**I. Constitutional Architecture**

* Art. I § 2: “The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.”
* Art. I § 4: “The times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.”
* Art. I § 5: “Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members.”
* 12th Am.: Electoral College
* 14th Am.: Equal Protections; Due Process
* 15th Am.: Prohibits denial of right to vote based on “race, color, or previous condition of servitude.”
* 19th Am.: Suffrage
* 22nd Am.: Presidential term limits
* 23rd Am.: D.C. electoral votes
* 24th Am.: Prohibits poll taxes

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| *Minor v. Happersett* (1874)—P challenges denial of women’s right to vote under 14th Am. (Equal Protections + Privileges & Immunities). Ct. rejects challenge b/c 14th Am. is about male enfranchisement, was not intended to reach women’s right to vote. |

**II. The Right to Vote**

**Individual Rights**

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| *Richardson v. Ramirez* (1974)—Plaintiffs challenged felony disenfranchisement under the 14th + 15th Ams. Ct. says states can remove voting privileges for convictions.* Treats voting as a privilege rather than a right.
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| *Lassiter v. Northampton Cty Bd of Elections* (1959)—Plaintiffs challenged N.C. literacy test. Ct. applied rational basis review b/c literacy tests are facially neutral; upheld.* Nullified by 1965 Voting Rights Act banning literacy tests.
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| *Harper v. Virginia State Bd of Elections* (1966)—Plaintiffs challenged Va. poll tax (Const. bans fed. poll taxes). Ct. strikes down tax as violating Equal Protections.* SCOTUS beginning to see voting as fundamental right.
* Read today as an absolute ban on property qualifications.
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| *Kramer v. Union Free School Dist.* (1969)—N.Y. had convoluted scheme for school bd. elections that limits voting to stakeholders (property-owning taxpayers; parents). Disenfranchised childless basement dweller challenges under Equal Protections. Ct. finally accepts voting as a fundamental right; strikes down the law.* Voting is a fundamental right, so denials are subject to strict scrutiny and require a compelling state interest. Superseded by *Crawford* test.
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**Residency**

* *Dunn v. Blumstein* (1972)—Tenn. residency req. upheld, but 1-yr. residency req. rejected under Equal Protections, applying *Kramer*.
	+ Tenn.’s reasoning: avoid fraud (failed means/end test); ensure educated, committed voters (over-/under-inclusive)
* *Carrington v. Rash* (1965)—Tex. denied soldiers’ right to vote in elections. SCOTUS struck down under rational basis review b/c reasoning (too transient) didn’t apply to P.
* *Brown v. Chattanooga Bd of Commsers* (1989)—5-member Bd. of Commsers elected at large, denying 31% black population political representation. Challenged under VRA § 2 (post-*Gingles*). Ct. struck down the at-large system as illegal vote dilution.
	+ Stand for the proposition that vote dilution impedes right to vote.

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| *Burdick v. Takushi* (1992)—Hawaii prohibits write-in candidates; P sued claiming this violated his 1st Am. right to expression as well as 14th Am. Ct. applied rational basis review; rejected the challenge.* Ct.: Voting is not an act of expression under 1st Am. protection.
* *Anderson-Burdick* balancing test: weigh injury to voting rights against state interest.
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| *Crawford v. Marion Cty Election Bd* (2008)—Ind. has particularly restrictive voter ID law; state interest: voter fraud + voter confidence; burden on voters: required to get docs, cast provisional ballots. Ct. upheld under strict-ish scrutiny, but split 3 ways:* Kennedy/Roberts/Stevens plurality: burden on most voters is low; gov’t interest high.
* Souter/Ginsburg/Breyer dissent: statute burdens particular classes.
* Scalia/Thomas/Alito concurrence: No strict scrutiny; “important regulatory interest.”
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**Race and the Vote**

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| *Giles v. Harris* (1903)—Ala. Const. provision imposes draconian restrictions on right to vote, grandfathers in those enfranchised before the 15th Am. passed, effectively denying all black Alabamans the right to vote. Ct. recognizes effect but declines to intervene.* Along w/*Minor* represents what happens when cts. withdraw—no means of redress.
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| *Gomillion v. Lightfoot* (1960)—Tuskegee gerrymandered black voters out of the city. Reaches Ct. on 12(b)(6). Ct. avoids 14th Am., states racial gerrymanders violate 15th Am.* Frankfurter avoiding a 14th Am. holding that could reach partisan gerrymandering.
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**Federal and State Power to Define**

