divining legislative intention. Presumably when Congress creates and defines the limits of a cause of action, it has taken into account competing considerations and struck what it considers to be an appropriate balance among them. In my view it is
154 wholly at odds with traditional principles for interpretation of legislative intention and with the constitutional notion of separation of powers to conclude that because Congress failed to indicate that it did not intend the cause of action and its limitations to be defined otherwise, it intended for this Court to exercise free rein in fashioning additional rules for recovery of damages under the guise of an inferred constitutional damages action.

For the foregoing reasons I dissent, and would reverse the judgment.

446 U.S. 55, 64 L.Ed.2d 47

CITY OF MOBILE, ALABAMA, et al., Appellants,

v.

Wiley L. BOLDEN et al.

No. 77-1844.

Argued March 19, 1979.

Reargued Oct. 29, 1979.

Decided April 22, 1980.

Black citizens of Mobile, Alabama, brought class action challenging constitutionality of city's at-large method of electing its commissioners. The United States District Court for the Southern District of Alabama, 423 F.Supp. 384, declared the commission government unconstitutional, and an appeal was taken. The Court of Appeals, Fifth Circuit, 571 F.2d 238, affirmed, and an appeal was taken. The Supreme Court, Per Mr. Justice Stewart, with three Justices joining, one Justice concurring in the result, and one Justice concurring in the judgment, delivered an opinion holding that the at-large electoral system in Mobile does not violate the rights of the city's Negro voters in contravention of the Fifteenth Amendment, since Negroes in Mobile register and vote without hindrance and their freedom to vote has not been denied or abridged by anyone.

Reversed and remanded.

Mr. Justice Blackmun filed an opinion concurring in the result.

Mr. Justice Stevens filed an opinion concurring in the judgment.

Mr. Justice White filed a dissenting opinion.

For separate dissenting opinions of Mr. Justice Brennan and Mr. Justice Marshall, see 100 S.Ct. 1519.

See also, 100 S.Ct. 1519.

Opinion after remand, 626 F.2d 1324.

1. Elections ⇐12

Fifteenth Amendment imposes but one limitation on the powers of the states: it forbids them to discriminate against Negroes in matters having to do with voting. (Per Mr. Justice Stewart with three Justices joining, one Justice concurring in the result, and one Justice concurring in the judgment.) U.S.C.A.Const. Amend. 15.

2. Elections ⇐12

Fifteenth Amendment's command and effect are wholly negative; it does not confer the right of suffrage on anyone, but has invested the citizens of the United States with a new constitutional right which is within the protecting power of Congress; that right is exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude. (Per Mr. Justice Stewart with three Justices joining, one Justice concurring in the result, and one Justice concurring in the judgment.) U.S.C.A.Const. Amend. 15.

3. Elections ⇐12

Action by a state that is racially neutral on its face violates the Fifteenth Amendment only if motivated by a discriminatory purpose. (Per Mr. Justice Stewart with three Justices joining, one Justice concurring in the result, and one Justice concurring in the judgment.) U.S.C.A.Const. Amend. 15.

4. Municipal Corporations ⇐80

At-large electoral system in Mobile, Alabama, does not violate the rights of the city's Negro voters in contravention of the Fifteenth Amendment, since Negroes in Mobile register and vote without hindrance and their freedom to vote has not been denied or abridged by anyone. (Per Mr. Justice Stewart with three Justices joining, one Justice concurring in result, and one Justice concurring in the judgment.) U.S.C.A.Const. Amend. 15; Voting Rights Act of 1965, § 2 et seq., 42 U.S.C.A. § 1973.

5. Elections ⇐12

Fifteenth Amendment does not entail the right to have Negro candidates elected but prohibits only purposefully discriminatory denial or abridgement by government of the freedom to vote "on account of race, color, or previous condition of servitude." (Per Mr. Justice Stewart with three Justices joining, one Justice concurring in result, and one Justice concurring in the judgment.) U.S.C.A.Const. Amend. 15.

6. Municipal Corporations ⇐80

A court, in formulating an apportionment plan as an exercise of its equity powers, should, as a general rule, not permit multimember legislative districts. (Per Mr. Justice Stewart with three Justices joining, one Justice concurring in result, and one Justice concurring in the judgment.)

7. Municipal Corporations ⇐80

Multimember legislative districts are not unconstitutional per se; however, such legislative apportionments could violate the Fourteenth Amendment if their purpose were invidiously to minimize or cancel out the voting potential of racial or ethnic minorities. (Per Mr. Justice Stewart with three Justices joining, one Justice concurring in result, and one Justice concurring in the judgment.) U.S.C.A.Const. Amend. 14.

8. Constitutional Law ⇐215.3

Only if there is purposeful discrimination can there be a violation of the equal protection clause, and this principle applies to claims of racial discrimination affecting voting just as it does to other claims of racial discrimination. (Per Mr. Justice Stewart with three Justices joining, one Justice concurring in result, and one Justice concurring in the judgment.) U.S.C.A. Const. Amend. 14.

9. Elections ⇐12

Disproportionate effects alone are insufficient to establish a claim of unconstitutional racial vote dilution. (Per Mr. Justice Stewart with three Justices joining, one Justice concurring in result, and one Justice concurring in the judgment.) U.S.C.A. Const. Amend. 14.

10. Constitutional Law ⇐215

Where the character of a law is readily explainable on grounds apart from race, as would nearly always be true where an entire system of local governance is brought into question, disproportionate impact alone cannot be decisive, and courts must look to other evidence to support a finding of discriminatory purpose. (Per Mr. Justice Stewart with three Justices joining, one Justice concurring in the result, and one Justice concurring in the judgment.)

11. Municipal Corporations ⇐80

Even assuming that an at-large municipal electoral system is constitutionally indistinguishable from the election of a few members of the state legislature in multimember districts, the evidence in the instant case, involving the city commission form of government for Mobile, Alabama, fell far short of showing that the city officials conceived or operated a purposeful device to further racial discrimination. (Per Mr. Justice Stewart with three Justices joining, one Justice concurring in the result, and one Justice concurring in the judgment.)

12. Municipal Corporations ⇐80

Past discrimination cannot, in the manner of original sin, condemn government action that is not itself unlawful. (Per Mr. Justice Stewart with three Justices joining, one Justice concurring in the result, and one Justice concurring in the judgment.)

13. Constitutional Law ⇐215.3

Equal protection clause does not require proportional representation as an imperative of political organization. (Per Mr. Justice Stewart with three Justices joining, and one Justice concurring in the result, and one Justice concurring in the judgment.) U.S.C.A.Const. Amend. 14.

14. Constitutional Law ⇐48(1)

A law that impinges upon a fundamental right explicitly or implicitly secured by the Constitution is presumptively unconstitutional. (Per Mr. Justice Stewart with three Justices joining, one Justice concurring in the result, and one Justice concurring in the judgment.)

15. Constitutional Law ⇐70.1(2)

It is not the province of the Supreme Court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws. (Per Mr. Justice Stewart with three Justices joining, one Justice concurring in the result, and one Justice concurring in the judgment.) U.S. C.A.Const. Amend. 14.

16. Constitutional Law ⇐70.3(3)

Where a state law does not impair a right or liberty protected by the Constitution, there is no occasion to depart from the settled mode of constitutional analysis of legislation involving questions of economic and social policy. (Per Mr. Justice Stewart with three Justices joining, one Justice concurring in the result, and one Justice concurring in the judgment.)

17. Constitutional Law ⇐48(6)

Presumption of constitutional validity that underlies the settled mode of reviewing legislation disappears if the law under consideration creates classes that, in a constitutional sense, are inherently "suspect." (Per Mr. Justice Stewart with three Justices joining, one Justice concurring in the result, and one Justice concurring in the judgment.) U.S.C.A.Const. Amend. 14.

18. Constitutional Law ⇐225.2(1)

While the equal protection clause confers a substantive right to participate in elections on an equal basis with other qualified voters, this right does not protect any "political group," however defined, from electoral defeat. (Per Mr. Justice Stewart with three Justices joining, one Justice concurring in the result, and one Justice concurring in the judgment.) U.S.C.A.Const. Amend. 14.

19. Jury ⇐21(1)

A defendant in a criminal case has the "fundamental" right to trial by a jury of his peers. (Per Mr. Justice Stewart with three Justices joining, one Justice concurring in the result, and one Justice concurring in the judgment.) U.S.C.A.Const. Amends. 6, 14.

20. Constitutional Law ⇐221(3)

Under the equal protection clause, a defendant in a criminal case has the right to require that the state not exclude from the jury members of his race, but fairness in selection has never been held to require proportional representation of races upon a jury, nor has the defendant any right to demand that members of his race be included. (Per Mr. Justice Stewart with three Justices joining, one Justice concurring in the result, and one Justice concurring in the judgment.) U.S.C.A.Const. Amends. 6, 14.

21. Constitutional Law ⇐221(1)

Absence from a jury of persons belonging to racial or other cognizable groups offends the Constitution only if it results from purposeful discrimination. (Per Mr. Justice Stewart with three Justices joining, one Justice concurring in the result, and one Justice concurring in the judgment.) U.S. C.A.Const. Amend. 14.

22. Jury ⇐33(1)

Fact that there is a constitutional right to a system of jury selection that is not

purposefully exclusionary does not entail a right to a jury of any particular racial composition. (Per Mr. Justice Stewart with three Justices joining, one Justice concurring in the result, and one Justice concurring in the judgment.) U.S.C.A.Const. Amend. 14.

23. Constitutional Law ⇐225.2(1)

Fact that the equal protection clause confers a right to participate in elections on an equal basis with other qualified voters does not entail the right to have one's candidates prevail. (Per Mr. Justice Stewart with three Justices joining, one Justice concurring in the result, and one Justice concurring in the judgment.) U.S.C.A.Const. Amend. 14.

24. Constitutional Law ⇐225.3(1)

Since Mobile, Alabama, is a unitary electoral district and city commission elections are conducted at large, there can be no claim that the "one person, one vote" principle has been violated, and therefore nobody's vote has been "diluted" in the sense in which that word is used in *Reynolds v. Sims.* (Per Mr. Justice Stewart with three Justices joining, one Justice concurring in the result, and one Justice concurring in the judgment.)

Syllabus *

Mobile, Ala., is governed by a Commission consisting of three members elected at large who jointly exercise all legislative, executive, and administrative power in the city. Appellees brought a class action in Federal District Court against the city and the incumbent Commissioners on behalf of all Negro citizens of the city, alleging, *inter alia*, that the practice of electing the City Commissioners at large unfairly diluted the voting strength of Negroes in violation of the Fourteenth and Fifteenth Amendments. Although finding that Negroes in Mobile "register and vote without hindrance," the District Court nevertheless held that the at-large electoral system violated the Fifteenth Amendment and invidiously discriminated against Negroes in violation of the Equal Protection Clause of the Fourteenth Amendment, and ordered that the Commission be disestablished and replaced by a Mayor and a Council elected from single-member districts. The Court of Appeals affirmed.

Held: The judgment is reversed, and the case is remanded. Pp. 1496–1507 (opinion of STEWART, J.); 1507–1508 (opinion of BLACKMUN, J.); 1508–1514 (opinion of STEVENS, J.).

5th Cir., 571 F.2d 238, reversed and remanded.

Mr. Justice STEWART, joined by THE CHIEF JUSTICE, Mr. Justice POWELL, and Mr. Justice REHNQUIST, concluded:

1. Mobile's at-large electoral system does not violate the rights of the city's Negro voters in contravention of the Fifteenth Amendment. Racially discriminatory motivation is a necessary ingredient of a Fifteenth Amendment violation. The Amendment does not entail the right to have Negro candidates elected but prohibits only purposefully discriminatory denial or abridgment by government of the freedom to vote "on account of race, color, or previous condition of servitude." Here, having found that Negroes in Mobile register and vote without hindrance, the courts below erred in believing that appellants invaded the protection of the Fifteenth Amendment. Pp. 1496–1499.

2. Nor does Mobile's at-large electoral system violate the Equal Protection Clause of the Fourteenth Amendment. Pp. 1498–1507.

I(a) Only if there is purposeful discrimination can there be a violation of the Equal Protection Clause. And this principle applies to claims of racial discrimination affecting voting just as it does to other claims of racial discrimination. Pp. 1499–1500. [56]

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

(b) Disproportionate effects alone are insufficient to establish a claim of unconstitutional racial vote dilution. Where the character of a law is readily explainable on grounds apart from race, as would nearly always be true where, as here, an entire system of local governance is brought into question, disproportionate impact alone cannot be decisive, and courts must look to other evidence to support a finding of discriminatory purpose. Pp. 1500–1501.

(c) Even assuming that an at-large municipal electoral system such as Mobile's is constitutionally indistinguishable from the election of a few members of a state legislature in multimember districts, it is clear that the evidence in this case fell far short of showing that appellants "conceived or operated [a] purposeful devic[e] to further racial ... discrimination," *Whitcomb v. Chavis*, 403 U.S. 124, 149, 91 S.Ct. 1858, 1872, 29 L.Ed.2d 363. Pp. 1501–1504.

