As of yet there have not been any well-established political organizations within the Mexican American community and the struggle for political equality has not been as prolonged. Because of the history of Black political activism, Blacks have learned to organize and view political involvement as a viable means for change. The literature predicts that as organizations within the Mexican American community increase and their patterns of political activity change, their political participation will also exceed that of Whites.⁴⁴

Thus far, criticisms of the trial court's findings on Black participation in the political process have been offered. Since the court's findings were directed toward supporting the premise that Black political participation exceeded that of Whites, social science theories discussing that premise have also been presented. These theories suggest that Black participation exceeds that of Whites not because of greater access but because of exclusion which could be mitigated by applying the Voting Rights Act. In fact, the trial court's decision defeating the voter dilution claim was reversed⁴⁵ in light of the decision in *Thornburg v. Gingles*.⁴⁶ The new factors which changed the court's decision will be discussed to suggest alternative methods of contextualizing the examination of factors to be considered in a vote dilution claim.

V. STANDARDS IMPOSED BY *THORNBURG V. GINGLES*

According to *Thornburg*, the presence of a successful Black candidate in a particular election does not necessarily mean that there is not polarized voting nor does proof that some minorities have been elected preclude a section 2 claim.⁴⁷ Where it generally operates to dilute minority votes, the electoral system cannot be defended. However, consistent successes, as in one of the districts under question in *Thornburg*, will defeat the claim. Thus, the extent

42. Antunes & Gaitz, *supra* note 3, at 1202.

43. *Id.* at 1207.

44. Williams, Babchuck and Johnson, *supra* note 3, at 645.

45. Collins v. Norfolk, 816 F.2d 932 (4th Cir. 1987).

46. United Latin American Citizens v. Midland Independent School District, 812 F.2d 1494 (5th Cir. 1987).

47. *Thornburg*, 478 U.S. at 74-77.

of success is *one* factor to be considered. Consistent with a contextualized approach, the test of *Thornburg* considers historical factors. Even after the direct barriers to voting were removed, Black participation was still depressed. This was true statewide and resulted in lower socioeconomic status for Blacks as compared with Whites. This gives Blacks special interests which prevents their full participation. This analysis differs from that in *Collins* because it does not focus on individual elections and looks at the status of the group as a whole. Thus, the successes are not viewed abstractly but in the historical and political context. In *Collins*, the court tended to isolate each factor under inquiry rather than to look at the status of Blacks as a whole. This point is illustrative: "While recognizing that it has now become possible for Black citizens to be elected to office at all levels of state government in North Carolina . . . the court found that, in comparison to white candidates running for the same office, Black candidates are at a disadvantage in terms of relative probability of success. It also found that the overall rate of Black electoral success has been minimal in relation to the percentage of Blacks in the total state population."⁴⁸

Although the court acknowledges improvement in the success of Black candidates, these successes occurred after the suit began. The successes were too limited in light of the long history of discrimination for them to be conclusive.⁴⁹ In cases where Black candidates have been successful there have usually been other circumstances at work such as incumbency or lack of opposition. Also, single shot voting was a significant feature in these successes.⁵⁰ *Collins* failed to acknowledge the presence of these factors and thus attached too much significance to the electoral successes. In contrast to *Collins*, *Thornburg* recognizes that low participation is usually a consequence of low socioeconomic status: "Both this court and other federal courts have recognized that political participation by minorities tends to be depressed where minority group members suffer effects of prior discrimination such as inferior education, poor employment opportunities and low incomes."⁵¹

Another difference in *Thornburg* is that the examination is a practical inquiry; thus a court can conduct a "searching practical evaluation of the 'past and present reality.'"⁵² The inquiry in *Collins* hardly seemed practical or realistic. *Thornburg* makes clear, however, that sustained electoral success will invalidate a section 2 claim. However, the analysis in *Collins*, did not reveal such successes, thus the basis for defeating the plaintiffs' claim is questionable. The standards imposed by *Thornburg* caused *Collins* to be remanded and later reversed. Several factors relevant to the evaluation of Black participation were instrumental in reversing the decision.

