

CALIFORNIA REDISTRICTING AND THE FEDERAL VOTING RIGHTS ACT

Matt A. Barreto



Department of Political Science
UCLA Voting Rights Project

The Federal Voting Rights Act of 1965

- Section 5 – states or subdivisions with history of, or ongoing discrimination had to pre-clear any plans and changes
 - 1968, Monterey and Yuba Counties
 - 1972, Kings County
- Supreme Court struck down the coverage formula (Section 4B) in 2013

The Federal Voting Rights Act of 1965

3

- Section 2 – Prohibits discrimination in any voting standard, practice, or procedure that results in the denial or abridgement of the right of any citizen to vote on account of race, color, or membership in a language minority group.
- Section 2 applies nationwide

The Federal Voting Rights Act of 1965

Section 2(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

The Federal Voting Rights Act of 1965

Section 2(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

The Federal Voting Rights Act of 1965

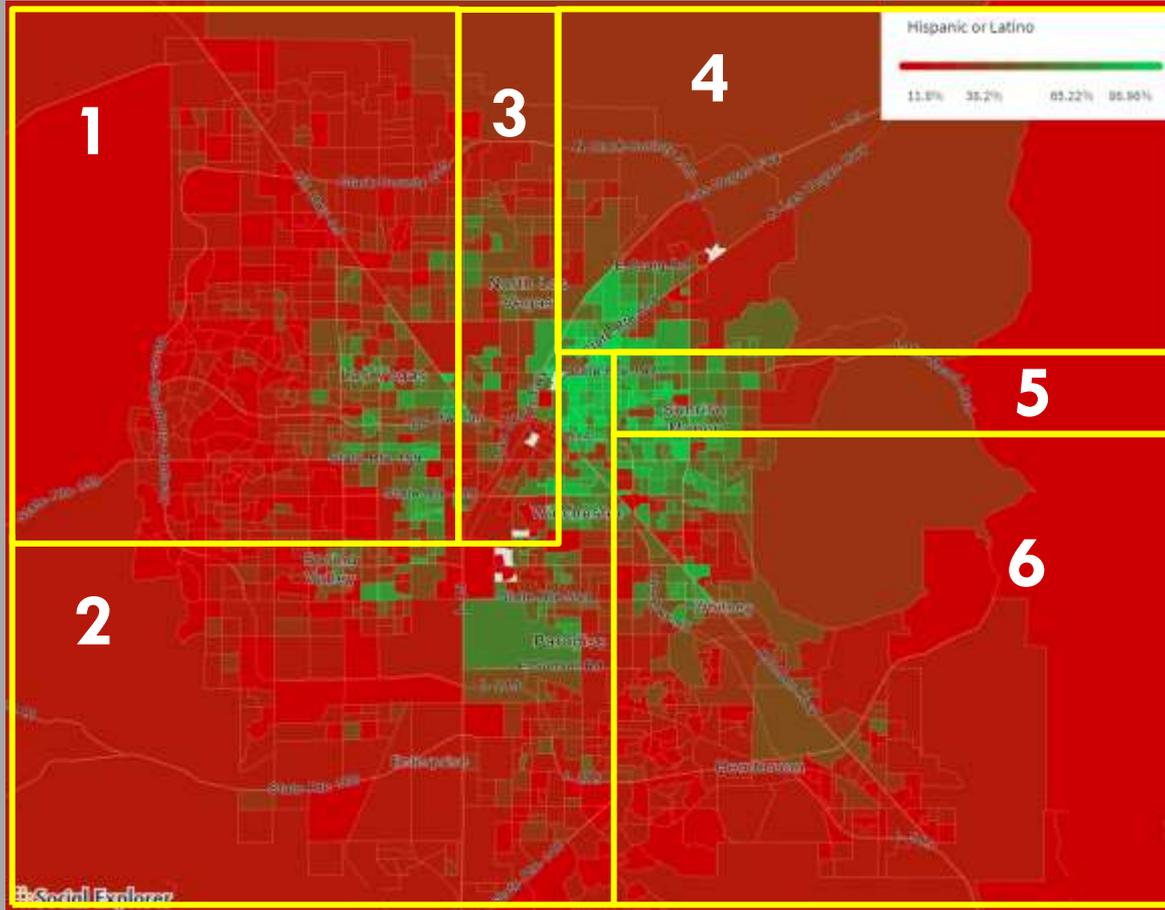
6

- Specifically, the VRA Section 2 prohibits districting plans that use racial gerrymandering to dilute minority rights to meaningful opportunity to elect candidates of their choice
- Has been used by Black, Latino, AAPI, Native American, White plaintiffs to challenge districting schemes that draw lines in a way that “pack” or “crack” their population
- Goal is to find the right balance and create fair and equitable districts, and successfully defend the plans to challenges

Minority Vote Dilution: Cracking & Packing

Cracking

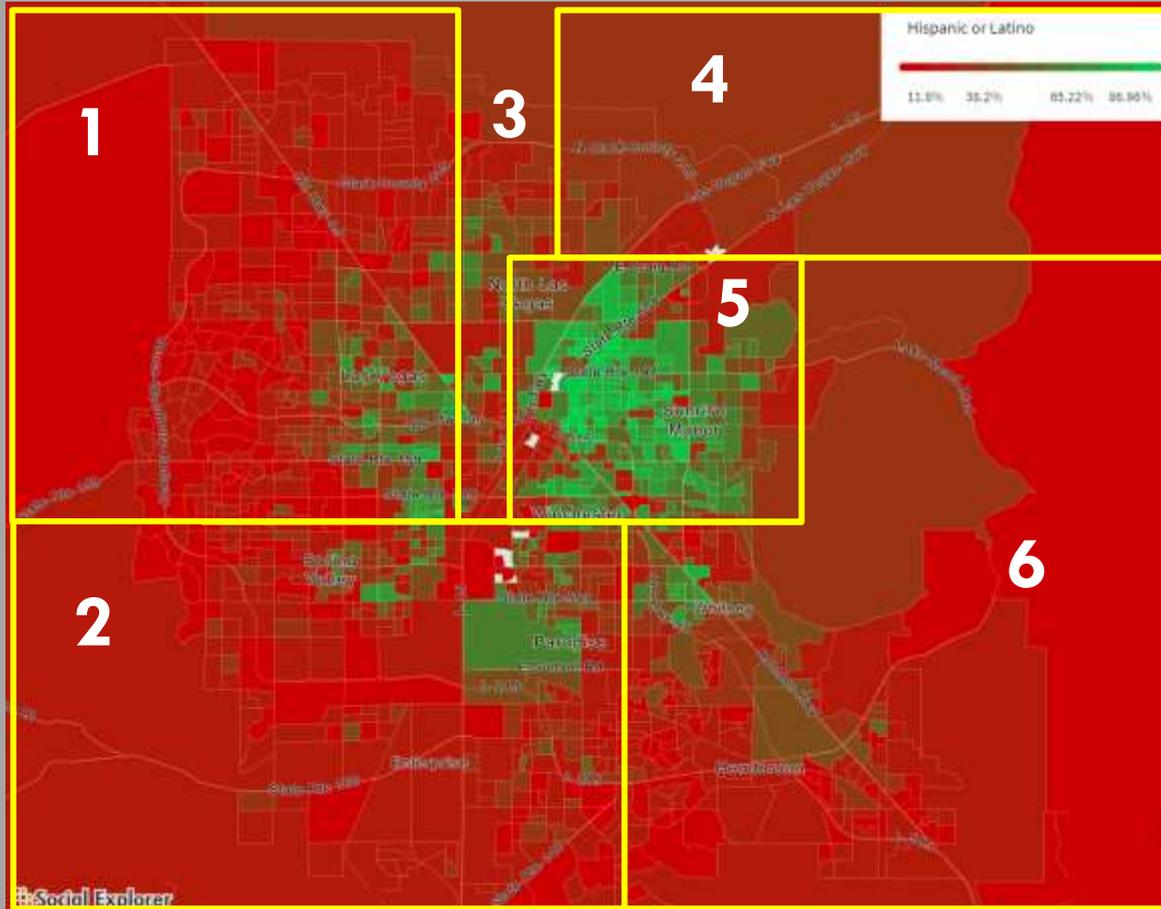
Here the Latina/o population appears split or cracked into multiple districts, perhaps never being able to see their candidate win