(d) The Equal Protection Clause does not require proportional representation as an imperative of political organization. While the Clause confers a substantive right to participate in elections on an equal basis with other qualified voters, this right does not protect any "political group," however defined, from electoral defeat. Since Mobile is a unitary electoral district and the Commission elections are conducted at large, there can be no claim that the "one person, one vote" principle has been violated, and therefore nobody's vote has been "diluted" in the sense in which that word was used in *Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506. Pp. 1504–1507.

Mr. Justice BLACKMUN concluded that the relief afforded appellees by the District Court was not commensurate with the sound exercise of judicial discretion. The court at least should have considered alternative remedial orders to converting Mobile's government to a mayor-council system, and in failing to do so the court appears to have been overly concerned with eliminating at-large elections *per se*, rather than with structuring an electoral system that provided an opportunity for black voters to participate in the city's government on an equal footing with whites. Pp. 1507–1508.

Mr. Justice STEVENS concluded that the proper standard for adjudging the constitutionality of a political structure, such as Mobile's, that treats all individuals as equals but adversely affects the political strength of an identifiable minority group, is the same whether the minority is identified by a racial, ethnic, religious, or economic characteristic; that *Gomillion v. Lightfoot*, 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110, suggests that the standard asks [1](1) [157] whether the political structure is manifestly not the product of a routine or traditional decision, (2) whether it has a significant adverse impact on a minority group, and (3) whether it is unsupported by any neutral justification and thus was either totally irrational or entirely motivated by a desire to curtail the political strength of the minority; and that the standard focuses on the objective effects of the political decision rather than the subjective motivation of the decisionmaker. Under this standard the choice to retain Mobile's commission form of government must be accepted as constitutionally permissible even though the choice may well be the product of mixed motivation, some of which is invidious. Pp. 1508–1514.

Charles S. Rhyne, Washington, D. C., for appellants.

James U. Blacksher, Mobile, Ala., for appellees.

James P. Turner, Washington, D. C., for the United States, as amicus curiae, in support of appellees.

[1]Mr. Justice STEWART announced the [158] judgment of the Court and delivered an opinion, in which THE CHIEF JUSTICE, Mr. Justice POWELL, and Mr. Justice REHNQUIST joined.

The city of Mobile, Ala., has since 1911 been governed by a City Commission con-

sisting of three members elected by the voters of the city at large. The question in this case is whether this at-large system of municipal elections violates the rights of Mobile's Negro voters in contravention of federal statutory or constitutional law.

The appellees brought this suit in the Federal District Court for the Southern District of Alabama as a class action on behalf of all Negro citizens of Mobile.[1] Named as defendants were the city and its three incumbent Commissioners, who are the appellants before this Court. The complaint alleged that the practice of electing the City Commissioners at large unfairly diluted the voting strength of Negroes in violation of § 2 of the Voting Rights Act of 1965,[2] of the Fourteenth Amendment, and of the Fifteenth Amendment. Following a bench trial, the District Court found that the constitutional rights of the appellees had been violated, entered a judgment in their favor, and ordered that the City Commission be disestablished and replaced by a municipal government consisting of a Mayor and a City Council with members elected from single-member districts. 423 F.Supp. 384.[3] The Court of Appeals affirmed the judgment in its entirety, 5th Cir., 571 F.2d 238, agreeing that Mobile's at-large elections operated to discriminate against Negroes in violation of the Fourteenth and Fifteenth Amendments, *id.*, at 245, and finding that the remedy formulated by the [59] District Court was inappropriate. An appeal was taken to this Court, and we noted probable jurisdiction, 439 U.S. 815, 99 S.Ct. 75, 58 L.Ed.2d 106. The case was originally argued in the 1978 Term, and was reargued in the present Term.

I

In Alabama, the form of municipal government a city may adopt is governed by state law. Until 1911, cities not covered by specific legislation were limited to governing themselves through a mayor and city council.[4] In that year, the Alabama Legislature authorized every large municipality to adopt a commission form of government.[5] Mobile established its City Commission in the same year, and has maintained that basic system of municipal government ever since.

The three Commissioners jointly exercise all legislative, executive and administrative power in the municipality. They are required after election to designate one of their number as Mayor, a largely ceremonial office, but no formal provision is made for allocating specific executive or administrative duties among the three.[6] As required by the state law enacted in 1911, each candidate for the Mobile City Commission runs for election in the city at large for a term of four years in one of three numbered posts, and may be elected only by a [60] majority of the total vote. This is the same basic electoral system that is followed by literally thousands of municipalities and

1. Approximately 35.4% of the residents of Mobile are Negro.

2. 79 Stat. 437, as amended, 42 U.S.C. § 1973. The complaint also contained claims based on the First and Thirteenth Amendments and on 42 U.S.C. § 1983 and 42 U.S.C. § 1985(3) (1976 ed., Supp. II). Those claims have not been pressed in this Court.

3. The District Court has stayed its orders pending disposition of the present appeal.

4. Ala.Code, § 11–43 (1975).

5. Act No. 281, 1911 Ala.Acts, p. 330.

6. In 1965 the Alabama Legislature enacted Act No. 823, 1965 Ala.Acts, p. 1539, § 2 of which designated specific administrative tasks to be performed by each Commissioner and provided that the title of Mayor be rotated among the three. After the present lawsuit was commenced, the city of Mobile belatedly submitted Act No. 823 to the Attorney General of the United States under § 5 of the Voting Rights Act of 1965. 42 U.S.C. § 1973c. The Attorney General objected to the legislation on the ground that the city had not shown that § 2 of the Act would not have the effect of abridging the right of Negroes to vote. No suit has been brought in the District Court for the District of Columbia to seek clearance under § 5 of the Voting Rights Act and, accordingly, § 2 of Act No. 823 is in abeyance.

other local governmental units throughout the Nation.[7]

II

Although required by general principles of judicial administration to do so, *Spector Motor Service, Inc. v. McLaughlin*, 323 U.S. 101, 105, 65 S.Ct. 152, 154, 89 L.Ed. 101; *Ashwander v. TVA*, 297 U.S. 288, 347, 56 S.Ct. 466, 483, 80 L.Ed. 688 (Brandeis, J., concurring), neither the District Court nor the Court of Appeals addressed the complaint's statutory claim—that the Mobile electoral system violates § 2 of the Voting Rights Act of 1965. Even a cursory examination of that claim, however, clearly discloses that it adds nothing to the appellees' complaint.

Section 2 of the Voting Rights Act provides:

> "No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color." 79 Stat. 437, as amended, 42 U.S.C. § 1973.

Assuming, for present purposes, that there exists a private right of action to enforce this statutory provision,[8] it is apparent that the language of § 2 no more than elaborates upon that of the Fifteenth Amendment,[9] [61] and the sparse legislative history of § 2 makes clear that it was intended to have an effect no different from that of the Fifteenth Amendment itself.

Section 2 was an uncontroversial provision in proposed legislation whose other provisions engendered protracted dispute. The House Report on the bill simply recited that § 2 "grants . . . a right to be free from enactment or enforcement of voting qualifications . . . or practices which deny or abridge the right to vote on account of race or color." H.R.Rep. No. 439, 89th Cong., 1st Sess., 23 (1965), U.S. Code Cong. & Admin.News, 1965, pp. 2437, 2453. See also S.Rep. No. 162, 89th Cong., 1st Sess., pt. 3, pp. 19–20 (1965). The view that this section simply restated the prohibitions already contained in the Fifteenth Amendment was expressed without contradiction during the Senate hearings. Senator Dirksen indicated at one point that all States, whether or not covered by the preclearance provisions of § 5 of the proposed legislation, were prohibited from discriminating against Negro voters by § 2, which he termed "almost a rephrasing of the 15th [A]mendment." Attorney General Katzenbach agreed. See Voting Rights: Hearings on S. 1564 before the Senate Committee on the Judiciary, 89th Cong., 1st Sess., pt. 1, p. 208 (1965).

In view of the section's language and its sparse but clear legislative history, it is evident that this statutory provision adds nothing to the appellees' Fifteenth Amendment claim. We turn, therefore, to a consideration of the validity of the judgment of the Court of Appeals with respect to the Fifteenth Amendment.

III

[1, 2] The Court's early decisions under the Fifteenth Amendment established that it imposes but one limitation on the powers of the States. It forbids them to discriminate against Negroes in matters having to do with voting. See *Ex parte Yarbrough*, 110 U.S. 651, 665, 4 S.Ct. 152, 159, 28 L.Ed.

7. According to the 1979 Municipal Year Book, most municipalities of over 25,000 people conducted at-large elections of their city commissioners or council members as of 1977. *Id.*, at 98–99. It is reasonable to suppose that an even larger majority of other municipalities did so.

8. Cf. *Allen v. State Board of Elections*, 393 U.S. 544, 89 S.Ct. 817, 22 L.Ed.2d 1. But see *Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U.S. 11, 100 S.Ct. 242, 62 L.Ed.2d 146; *Touche Ross & Co. v. Redington*, 442 U.S. 560, 99 S.Ct. 2479, 60 L.Ed.2d 82.

9. Section 1 of the Fifteenth Amendment provides:

> "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

274; *Neal v. Delaware*, 103 U.S. 370, 389–390, 26 L.Ed. 567; *United States v. Cruikshank*, 92 U.S. 542, 555–556, 23 L.Ed. 588; *United States v. Reese*, 92 U.S. 214, 23 L.Ed. 563. The Amendment's command and effect are wholly negative. "The Fifteenth Amendment does not confer the right of suffrage upon any one," but has "invested the citizens of the United States with a new constitutional right which is within the protecting power of Congress. That right is exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude." *Id.*, at 217–218.

[3] Our decisions, moreover, have made clear that action by a State that is racially neutral on its face violates the Fifteenth Amendment only if motivated by a discriminatory purpose. In *Guinn v. United States*, 238 U.S. 347, 35 S.Ct. 926, 59 L.Ed. 1340, this Court struck down a "grandfather" clause in a state constitution exempting from the requirement that voters be literate any person or the descendants of any person who had been entitled to vote before January 1, 1866. It was asserted by way of defense that the provision was immune from successful challenge, since a law could not be found unconstitutional either "by attributing to the legislative authority an occult motive," or "because of conclusions concerning its operation in practical execution and resulting discrimination arising . . . from inequalities naturally inhering in those who must come within the standard in order to enjoy the right to vote." *Id.*, at 359, 35 S.Ct., at 929. Despite this argument, the Court did not hesitate to hold the grandfather clause unconstitutional, because it was not "possible to discover any basis in reason for the standard thus fixed other than the purpose" to circumvent the Fifteenth Amendment. *Id.*, at 365, 35 S.Ct., at 931.

The Court's more recent decisions confirm the principle that racially discriminatory motivation is a necessary ingredient of a Fifteenth Amendment violation. In *Gomillion v. Lightfoot*, 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed. 2d 110, the Court held that allegations of a racially motivated gerrymander of municipal boundaries stated a claim under the Fifteenth Amendment. The constitutional infirmity of the state law in that case, according to the allegations of the complaint, was that in drawing the municipal boundaries the legislature was "solely concerned with segregating white and colored voters by fencing Negro citizens out of town so as to deprive them of their pre-existing municipal vote." *Id.*, at 341, 81 S.Ct., at 127. The Court made clear that in the absence of such an invidious purpose, a State is constitutionally free to redraw political boundaries in any manner it chooses. *Id.*, at 347, 81 S.Ct., at 130.[10]

In *Wright v. Rockefeller*, 376 U.S. 52, 84 S.Ct. 603, 11 L.Ed.2d 512, the Court upheld by like reasoning a state congressional reapportionment statute against claims that district lines had been racially gerrymandered, because the plaintiffs failed to prove that the legislature "was either motivated by racial considerations or in fact drew the districts on racial lines"; or that the statute "was the product of a state contrivance to segregate on the basis of race or place of origin." *Id.*, at 56, 58, 84 S.Ct., at 605–06.[11]

10. The Court has repeatedly cited *Gomillion v. Lightfoot*, for the principle that an invidious *purpose* must be adduced to support a claim of unconstitutionality. See *Personnel Administrator of Mass. v. Feeney*, 442 U.S. 256, 272, 99 S.Ct. 2282, 2292, 60 L.Ed.2d 870; *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 265, 266, 97 S.Ct. 555, 563, 50 L.Ed.2d 450; *Washington v. Davis*, 426 U.S. 229, 240, 96 S.Ct. 2040, 2047, 48 L.Ed.2d 597.

11. Mr. Justice MARSHALL has elsewhere described the fair import of the *Gomillion* and *Wright* cases: "In the two Fifteenth Amendment redistricting cases, *Wright v. Rockefeller*, 376 U.S. 52, 84 S.Ct. 603, 11 L.Ed.2d 512 (1964), and *Gomillion v. Lightfoot*, 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110 (1960), the Court suggested that legislative purpose alone is determinative, although language in both cases may be isolated that seems to approve some inquiry into effect insofar as it elucidates purpose." *Beer v. United States*, 425 U.S. 130, 148, n. 4, 96 S.Ct. 1357, 1367, n. 4, 47 L.Ed.2d 629 (dissenting opinion).