A. *Historical Factors*

Thornburg changes the prior result of *Collins* by taking into account historical factors: "The essence of a section 2 claim, as characterized in *Gingles*, is that some electoral characteristic interacts with social and historical condi-

48. *Id.* at 40.

49. *Id.* at 39.

50. *Id.* at 54.

51. *Id.* at 69.

52. *Id.* at 75.

tions to create an inequality in minority and majority voters' ability to elect their preferred candidates."⁵³ The court rejects *Collins's* definition of racially polarized voting composed of three elements—white backlash, the pattern of voting over a period of years and whether Whites attempt to limit the field of candidates—and simply considers the patterns over the years without inquiring why those patterns exist.

B. *Minority Electoral Success*

The court does recognize some degree of electoral success that is not as pronounced as the one which invalidated the claim of vote dilution in a district in *Thornburg*.⁵⁴ Whether the successes have been sufficient to invalidate a claim of vote dilution is an issue to be determined in the trial court. The evaluation of minority electoral success must be circumspect. It is not sufficient to simply say that one who has received at least half of the minority votes counts as a minority electoral success when the ballot contains more than one candidate. Each case must be considered individually to determine whether the candidates are representative of the community.⁵⁵

The court recognizes the need to look beyond apparent successes to see if there were any improper motivations, in particular, whether or not an apparent success was an attempt to interfere with voting rights litigation. This had been an issue in *Collins* at the trial court level. But this inquiry alone is not sufficient. A court should consider whether the success resulted from unusual circumstances. *Collins* attached significance to the mayor's support of a second Black council member and his comment suggesting that Black representation may cease to become an issue after the election.⁵⁶ If there is unusual support of the candidate the success should be of lesser importance.

VI. CASES FOLLOWING *GINGLES*

The decision of *Thornburg v. Gingles* offers some hope of continued success of claims brought under the Voting Rights Act by requiring a contextualization of Black political participation rather than an abstract view. That the decision may have continued impact on reaching successful claims under the Voting Rights Act is suggested by subsequent cases both within and outside of the South.⁵⁷ Also, subsequent cases suggest that the Voting Rights Act will provide a remedy for minorities other than Blacks. Some subsequent cases following *Gingles* will be examined to see how the standards were applied to uphold claims brought under the Voting Rights Act.

In *United Latin American Citizens v. Midland Independent School District*,⁵⁸ Blacks and Mexican Americans sued under the Voting Rights Act, alleging their votes for the board of trustees were diluted by an at-large system. This claim was upheld. The court based its decision on a long history of dis-

53. *Collins*, 816 F.2d at 935.

54. *Thornburg* 478 U.S. at 77.

55. *Id.* at 74-77.

56. 816 F.2d 938 (4th Cir. 1987).

57. *United Latin American Citizens v. Midland Independent School District*, 812 F.2d 1494 (5th Cir. 1987); *Jackson v. Edgefield County*, 650 F. Supp. 1176 (D.S.C. 1986); *Buckanaga v. Sisseton Independent School District*, 804 F.2d 469 (8th Cir. 1986).

58. 812 F.2d 1494 (5th Cir. 1987).

crimination against Blacks and Mexican Americans and their perceived common political goals. Both groups were found to have similar socioeconomic status which deprived them of goods and services as compared with Whites. Although there was some debate over the plausibility of the political cohesiveness of Blacks and Mexican Americans between the majority opinion and the dissent, the majority found it sufficiently persuasive to meet the requirement of a politically cohesive group under *Gingles*. The decision notes, consistent with *Gingles*, that it is important not to attach too much significance to the election of some minority candidates:

A member of a minority group may occasionally be elected to a political office, but one would be politically naive not to recognize in some such situations the tactical advantages in a political campaign of a white majority supporting one or more minority candidates. The election, therefore, of one or of a few minority candidates is not necessarily significant in a political election dominated by white voters.⁵⁹

This approach, in contrast to that discussed earlier in *Collins* offers a realistic and contextualized analysis of minority participation which is supported by *Gingles*. This type of analysis sustains the vitality of the Voting Rights Act and presents the possibility that its remedy will be available to other minorities.