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| *Arizona v. Inter Tribal Council* (2013)—Ariz. passed law requiring proof of citizenship in order to register to vote. ITC argued it was preempted by the VRA, which provides a uniform federal voter registration form.* States can impede voting w/voter ID laws but not voter registration, essentially.
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**Voting and the Virus**

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| *RNC v. DNC* (2020)—Wisc. declined to postpone 4/2020 primary. Dist. ct. declined to postpone but ordered state count ballots received up to a week after the primary b/c state election officials were overwhelmed by requests, and many requesters had not yet received ballots. SCOTUS stayed order except for ballots postmarked by election day.* SCOTUS: *Purcell* prevents judicial intervention close to elections
* Dissent noted that SCOTUS’s intervention did far more to disrupt election than dist. ct.
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**Electoral College**

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| *Chiafalo v. Washington* (2020)—Wash. electors fined for not voting Clinton in 2016, challenged on 1st Am. SCOTUS denied challenge b/c Const. does not prohibit states from restricting electors’ discretion. |

**III. Political Parties**

**White Primary Cases**: Answering the question of the extent to which parties are appendages of the state and the extent to which they are private organizations.

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| *Nixon v. Herndon* (1927)—Tex. statute said no “Negro” eligible to participate in Dem. primary; P challenged under Equal Protections, sought $5k damages. Ct. agreed.* Ct. wanted to avoid issuing an injunction; damages provided incentive to change law.
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* *Nixon v. Condon* (1932)—Tex. then passed statute allowing parties to set their own qualifications. Ct. struck down on a technicality.

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| *Smith v. Allwright* (1944)—Tex. statute allowing parties to set their own qualifications struck down b/c when party limits participation in primaries, it becomes state agent.* This might have been a stretch, but at the time in Tex., Dems were basically the state.
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| *Terry v. Adams* (1952)—“Jaybird Party” is a dominant county org., not state regulated. It bans black candidates from its primaries (which typically predetermine Dem primaries). Ct. invalidates the rule under the 15th Am.* “It violated the 15th Am. for a state … to permit w/in its borders the use of any device that produces an equivalent of the prohibited election.”
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**Ballot Access**

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| *Bullock v. Carter* (1972)—Tex. allows parties to choose b/n unpopular taxpayer funding or internal funding. Parties choose the latter; pay for it w/expensive primary entry fees, which have the effect of excluding non-white candidates. Ct. strikes down as effectively a candidate property requirement.* Limited reach. Replaced by petitioning reqs, which overall can be more expensive.
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* **Duverger’s Law**—Winner-take-all/first-past-the-post elections lead to two-party systems

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| *Nader v. Schaffer* (D.Conn. 1976) (summarily aff’d by SCOTUS)—Ps challenged Conn.’s closed primary system as creating an unconstitutional Catch-22 b/n the right to vote and the right to associate. Ct. rejected the argument, finding registration was too limited, Ps could participate in minor party primaries or run independents, donate, etc. |

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| *Duke v. Massey* (11th Cir. 1996)—David Duke qualifies for Ga. GOP pres. primary ballot, but party takes his name off. He sues arguing this violates his right to associate. Ct. says party committee has authority to remove him from the ballot. (“unwilling partner”) |

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| *Republican Party of Texas v. Dietz* (Tex. Sup. Ct. 1997)—Tex. GOP denied Log Cabin Republicans a table at their convention. They sued alleging discrimination. Ct.: Party is not acting as the state in excluding a group from having a table at convention. |

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| *Tashjian v. Republican Party of Conn.* (1986)—Conn. statute mandates closed primaries, but state GOP wants semi-closed (Inds. can participate); they challenge. Ct. strikes down statute under 1st and 14th Ams. State interests are insubstantial. |

* Reconciling *Nixon v. Condon* w/*Dietz* and *Tashjian*
	+ Race is immutable while ideology is not; party acts as state when policing ballot, not when disallowing tables at a convention.