See also *Lassiter v. Northampton Election Bd.*, 360 U.S. 45, 79 S.Ct. 985, 3 L.Ed.2d 1072; *Lane v. Wilson*, 307 U.S. 268, 275–277, 59 S.Ct. 872, 876, 83 L.Ed. 1281.

While other of the Court's Fifteenth Amendment decisions have dealt with different issues, none has questioned the necessity of showing purposeful discrimination in order to show a Fifteenth Amendment violation. The cases of *Smith v. Allwright*, 321 U.S. 649, 64 S.Ct. 757, 88 L.Ed. 987, and *Terry v. Adams*, 345 U.S. 461, 73 S.Ct. 809, 97 L.Ed. 1152, for example, dealt [164] with the question whether a State was so involved with racially discriminatory voting practices as to invoke the Amendment's protection. Although their facts differed somewhat, the question in both cases was whether the State was sufficiently implicated in the conduct of racially exclusionary primary elections to make that discrimination an abridgment of the right to vote *by a State*. Since the Texas Democratic Party primary in *Smith v. Allwright* was regulated by statute, and only party nominees chosen in a primary were placed on the ballot for the general election, the Court concluded that the state Democratic Party had become the agency of the State, and that the State thereby had "endorse[d], adopt[ed] and enforce[d] the discrimination against Negroes, practiced by a party." 321 U.S., at 664, 64 S.Ct., at 765.

Terry v. Adams, supra, posed a more difficult question of state involvement. The primary election challenged in that case was conducted by a county political organization, the Jaybird Association, that was neither authorized nor regulated under state law. The candidates chosen in the Jaybird primary, however, invariably won in the subsequent Democratic primary and in the general election, and the Court found that the Fifteenth Amendment had been violated. Although the several supporting opinions differed in their formulation of this conclusion, there was agreement that the State was involved in the purposeful exclusion of Negroes from participation in the election process.

The appellees have argued in this Court that *Smith v. Allwright* and *Terry v. Adams* support the conclusion that the at-large system of elections in Mobile is unconstitutional, reasoning that the effect of racially polarized voting in Mobile is the same as that of a racially exclusionary primary. The only characteristic, however, of the exclusionary primaries that offended the Fifteenth Amendment was that Negroes were not permitted to vote in them. The difficult question was whether the "State ha[d] had a hand in" the patent discrimination [165] practiced by a nominally private organization. *Terry v. Adams, supra*, at 473, 73 S.Ct., at 815 (opinion of Frankfurter, J.).

[4, 5] The answer to the appellees' argument is that, as the District Court expressly found, their freedom to vote has not been denied or abridged by anyone. The Fifteenth Amendment does not entail the right to have Negro candidates elected, and neither *Smith v. Allwright* nor *Terry v. Adams* contains any implication to the contrary. That Amendment prohibits only purposefully discriminatory denial or abridgment by government of the freedom to vote "on account of race, color, or previous condition of servitude." Having found that Negroes in Mobile "register and vote without hindrance," the District Court and Court of Appeals were in error in believing that the appellants invaded the protection of that Amendment in the present case.

IV

The Court of Appeals also agreed with the District Court that Mobile's at-large electoral system violates the Equal Protection Clause of the Fourteenth Amendment. There remains for consideration, therefore, the validity of its judgment on that score.

A

The claim that at-large electoral schemes unconstitutionally deny to some persons the

The Court in the *Wright* case also rejected claims made under the Equal Protection Clause of the Fourteenth Amendment. See *infra*, at 1500.

equal protection of the laws has been advanced in numerous cases before this Court. That contention has been raised most often with regard to multimember constituencies within a state legislative apportionment system. The constitutional objection to multimember districts is not and cannot be that, as such, they depart from apportionment on a population basis in violation of *Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506, and its progeny. Rather the focus in such cases has been on the lack of representation multimember districts afford various elements of the voting population in a system of representative legislative democracy. "Criticism [of multimember districts] is rooted in their winner-
[66] take-all aspects, their tendency to submerge minorities . . ., a general preference for legislatures reflecting community interests as closely as possible and disenchantment with political parties and elections as devices to settle policy differences between contending interests." *Whitcomb v. Chavis*, 403 U.S. 124, 158–159, 91 S.Ct. 1858, 1877, 29 L.Ed.2d 363.

[6, 7] Despite repeated constitutional attacks upon multimember legislative districts, the Court has consistently held that they are not unconstitutional *per se*, *e. g.*, *White v. Regester*, 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314; *Whitcomb v. Chavis*, *supra*; *Kilgarlin v. Hill*, 386 U.S. 120, 87 S.Ct. 820, 17 L.Ed.2d 771; *Burns v. Richardson*, 384 U.S. 73, 86 S.Ct. 1286, 16 L.Ed.2d 376; *Fortson v. Dorsey*, 379 U.S. 433, 85 S.Ct. 498, 13 L.Ed.2d 401.[12] We have recognized, however, that such legislative apportionments could violate the Fourteenth Amendment if their purpose were invidiously to minimize or cancel out the voting potential of racial or ethnic minorities. See *White v. Regester*, *supra*; *Whitcomb v. Chavis*, *supra*; *Burns v. Richardson*, *supra*; *Fortson v. Dorsey*, *supra*. To prove such a purpose it is not enough to show that the group allegedly discriminated against has not elected representatives in proportion to its numbers. *White v. Regester*, *supra*, 412 U.S., at 765–766, 93 S.Ct., at 2339; *Whitcomb v. Chavis*, 403 U.S., at 149–150, 91 S.Ct., at 1872. A plaintiff must prove that the disputed plan was "conceived or operated as [a] purposeful devic[e] to further racial . . . discrimination," *id.*, at 149, 91 S.Ct. at 1872.

[8, 9] This burden of proof is simply one aspect of the basic principle that only if there is purposeful discrimination can there be a violation of the Equal Protection Clause of the Fourteenth Amendment. See *Washington v. Davis*, 426 U.S. 229, 96 S.Ct. 2040, 48 L.Ed.2d 597; *Arlington Heights v.* [67] *Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 97 S.Ct. 555, 50 L.Ed.2d 450; *Personnel Administrator of Mass. v. Feeney*, 442 U.S. 256, 99 S.Ct. 2282, 60 L.Ed.2d 870. The Court explicitly indicated in *Washington v. Davis* that this principle applies to claims of racial discrimination affecting voting just as it does to other claims of racial discrimination. Indeed, the Court's opinion in that case viewed *Wright v. Rockefeller*, 376 U.S. 52, 84 S.Ct. 603, 11 L.Ed.2d 512, as an apt illustration of the principle that an illicit purpose must be proved before a constitutional violation can be found. The Court said:

> "The rule is the same in other contexts. *Wright v. Rockefeller*, 376 U.S. 52, 84 S.Ct. 603, 11 L.Ed.2d 512 (1964), upheld a New York congressional apportionment statute against claims that district lines had been racially gerrymandered. The challenged districts were made up predominantly of whites or of minority races, and their boundaries were irregularly drawn. The challengers did not prevail because they failed to prove that the New York Legislature 'was either moti-

12. We have made clear, however, that a court in formulating an apportionment plan as an exercise of its equity powers should, as a general rule, not permit multimember legislative districts. "[S]ingle-member districts are to be preferred in court-ordered legislative reapportionment plans unless the court can articulate a 'singular combination of unique factors' that justifies a different result. *Mahan v. Howell*, 410 U.S. 315, 333, 93 S.Ct. 979, 989, 35 L.Ed. 320." *Connor v. Finch*, 431 U.S. 407, 415, 97 S.Ct. 1828, 1834, 52 L.Ed.2d 465.

vated by racial considerations or in fact drew the districts on racial lines'; the plaintiffs had not shown that the statute 'was the product of a state contrivance to segregate on the basis of race or place of origin.' *Id.*, at 56, 58, 84 S.Ct., at 605. The dissenters were in agreement that the issue was whether the 'boundaries . . . were purposefully drawn on racial lines.' *Id.*, at 67, 84 S.Ct., at 611." *Washington v. Davis, supra*, 426 U.S., at 240, 96 S.Ct., at 2047-48.

More recently, in *Arlington Heights v. Metropolitan Housing Dev. Corp., supra*, the Court again relied on *Wright v. Rockefeller* to illustrate the principle that "[p]roof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause." 429 U.S., at 265, 97 S.Ct., at 563. Although dicta may be drawn from a few of the Court's earlier opinions suggesting that disproportionate effects alone may establish a claim of unconstitutional racial voter dilution, the fact is that such a view is not supported by any decision [68] of this Court.[13] More importantly, such a view is not consistent with the meaning of the Equal Protection Clause as it has been understood in a variety of other contexts involving alleged racial discrimination. *Washington v. Davis, supra* (employment); *Arlington Heights v. Metropolitan Housing Corp., supra* (zoning); *Keyes v. School District No. 1, Denver, Colo.*, 413 U.S. 189, 208, 93 S.Ct. 2686, 2697, 37 L.Ed.2d 548 (public schools); *Akins v. Texas*, 325 U.S. 398, 403–404, 65 S.Ct. 1276, 1279, 89 L.Ed. 1692 (jury selection).

In only one case has the Court sustained a claim that multimember legislative districts unconstitutionally diluted the voting strength of a discrete group. That case was *White v. Regester*. There the Court upheld a constitutional challenge by Negroes and Mexican-Americans to parts of a legislative reapportionment plan adopted by the State of Texas. The plaintiffs alleged that the multimember districts for the two counties in which they resided minimized the effect of their votes in violation of the Fourteenth Amendment, and the Court held that the plaintiffs had been able to "produce evidence to support findings that the political processes leading to nomination [69] and election were not equally open to participation by the group[s] in question." 412 U.S., at 766, 767, 93 S.Ct. at 2339. In so holding, the Court relied upon evidence in the record that included a long history of official discrimination against minorities as well as indifference to their needs and interests on the part of white elected officials. The Court also found in each county additional factors that restricted the access of minority groups to the political process. In one county, Negroes effectively were excluded from the process of slating candidates for the Democratic Party, while the plaintiffs in the other county were Mexican-Americans who "suffer[ed] a cultural and language barrier" that made "participation in community processes extremely difficult, particularly . . . with respect to the political life" of the county. *Id.*

13. The dissenting opinion of Mr. Justice Marshall reads the Court's opinion in *Fortson v. Dorsey*, 379 U.S. 433, 85 S.Ct. 498, 13 L.Ed.2d 401, to say that a claim of vote dilution under the Equal Protection Clause could rest on either discriminatory purpose or effect. *Post*, at 1522. In fact, the Court explicitly reserved this question and expressed no view concerning it. That case involved solely a claim, which the Court rejected, that a state legislative apportionment statute creating some multimember districts was constitutionally infirm on its face. Although the Court recognized that "designedly or otherwise," multimember districting schemes might, under the circumstances of a particular case, minimize the voting strength of a racial group, an issue as to the constitutionality of such an arrangement "[was] not presented by the record," and " 'our holding ha[d] no bearing on that wholly separate question.' " 379 U.S., at 439, 85 S.Ct., at 501.

The phrase "designedly or otherwise" in which this dissenting opinion places so much stock, was repeated, also in dictum in *Burns v. Richardson*, 384 U.S. 73, 88, 86 S.Ct. 1286, 1294, 16 L.Ed.2d 376. But the constitutional challenge to the multimember constituencies failed in that case because the plaintiffs demonstrated neither discriminatory purpose nor effect. *Id.*, at 88–90, and nn. 15 and 16, 86 S.Ct., at 1294–1295 and nn. 15 and 16.

at 768, 93 S.Ct., at 2340–41 (footnote omitted).

[10] *White v. Regester* is thus consistent with "the basic equal protection principle that the invidious equality of a law claimed to be racially discriminatory must ultimately be traced to a racially discriminatory purpose," *Washington v. Davis*, 426 U.S., at 240, 96 S.Ct., at 2048. The Court stated the constitutional question in *White* to be whether the "multimember districts [were] *being used invidiously* to minimize or cancel out or minimize the voting strength of racial groups," 412 U.S., at 765, 93 S.Ct., at 2339 (emphasis added), strongly indicating that only a purposeful dilution of the plaintiffs' vote would offend the Equal Protec- 170 tion Clause.[14] 1Moreover, much of the evidence on which the Court relied in that case was relevant only for the reason that "official action will not be held unconstitutional solely because it results in a racially disproportionate impact." *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S., at 264–265, 97 S.Ct., at 563. Of course, "[t]he impact of the official action—whether it 'bears more heavily on one race than another,' *Washington v. Davis, supra*, 426 U.S., at 242, 96 S.Ct., at 2049—may provide an important starting point." *Arlington Heights v. Metropolitan Housing Dev. Corp., supra*, at 266, 97 S.Ct., at 564. But where the character of a law is readily explainable on grounds apart from race, as would nearly always be true where, as here, an entire system of local governance is brought into question, disproportionate impact alone cannot be decisive, and courts must look to other evidence to support a finding of discriminatory purpose. See *ibid.*; *Washington v. Davis, supra*, at 242, 96 S.Ct., at 2048.

