final analysis, it will be the Court's myopic view of judicial minimalism that has sealed section 5's fate.

2. Vote Dilution. — Section 2 of the Voting Rights Act of 1965[1] (VRA) prohibits any voting standard, practice, or procedure that "results in a denial or abridgment of the right . . . to vote on account of race." A violation is established when minorities "have less opportunity than other members of the electorate to elect representatives of their choice."[2] The Supreme Court has interpreted the VRA to require state legislators to draw minority-controlled districts in situations where minorities meet both (1) the three preconditions established in *Thornburg v. Gingles*[3] and (2) a totality-of-the-circumstances test.[4] Last Term, in *Bartlett v. Strickland*,[5] the Supreme Court held that section 2 does not compel legislatures to draw a minority district unless the racial group would comprise at least 50% of voters in the district.[6] The Court read the 50% requirement into the first *Gingles* prong, that the racial minority group be large enough to control a district.[7] Although the 50% rule is the correct interpretation of the VRA, the plurality should have read this requirement into the totality-of-the-circumstances test rather than hiding behind the first prong of *Gingles*. By building the 50% rule into prong one, the Court mischaracterized the 50% rule as justified on empirical rather than normative grounds. In the changing modern politics of racial polarization, it is now untrue as an empirical matter that the racial minority must constitute 50% of the population to control a district.[8] However, mandating the construction of such coalition districts unfairly multiplies the obligations on the state well beyond what should be required under the totality of circumstances as equal opportunity to participate in the political process.

In 1991, the North Carolina General Assembly drew District 18 of the North Carolina House of Representatives "to include portions of four counties, including Pender County," to create a majority African American district as required by the VRA.[9] By 2000, the minority population of District 18 had fallen below 50%.[10] Following the 2000 census, the North Carolina Supreme Court rejected the legislature's

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1 42 U.S.C. §§ 1973–1973bb-1 (2006).

2 *Id.* § 1973.

3 478 U.S. 30 (1986).

4 *See, e.g.*, Voinovich v. Quilter, 507 U.S. 146, 158 (1993).

5 129 S. Ct. 1231 (2009).

6 *Id.* at 1246 (plurality opinion).

7 *Id.* at 1245–46.

8 *See id.* at 1242 (explaining that minorities as a practical matter are able to control a district with the help of a small number of white "crossover" voters).

9 *Id.* at 1239.

10 *Id.*

first two redistricting attempts[11] for failure to comply with the "Whole County Provision" of North Carolina's constitution,[12] which prohibits redistricters from splitting counties into different districts.[13] District 18 as redrawn in the third attempt was 39% African American and combined portions of New Hanover and Pender Counties.[14]

In 2004, Pender County and the five members of its Board of Commissioners sued the Governor, the Director of the State Board of Elections, and members of the state assembly, alleging that the state's redistricting again violated the Whole County Provision.[15] The state officials argued that the district had to be drawn to comply with section 2 of the VRA, which preempts the state constitution.[16] The North Carolina Superior Court agreed, finding the minority population in District 18 large enough "to constitute a de facto majority."[17] The district thus was required to ensure that minorities had "an equal opportunity . . . to elect a candidate to the [state house] of their choice."[18] The court then dismissed the plaintiffs' claims.[19]

The North Carolina Supreme Court reversed.[20] It held that a "minority group must constitute a numerical majority . . . before Section 2 . . . requires the creation of a legislative district."[21] It found that section 2 of the VRA did not require District 18 because African Americans represented only 39% of the district. The court ordered the General Assembly to redraw District 18.[22]

The U.S. Supreme Court affirmed.[23] Writing for the plurality, Justice Kennedy[24] enumerated the three *Gingles* preconditions: "(1) The minority group must be 'sufficiently large and geographically compact to constitute a majority [of a district],' (2) the minority group must be 'politically cohesive,' and (3) the majority must vote [as an oppositional bloc]."[25] Justice Kennedy noted that *Gingles* left open the possibility that minorities could bring section 2 claims with less than 50%