Clark County, NV

Hypothetical example, for illustration purposes

Minority Vote Dilution: Cracking & Packing



Clark County, NV

Packing

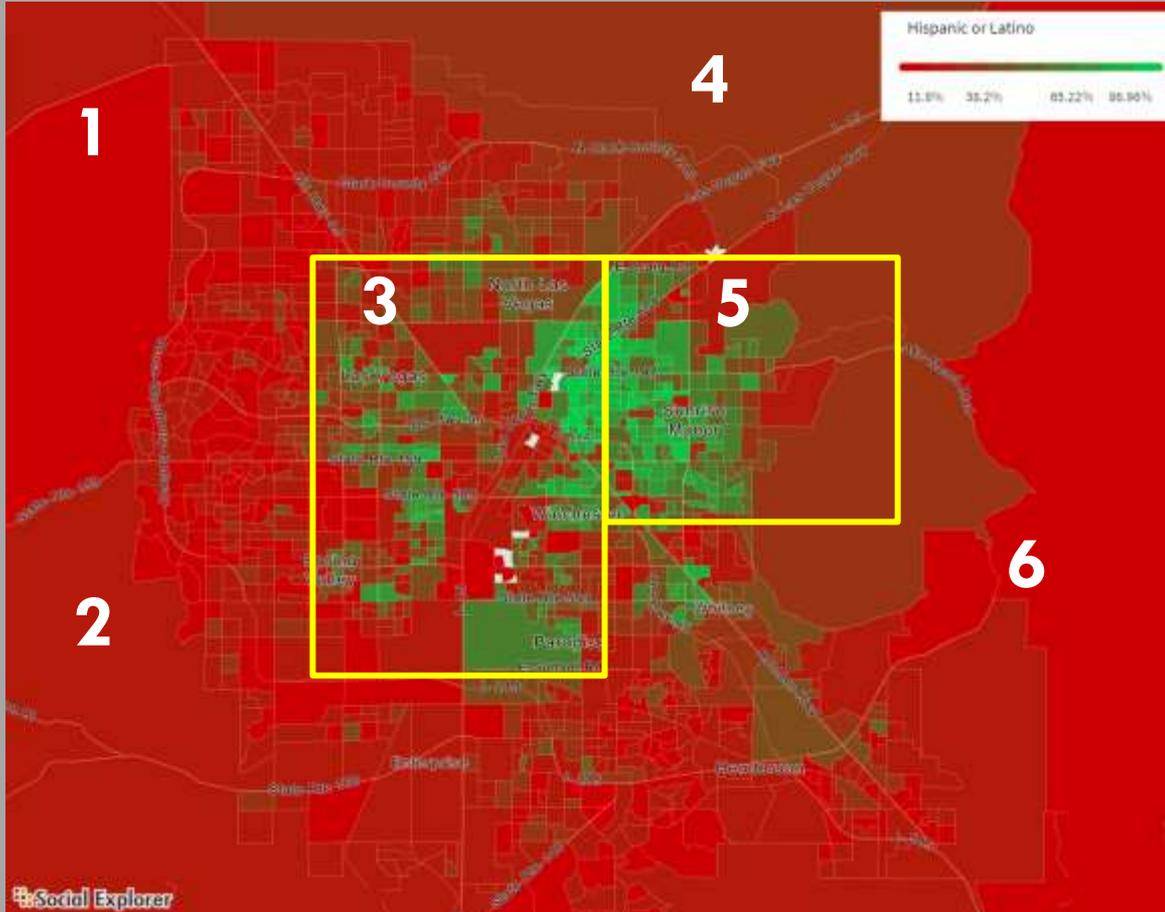
Here the Latina/o population appears concentrated or packed into a single district (5) preventing a second Latino-influence district from being drawn