[11] We may assume, for present purposes, that an at-large election of city officials with all the legislative, executive, and administrative power of the municipal government is constitutionally indistinguishable from the election of a few members of a state legislative body in multimember districts—although this may be a rash assumption.[15] But even making this assumption, it is clear that the evidence in the present case fell far short of showing that the appellants "conceived or operated [a] purposeful devic[e] to further racial . . . discrimination." *Whitcomb v. Chavis*, 403 U.S., at 149, 91 S.Ct., at 1872.

1The District Court assessed the appellees' 171 claims in light of the standard that had been articulated by the Court of Appeals for the Fifth Circuit in *Zimmer v. McKeithen*, 485 F.2d 1297. That case, coming before *Washington v. Davis*, 426 U.S. 229, 96 S.Ct. 2040, 48 L.Ed.2d 597, was quite evidently decided upon the misunderstanding

14. In *Gaffney v. Cummings*, 412 U.S. 735, 93 S.Ct. 2321, 37 L.Ed.2d 298, a case decided the same day as *White v. Regester*, the Court interpreted both *White* and the earlier vote dilution cases as turning on the existence of discriminatory purpose:

"State legislative districts may be equal or substantially equal in population and still be vulnerable under the Fourteenth Amendment. A districting statute otherwise acceptable, may be invalid because it fences out a racial group so as to deprive them of their pre-existing municipal vote. *Gomillion v. Lightfoot*, 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110 (1960). A districting plan may create multimember districts perfectly acceptable under equal population standards, but invidiously discriminatory because they are *employed* 'to minimize or cancel out the voting strength of racial or political elements of the voting population.' *Fortson v. Dorsey*, 379 U.S. 433, 439, 85 S.Ct. 498, 501, 13 L.Ed.2d 401 (1965). See *White v. Regester*, *post*, 412 U.S. p. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314; *Whitcomb v. Chavis*, 403 U.S. 124, 91 S.Ct. 1858, 29 L.Ed.2d 363 (1971); *Abate v. Mundt*, 403 U.S. [182], at 184, n. 2, 91 S.Ct. 1904, 1906, n. 2, 29 L.Ed.2d 399; *Burns v. Richardson*, 384 U.S., at 88–89, 86 S.Ct., at 1294–1295." 412 U.S., at 751, 93 S.Ct., at 2330–31 (emphasis added).

15. See *Wise v. Lipsomb*, 437 U.S. 535, 550, 98 S.Ct. 2493, 2501, 57 L.Ed.2d 411 (opinion of REHNQUIST, J.). It is noteworthy that a system of at-large city elections in place of elections of city officials by the voters of small geographic wards was universally heralded not many years ago as a praiseworthy and progressive reform of corrupt municipal government. See, *e. g.*, E. Banfield & J. Wilson, City Politics 151 (1963). Cf., M. Seasongood, Local Government in the United States (1933); L. Steffens, The Shame of the Cities (1904).

that it is not necessary to show a discriminatory purpose in order to prove a violation of the Equal Protection Clause—that proof of a discriminatory effect is sufficient. See 485 F.2d, at 1304–1305, and n. 16.[16]

In light of the criteria identified in *Zimmer*, the District Court based its conclusion of unconstitutionality primarily on the fact that no Negro had ever been elected to the City Commission, apparently because of the pervasiveness of racially polarized voting in Mobile. The trial court also found that city officials had not been as responsive to the interests of Negroes as to those of white persons. On the basis of these findings, the court concluded that the political processes in Mobile were not equally open to Negroes, despite its seemingly inconsistent findings that there were no inhibitions against Negroes becoming candidates, and that in fact Negroes had registered and voted without hindrance. 423 F.Supp., at 387. Finally, with little additional discussion, the District Court held that Mobile's at-large electoral system was invidiously discriminating against Negroes in violation of the Equal Protection Clause.[17]

In affirming the District Court, the Court [172] of Appeals acknowledged that the Equal Protection Clause of the Fourteenth Amendment reaches only purposeful discrimination,[18] but held that one way a plaintiff may establish this illicit purpose is by adducing evidence that satisfies the criteria of its decision in *Zimmer v. McKeithen, supra.* Thus, because the appellees had proved an "aggregate" of the *Zimmer* factors, the Court of Appeals concluded that a discriminatory purpose had been proved. [173] That approach, however, is inconsistent with our decisions in *Washington v. Davis, supra,* and *Arlington Heights, supra.* Although the presence of the indicia relied on

16. This Court affirmed the judgment of the Court of Appeals in *Zimmer v. McKeithen* on grounds other than those relied on by that court and explicitly "without approval of the constitutional views expressed by the Court of Appeals." *East Carroll Parish School Bd. v. Marshall,* 424 U.S. 636, 638, 96 S.Ct. 1083, 1085, 47 L.Ed.2d 296 (*per curiam*).

17. The only indication given by the District Court of an inference that there existed an invidious purpose was the following statement: "It is not a long step from the *systematic exclusion of blacks* from juries which is itself such an 'unequal application of the law . . . as to show intentional discrimination,' *Akins v. Texas,* 325 U.S. 398, 404, 65 S.Ct. 1276, 1279, 89 L.Ed. 1692, . . . to [the] present purpose to dilute the black vote as evidenced in this case. There is a 'current' condition of dilution of the black vote resulting from intentional state legislative *inaction* which is as effective as the intentional state action referred to in *Keyes [v. School District No. 1, Denver Colo.,* 413 U.S. 189, 93 S.Ct. 2686, 37 L.Ed.2d 548]." 423 F.Supp., at 398.

What the District Court may have meant by this statement is uncertain. In any event the analogy to the racially exclusionary jury cases appears mistaken. Those cases typically have involved a consistent pattern of discrete official actions that demonstrated almost to a mathematical certainty that Negroes were being excluded from juries because of their race. See *Castaneda v. Partida,* 430 U.S. 482, 495–497, and n. 17, 97 S.Ct. 1272, 1280–1281, and n. 17, 51 L.Ed.2d 498; *Patton v. Mississippi,* 332 U.S. 463, 466–467, 68 S.Ct. 184, 186; *Pierre v. Louisiana,* 306 U.S. 354, 359, 59 S.Ct. 536, 539, 83 L.Ed. 757; *Norris v. Alabama,* 294 U.S. 587, 591, 55 S.Ct. 579, 580, 79 L.Ed. 1074.

If the District Court meant by its statement that the existence of the at-large electoral system was, like the systematic exclusion of Negroes from juries, unexplainable on grounds other than race, its inference is contradicted by the history of the adoption of that system in Mobile. Alternatively, if the District Court meant that the state legislature may be presumed to have "intended" that there would be no Negro Commissioners, simply because that was a foreseeable consequence of at-large voting, it applied an incorrect legal standard. " 'Discriminatory purpose' . . . implies more than intent as volition or intent as awareness of consequences. . . . It implies that the decisionmaker . . . selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." *Personnel Administrator of Mass. v. Feeney,* 442 U.S., at 279, 99 S.Ct., at 2296 (footnotes omitted.)

18. The Court of Appeals expressed the view that the District Court's finding of discrimination in light of the *Zimmer* criteria was "buttressed" by the fact that the Attorney General had interposed an objection under § 5 of the Voting Rights Act of 1965 to the state statute designating the functions of each Commissioner. 571 F.2d 238, 246 (CA5). See n. 6, *supra.*

in *Zimmer* may afford some evidence of a discriminatory purpose, satisfaction of those criteria is not of itself sufficient proof of such a purpose. The so-called *Zimmer* criteria upon which the District Court and the Court of Appeals relied were most assuredly insufficient to prove an unconstitutionally discriminatory purpose in the present case.

First, the two courts found it highly significant that no Negro had been elected to the Mobile City Commission. From this fact they concluded that the processes leading to nomination and election were not open equally to Negroes. But the District Court's findings of fact, unquestioned on appeal, make clear that Negroes register and vote in Mobile "without hindrance," and that there are no official obstacles in the way of Negroes who wish to become candidates for election to the Commission. Indeed, it was undisputed that the only active "slating" organization in the city is comprised of Negroes. It may be that Negro candidates have been defeated but that fact alone does not work a constitutional deprivation. *Whitcomb v. Chavis*, 403 U.S., at 160, 91 S.Ct., at 1877; see *Arlington Heights*, 429 U.S., at 266, and n. 15, 97 S.Ct., at 564 and n. 15.[19]

Second, the District Court relied in part on its finding that the persons who were elected to the Commission discriminated against Negroes in municipal employment and in dispensing public services. If that is the case, those discriminated against may be entitled to relief under the Constitution, albeit of a sort quite different from that sought in the present case. The Equal Protection Clause proscribes purposeful discrimination because of race by any unit of state government, whatever the method of its election. But evidence of discrimination by white officials in Mobile is relevant only as the most tenuous and circumstantial evidence of the constitutional invalidity of the electoral system under which they attained their offices.[20] 74

[12] Third, the District Court and the Court of Appeals supported their conclusion by drawing upon the substantial history of official racial discrimination in Alabama. But past discrimination cannot, in the manner of original sin, condemn governmental action that is not itself unlawful. The ultimate question remains whether a discriminatory intent has been proved in a given case. More distant instances of official discrimination in other cases are of limited help in resolving that question.

Finally, the District Court and the Court of Appeals pointed to the mechanics of the at-large electoral system itself as proof that the votes of Negroes were being invidiously canceled out. But those features of that electoral system, such as the majority vote requirement, tend naturally to disadvantage any voting minority, as we noted in *White v. Regester, supra*. They are far from proof that the at-large electoral scheme represents purposeful discrimination against Negro voters.[21]

19. There have been only three Negro candidates for the City Commission, all in 1973. According to the District Court, the Negro candidates "were young, inexperienced, and mounted extremely limited campaigns" and received only "modest support from the black community . . . ." 423 F.Supp., at 388.

20. Among the difficulties with the District Court's view of the evidence was its failure to identify the state officials whose intent it considered relevant in assessing the invidiousness of Mobile's system of government. To the extent that the inquiry should properly focus on the state legislature, see n. 21, *infra*, the actions of unrelated governmental officials would be, of course, of questionable relevance.

21. According to the District Court, voters in the city of Mobile are represented in the state legislature by three state senators, any one of whom can veto proposed local legislation under the existing courtesy rule. Likewise, a majority of Mobile's 11-member House delegation can prevent a local bill from reaching the floor for debate. Unanimous approval of a local measure by the city delegation, on the other hand, virtually assures passage. 423 F.Supp., at 397.

There was evidence in this case that several proposals that would have altered the form of Mobile's municipal government have been defeated in the state legislature, including at least one that would have permitted Mobile to govern itself through a Mayor and City Council with members elected from individual districts

[75] B

We turn finally to the arguments advanced in Part I of Mr. Justice MARSHALL's dissenting opinion. The theory of this dissenting opinion—a theory much more extreme than that espoused by the District Court or the Court of Appeals—appears to be that every "political group," or at least every such group that is in the minority, has a federal constitutional right to elect candidates in proportion to its numbers.[22] Moreover, a political group's "right" to have its candidates elected is said to be a "fundamental interest," the infringement of which may be established without proof that a State has acted with the purpose of impairing anybody's access to the political process. This dissenting opinion finds the "right" infringed in the present case because no Negro has been elected to the Mobile City Commission.

[13] Whatever appeal the dissenting opinion's view may have as a matter of political theory, it is not the law. The Equal Protection Clause of the Fourteenth [76] Amendment does not require proportional representation as an imperative of political organization. The entitlement that the dissenting opinion assumes to exist simply is not to be found in the Constitution of the United States.

[14–17] It is of course true that a law that impinges upon a fundamental right explicitly or implicitly secured by the Constitution is presumptively unconstitutional. See *Shapiro v. Thompson*, 394 U.S. 618, 634, 638, 89 S.Ct. 1322, 1333, 22 L.Ed.2d 600, *id.*, at 642–644, 89 S.Ct., at 1335–1336 (concurring opinion). See also *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 17, 30–32, 93 S.Ct. 1278, 1288, 1295–1296, 36 L.Ed.2d 16. But plainly "[i]t is not the province of this court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws," *id.*, at 33, 93 S.Ct., at 1297. See *Lindsey v. Normet*, 405 U.S. 56, 74, 92 S.Ct. 862, 874, 31 L.Ed.2d 36; *Dandridge v. Williams*, 397 U.S. 471, 485, 90 S.Ct. 1153, 1161, 25 L.Ed.2d 491. Accordingly, where a state law does not impair a right or liberty protected by the Constitution, there is no occasion to depart from "the settled mode of constitutional analysis of legislat[ion] . . . involving questions of economic and social policy," *San Antonio Independent School Dist. v. Rodriguez, supra*, 411 U.S., at 33, 93 S.Ct., at 1296.[23] Mr. Justice MARSHALL's dissenting opinion would discard these fixed principles in favor of a judicial inventiveness that would go "far toward making this Court a 'super-legislature.'" *Shapiro v. Thompson, supra*, 394 U.S. at 655, 661, 89 S.Ct., at 1346 (Harlan, J., dissenting). We are not free to do so.