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11 *Id.*
12 N.C. CONST. art. II, §§ 3, 5.
13 *Id.*
14 *Bartlett*, 129 S. Ct. at 1239 (plurality opinion).
15 *Id.*
16 Pender County v. Bartlett, No. 04 CVS 06966, slip op. at 2 (N.C. Super. Ct. Jan. 9, 2006).
17 *Id.* at 6.
18 *Id.*
19 *Id.* at 8.
20 Pender County v. Bartlett, 649 S.E.2d 364 (N.C. 2007).
21 *Id.* at 371; *accord id.* at 372.
22 *Id.* at 376.
23 *Bartlett*, 129 S. Ct. at 1240 (plurality opinion).
24 Justice Kennedy was joined by Chief Justice Roberts and Justice Alito.
25 *Bartlett*, 129 S. Ct. at 1241 (plurality opinion) (quoting Thornburg v. Gingles, 478 U.S. 30, 50–51 (1986)).

of the population[26] and that *Gingles*'s use of the word "majority" did not "end the matter."[27] The plurality instead found that failure to draw coalition districts would not leave minorities with "less opportunity [to] . . . elect representatives" because they would have the "[same] opportunity . . . [as] any other group of voters with the same [numbers]" and "[n]othing in section 2 grants special protection to a minority group's right to form . . . coalitions."[28] Justice Kennedy also feared that allowing coalition claims would "create serious tension with the third *Gingles* requirement" — that the majority vote as an oppositional bloc — because coalition districts by definition require some crossover voting.[29]

Justice Kennedy also expressed concern about the administrability of a rule requiring courts to predict political and racial voting patterns to determine VRA compliance.[30] He then invoked the canon of constitutional avoidance because requiring coalition districts would present "serious [equal protection] concerns."[31] Justice Kennedy concluded by cautioning that the plurality's holding did not "consider the permissibility of [coalition] districts" and did not "entrench majority-minority districts by statutory command."[32]

Justice Thomas concurred in the judgment.[33] Adhering to the position he has taken in other VRA cases,[34] Justice Thomas argued that section 2 does not reach vote dilution claims at all, and so he would overrule the *Gingles* framework.[35] Because he believed section 2 regulates only ballot access claims, he agreed that District 18 did not have to be drawn as it was.[36]

Justice Souter dissented.[37] He would have held that "a district may be a minority-opportunity district so long as a cohesive minority population is large enough to elect its chosen candidate when combined with a reliable number of crossover voters from an otherwise polarized

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[26] *Id.* at 1242 (noting that earlier cases had left open the question of whether "a showing of geographical compactness of a minority group not sufficiently large to constitute a majority will suffice" (quoting Growe v. Emison, 507 U.S. 25, 41 n.5 (1993))).

[27] *Id.*

[28] *Id.* at 1243.

[29] *Id.* at 1244. However, plaintiffs conceded the existence of white oppositional bloc voting in state court, so the Court did not rest its holding on the third *Gingles* precondition. *Id.*

[30] *See id.* at 1244–45.

[31] *Id.* at 1247.

[32] *Id.* at 1248.

[33] Justice Thomas was joined by Justice Scalia.

[34] *See, e.g.*, Holder v. Hall, 512 U.S. 874, 891 (1994) (Thomas, J., concurring in the judgment).

[35] *Bartlett*, 129 S. Ct. at 1250 (Thomas, J., concurring in the judgment).