Hypothetical example, for illustration purposes

Minority Vote Dilution: Cracking & Packing

Balance

Here there might be two districts in which Latina/o voters have an opportunity to elect candidates of their choice



Clark County, NV

Note:

A map drawer can give consideration to race – as one condition, not the only condition – if historical conditions and voting behavior justify considering race

Hypothetical example, for illustration purposes

Lawful Considerations on Drawing the Lines

- Complying with the Federal and State Laws
- Compactness
- Contiguity
- Competitiveness
- Preservation of political subdivisions
- Preservation of communities of interest
- Deference to “core” of prior districts
- Avoiding two incumbents in same district

One Person, One Vote

- Maximum population deviation of 10% for state offices
- U.S. House seats as close to equal population as possible
- *Larios v. Cox* (2004)
 - Population deviation should be used traditional districting principles
 - Population deviation should not be used to discriminate against voters based on race

Arlington Heights Factors

Test for whether a government action taken with discriminatory intent

1. “The impact of the official action,” especially “whether it bears more heavily on one race than another” (but “impact alone is not determinative”)
2. “The historical background of the decision, particularly if it reveals a series of official actions taken for invidious purposes”
3. “The specific sequence of events leading up the challenged decision”
4. “Departures from the normal procedural sequence” or “[s]ubstantive departures”
5. “The legislative or administrative history . . . especially where there are contemporary statements by members of the decision making body, minutes of its meetings, or reports”

Shaw v. Reno (1993)

Considering Race in Redistricting

1. Redistricting based on race must be held to a standard of strict scrutiny under the equal protection clause
2. Bodies undertaking redistricting must be conscious of race to ensure compliance with the VRA

The Gingles Test

- In a landmark case, SCOTUS established a three-prong test to assess minority vote dilution -- *Thornburg v. Gingles*, 478 U.S. 30 (1986)
 - Minority group sufficiently large and geographically compact
 - Minority voters are politically cohesive in supporting their candidate of choice
 - Majority votes in a bloc to usually defeat minority's preferred candidate

Lack of proportionality? — *Johnson v. DeGrandy*, 512 U.S. 997 (1994)

Totality of the Circumstances factors to consider: (1982 Senate Report) *Gingles*, 478 U.S. 30

1. The extent of any history of official discrimination with respect to the minorities' right to vote
2. The extent to which potentially discriminatory voting practices or procedures, like majority voting requirements or anti-single shot provisions, have been used.
3. If there is a candidate-slating process, whether minority candidates have been denied access to it.
4. The extent to any discrimination against minorities in education or other areas, which might hinder effective participation in the political process.
5. Whether political campaigns have been characterized by racial appeals.
6. The extent to which minority group members have been elected to public office.
7. Whether there is a lack of responsiveness on the part of elected officials to the minority groups particularized needs.
8. Whether the policy of supporting the use of voting policy or practice is tenuous

Totality of the Circumstances factors to consider: (1982 Senate Report) *Gingles*, 478 U.S. 30

1. The extent of any history of official discrimination with respect to the minorities' right to vote
2. The extent to which potentially discriminatory voting practices or procedures, like majority voting requirements or anti-single shot provisions, have been used.
3. If there is a candidate-slating process, whether minority candidates have been denied access to it.
4. The extent to any discrimination against minorities in education or other areas, which might hinder effective participation in the political process.
5. Whether political campaigns have been characterized by racial appeals.
6. The extent to which minority group members have been elected to public office.
7. Whether there is a lack of responsiveness on the part of elected officials to the minority groups particularized needs.
8. Whether the policy of supporting the use of voting policy or practice is tenuous

Totality of the Circumstances factors to consider: (1982 Senate Report) *Gingles*, 478 U.S. 30