[18–23] More than 100 years ago the Court unanimously held that "the Constitution of the United States does not confer the right of suffrage upon any one. . . ."

within the city. Whether it may be possible ultimately to prove that Mobile's present governmental and electoral system has been retained for a racially discriminatory purpose, we are in no position now to say.

22. The dissenting opinion seeks to disclaim this description of its theory by suggesting that a claim of vote dilution may require, in addition to proof of electoral defeat, some evidence of "historical and social factors" indicating that the group in question is without political influence. *Post*, at 1523–1524, n. 7, 1529–1531. Putting to the side the evident fact that these gauzy sociological considerations have no constitutional basis, it remains far from certain that they could, in any principled manner, exclude the claims of any discrete political group that happens, for whatever reason, to elect fewer of its candidates than arithmetic indicates it might. Indeed, the putative limits are bound to prove illusory if the express purpose informing their application would be, as the dissent assumes, to redress the "inequitable distribution of political influence." *Post*, at 1529.

23. The presumption of constitutional validity that underlies the settled mode of reviewing legislation disappears, of course, if the law under consideration creates classes that, in a constitutional sense, are inherently "suspect." See *McLaughlin v. Florida*, 379 U.S. 184, 85 S.Ct. 283, 13 L.Ed.2d 222; *Strauder v. West Virginia*, 100 U.S. 303, 25 L.Ed. 664. Cf. *Lockport v. Citizens for Community Action*, 430 U.S. 259, 97 S.Ct. 1047, 51 L.Ed.2d 313.

Minor v. Happersett, 21 Wall. 162, 178, 22 L.Ed. 627. See *Lassiter v. Northampton Election Bd.*, 360 U.S., at 50–51, 79 S.Ct., at 989. It is for the States "to determine the conditions under which the right of suf- [77] frage may be exercised . . ., absent of course the discrimination which the Constitution condemns," *ibid.* It is true, as the dissenting opinion states, that the Equal Protection Clause confers a substantive right to participate in elections on an equal basis with other qualified voters. See *Dunn v. Blumstein*, 405 U.S. 330, 336, 92 S.Ct. 995, 999, 31 L.Ed.2d 274; *Reynolds v. Sims*, 377 U.S., at 576, 84 S.Ct., at 1389. But this right to equal participation in the electoral process does not protect any "political group," however defined, from electoral defeat.[24]

[24] The dissenting opinion erroneously discovers the asserted entitlement to group representation within the "one person-one vote" principle of *Reynolds v. Sims, supra*, and its progeny.[25] Those cases established that the Equal Protection Clause guaran- [78] tees the right of each voter to "have his vote weighted equally with those of all other citizens." 377 U.S., at 576, 84 S.Ct., at 1389. The Court recognized that a voter's right to "have an equally effective voice" in the election of representatives is impaired where representation is not apportioned substantially on a population basis. In such cases, the votes of persons in more populous districts carry less weight than do those of persons in smaller districts. There can be, of course, no claim that the "one person, one vote" principle has been violated in this case, because the city of Mobile is a unitary electoral district and the Commission elections are conducted at large. It is therefore obvious that nobody's vote has been "diluted" in the sense in which that word was used in the *Reynolds* case.

The dissenting opinion places an extraordinary interpretation on these decisions, an

24. The basic fallacy in the dissenting opinion's theory is illustrated by analogy to a defendant's right under the Sixth and Fourteenth Amendments to a trial by a jury of his peers in a criminal case. See *Duncan v. Louisiana*, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491. That right, expressly conferred by the Constitution, is certainly "fundamental" as that word is used in the dissenting opinion. Moreover, under the Equal Protection Clause, a defendant has a right to require that the State not exclude from the jury members of his race. See *Castaneda v. Partida*, 430 U.S., at 493, 97 S.Ct., at 1279. But "[f]airness in selection has never been held to require proportional representation of races upon a jury," *Akins v. Texas*, 325 U.S. 398, 403, 65 S.Ct. 1276, 1279, 89 L.Ed. 1692; nor has the defendant any "right to demand that members of his race be included," *Alexander v. Louisiana*, 405 U.S. 625, 628, 92 S.Ct. 1221, 1224, 31 L.Ed.2d 536. The absence from a jury of persons belonging to racial or other cognizable groups offends the Constitution only "if it results from purposeful discrimination." *Castaneda v. Partida, supra*, 430 U.S., at 493, 97 S.Ct., at 1279. See *Alexander v. Louisiana, supra*; see also *Washington v. Davis*, 426 U.S., at 239–240, 96 S.Ct., at 2047. Thus, the fact that there is a constitutional right to a system of jury selection that is not purposefully exclusionary does not entail a right to a jury of any particular racial composition. Likewise, the fact that the Equal Protection Clause confers a right to participate in elections on an equal basis with other qualified voters does not entail a right to have one's candidates prevail.

25. The dissenting opinion also relies upon several decisions of this Court that have held constitutionally invalid various voter eligibility requirements: *Dunn v. Blumstein*, 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (length of residence requirement); *Evans v. Comman*, 398 U.S. 419, 90 S.Ct. 1752, 26 L.Ed.2d 370 (exclusion of residents of federal property); *Kramer v. Union School District*, 395 U.S. 621, 89 S.Ct. 1886, 23 L.Ed.2d 583 (property or status requirement); *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (poll tax requirement). But there is in this case no attack whatever upon any of the voter eligibility requirements in Mobile. Nor do the cited cases contain implicit support for the position of the dissenting opinion. They stand simply for the proposition that "if a challenged state statute grants the right to vote to some bona fide residents of requisite age and citizenship and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest." *Kramer v. Union School District, supra*, 395 U.S., at 627, 89 S.Ct., at 1890. It is difficult to perceive any similarity between the excluded person's right to equal electoral participation in the cited cases, and the right asserted by the dissenting opinion in the present case, aside from the fact that they both in some way involve voting.

interpretation not justified by *Reynolds v. Sims* itself or by any other decision of this Court. It is, of course, true that the right of a person to vote on an equal basis with other voters draws much of its significance from the political associations that its exercise reflects, but it is an altogether different matter to conclude that political groups themselves have an independent constitutional claim to representation.[26] And the
179 Court's decisions hold squarely that they do not. See *United Jewish Organizations v. Carey*, 430 U.S. 144, 166–167, 97 S.Ct. 996, 1010, 51 L.Ed.2d 229; *id.*, at 179–180, 97 S.Ct., at 1016–1017 (opinion concurring in judgment); *White v. Regester*, 412 U.S., at 765–766, 93 S.Ct., at 2339; *Whitcomb v. Chavis*, 403 U.S., at 149–150, 153–154, 156–157, 91 S.Ct., at 1872, 1873–1874, 1875–1876.

The fact is that the Court has sternly set its face against the claim, however phrased, that the Constitution somehow guarantees proportional representation. In *Whitcomb v. Chavis, supra*, the trial court had found that a multimember state legislative district had invidiously deprived Negroes and poor persons of rights guaranteed them by the Constitution, notwithstanding the absence of any evidence whatever of discrimination against them. Reversing the trial court, this Court said:

> "The District Court's holding, although on the facts of this case limited to guaranteeing one racial group representation, is not easily contained. It is expressive of the more general proposition that any group with distinctive interests must be represented in legislative halls if it is numerous enough to command at least one seat and represents a majority living
180 in an area sufficiently compact to constitute a single-member district. This approach would make it difficult to reject claims of Democrats, Republicans, or members of any political organization in Marion County who live in what would be safe districts in a single-member district system but who in one year or another, or year after year, are submerged in a one-sided multi-member district vote. There are also union oriented workers, the university community, religious or ethnic groups occupying identifiable areas of our heterogeneous cities and urban areas. Indeed, it would be difficult for a great many, if not most, multi-member districts to survive analysis under the District Court's view unless combined with some voting arrangement such as proportional representation or cumulative voting aimed at providing representation for minority parties or interests. At the very least, affirmance of the District Court would spawn endless litigation concerning the multi-member district systems now widely employed in this country." *Whitcomb v. Chavis, supra*, at 156–157, 91 S.Ct., at 1876 (footnotes omitted).

V

The judgment is reversed, and the case is remanded to the Court of Appeals for further proceedings.

It is so ordered.

26. It is difficult to perceive how the implications of the dissenting opinion's theory of group representation could rationally be cabined. Indeed, certain preliminary practical questions immediately come to mind: Can only members of a minority of the voting population in a particular municipality be members of a "political group"? How large must a "group" be to be a "political group"? Can any "group" call itself a "political group"? If not, who is to say which "groups" are "political groups"? Can a qualified voter belong to more than one "political group"? Can there be more than one "political group" among white voters (*e. g.*, Irish-American, Italian-American, Polish-American, Jews, Catholics, Protestants)? Can there be more than one "political group" among nonwhite voters? Do the answers to any of these questions depend upon the particular demographic composition of a given city? Upon the total size of its voting population? Upon the size of its governing body? Upon its form of government? Upon its history? Its geographic location? The fact that even these preliminary questions may be largely unanswerable suggests some of the conceptual and practical fallacies in the constitutional theory espoused by the dissenting opinion, putting to one side the total absence of support for that theory in the Constitution itself.

Mr. Justice BLACKMUN, concurring in the result.

Assuming that proof of intent is a prerequisite to appellees' prevailing on their constitutional claim of vote dilution, I am inclined to agree with Mr. Justice WHITE that, in this case, "the findings of the District Court amply support an inference of purposeful discrimination," *post*, at 1518. I concur in the Court's judgment of reversal, however, because I believe that the relief afforded appellees by the District Court was not commensurate with the sound exercise of judicial discretion.

[1] It seems to me that the city of Mobile, and its citizenry, have a substantial interest in maintaining the commission form of government that has been in effect there for nearly 70 years. The District Court recognized that its remedial order, changing the form of the city's government to a mayor-council system, "raised serious constitutional issues." 423 F.Supp. 384, 404 (SD Ala.1976). Nonetheless, the court was "unable to see how the impermissibly unconstitutional dilution can be effectively corrected by any other approach." *Id.*, at 403.

The Court of Appeals approved the remedial measures adopted by the District Court and did so essentially on three factors: (1) this Court's preference for single-member districting in court-ordered legislative reapportionment, absent special circumstances, see, *e. g., Connor v. Finch*, 431 U.S. 407, 415, 97 S.Ct. 1828, 1834, 52 L.Ed.2d 465 (1977); (2) appellants' noncooperation with the District Court's request for the submission of proposed municipal government plans that called for single-member districts for councilmen, under a mayor-council system of government; and (3) the temporary nature of the relief afforded by the District Court, the city or State being free to adopt a "constitutional replacement" for the District Court's plan in the future. 571 F.2d 238, 247 (CA5 1978).

Contrary to the Court of Appeals, I believe that special circumstances are presented when a District Court "reapportions" a municipal government by altering its basic structures. See also the opinion of Mr. Justice STEWART, *ante*, at 1502, and n. 15. See *Chapman v. Meier*, 420 U.S. 1, 20, n. 14, 95 S.Ct. 751, 762, n. 14, 42 L.Ed.2d 766 (1975); *Sixty-Seventh Minnesota State Senate v. Beens*, 406 U.S. 187, 92 S.Ct. 1477, 32 L.Ed.2d 1 (1972). I also believe that the city's failure to submit a proposed plan to the District Court was excused by the fact that the only proposals the court was interested in receiving were variations on a mayor-council plan utilizing single-member districts. Finally, although the District Court's order may have been temporary, it was unlikely that the courts below would have approved any attempt by Mobile to return to the commission form of government. And even [2] a temporary alteration of a long-established form of municipal government is a drastic measure for a court to take.

Contrary to the District Court, I do not believe that, in order to remedy the unconstitutional vote dilution it found, it was necessary to convert Mobile's city government to a mayor-council system. In my view, the District Court at least should have considered alternative remedial orders that would have maintained some of the basic elements of the commission system Mobile long ago had selected—joint exercise of legislative and executive power, and citywide representation. In the first place, I see no reason for the court to have separated legislative and executive power in the city of Mobile by creating the office of mayor. In the second place, the court could have, and in my view should have, considered expanding the size of the Mobile City Commission and providing for the election of at least some commissioners at large. Alternative plans might have retained at-large elections for all commissioners while imposing district residency requirements that would have insured the election of a commission that was a cross section of all of Mobile's neighborhoods, or a plurality-win system that would have provided the potential for the effective use of single-shot voting by

black voters. See *City of Rome v. United States*, 446 U.S., at 184, n. 19, 100 S.Ct., at 1566, n. 19. In failing to consider such alternative plans, it appears to me that the District Court was perhaps overly concerned with the elimination of at-large elections *per se*, rather than with structuring an electoral system that provided an opportunity for black voters in Mobile to participate in the city's government on an equal footing with whites.