**Who Is the Party?**

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| *Cal. Democratic Party v. Jones* (2000)—Cal. adopts blanket primary (all voters can vote for any candidate; each party assigned its highest vote getter); voters challenge. Ct. finds law forces parties to affiliate w/non-party members; state interests are uncompelling. |

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| *Wash. State Grange v. Wash. State Republican Party* (2008)—Wash. adopts “modified blanket primary” in which candidates self-identify party pref. Top two move on regardless of party. 9th Cir. struck down citing *Jones*. SCOTUS reversed, saying self-ID allowable.  |

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| *Timmons v. Twin Cities Area New Party* (1997)—Minn. banned fusion voting; smaller party challenged. Ct. found this did not severely burden New Party’s association rights b/c they could still select and run candidates. |

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| *Ark. Educational Television Comm’n v. Forbes* (1998)—State-owned TV station sponsors debate b/n congressional candidates, excluded popular indy candidate, who sued arguing violation of free speech rights. Ct. determined AETC debate was a nonpublic forum, for which reasonable screening was permissible. |

**Alternative Voting, Political Lockups**

* Ranked choice voting
* Instant Runoff
* Multi-member districts + ranked choice

**IV. Money and Democracy**

**The Constitutional Framework**

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| *Buckley v. Valeo* (1976)—Small parties brought a facial challenge to a campaign finance statute requiring disclosures and limiting expenditures and contributions. Ct.: regulation of contributions is justified (rationale: prevent corruption), but regulation of expenditures is not. Disclosure rules upheld.* Ct. is, for the first time, saying money is speech.
* “Magic words test” distinguished speech directly stating “vote for/against X” (overridden by McCain-Feingold)
* Ongoing debate in which liberals want to regulate expenditures + contributions, while conservatives want to regulate neither (Roberts, Alito, and Breyer in the middle)
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**Contributions**

* *Nixon v. Shrink Missouri Gov’t PAC* (2000)—Applies *Buckley* to state contribution caps.

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| *Randall v. Sorrell* (2006)—Vermont statute w/contribution cap of $200 struck down as too low, violating candidates’ speech rights. Expenditure cap also struck down. |

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| *Colo. Republican Fed’l Campaign Comm’n v. FEC (Colo. Republican I)* (1996)—FEC charged Co. GOP with violating FECA’s non-coordinated expenditure cap. Struck down independent expenditures but did not rule on coordinated expenditures. |

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| *FEC v. Colo. Republican Fed’l Campaign Comm’n (Colo. Republican II)* (2001)—Narrow 5-4 decision treats coordinated expenditures like contributions, upholds FECA limits.* Thomas dissent argues for overruling *Buckley*; FECA doesn’t pass strict scrutiny.
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**Corporations, BCRA**

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| *First Nat’l Bank of Boston v. Bellotti* (1978)—Mass. statute banned corporate contributions + expenditures on voter initiatives. Ct. strikes down statute on 1st Am. grounds b/c there is a societal interest in “free flow of commercial info.” Strict scrutiny. |

* McCain-Feingold Act (BCRA)
	+ Title I: Restrictions on “soft money”: contributions that evade FECA.
	+ Title II: Limits on corp. + union electioneering comms. during bounded period.

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| *McConnell v. FEC* (2003)—Facial challenge to BCRA. Ct.: No strict scrutiny for Title I b/c it deals w/contributions (masked as expenditures); upheld. Title II upheld b/c corps. + unions can create segregated electioneering funds (PACs). Strikes down other aspects. |

**Super PACs, Public Financing**

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| *Citizens United v. FEC* (2010)—Overruled prior decisions upholding limits on corp. expenditures. Maintained reporting/disclosure requirements. Ct: limits on expenditures are bans on speech subject to strict scrutiny. Rejected anti-corruption rationale. |

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| *SpeechNow.org v. FEC* (D.C. Cir. 2010) (en banc)—Citing *Citizens United*, overturned contribution limits for political committees that only make independent expenditures. |

* *McCutcheon v. FEC* (2014)—Struck down aggregate caps under BCRA. Made *Citizens United*’s language on corruption law rather than dicta.

**Democracy and the Internet**

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| *Washington Post v. McManus* (4th Cir. 2019)—Maryland law required disclosure of info. regarding political ads carried by newspapers/media sites. Struck down as violating 1st Am., although ct. did not reach what level of review is appropriate. |

**V. One Person, One Vote**

**One Person, One Vote**: Doctrine that mandates roughly equal numerical representation in state and federal legislatures. Test is less strict for state legislatures. Does not apply to U.S. Senate or Electoral College.