1. The extent of any history of official discrimination with respect to the minorities' right to vote
2. The extent to which potentially discriminatory voting practices or procedures, like majority voting requirements or anti-single shot provisions, have been used.
3. If there is a candidate-slating process, whether minority candidates have been denied access to it.
4. The extent to any discrimination against minorities in education or other areas, which might hinder effective participation in the political process.
5. Whether political campaigns have been characterized by racial appeals.
6. The extent to which minority group members have been elected to public office.
7. Whether there is a lack of responsiveness on the part of elected officials to the minority groups particularized needs.
8. Whether the policy of supporting the use of voting policy or practice is tenuous

Totality of the Circumstances factors to consider: (1982 Senate Report) *Gingles*, 478 U.S. 30

1. The extent of any history of official discrimination with respect to the minorities' right to vote
2. The extent to which potentially discriminatory voting practices or procedures, like majority voting requirements or anti-single shot provisions, have been used.
3. If there is a candidate-slating process, whether minority candidates have been denied access to it.
4. The extent to any discrimination against minorities in education or other areas, which might hinder effective participation in the political process.
5. Whether political campaigns have been characterized by racial appeals.
6. The extent to which minority group members have been elected to public office.
7. Whether there is a lack of responsiveness on the part of elected officials to the minority groups particularized needs.
8. Whether the policy of supporting the use of voting policy or practice is tenuous

The Gingles Test: Factor 1

19

Minority group sufficiently large and geographically compact

- Decennial Census
- Census ACS 1-year or 5-year
- Voter file analysis
 - Spanish or Asian surname
 - New advancement in BISG

The Gingles Test: Factors 2 and 3

- Minority voters are politically cohesive in supporting their candidate of choice
- Majority votes in a bloc to usually defeat minority's preferred candidate
- This requires an analysis of voting patterns by race/ethnicity
 - Question the courts will ask us to answer is: Is there evidence of “racially polarized voting”?

Defining Racially Polarized Voting

- Racially polarized voting exists when voters of different racial or ethnic groups exhibit very different candidate preferences in an election.
- It means simply that voters of different groups are voting in polar opposite directions, rather than in a coalition.
- RPV does not necessarily mean voters are racist, it only measures the outcomes of voting patterns and determines whether patterns exist based on race/ethnicity

Defining Racially Polarized Voting

- Bottom line: minority voters are voting one way, and majority voters are voting another way
- But because majority voters are more numerous in the district, minority voters systematically lose.
- The analysis is about the individual voters within a jurisdiction. Even if a governing body is well intentioned, the individual voters across the county may behave in a way that blocks minority representation.

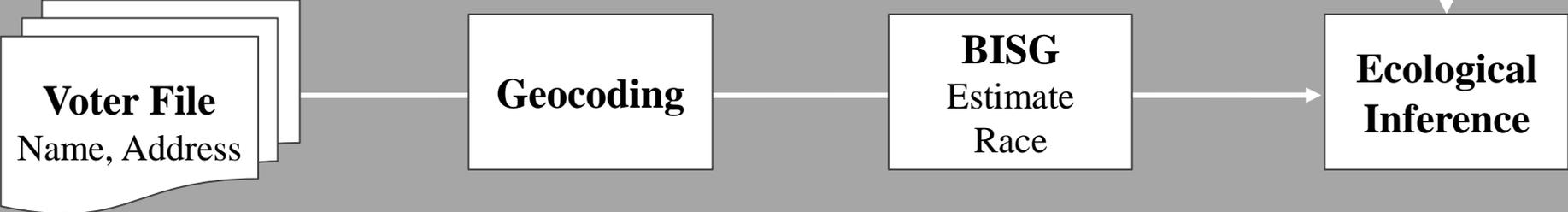
Measuring Racially Polarized Voting

- RPV can vary in degree of intensity, and it can be measured and quantified using statistical analysis that has been accepted by the courts.
- Your vote is secret – so how do we understand voting patterns by race and ethnicity?
- We have developed improved ecological inference techniques to use precinct-level vote results and racial demographics (Barreto, Collingwood, Garcia-Rios & Oskooii, 2016, 2019)