In the past, this Court has emphasized that a district court's remedial power "may be exercised only on the basis of a constitutional violation," and that "the nature of the violation determines the scope of the remedy." *Swann v. Board of Education*, 402 U.S. 1, 16, 91 S.Ct. 1267, 1276, 28 L.Ed.2d 554 (1971). I am not convinced that any violation of federal constitutional rights established by appellees required the
[83] District Court to dismantle Mobile's commission form of government and replace it with a mayor-council system. Accordingly, I, too, would reverse the judgment of the Court of Appeals, and remand the case for reconsideration of an appropriate remedy.

Mr. Justice STEVENS, concurring in the judgment.

At issue in this case is the constitutionality of the city of Mobile's commission form of government. Black citizens in Mobile, who constitute a minority of that city's registered voters, challenged the at-large nature of the elections for the three positions of City Commissioner, contending that the system "dilutes" their votes in violation of the Fifteenth Amendment and the Equal Protection Clause of the Fourteenth Amendment. While I agree with Mr. Justice STEWART that no violation of respondents' constitutional rights has been demonstrated, my analysis of the issue proceeds along somewhat different lines.

In my view, there is a fundamental distinction between state action that inhibits an individual's right to vote and state action that affects the political strength of various groups that compete for leadership in a democratically governed community. That distinction divides so-called vote dilution practices into two different categories "governed by entirely different constitutional considerations," see *Wright v. Rockefeller*, 376 U.S. 52, 58, 84 S.Ct. 603, 606, 11 L.Ed.2d 512 (Harlan, J., concurring).

In the first category are practices such as poll taxes or literacy tests that deny individuals access to the ballot. Districting practices that make an individual's vote in a heavily populated district less significant than an individual's vote in a smaller district also belong in that category. See *Baker v. Carr*, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663; *Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506.[1] Such
[84] practices must be tested by the strictest of constitutional standards, whether challenged under the Fifteenth Amendment or under the Equal Protection Clause of the Fourteenth Amendment. See, *e. g., Dunn v. Blumstein*, 405 U.S. 330, 337, 92 S.Ct. 995, 1000, 31 L.Ed.2d 274.

This case does not fit within the first category. The District Court found that black citizens in Mobile "register and vote without hindrance"[2] and there is no claim

1. In *Reynolds v. Sims*, the Court quoted Mr. Justice Douglas' statement that the right to vote "includes the right to have the vote counted at full value without dilution or discount . . . ," 377 U.S., at 555, n. 29, 84 S.Ct., at 1378, n. 29, as well as the comment in *Wesberry v. Sanders*, 376 U.S. 1, 8, 84 S.Ct. 526, 533, 11 L.Ed.2d 481, that "'one man's vote in a congressional election is to be worth as much as another's.'" 377 U.S., at 559, 84 S.Ct., at 1380.

2. This finding distinguishes this case from *White v. Regester*, 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314. In *White* the Court held that, in order to establish a Fourteenth Amendment violation, a group alleging vote dilution must "produce evidence to support findings that the political processes leading to nomination and election were not equally open to participation by the group in question—that its members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice." *Id.*, at 766, 93 S.Ct., at 2339.

that any individual's vote is worth less than any other's. Rather, this case draws into question a political structure that treats all individuals as equals but adversely affects the political strength of a racially identifiable group. Although I am satisfied that such a structure may be challenged under the Fifteenth Amendment as well as under the Equal Protection Clause of the Fourteenth Amendment,[3] I believe that under [85] either provision it must be judged by a standard that allows the political process to function effectively.

My conclusion that the Fifteenth Amendment applies to a case such as this rests on this Court's opinion in *Gomillion v. Lightfoot*, 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110. That case established that the Fifteenth Amendment does not simply guarantee the individual's right to vote; it also limits the States' power to draw political boundaries. Although *Gomillion* involved a districting structure that completely excluded the members of one race from participation in the city's elections,[4] it does not stand for the proposition that no racial group can prevail on a Fifteenth Amendment claim unless it proves that an electoral system has the effect of making its members' right to vote, in Mr. Justice MARSHALL's words, "nothing more than the right to cast meaningless ballots." *Post*, 446 U.S., at 104, 100 S.Ct., at 1520. I agree with Mr. Justice MARSHALL that the Fifteenth Amendment need not and should not be so narrowly construed. I do not agree, however, with his view that every "showing of discriminatory impact" on a historically and socially disadvantaged racial group, [86] *post*, at 111, n. 7, 100 S.Ct., at 1520, 1524, n. 7, is sufficient to invalidate a districting plan.[5]

Neither *Gomillion* nor any other case decided by this Court establishes a constitutional right to proportional representation

The Court affirmed a judgment in favor of black and Mexican-American voters on the basis of the District Court's express findings that black voters had been "'effectively excluded from participation in the Democratic primary selection process,'" *id.*, at 767, 93 S.Ct., at 2340, and that "'. . . cultural incompatibility . . . conjoined with the poll tax and the most restrictive voter registration procedures in the nation ha[d] operated to effectively deny Mexican-Americans access to the political processes in Texas even longer than the Blacks were formally denied access by the white primary.'" *Id.*, at 768, 93 S.Ct., at 2341.

3. Thus, I disagree with Mr. Justice STEWART's conclusion for the plurality that the Fifteenth Amendment applies only to practices that directly affect access to the ballot and hence is totally inapplicable to the case at bar. *Ante*, at 1498–1499. I also find it difficult to understand why, given this position, he reaches out to decide that discriminatory purpose must be demonstrated in a proper Fifteenth Amendment case. *Ante*, at 1497–1498.

4. "The petitioners here complain that affirmative legislative action deprives them of their votes and the consequent advantages that the ballot affords. When a legislature thus singles out a readily isolated segment of a racial minority for special discriminatory treatment, it violates the Fifteenth Amendment. In no case involving unequal weight in voting distribution that has come before the Court did the decision sanction a differentiation on racial lines whereby approval was given to unequivocal withdrawal of the vote solely from colored citizens.

. . . . .

"According to the allegations here made, the Alabama Legislature has not merely redrawn the Tuskegee city limits with incidental inconvenience to the petitioners; it is more accurate to say that it has deprived the petitioners of the municipal franchise and consequent rights and to that end it has incidentally changed the city's boundaries. While in form this is merely an act redefining metes and bounds, if the allegations are established, the inescapable human effect of this essay in geometry and geography is to despoil colored citizens, and only colored citizens, of their theretofore enjoyed voting rights." 364 U.S., at 346, 347, 81 S.Ct., at 130.

5. I also disagree with Mr. Justice MARSHALL to the extent that he implies that the votes cast in an at-large election by members of a racial minority can never be anything more than "meaningless ballots." I have no doubt that analyses of Presidential, senatorial and other statewide elections would demonstrate that ethnic and racial minorities have often had a critical impact on the choice of candidates and the outcome of elections. There is no reason to believe that the same political forces cannot operate in smaller election districts regardless of the depth of conviction or emotion that may separate the partisans of different points of view.

for racial minorities.[6] What *Gomillion* holds is that a sufficiently "uncouth" or irrational racial gerrymander violates the Fifteenth Amendment. As Mr. Justice Whittaker's concurrence in that case demonstrates, the same result is compelled by the Equal Protection Clause of the Fourteenth Amendment. See 364 U.S., at 349, 81 S.Ct., at 131. The fact that the "gerrymander" condemned in *Gomillion* was equally vulnerable under both Amendments indicates that the essential holding of that case is applicable, not merely to gerrymanders directed against racial minorities, but to those aimed at religious, ethnic, economic, and political groups as well. Whatever the proper standard for identifying an unconstitutional gerrymander may be, I have long been persuaded that it must apply equally to all forms of political gerrymandering—not just to racial gerrymandering. [187] See *Cousins v. City Council of Chicago*, 466 F.2d 830, 848–852 (CA7 1972) (Stevens, J., dissenting), cert. denied, 409 U.S. 893, 93 S.Ct. 85, 34 L.Ed.2d 151.[7]

This conclusion follows, I believe, from the very nature of a gerrymander. By definition, gerrymandering involves drawing district boundaries (or using multimember districts or at-large elections) in order to maximize the voting strength of those loyal to the dominant political faction and to minimize the strength of those opposed to it.[8] 466 F.2d, at 847. In seeking the desired result, legislators necessarily make judgments about the probability that the members of certain identifiable groups, whether racial, ethnic, economic, or religious, will vote in the same way. The success of the gerrymander from the legislators' point of view, as well as its impact on the disadvantaged group, depends on [188] the accuracy of those predictions.

A prediction based on a racial characteristic is not necessarily more reliable than a prediction based on some other group characteristic. Nor, since a legislator's ultimate purpose in making the prediction is political in character, is it necessarily more invidious or benign than a prediction based on other group characteristics.[9] In the line-drawing

6. And this is true regardless of the apparent need of a particular group for proportional representation because of its historically disadvantaged position in the community. See *Cousins v. City Council of Chicago*, 466 F.2d 830, 852 (CA7 1972) (Stevens, J., dissenting), cert. denied, 409 U.S. 893, 93 S.Ct. 85, 34 L.Ed.2d 151. This does not mean, of course, that a legislature is constitutionally prohibited from according some measure of proportional representation to a minority group, see *United Jewish Organizations v. Carey*, 430 U.S. 144, 97 S.Ct. 996, 51 L.Ed.2d 229.

7. This view is consistent with the Court's Fourteenth Amendment cases in which it has indicated that attacks on apportionment schemes on racial, political, or economic grounds should all be judged by the same constitutional standard. See, *e. g., Whitcomb v. Chavis*, 403 U.S. 124, 149, 91 S.Ct. 1858, 1872, 29 L.Ed.2d 363 (districts that are "conceived or operated as purposeful devices to further racial *or economic* discrimination" are prohibited by the Fourteenth Amendment) (emphasis supplied); *Fortson v. Dorsey*, 379 U.S. 433, 439, 85 S.Ct. 498, 501, 13 L.Ed.2d 401 (an apportionment scheme would be invalid under the Fourteenth Amendment if it "operate[d] to minimize or cancel out the voting strength of racial *or political* elements of the voting population") (emphasis supplied).

8. Gerrymanders may also be used to preserve the current balance of power between political parties, see, *e. g., Gaffney v. Cummings*, 412 U.S. 735, 93 S.Ct. 2321, 37 L.Ed.2d 298, or to preserve the safe districts of incumbents, cf. *Wright v. Rockefeller*, 376 U.S. 52, 84 S.Ct. 603, 11 L.Ed.2d 512. In *Gaffney* the Court pointed out: "[I]t requires no special genius to recognize the political consequences of drawing a district line along one street rather than another. It is not only obvious, but absolutely unavoidable, that the location and shape of districts may well determine the political complexion of the area. District lines are rarely neutral phenomena. They can well determine what district will be predominantly Democratic or predominantly Republican, or make a close race likely. Redistricting may pit incumbents against one another or make very difficult the election of the most experienced legislator. The reality is that districting inevitably has and is intended to have substantial political consequences." 412 U.S., at 753, 93 S.Ct., at 2331.

9. Thus, for example, there is little qualitative difference between the motivation behind a religious gerrymander designed to gain votes on the abortion issue and a racial gerrymander designed to gain votes on an economic issue.

process, racial, religious, ethnic, and economic gerrymanders are all species of political gerrymanders.

From the standpoint of the groups of voters that are affected by the line-drawing process, it is also important to recognize that it is the group's interest in gaining or maintaining political power that is at stake. The mere fact that a number of citizens share a common ethnic, racial, or religious background does not create the need for protection against gerrymandering. It is only when their common interests are strong enough to be manifested in political action that the need arises. For the political strength of a group is not a function of its ethnic, racial, or religious composition; rather, it is a function of numbers—specifically the number of persons who will vote in the same way. In the long run there is no more certainty that individual members of racial groups will vote alike than that members of other identifiable groups will do so. And surely there is no national interest in creating an incentive to define political groups by racial characteristics.[10]

[89] But if the Constitution were interpreted to give more favorable treatment to a racial minority alleging an unconstitutional impairment of its political strength than it gives to other identifiable groups making the same claim such an incentive would inevitably result.

My conclusion that the same standard should be applied to racial groups as is applied to other groups leads me also to [90] conclude that the standard cannot condemn every adverse impact on one or more political groups without spawning more dilution litigation than the judiciary can manage. Difficult as the issues engendered by *Baker v. Carr*, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663, may have been, nothing comparable to the mathematical yardstick used in apportionment cases is available to identify the difference between permissible and impermissible adverse impacts on the voting strength of political groups.