[36] *Id.*

[37] Justice Souter was joined by Justices Stevens, Ginsburg, and Breyer. Justice Ginsburg issued a brief, solo dissent petitioning Congress to reverse the Court and "clarify beyond debate the appropriate reading of § 2." *Id.* at 1260 (Ginsburg, J., dissenting).

majority," even if minorities comprise less than 50% of the district.[38] Justice Souter insisted that nothing in section 2 requires majority-minority districts and argued that the "totality of the circumstances" language prescribed "the ultimate functional approach."[39] He relied on the lower court's factual findings to show that coalition districts could function as effective minority-opportunity districts in practice.[40]

Justice Souter next criticized the plurality's reliance on *Gingles*, recalling that the Court had "repeatedly reserved decision on today's question,"[41] and citing cases "more consistent with a functional approach."[42] Further, he criticized the argument that allowing coalition claims would "by definition" defeat the majority-bloc-voting prong because in some situations the number of crossover voters may be a very small percentage of an otherwise oppositional racial majority.[43] Justice Souter also argued that the Court's 50% requirement conflicted with *Georgia v. Ashcroft*,[44] in which the Court held that "crossover districts count as minority-opportunity districts for [determining] whether minorities have [an] opportunity 'to elect . . .' under § 5 of the VRA."[45] Finally, the dissent accused the plurality of being "precisely backwards" in its use of constitutional avoidance because fewer minority districts would need to be purposefully drawn if coalition districts, which occur naturally, count toward section 2 compliance.[46]

Justice Breyer also dissented, offering an alternative bright-line rule to meet the plurality's administrability concerns.[47] Justice Breyer proposed using a "gateway number" to distinguish "districts where a minority group can 'elect representatives of their choice,' from . . . districts where the minority . . . can only 'elect' . . . consensus candidates."[48] Accepting that "[n]o voting group is 100% cohesive,"[49]

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[38] *Id.* at 1250 (Souter, J., dissenting).

[39] *Id.* at 1253.

[40] *See id.* at 1253–54.

[41] *Id.* at 1255 (citing, inter alia, Thornburg v. Gingles, 478 U.S. 30, 46 n.12 (1986)); *see Gingles*, 478 U.S. at 46 n.12 ("We have no occasion to consider whether § 2 permits . . . a claim brought by a minority group, that is not sufficiently large and compact to constitute a majority in a single-member district, alleging . . . impair[ment of] its ability *to influence* elections.").

[42] *Id.* at 1256 (citing League of United Latin Am. Citizens v. Perry, 126 S. Ct. 2594, 2616 (2006) ("[T]he first *Gingles* condition requires the possibility of creating more . . . districts with a sufficiently large minority population to elect candidates of its choice." (quoting Johnson v. De Grandy, 512 U.S. 997, 1008 (1994)) (internal quotation marks omitted)).

[43] *Id.* at 1257 (quoting *id.* at 1244 (plurality opinion)).

[44] 539 U.S. 461 (2003).

[45] *Bartlett*, 129 S. Ct. at 1258 (Souter, J., dissenting) (citation omitted) (quoting VRA § 5, 42 U.S.C. § 1973c(b) (2006)). Justice Kennedy countered simply that the "inquiries under [sections] 2 and 5 are different." *Id.* at 1249 (plurality opinion).

[46] *Id.* at 1258 (Souter, J., dissenting).

[47] *See id.* at 1260–62 (Breyer, J., dissenting).

[48] *Id.* at 1260 (quoting VRA § 2, 42 U.S.C. § 1973(b)).

[49] *Id.*

Justice Breyer suggested the Court "pick a numerical ratio that requires the minority voting age population to be twice as large as the percentage of majority crossover votes needed."[50] He argued this rule would better reflect the reality of when the minority group has effective control.

Although the Court reached the correct result, neither the plurality nor the dissents considered the implications of mandating coalition districts. Mandating coalition districts would force redistricters actively to seek out voting partners for racial minorities too small to control an election on their own, heavily burdening redistricters and unfairly advantaging minorities. These consequences would drastically change what the VRA requires in ways that cannot be reconciled with either its text or its purpose. By ignoring these implications, the Supreme Court shirked its obligation to grapple with a functional inquiry and instead hid behind a formalistic majority requirement.