**Emergence of the Doctrine**

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| *Colegrove v. Green* (1946)—Challenge to Ill.’s failure to reapportion districts, which were up to 9-to-1 unequal. Means to fix were effectively closed off b/c of Ill. legislature + cts., and Congress lacks juris., so fed. cts. were the only option. But Frankfurter held there was no judicially manageable standard, upheld the districts.* Black dissented: functional answer is one person, one vote.
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| *Baker v. Carr* (1962)—40-to-1 disparities between some districts in Tenn., and no reapportionment since 1901. Brennan remanded for fact-finding, implying one person, one vote, but could not get a majority w/Stewart or Clark for that.* Stewart concurrence: Plausible explanation approach. Tenn. must offer a reasonable rationale for its districting pattern.
* Clark concurrence: Process-based approach. Judicial intervention is appropriate where voters have no mechanism to challenge districting process.
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| *Reynolds v. Sims* (1964) (Warren)—Ala. state legislature apportionment created dramatic disparities (as high as 41-to-1). Voters challenged under Equal Protections.* Ct.: One person, one vote. State legislative dists. must represent “substantially equal” numbers of citizens\*.
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* *Wesberry v. Sanders* (1964)—Extends one person, one vote to congressional districts.
* *Gray v. Sanders* (1964)—Rejects argument that upper state house can be similarly disproportionate to U.S. Senate. Only Senate and electoral college can be undemocratic.
* *Lucas v. 44th Gen. Assembly of Colorado* (1964)—Voter initiative endorsed state senate apportionment based on counties w/relatively minor population disparities. Supported in every cty. SCOTUS still struck it down b/c it violated one person, one vote.
* *Karcher v. Daggett* (1983)—NJ gerrymander created partisan dists. based on population variation w/in Census margin of error. Ct. rejected plan as violating one person, one vote.
* *Cox v. Larios* (2004)—Ga. gerrymander taking advantage of 10 percent deviation rule. Ct. found too blatantly partisan, violates one person, one vote.
* *Fumarolo v. Chicago Bd. of Educ.* (1990)—Elected bodies w/special limited purposes are subject to rational basis review. But school subdistrict councils are of general interest, so scheme that overprivileged parents & staff was struck down under strict scrutiny.

**Equality of Voters or Persons?**

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| *Evenwel v. Abbott* (2016) (Ginsburg)—Plaintiffs challenged Tex. senate map under Equal Protections arguing one person, one vote should be calculated based on vote-eligible population rather than total population. Rejected b/c legislative history of Art. I § 2 and of 14th Am. both clearly showed support for allocation based on general population (although distinguish apportionment and districting).* The Ct. did not answer whether states could choose to allocate based on vote-eligible population.
* Thomas concurs, arguing one person, one vote is untenable. Constitution prescribes no single form of districting.
* Alito concurrence says it was all power politics. No discernible constitutional rationale.
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* *Burns v. Richardson* (1966)—Redistricting done on the basis of registered voters rather than total population in area w/population distorted by large military base. Ct. upheld this under these special circumstances.

**2018 Census Question**: The Census has not previously had a citizenship question, only informing states of total and voting-age population, effectively denying states the opportunity to apportion seats based on voting-eligible population. In 2018, Secretary of Commerce Wilbur Ross announced a citizenship question would be added. Ultimately unsuccessful b/c violated APA, but this question could have formed the basis for voting-eligible population apportionment.

**VI. Majorities, Minorities, and Political Representation**

**Constitutional Approaches**

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| *Whitcomb v. Chavis* (1971)—Poor and minority voters challenged multi-member state legislative dists. in Indiana that eliminated their opportunity for representation. Cannot show discriminatory intent. Ct. holds that minority groups don’t have a special right to representation; multi-member districts upheld.* Douglas, Brennan, and Marshall dissent: Dist. Ct. was correct to strike down multi-member districting w/racially disenfranchising effect.
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| *White v. Regester* (1973)—Minority voters challenged multi-member legislative dists. in Texas. Ps showed black and Mexican-Am. voters had no opportunity to participate in candidate selection process in either dist. Ct. upheld Dist. Ct. decision finding multi-member dist. here unconstitutional. |

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| *City of Mobile v. Bolden* (1980)—Black residents of Mobile, Al., challenged three-member at-large election city council as vote dilution. *Wash. v. Davis* had recently added intent req. to disc. claims. Ct. rejected the claim b/c it could not demonstrate a *discriminatory purpose*.* Blackmun concurrence: there is discriminatory purpose, but relief not commensurate.
* Stevens concurrence: wants to set up a new standard.
* White dissent: there is discriminatory purpose based on history, actions of members, and effect (*Zimmer* factors)
* Marshall dissent: Test for discriminatory purpose is too strict; should be common law foreseeability. This is about fundamental rights, not suspect classifications.
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**Section 2 of the Voting Rights Act**

* § 2—Permanent reqs. for voting rights
	+ 1982 Amendment responding to *Mobile* decision removes purpose test, but clarifies that this does not guarantee proportional representation of minorities.
	+ Establishes “Results Test”

**The “Results” Test in Practice**

Three required *Gingles* factors:

* Group must be large enough to be a majority in a single-member district
* Group must show it is politically cohesive
* Group must demonstrate white majority votes sufficiently as a bloc to prevent minority candidates’ chances

-Redistricting on the basis of the *Gingles* factors had the effect of racially gerrymandering black voters into majority-minority districts, leading to the 1994 Republican takeover of the House.