In its prior cases the Court has phrased the standard as being whether the district-

10. As Mr. Justice Douglas wrote in his dissent in *Wright v. Rockefeller*:

"Racial electoral registers, like religious ones, have no place in a society that honors the Lincoln tradition—'of the people, by the people, for the people.' Here the individual is important, not his race, his creed, or his color. The principle of equality is at war with the notion that District A must be represented by a Negro, as it is within the notion that District B must be represented by a Caucasian, District C by a Jew, District D by a Catholic, and so on. Cf. *Gray v. Sanders*, 372 U.S. 368, 379, 83 S.Ct. 801, 807, 9 L.Ed.2d 821. The racial electoral register system weighs votes along one racial line more heavily than it does other votes. That system, by whatever name it is called, is a divisive force in a community, emphasizing differences between candidates and voters that are irrelevant in the constitutional sense. Of course race, like religion, plays an important role in the choices which individual voters make from among various candidates. But government has no business designing electoral districts along racial or religious lines.

. . . . .

"When racial or religious lines are drawn by the State, the multiracial, multireligious communities that our Constitution seeks to weld together as one becomes separatist; antagonisms that relate to race or to religion rather than to political issues are generated; communities seek not the best representative but the best racial or religious partisan. Since that system is at war with the democratic ideal, it should find no footing here." 376 U.S., at 66–67, 84 S.Ct., at 611.

See also my dissent in *Cousins, supra*:

"In my opinion an interpretation of the Constitution which afforded one kind of political protection to blacks and another kind to members of other identifiable groups would itself be invidious. Respect for the citizenry in the black community compels acceptance of the fact that in the long run there is no more certainty that these individuals will vote alike than will individual members of any other ethnic, economic, or social group. The probability of parallel voting fluctuates as the blend of political issues affecting the outcome of an election changes from time to time to emphasize one issue, or a few, rather than others, as dominant. The facts that a political group has its own history, has suffered its own special injustices, and has its own congeries of special political interests, do not make one such group different from any other in the eyes of the law. The members of each go to the polls with equal dignity and with an equal right to be protected from invidious discrimination." 466 F.2d, at 852.

ing practices in question "unconstitutionally operate to dilute or cancel the voting strength of racial or political elements." *Whitcomb v. Chavis*, 403 U.S. 124, 144, 91 S.Ct. 1858, 1869, 29 L.Ed.2d 363. In *Zimmer v. McKeithen*, 485 F.2d 1297 (CA5 1973), aff'd on other grounds *sub nom. East Carroll Parish School Bd. v. Marshall*, 424 U.S. 636, 96 S.Ct. 1083, 47 L.Ed.2d 296, the Fifth Circuit attempted to outline the types of proof that would satisfy this rather amorphous test. Today, the plurality rejects the *Zimmer* analysis, holding that the primary, if not the sole, focus of the inquiry must be on the intent of the political body responsible for making the districting decision. While I agree that the *Zimmer* analysis should be rejected, I do not believe that it is appropriate to focus on the subjective intent of the decisionmakers.

In my view, the proper standard is suggested by three characteristics of the gerrymander condemned in *Gomillion:* (1) the 28-sided configuration was, in the Court's word, "uncouth," that is to say, it was manifestly not the product of a routine or a traditional political decision; (2) it had a significant adverse impact on a minority group; and (3) it was unsupported by any neutral justification and thus was either totally irrational or entirely motivated by a desire to curtail the political strength of the minority. These characteristics suggest that a proper test should focus on the objective effects of the political decision rather than the subjective motivation of the decisionmaker. See *United States v. O'Brien*, 391 U.S. 367, 384, 88 S.Ct. 1673, 1683, 20 L.Ed.2d 672.[11] In this case, if the commission form of government in Mobile were extraordinary, or if it were nothing more than a vestige of history, with no greater justification than the grotesque figure in *Gomillion*, it would surely violate the Constitution. That conclusion would follow simply from its adverse impact on black voters plus the absence of any legitimate justification for the system, without reference to the subjective intent of the political body that has refused to alter it. [91]

Conversely, I am also persuaded that a political decision that affects group voting rights may be valid even if it can be proved that irrational or invidious factors have played some part in its enactment or retention.[12] The standard for testing the acceptability of such a decision must take into account the fact that the responsibility for drawing political boundaries is generally committed to the legislative process and that the process inevitably involves a series of compromises among different group interests. If the process is to work it must reflect an awareness of group interests and it must tolerate some attempts to advantage or to disadvantage particular segments of the voting populace. Indeed, the same "group interest" may simultaneously support and oppose a particular boundary change.[13] The standard cannot, therefore, be so strict that any evidence of a purpose [92]

11. In *O'Brien* the Court described *Gomillion* as standing "not for the proposition that legislative motive is a proper basis for declaring a statute unconstitutional, but that the inevitable effect of a statute on its face may render it unconstitutional."

12. "It is unrealistic, on the one hand, to require the victim of alleged discrimination to uncover the actual subjective intent of the decisionmaker or, conversely, to invalidate otherwise legitimate action simply because an improper motive affected the deliberation of a participant in the decisional process. A law conscripting clerics should not be invalidated because an atheist voted for it." *Washington v. Davis*, 426 U.S. 229, 253, 96 S.Ct. 2040, 2054, 48 L.Ed.2d 597 (STEVENS, J., concurring).

13. For example, if 55% of the voters in an area comprising two districts belong to group A, their interests in electing two representatives would be best served by evenly dividing the voters in two districts, but their interests in making sure that they elect at least one representative would be served by concentrating a larger majority in one district. See *Cousins v. City Council of Chicago*, 466 F.2d, at 855, n. 30 (Stevens, J., dissenting). See also *Wright v. Rockefeller*, 376 U.S. 52, 84 S.Ct. 603, 11 L.Ed.2d 512, where the maintenance of racially separate congressional districts was challenged by one group of blacks and supported by another group having the dominant power in the black-controlled district.

to disadvantage a bloc of voters will justify a finding of "invidious discrimination"; otherwise, the facts of political life would deny legislatures the right to perform the districting function. Accordingly, a political decision that is supported by valid and articulable justifications cannot be invalid simply because some participants in the decisionmaking process were motivated by a purpose to disadvantage a minority group.

The decision to retain the commission form of government in Mobile, Ala., is such a decision. I am persuaded that some support for its retention comes, directly or indirectly, from members of the white majority who are motivated by a desire to make it more difficult for members of the black minority to serve in positions of responsibility in city government. I deplore that motivation and wish that neither it nor any other irrational prejudice played any part in our political processes. But I do not believe otherwise legitimate political choices can be invalidated simply because an irrational or invidious purpose played some part in the decisionmaking process.

As Mr. Justice STEWART points out, Mobile's basic election system is the same as that followed by literally thousands of municipalities and other governmental units throughout the Nation. *Ante*, at 1496.[14] The fact that these at-large systems [93] characteristically place one or more minority groups at a significant disadvantage in the struggle for political power cannot invalidate all such systems. See *Whitcomb v. Chavis*, 403 U.S., at 156–160, 91 S.Ct., at 1857–1877. Nor can it be the law that such systems are valid when there is no evidence that they were instituted or maintained for discriminatory reasons, but that they may be selectively condemned on the basis of the subjective motivation or some of their supporters. A contrary view "would spawn endless litigation concerning the multimember district systems now widely employed in this country," *id.*, at 157, 91 S.Ct., at 1876, and would entangle the judiciary in a voracious political thicket.[15]

[94] In sum, I believe we must accept the choice to retain Mobile's commission form of government as constitutionally permissible even though that choice may well be the

14. I emphasize this point because in my opinion there is a significant difference between a statewide legislative plan that "happens" to use multimember districts only in those areas where they disadvantage discrete minority groups and the use of a generally acceptable municipal form of government that involves the election of commissioners by the voters at large. While it is manifest that there is a substantial neutral justification for a municipality's choice of a commission form of government, it is by no means obvious that an occasional multimember district in a State which typically uses single-member districts can be adequately explained on neutral grounds. Nothing in the Court's opinion in *White v. Regester*, 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314, describes any purported neutral explanation for the multimember districts in Bexar and Dallas Counties. In this connection, it should be remembered that *Kilgarlin v. Hill*, 386 U.S. 120, 87 S.Ct. 820, 17 L.Ed.2d 771, did not uphold the constitutionality of a "crazy quilt" of single-member and multimember districts; rather, in that case this Court merely upheld the findings by the District Court that the plaintiffs had failed to prove their allegations that the districting plan constituted such a crazy quilt.

15. Rejection of Mr. Justice Frankfurter's views in the specific controversy presented by *Baker v. Carr*, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663, does not refute the basic wisdom of his call for judicially manageable standards in this area:

"Disregard of inherent limits in the effective exercise of the Court's 'judicial Power' not only presages the futility of judicial intervention in the essentially political conflict of forces by which the relation between population and representation has time out of mind been and now is determined. It may well impair the Court's position as the ultimate organ of 'the supreme Law of the Land' in that vast range of legal problems, often strongly entangled in popular feeling, on which this Court must pronounce. The Court's authority—possessed of neither the purse nor the sword—ultimately rests on sustained public confidence in its moral sanction. Such feeling must be nourished by the Court's complete detachment, in fact and in appearance, from political entanglements and by abstention from injecting itself into the clash of political forces in political settlements." *Id.*, at 267, 82 S.Ct., at 737–38 (Frankfurter, J., dissenting).

product of mixed motivation, some of which is invidious. For these reasons I concur in the judgment of reversal.

Mr. Justice WHITE, dissenting.

In *White v. Regester*, 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314 (1973), this Court unanimously held the use of multimember districts for the election of state legislators in two counties in Texas violated the Equal Protection Clause of the Fourteenth Amendment because, based on a careful assessment of the totality of the circumstances, they were found to exclude Negroes and Mexican-Americans from effective participation in the political processes in the counties. Without questioning the vitality of *White v. Regester* and our other decisions dealing with challenges to multimember districts by racial or ethnic groups, the Court today inexplicably rejects a similar holding based on meticulous factual findings and scrupulous application of the principles of these cases by both the District Court and the Court of Appeals. The Court's decision is flatly inconsistent with *White v. Regester* and it cannot be understood to flow from our recognition in *Washington v. Davis*, 426 U.S. 229, 96 S.Ct. 2040, 48 L.Ed.2d 597 (1976), that the Equal Protection Clause forbids only purposeful discrimination. Both the District Court and [95] the Court of Appeals properly found that an invidious discriminatory purpose could be inferred from the totality of facts in this case. The Court's cryptic rejection of their conclusions ignores the principles that an invidious discriminatory purpose can be inferred from objective factors of the kind relied on in *White v. Regester* and that the trial courts are in a special position to make such intensely local appraisals.

I

Prior to our decision in *White v. Regester*, we upheld a number of multimember districting schemes against constitutional challenges, but we consistently recognized that such apportionment schemes could constitute invidious discrimination "where the circumstances of a particular case may 'operate to minimize or cancel out the voting strength of racial or political elements of the voting population.'" *Whitcomb v. Chavis*, 403 U.S. 124, 143, 91 S.Ct. 1858, 1869, 29 L.Ed.2d 363 (1971), quoting from *Fortson v. Dorsey*, 379 U.S. 433, 439, 85 S.Ct. 498, 501, 13 L.Ed.2d 401 (1965); *Burns v. Richardson*, 384 U.S. 73, 88, 86 S.Ct. 1286, 1294, 16 L.Ed.2d 376 (1966). In *Whitcomb v. Chavis, supra*, we noted that the fact that the number of members of a particular group who were legislators was not in proportion to the population of the group did not prove invidious discrimination absent evidence and findings that the members of the group had less opportunity than did other persons "to participate in the political processes and to elect legislators of their choice." 403 U.S., at 149, 91 S.Ct., at 1872.