A practical inquiry reveals that legislatures would not merely be required to "protect" coalition districts, as if they are naturally occurring and waiting to be destroyed by redistricters for political gain, but would also be required to seek out the right "balance" of friendly and unfriendly white voters to give the racial minority group electoral control. Mandating coalition districts would not be a simple matter of keeping a racial group together. If statewide statistics about the size of the racial group needed to elect a candidate sufficed, then nefarious legislators could group 39% African Americans with 61% white Republicans[51] to submerge the minority vote.[52] If this submerging were done with the intention of suppressing African Americans' votes, it would surely violate the VRA, and likely the Fifteenth Amendment, but so long as there were political motives, say, to decrease Democratically controlled districts, it would likely withstand scrutiny under both.[53] Similarly, a strategic redistricter might place the 39% African Americans with 61% white Democrats, thus packing as many Democrats into a district as possible, with the effect that white Democrats would control the primary and African Americans would again be left without an "opportunity to elect." Instead, because statistics do not suffice, legislators would have to seek out the right proportion of white

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[50] *Id.* at 1261.

[51] This comment assumes, for purposes of this example, that African Americans tend to vote overwhelmingly for Democrats.

[52] *Cf.* Campos v. City of Houston, 113 F.3d 544, 548 (5th Cir. 1997) ("It would be a Pyrrhic victory for a court to create a single-member [opportunity] district in which a minority population . . . continued to be defeated at the polls." (quoting Brewer v. Ham, 876 F.2d 448, 452 (5th Cir. 1989))).

[53] *See* Easley v. Cromartie, 532 U.S. 234, 257–58 (2001).

Democrats and then complete the district with white, Republican "filler people."[54]

The burden to create the right sociopolitical balance would not be a requirement merely to maintain or preserve such naturally occurring communities, as some courts have imagined,[55] but also to gerrymander district lines to tie the racial minority group together with racial majority enclaves of the desired political affiliation. The Court has already required legislators to draw bizarrely shaped districts to connect pockets of racial minority voters to create majority-minority districts. In Texas, for example, the Court required the legislature to draw a section 2 majority-minority district where the "Latino communities joined to form [the district were] . . . over 500 miles [apart]."[56] Similarly, the Supreme Court upheld against an equal protection challenge a North Carolina district that "meander[ed] down Interstate 85 through six counties, picking up urban and heavily African American–concentrated areas in parts of Charlotte, Winston-Salem and Greensboro."[57] Thus, although the most egregious gerrymanders will be struck down,[58] the compactness requirement does not put a significant limit on the types of districts that can be drawn.[59] As these oddly shaped districts are accepted for VRA compliance, legislators face more pressure to create minority districts — pressure that will only increase once they not only have to string together minority voters, but also have to combine them with white voters of particular political affiliations.

The *Bartlett* plurality failed to address these consequences. Justice Kennedy framed the case in terms of "preserv[ing minority] strength"[60]

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[54] T. Alexander Aleinikoff & Samuel Issacharoff, *Race and Redistricting: Drawing Constitutional Lines After* Shaw v. Reno, 92 MICH. L. REV. 588, 601 (1993) (defining "filler people" as groups subordinated by state authorities who intentionally place them in districts in which they have no chance of winning). The concept of filler people becomes more complex in the coalition context. Traditionally, filler people are groups of white voters placed in majority-minority districts to avoid accusations of "packing" African American voters and wasting unneeded votes. *See id.* at 630–31. In the coalition context, filler people are not random white voters, but must be a certain proportion of each political group. Arguably, then, both the Republican and the Democratic white voters placed in coalition districts could be considered filler people, as neither has a chance to elect their preferred candidate.

[55] *See, e.g.*, Hall v. Virginia, 385 F.3d 421, 431 (4th Cir. 2004) (describing a minority group's section 2 claim as "assert[ing] . . . a right to preserve [its] strength").