Another case following *Gingles*, *Jackson v. Edgefield County, South Carolina School District*,⁶⁰ applies a contextualized approach which upholds a claim of vote dilution. The plaintiffs alleged that the at-large system used to elect members of the Edgefield County school board of trustees in South Carolina diluted Black voting strength. The claim was upheld. Consistent with a contextualized approach, both plaintiffs and defendants recognized there had been improvements in Black participation but these improvements did not necessarily result in equal access:

These relatively recent achievements, however, have not purged the continuing adverse effects of past racial discrimination on Black citizens' ability to participate effectively on an equal basis in political affairs under certain circumstances in Edgefield county and in the State. Indeed, defendants have acknowledged that "Jim Crow was a way of life in Edgefield County for a hundred years after the Civil War," and that the "millennium has not arrived in Edgefield county (or elsewhere) in race relations." Under the "results" standard of section 2 of the Voting Rights Act, a review of the history on racial discrimination in South Carolina is a useful starting point in fathoming the degree of its lingering effects that impairs the present day ability of Blacks to participate on an equal basis in the political processes.⁶¹

The failure to recognize the limited significance of apparent minority successes was a criticism of the decision in *Collins*. Instead of construing the improvements as indicative of equal access, the *Collins* court should have placed them within context. If this contextualization had been completed at the trial court level, the voter dilution claim should have been upheld. Although this result was eventually reached, it was due to the interpretation of section 2 presented in *Gingles*. In *Jackson*, the court recognizes the long history of discrimination and the impact of Blacks' disadvantaged socioeconomic status on their political participation. As the court should have done in *Col-*

59. *Id.* at 1502.

60. 650 F. Supp. 1176 (D.S.C. 1986).

61. *Id.* at 1180.

lins, the court in *Jackson* recognizes that "defendants . . . have attempted to dispel the apparent residual effects of segregation and discrimination by presenting a body of evidence showing improvements in the County schools and living conditions in general in the past few years."⁶² The court does not simply consider improved conditions in recent years as the court in *Collins* did which suggests a reason for the differing results.

The applicability of the Voting Rights Act to areas outside the South and to minorities other than Blacks is illustrated by *Buckanga v. Sisseton Independent School District*.⁶³ The case involved a claim of citizens of American Indian descent who alleged that the at-large system of electing District board members violated the Voting Rights Act. Although there was no history of discrimination as exists in the South, the lower court failed to discuss evidence of exclusion of Indians from voting and holding office.⁶⁴ Also, the existence of staggered terms and apportionment of seats between rural and urban members suggested discriminatory results. The opinion in *Buckanga* recognizes that white support of a minority candidate may sometimes be motivated by a desire to prevent litigation under the Voting Rights Act, therefore analysis of minority successes must proceed carefully. The same potential for manipulation which existed in *Collins* is present in *Buckanga*.⁶⁵ These factors, in addition to the vestiges of discrimination remaining within the minority community, led the court to find impermissible vote dilution.

VII. CONCLUSION

A results test is an easier standard for plaintiffs to meet, yet if a court takes the socioeconomic status and electoral successes out of perspective, the results test may be as much of a threat to the vitality of the Voting Rights Act as an intent test. Thus, this research has argued for a contextualized examination of the factors relevant to determining a claim of vote dilution. While the potential for taking this approach existed prior to *Gingles* the impact of the case is significant because it interpreted how Congress intended the factors to be applied. This approach suggests the potential for successful claims under the Voting Rights Act not only for Blacks but for other minorities as well. The examination of cases following *Gingles* reveals the widespread nature of discrimination and exclusion not only in the South but its existence in other areas. It also discredits the findings in a case such as *Collins* that equal access to the political process has been attained by minorities. The fact that other minorities have brought successful claims under the Voting Rights Act corroborates the prediction of the social science research that minorities are beginning to harness their political potential. However, for this potential to be maximized, continued litigation of claims under the Voting Rights Act is necessary.

62. *Id.* at 1203.

63. 804 F.2d 469 (8th Cir. 1986).

64. *Id.* at 474.

65. *Id.* at 476.