Relying on this principle, in *White v. Regester* we unanimously upheld a District Court's conclusion that the use of multimember districts in Dallas and Bexar Counties in Texas violated the Equal Protection Clause in the face of findings that they excluded Negroes and Mexican-Americans from effective participation in the political processes. With respect to the exclusion of Negroes in Dallas County, "the District Court first referred to the history of official racial discrimination in Texas, which at times touched the right of Negroes to register and vote and to participate in the democratic [96] processes." 412 U.S., at 766, 93 S.Ct., at 2339. The District Court also referred to Texas' majority vote requirement and "place" rule, "neither in themselves improper nor invidious," but which "enhanced the opportunity for racial discrimination" by reducing legislative elections from the multimember district to "a head-to-head contest for each position." *Ibid.* We deemed more fundamental the District Court's findings that only two Negro state representatives had been elected from Dallas County since Reconstruction and that these were the only two Negroes ever slated by an organization that effectively controlled Democratic Party candidate slating. *Id.*, at 766–767, 93 S.Ct., at 2339. We also

noted the District Court's findings that the Democratic Party slating organization was insensitive to the needs and aspirations of the Negro community and that at times it had employed racial campaign tactics to defeat candidates supported by the black community. Based on this evidence, the District Court concluded that the black community generally was "not permitted to enter into the political process in a reliable and meaningful manner." *Id.*, at 767, 93 S.Ct., at 2340. We held that "[t]hese findings and conclusions are sufficient to sustain the District Court's judgment with respect to the Dallas multimember district and, on this record, we have no reason to disturb them." *Ibid.*

With respect to the exclusion of Mexican-Americans from the political process in Bexar County, the District Court referred to the continuing effects of a long history of invidious discrimination against Mexican-Americans in education, employment, economics, health, politics, and other fields. *Id.*, at 768, 93 S.Ct., at 2340. The impact of this discrimination, coupled with a cultural and language barrier, made Mexican-American participation in the political life of Bexar County extremely difficult. Only five Mexican-Americans had represented Bexar County in the Texas Legislature since 1880, and the county's legislative delegation "was insufficiently responsive to Mexican-American interests." *Id.*, at 769, 93 S.Ct., at 2341. "Based on the totality of the circumstances, the District Court [97] evolved its [ ] ultimate assessment of the multimember district, overlaid, as it was, on the cultural and economic realities of the Mexican-American community in Bexar County and its relationship with the rest of the county." *Ibid.* "[F]rom its own special vantage point" the District Court concluded that the multimember district invidiously excluded Mexican-Americans from effective participation in the election of state representatives. We affirmed, noting that we were "not inclined to overturn these findings, representing as they do a blend of history and an intensely local appraisal of the design and impact of the Bexar County multimember district in the light of past and present reality, political and otherwise." *Id.*, at 769–770, 93 S.Ct., at 2341.

II

In the instant case the District Court and the Court of Appeals faithfully applied the principles of *White v. Regester* in assessing whether the maintenance of a system of at-large elections for the selection of Mobile City Commissioners denied Mobile Negroes their Fourteenth and Fifteenth Amendment rights. Scrupulously adhering to our admonition that "[t]he plaintiffs' burden is to produce evidence to support findings that the political processes leading to nomination and election were not equally open to participation by the group in question," *id.*, at 766, 93 S.Ct., at 2339, the District Court conducted a detailed factual inquiry into the openness of the candidate selection process to blacks. The court noted that "Mobile blacks were subjected to massive official and private racial discrimination until the Voting Rights Act of 1965" and that "[t]he pervasive effects of past discrimination still substantially affec[t] black political participation." 423 F.Supp. 384, 387 (SD Ala.1976). Although the District Court noted that "[s]ince the Voting Rights Act of 1965, blacks register and vote without hindrance," the court found that "local political processes are not equally open" to blacks. Despite the fact that Negroes constitute more than 35% of the population of Mobile, no Negro has ever been elected to the Mobile [ ] City Commission. The plaintiffs intro- [98] duced extensive evidence of severe racial polarization in voting patterns during the 1960's and 1970's with "white voting for white and black for black if a white is opposed to a black," resulting in the defeat of the black candidate or, if two whites are running, the defeat of the white candidate most identified with blacks. *Id.*, at 388. Regression analyses covering every City Commission race in 1965, 1969, and 1973, both the primary and general election of the county commission in 1968 and 1972, selected school board races in 1962, 1966,

1970, 1972, and 1974, city referendums in 1963 and 1973, and a countywide legislative race in 1969 confirmed the existence of severe bloc voting. *Id.*, at 388–389. Nearly every active candidate for public office testified that because of racial polarization "it is highly unlikely that anytime in the foreseeable future, under the at-large system, . . . a black can be elected against a white." *Id.*, at 388. After single-member districts were created in Mobile County for state legislative elections, "three blacks of the present fourteen member Mobile County delegation have been elected." *Id.*, at 389. Based on the foregoing evidence, the District Court found "that the structure of the at-large election of city commissioners combined with strong racial polarization of Mobile's electorate continues to effectively discourage qualified black citizens from seeking office or being elected thereby denying blacks equal access to the slating or candidate selection process." *Ibid.*

The District Court also reviewed extensive evidence that the City Commissioners elected under the at-large system have not been responsive to the needs of the Negro community. The court found that city officials have been unresponsive to the interests of Mobile Negroes in municipal employment, appointments to boards and committees, and the provision of municipal services in part because of "the political fear of a white backlash vote when black citizens' needs are at stake." *Id.*, at 392. The court also found that there is no clear-cut state policy preference for at-large elections and [99] that past discrimination affecting the ability of Negroes to register and to vote "has helped preclude the effective participation of blacks in the election system today." *Id.*, at 393. The adverse impact of the at-large election system on minorities was found to be enhanced by the large size of the city-wide election district, the majority vote requirement, the provision that candidates run for positions by place or number, and the lack of any provision for at-large candidates to run from particular geographical subdistricts.

After concluding its extensive findings of fact, the District Court addressed the question of the effect of *Washington v. Davis*, 426 U.S. 229, 96 S.Ct. 2040, 48 L.Ed.2d 597 (1976), on the *White v. Regester* standards. The court concluded that the requirement that a facially neutral statute involve purposeful discrimination before a violation of the Equal Protection Clause can be established was not inconsistent with *White v. Regester* in light of the recognition in *Washington v. Davis, supra*, at 241–242, 96 S.Ct., at 2048, that the discriminatory purpose may often be inferred from the totality of the relevant facts, including the discriminatory impact of the statute. 423 F.Supp., at 398. After noting that "whenever a redistricting bill of any type is proposed by a county delegation member, a major concern has centered around how many, if any, blacks would be elected," *id.*, at 397, the District Court concluded that there was "a present purpose to dilute the black vote . . . resulting from intentional state legislative *inaction* . . . ." *Id.*, at 398. Based on an "exhaustive analysis of the evidence in the record," the court held that "[t]he plaintiffs have met the burden cast in *White* and *Whitcomb*," and that "the multi-member at-large election of Mobile City Commissioners . . . results in an unconstitutional dilution of black voting strength." *Id.*, at 402.

The Court of Appeals affirmed the District Court's judgment in one of four consolidated "dilution" cases decided on the same day. *Bolden v. Mobile*, 571 F.2d 238 (CA5 1978); *Nevett v. Sides*, 571 F.2d 209 (CA5 1978) (*Nevett II*); *Blacks United for Lasting Leadership, Inc. v. Shreveport*, 571 [100] F.2d 248 (CA5 1978); *Thomasville Branch* [100] *of NAACP v. Thomas County, Georgia*, 571 F.2d 257 (CA5 1978). In the lead case of *Nevett II, supra*, the Court of Appeals held that under *Washington v. Davis, supra*, and *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977), "a showing of racially motivated discrimination is a necessary element" for a successful claim of unconstitutional voting dilution under either the Four-

teenth or Fifteenth Amendment. 571 F.2d, at 219. The court concluded that the standards for proving unconstitutional voting dilution, outlined in *White v. Regester* were consistent with the requirement that purposeful discrimination be shown because they focus on factors that go beyond a simple showing that minorities are not represented in proportion to their numbers in the general population. 571 F.2d, at 219–220, n. 13, 222–224.

In its decision in the instant case the Court of Appeals reviewed the District Court's findings of fact, found them not to be clearly erroneous and held that they "compel the inference that [Mobile's at-large] system has been maintained with the purpose of diluting the black vote, thus supplying the element of intent necessary to establish a violation of the fourteenth amendment, *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 [97 S.Ct. 555, 50 L.Ed.2d 450] (1977); *Washington v. Davis*, 426 U.S. 229 [96 S.Ct. 2040, 48 L.Ed.2d 597] (1976), and the fifteenth amendment, *Wright v. Rockefeller*, 376 U.S. 52 [84 S.Ct. 603, 11 L.Ed.2d 512] (1964)." *Id.*, at 245. The court observed that the District Court's "finding that the legislature was acutely conscious of the racial consequences of its districting policies," coupled with the attempt to assign different functions to each of the three City Commissioners "to lock in the at-large feature of the scheme," constituted "direct evidence of the intent behind the maintenance of the at-large plan." *Id.*, at 246. The Court of Appeals concluded that "the district court has properly conducted the 'sensitive inquiry into such circumstantial and direct evidence of intent as may be available' that a court must undertake in [101] '[d]etermining whether invidious discriminatory purpose was a motivating factor' in the maintenance or enactment of a districting plan." *Ibid.*, quoting *Arlington Heights v. Metropolitan Housing Dev. Corp.*, *supra*, at 266, 97 S.Ct., at 2060.

III

A plurality of the Court today agrees with the courts below that maintenance of Mobile's at-large system for election of City Commissioners violates the Fourteenth and Fifteenth Amendments only if it is motivated by a racially discriminatory purpose. The plurality also apparently reaffirms the vitality of *White v. Regester* and *Whitcomb v. Chavis*, which established the standards for determining whether at-large election systems are unconstitutionally discriminatory. The plurality nonetheless casts aside the meticulous application of the principles of these cases by both the District Court and the Court of Appeals by concluding that the evidence they relied upon "fell far short of showing" purposeful discrimination.

The plurality erroneously suggests that the District Court erred by considering the factors articulated by the Court of Appeals in *Zimmer v. McKeithen*, 485 F.2d 1297 (CA5 1973), to determine whether purposeful discrimination has been shown. This remarkable suggestion ignores the facts that *Zimmer* articulated the very factors deemed relevant by *White v. Regester* and *Whitcomb v. Chavis*—a lack of minority access to the candidate selection process, unresponsiveness of elected officials to minority interests, a history of discrimination, majority vote requirements, provisions that candidates run for positions by place or number, the lack of any provision for at-large candidates to run from particular geographical subdistricts—and that both the District Court and the Court of Appeals considered these factors with the recognition that they are relevant only with respect to the question whether purposeful discrimination can be inferred.

Although the plurality does acknowledge that "the presence of the indicia relied on in *Zimmer* may afford some evidence of a [102] discriminatory purpose," it concludes that the evidence relied upon by the court below was "most assuredly insufficient to prove an unconstitutionally discriminatory purpose in the present case." The plurality apparently bases this conclusion on the fact

that there are no official obstacles barring Negroes from registering, voting, and running for office, coupled with its conclusion that none of the factors relied upon by the courts below would alone be sufficient to support an inference of purposeful discrimination. The absence of official obstacles to registration, voting, and running for office heretofore has never been deemed to insulate an electoral system from attack under the Fourteenth and Fifteenth Amendments. In *White v. Regester*, 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314 (1973), there was no evidence that Negroes faced official obstacles to registration, voting, and running for office, yet we upheld a finding that they had been excluded from effective participation in the political process in violation of the Equal Protection Clause because a multimember districting scheme, in the context of racial voting at the polls, was being used invidiously to prevent Negroes from being elected to public office. In *Gomillion v. Lightfoot*, 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110 (1960), and *Terry v. Adams*, 345 U.S. 461, 73 S.Ct. 809, 97 L.Ed. 1152 (1953), we invalidated electoral systems under the Fifteen Amendment not because they erected official obstacles in the path of Negroes registering, voting, or running for office, but because they were used effectively to deprive the Negro vote of any value. Thus, even though Mobile's Negro community may register and vote without hindrance, the system of at-large election of City Commissioners may violate the Fourteenth and Fifteenth Amendments if it is used purposefully to exclude Negroes from the political process.

In conducting "an intensely local appraisal of the design and impact" of the at-large election scheme, *White v. Regester, supra*, at 769, 93 S.Ct., at 2341, the District Court's decision was fully consistent with our recognition in *Washington v. Davis*, 426 U.S., at 242, 96 S.Ct., at 2048–49, that "an invidious discriminatory purpose may often be inferred from the totality of the relevant [103] facts, including the fact, if it is true, that the law bears more heavily on one race than another." Although the totality of the facts relied upon by the District Court to support its inference of purposeful discrimination is even more compelling than that present in *White v. Regester*, the plurality today rejects the inference of purposeful discrimination apparently because each of the factors relied upon by the courts below is alone insufficient to support the inference. The plurality states that the "fact [that Negro candidates have been defeated] alone does not work a constitutional deprivation," that evidence of the unresponsiveness of elected officials "is relevant only as the most tenuous and circumstantial evidence," that "the substantial history of official racial discrimination . . . [is] of limited help," and that the features of the electoral system that enhance the disadvantages faced by a voting minority "are far from proof that the at-large electoral scheme represents purposeful discrimination." By viewing each of the factors relied upon below in isolation, and ignoring the fact that racial bloc voting at the polls makes it impossible to elect a black commissioner under the at-large system, the plurality rejects the "totality of the circumstances" approach we endorsed in *White v. Regester, supra*, at 766–770, 93 S.Ct., at 2339–2341; *Washington v. Davis, supra*, at 241–242, 96 S.Ct., at 2048–2049, and *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S., at 266, 97 S.Ct., at 563, and leaves the courts below adrift on uncharted seas with respect to how to proceed on remand.

Because I believe that the findings of the District Court amply support an inference of purposeful discrimination in violation of the Fourteenth and Fifteenth Amendments, I respectfully dissent.