[56] League of United Latin Am. Citizens v. Perry, 126 S. Ct. 2594, 2657 (2006) (Roberts, C.J., concurring in part, concurring in the judgment in part, and dissenting in part).

[57] Robert F. Kravetz, Recent Decision, *Where Race and Political Behavior Highly Correlate Within a Congressional District, It Is Unlikely that the District Will Be Held To Be an Unconstitutional Racial Gerrymander:* Easley v. Cromartie, 40 DUQ. L. REV. 561, 561 (2002).

[58] *See, e.g.*, Miller v. Johnson, 515 U.S. 900 (1995); Shaw v. Reno, 509 U.S. 630 (1993).

[59] *See The Supreme Court, 2000 Term—Leading Cases*, 115 HARV. L. REV. 306, 395 (2001) (describing *Easley* as creating a "hyper-deference to legislative redistricting").

[60] *Bartlett*, 129 S. Ct. at 1243 (plurality opinion) (quoting *Hall*, 385 F.3d at 431).

and "protect[ing]"[61] minorities' opportunity to elect, as if the burden is merely one of keeping racial groups together. Yet while the peculiar posture of *Bartlett* was such that the legislature was *defending* a coalition district, a non-50% rule would apply equally to the usual case challenging legislatures for failing to draw coalition districts. Thus, the plurality offered no account of how coalition districts would be planned and drawn before the redistricting reaches litigation.

While Justice Breyer's 2:1 ratio rule comes closest to offering a functional test of when coalition districts must be preserved, this test is only for preexisting or proposed coalition districts, not for how they would be drawn in the first instance. Ironically, then, Justice Breyer presented both the most practical gatekeeping test for determining when racial minorities have effective control of a coalition district and the least practical analysis for determining how to draw these districts.

Justice Souter's dissent addressed how these districts would be created, but his analysis is flawed because it treats coalition districts either as "natural byproduct[s]" or as requiring legislators simply to preserve communities in which racial minorities comprise the requisite percentage of the population.[62] He noted, for instance, that "voting districts with a black . . . population of as little as 38.37% [can] elect black candidates."[63] Justice Souter further observed that "threshold population[s are] sufficient to provide minority voters with an opportunity to elect," but he did not reference how district-by-district differences in the voting preferences of the nonminority population might affect the required "threshold population."[64] Unlike Chief Justice Parker's similar dissent from the state supreme court decision,[65] Justice Souter did not mention that District 18 itself had actually elected an African American representative under the plan.[66] Instead, he depended wholly on statewide statistics and ignored the specific composition of the district. This reliance may suggest that the burden on legis-

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[61] *Id.* at 1246.

[62] *Id.* at 1258 (Souter, J., dissenting).

[63] *Id.* at 1253 (citing Pender County v. Bartlett, 649 S.E.2d 364, 366–67 (N.C. 2007)).

[64] *Id.* at 1254.

[65] *See Bartlett*, 649 S.E.2d at 380 (Parker, C.J., dissenting) ("In House District 18, election results have already established that minority voters have the potential to elect a representative of choice. The 2004 election results, held under the 2003 plan, demonstrated that District 18 as currently drawn is an effective minority voting district . . . ." (footnote omitted)).

[66] Although he pointed to the past success of districts in which African Americans are between 39% and 50% of the population, stating "all but one elected a black representative in the 2004 election," he made no reference to the results in District 18 itself. Bartlett, 129 S. Ct. at 1254 (Souter, J., dissenting). Petitioner's brief also noted that "District 18 has in fact consistently elected the candidate of choice of African American voters. In 2004, Representative Wright defeated another black Democrat to secure his party's nomination, and went on to defeat a Republican challenger in the general election . . . ." Brief for the Petitioners at 8, Bartlett, 129 S. Ct. 1231 (2009) (No. 07-689), 2008 WL 2415164.

lators is not to find friendly white voters, but rather to ensure there are enough minorities such that they, on average, have the ability to elect a candidate. Under this rule, some redistricters would be able to manipulate these "coalition districts" by flooding them with either too many white Republicans or too many white Democrats[67] and thus escape litigation while leaving the minority community without a voice.