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| *Thornburg v. Gingles* (1986)—Black voters in NC challenged multimember districts under VRA § 2. Ct. established three-factor test.* White’s concurrence disagrees w/Brennan’s exclusive focus on race of voters, rather than race of candidates.
* O’Connor dissent: Could likely be the future of the test.
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| *Johnson v. De Grandy* (1994)—First redistricting under results test. Miami-Dade, conflict b/n Af. Am., Latino, and white voters. Ct. says *Gingles* factors are satisfied, but that alone may not be sufficient. A multimember district violates VRA § 2 if a bloc-voting majority is locking out a politically cohesive, geographically insular minority group.* Districts should be drawn based on state demographics, not county demographics.
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| *League of United Latin Am. Citizens (LULAC) v. Perry* (2006)—Mid-decade redistricting in Tex. scattered previously ~20% Black and Latino voting blocs. They brought an effects challenge. Ct.: effects challenge under § 2 is only applicable if 50+%, although purpose challenge would still work. |

**VII. Emerging Constraints**

***Shaw*, Politics & Race**

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| *Shaw v. Reno* (1993)—Ordered by the AG to redistrict in a way that provided better black representation, NC developed a heavily racially gerrymandered map in order to produce 2 black-majority congressional districts. Conservative justices ruled (5-4) that the shape of the district, snaking across the state, was bizarre enough to constitute an illegal racial gerrymander, invalidated the map.* Dissent notes that whites are still overrepresented in congressional delegation. Argues there must be a threshold showing of discriminatory effect.
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| *Easley v. Cromartie* (2001)—Districting based on partisan registration rather than race, w/race acting as a proxy for party. Ct. says this does not violate *Shaw*; state need only cite a non-racial motive. |

**The VRA & the Constitution**

* Voting Rights Act
	+ Section 5 (preclearance): In areas w/history of discrimination in voting rights, DOJ must pre-clear new voting laws/regulations.

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| *Bethune-Hill v. Va. State Bd. of Elections* (2017)—Va. voters challenged 12 intentionally (to comply w/VRA § 5) majority-minority dists. as violating Equal Protections. Ct. applies strict scrutiny; upholds Dist. 75 despite reliance on race.* Ct.: P does not have to show that map violated traditional redistricting principles in order to show racial predominance. Can look holistically at direct/circ. evidence.
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| *South Carolina v. Katzenbach* (1966)—S.C. makes const. challenge to VRA § 5. Basically, only cts. can judge us. Ct. upholds it; says Congress has power to regulate here.  |

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| *Shelby Cty. v. Holder* (2013)—Ala. county challenged VRA § 5 renewal as an unconstitutional burden. Ct. overturned § 4 (§ 5’s enforcement mechanism), holding that the patterns that necessitated the VRA had largely been resolved and that the formula for determining fed. review of state voting procedures is outdated. |

**VIII. Partisan Gerrymandering**

**1970–2018**

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| *Gaffney v. Cummings* (1973)—Challenge to Conn.’s bipartisan gerrymander. Ct. found that minor variation in political representation resulting was not sufficient to make gerrymander unconstitutional. Douglas, Marshall, and Brennan dissented.* Compare to *Gomillion*, overturning racial gerrymander.
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**2018–Present**

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| *Gill v. Whitford* (2018)—Challenge to Wisconsin partisan gerrymander. Ct. upheld statute w/out reaching merits b/c Ps lacked Art. III standing b/c no particularized injury.* Kagan concurrence recommended Ps on remand argue violation of 1st Am. right of association, predicting that standing would not prevent adjudication for long.
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| *Rucho v. Common Cause* (2019)—Ruled that partisan gerrymandering claims are nonjusticiable b/c they are meant to be resolved thru state legislatures + Congress.* Kagan dissents, arguing Ct. is effectively encouraging gerrymandering.
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