NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. 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.

SUPREME COURT OF THE UNITED STATES

Syllabus

HOLDER, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS COUNTY COMMISSIONER FOR BLECKLEY COUNTY, GEORGIA, ET AL. *v.* HALL ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 91–2012. Argued October 4, 1993—Decided June 30, 1994

Bleckley County, Georgia, has always had a form of government whereby a single commissioner holds all legislative and executive authority. In 1985, the State Legislature authorized the county to adopt by referendum a multimember commission consisting of five members elected from single-member districts and a chair elected at large, but voters defeated the proposal, although they had previously approved a five-member district plan for the county school board. Respondents, black voters and the local chapter of the National Association for the Advancement of Colored People, filed this action. The District Court rejected their constitutional claim that the single-member commission was enacted or maintained with an intent to exclude or limit the political influence of the county's black community in violation of the Fourteenth and Fifteenth Amendments. The court also ruled against their claim that the commission's size violated §2 of the Voting Rights Act of 1965, finding that respondents satisfied only one of the three preconditions established in *Thornburg* v. *Gingles*, 478 U. S. 30. The Court of Appeals reversed on the statutory claim, holding that the totality of the circumstances supported §2 liability and remanding for a formulation of a remedy, which it suggested could be modeled after the county's school board election system.

Held: The judgment is reversed, and the case is remanded.

955 F. 2d 1563, reversed and remanded.

JUSTICE KENNEDY, joined by THE CHIEF JUSTICE and JUSTICE O'CONNOR, concluded in Parts I, II–A, and III:

1. The size of a governing authority is not subject to a vote dilution challenge under §2. Along with determining whether

the *Gingles* preconditions are met and whether the totality of the circumstances support a liability finding, a court in a §2 suit must find a reasonable alternative practice as a benchmark against which to measure the existing voting practice. However, there is no objective and workable standard for choosing a reasonable benchmark where, as here, the challenge is brought to the government body's size. There is no reason why one size should be picked over another. Respondents have offered no convincing reasons why the benchmark should be a hypothetical five-member commission. That such a commission is the most common form of governing authority in the State does not bear on dilution, since a sole commissioner system has the same impact on voting strength whether it is shared by none, or by all, of Georgia's counties. That the county was authorized to expand its commission, and that it adopted a five-member school board, are likewise irrelevant considerations. At most, they indicate that the county could change the size of its governing body with minimal disruption, but the failure to do so says nothing about the effects the current system has on the county citizens' voting power. Pp. 4–7.

2. The case is remanded for consideration of respondents' constitutional claim. P. 10.

JUSTICE KENNEDY, joined by THE CHIEF JUSTICE, concluded in Part II–B that a voting practice subject to the preclearance requirement of §5 of the Act is not necessarily subject to a dilution challenge under §2. The sections differ in structure, purpose, and application; and in contrast to §2 cases, a baseline for comparison under §5 exists by definition: A proposed voting practice is measured against the existing practice to determine whether retrogression would result from the proposed change. Pp. 7–10.

JUSTICE O'CONNOR concluded that precedent compels the conclusion that the size of a governing authority is both a ``standard, practice, or procedure'' under §2 and a ``standard, practice, or procedure with respect to voting'' under §5, but agreed that a §2 dilution challenge to a governing authority's size cannot be maintained because there can never be an objective alternative benchmark for comparison. Pp. 1–2.

JUSTICE THOMAS, joined by JUSTICE SCALIA, concluded that the size of a governing body cannot be attacked under §2 because it is not a ``standard, practice, or procedure'' within the terms of §2. An examination of §2's text makes it clear that those terms refer only to practices that affect minority citizens' access to the ballot. Districting systems and electoral mechanisms that may affect the ``weight'' given to a ballot duly cast and counted are simply beyond the purview of the Act. The decision in *Thornburg* v. *Gingles,* 478 U. S. 30, which interprets §2 to reach claims of vote ``dilution,'' should be overruled. *Gingles* was based upon a flawed method of statutory construction and has produced an interpretation of §2

that is at odds with the text of the Act and that has proved unworkable in practice. Pp. 1–59.

KENNEDY, J., announced the judgment of the Court and delivered an opinion, in which REHNQUIST, C. J., joined, and in all but Part II–B of which O'CONNOR, J., joined. O'CONNOR, J., filed an opinion concurring in part and concurring in the judgment. THOMAS, J., filed an opinion concurring in the judgment, in which SCALIA, J., joined. BLACKMUN, J., filed a dissenting opinion, in which STEVENS, SOUTER, and GINSBURG, JJ., joined. GINSBURG, J., filed a dissenting opinion. STEVENS, J., filed a separate opinion, in which BLACKMUN, SOUTER, and GINSBURG, JJ., joined.