That each of the opinions misunderstood the consequences of a non-50% rule is not surprising: the plurality attempted to dodge such considerations by rejecting coalition districts at the first *Gingles* step. Yet such an interpretation of the first *Gingles* prong, which focuses on a functional ability to elect, made for a much closer case than if the plurality had acknowledged the consequences of a non-50% rule under the totality-of-the-circumstances step.[68] These consequences cannot be reconciled with either the text or purpose of the VRA. Section 2 prohibits voting standards, practices, and procedures that "result[] in a denial or abridgement of the right . . . to vote on account of race."[69] A violation "is established if, based on the totality of the circumstances, . . . the political processes . . . are not equally open to participation."[70] Courts have interpreted section 2 as ensuring that "any disparate racial impact of facially neutral voting requirements d[oes] not result from racial discrimination."[71] Failure to seek out coalition groups hardly seems to have a disparate racial impact, except in the sense that refusal to implement any affirmative action policy would have an adverse, disparate impact on its would-be beneficiaries. Further, any arguable loss to minority groups is unlikely to be the result of racial discrimination.[72] Failure to search actively for minority-friendly neighbors does not have the same likelihood of a discriminatory motive as failure to preserve a compact, politically cohesive minority community of 50%.

The Supreme Court's interpretation of the totality-of-the-circumstances step also suggests that groups with less than 50% of the popu-

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[67] A district could technically satisfy Justice Souter's test but fail to elect a minority candidate if it contained a large proportion of white Democrats who would rather vote for a white Republican than a black Democrat.

[68] Although the totality-of-the-circumstances step may seem less amenable to a bright-line 50% rule than the *Gingles* prong, it is the dramatic *qualitative shift* in the burden to the legislature and windfall to minorities that requires categorical exclusion of coalition districts even under the usually flexible analysis.

[69] 42 U.S.C. § 1973(a) (2006).

[70] *Id.* § 1973(b).

[71] Farrakhan v. Washington, 338 F.3d 1009, 1016 (9th Cir. 2003).

[72] In *Bartlett*, the Whole County Provision "arose hundreds of years before [the VRA]," originating in the state constitution of 1776, and thus had nothing to do with vote dilution. Stephenson v. Bartlett, 562 S.E.2d 377, 386 (N.C. 2002). Additionally, the Supreme Court has recognized that "maintain[ing] the integrity of political subdivisions" is a legitimate state interest and does not give rise to discrimination concerns. Shaw v. Reno, 509 U.S. 630, 646 (1993).

lation categorically fail the analysis, particularly when one accounts for the extraordinary process the legislature must undertake to ensure the right electoral balance. In *Johnson v. De Grandy*,[73] the Supreme Court held that Florida was not required to draw an additional majority-minority district because Cubans were already represented in rough proportion to their numbers.[74] The Court stated that section 2 did not entitle a minority group to a "political feast," but rather only to "equal participation in the political process."[75] Even Justice Souter's *Bartlett* dissent admitted that "the VRA was passed to guarantee minority voters a fair game, not a killing."[76] Requiring states to hunt actively for nearby, minority-friendly voters would require a much more intensive inquiry than what is required to create a majority-minority district: namely, keeping the racial minority together. Finding local coalition partners for minorities would "immunize [them] from the obligation to pull, haul, and trade"[77] and give them a "political feast," much like the rejected additional seat in *De Grandy*.[78]

Some of the *Bartlett* plurality's own reasoning recognizes this concern. First, in rejecting the State's claim that District 18 was required under section 2, the plurality stated that "[n]othing in § 2 grants special protection to a minority group's . . . political coalitions."[79] The plurality went on to conclude that "[s]ection 2 does not impose on [redistricters] a duty to give minority voters the most potential, or the best potential, to elect a candidate."[80] It is difficult to see how this aversion to special treatment is relevant to interpreting a requirement that the minority group be sufficiently large to control an election under the plurality's formulaic recitation of the first *Gingles* prong. This language is better understood to show why failure to draw coalition districts is nonactionable under the totality of the circumstances because requiring legislators to find voting partners unfairly advantages minorities.

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[73] 512 U.S. 997 (1994).

[74] *Id.* at 1000.

[75] *Id.* at 1017; *see also* Barnett v. City of Chicago, 969 F. Supp. 1359, 1412 (N.D. Ill. 1997) ("VRA § 2 protects racial minorities against a stacked deck but it does not guarantee that they will enjoy a winning hand . . . ."), *aff'd in part*, *vacated in part*, 141 F.3d 706 (7th Cir. 1998). *But see* Samuel Issacharoff, *Supreme Court Destabilization of Single-Member Districts*, 1995 U. CHI. LEGAL F. 205, 233 (noting the "VRA imposes great pressure on redistricting to optimize minority electoral prospects" because legislators seek to avoid litigation).

[76] *Bartlett*, 129 S. Ct. at 1251 (Souter, J., dissenting).

[77] *De Grandy*, 512 U.S. at 1020.

[78] In *Bartlett*, African Americans did not have proportional representation, and the proposed redistricting would have brought them closer to, but still less than, that figure. *See Bartlett*, 129 S. Ct. at 1258–59 (Souter, J., dissenting). This comment analogizes to *De Grandy* only to show another type of potential "political feast" in finding coalition partners for racial minorities.

[79] *Id.* at 1243 (plurality opinion).

[80] *Id.* The Court later reiterated that "[s]ection 2 does not guarantee minority voters an electoral advantage." *Id.* at 1246.

Second, the plurality's discussion of judicial administrability supports a reading of the 50% rule arising from a totality-of-the-circumstances analysis. The plurality delineated several questions needed to determine "whether potential districts could function as crossover districts" and stated that these inquiries "place courts in the untenable position of predicting many political variables."[81] Although most of the Court's discussion concerned judicial competence, it also discussed "legislative administration."[82] The plurality stated that "[a] requirement to draw election districts on answers to these and like inquiries ought not to be inferred from the text or purpose of § 2."[83] Yet this language is hardly a straightforward reading of the first *Gingles* prong. Here, the Court appeared to look briefly beyond the formalistic numbers requirement and to realize that any other holding would force legislators to predict racial and political trends for all the hypothetical ways they could draw districts. These predictions, the plurality suggested, may be so race-intensive that they amount to unconstitutional "[r]acial gerrymandering."[84] Certainly, under the totality of the circumstances, it would be unreasonable to find vote dilution simply because legislators have not performed this searching inquiry to find political partners for racial minority groups.

Although *Bartlett* ultimately reached the right conclusion, it hid behind a formalistic requirement without considering the implications of mandatory coalition districts. Because North Carolina demonstrated that District 18 had actually elected an African American representative under the plan, it made little sense for the Court to read the 50% requirement into the *Gingles* prong requiring "ability to elect." Instead, the Court should have acknowledged the difference between preventing unjustified dispersion of racial minority groups and requiring state legislators to find coalition partners for them. This recognition would have rightfully grounded the Court's conclusion in the totality-of-the-circumstances analysis. Such an analysis would be more in line with the VRA and the Court's own reasoning. Because the plurality failed to acknowledge the consequences of an expanded interpretation of the VRA, the plurality's opinion was technical, formalistic, and far less persuasive than if it had confronted this essential issue.

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[81] *Id.* at 1244.
[82] *Id.*
[83] *Id.* at 1245.
[84] *Id.* at 1247 (quoting Shaw v. Reno, 509 U.S. 630, 657 (1993)).