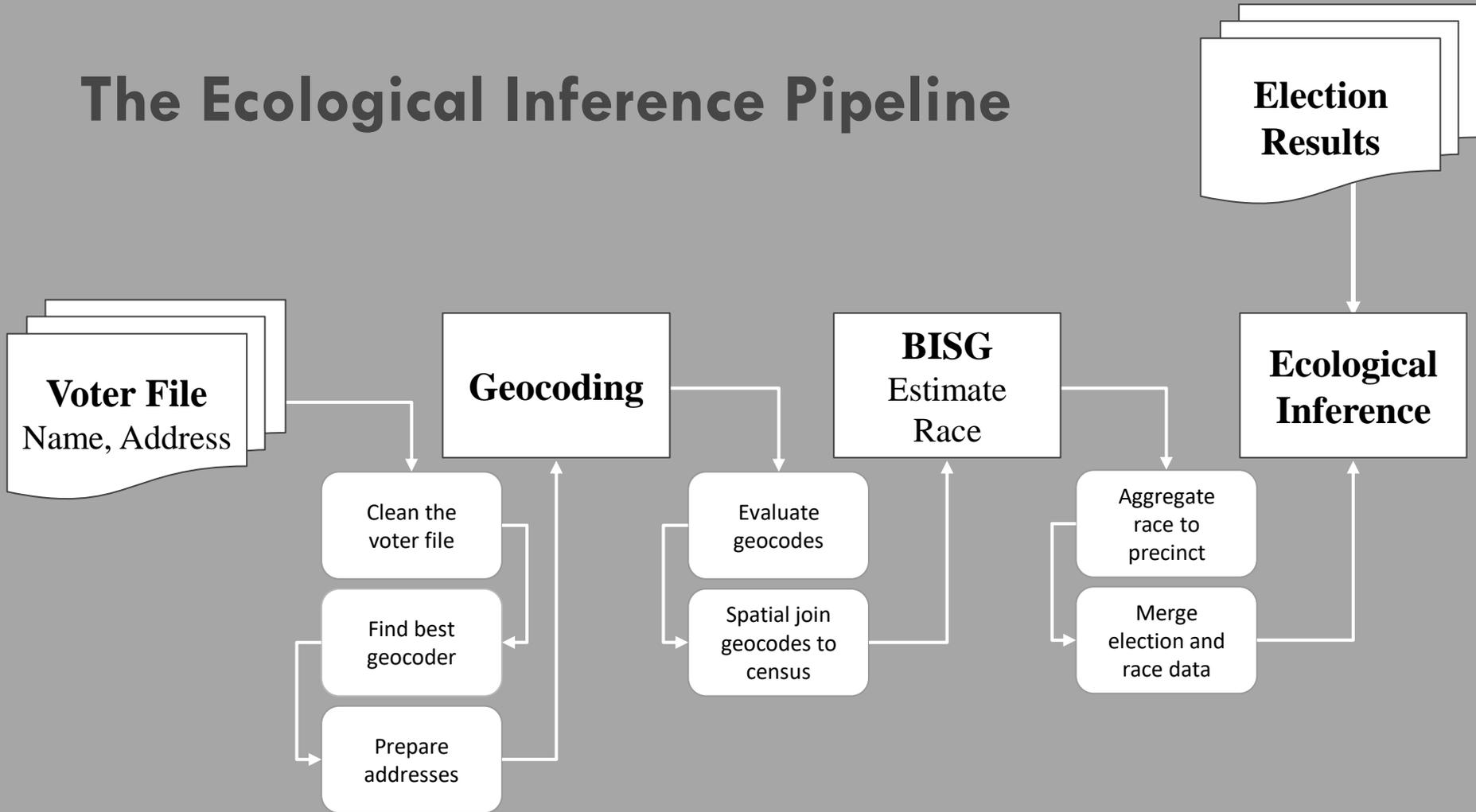
New Advances in Ecological Inference

- Detecting minority vote dilution is difficult and requires a mix of political science data, census data, statistical analysis and computer programming
- We developed a statistical analysis package in R, eiCompare that offers numerous new tools critical to districting
- We provide a variety of tables, graphics and congruence reliability statistics to properly assess vote dilution and minority representation

The Ecological Inference Pipeline

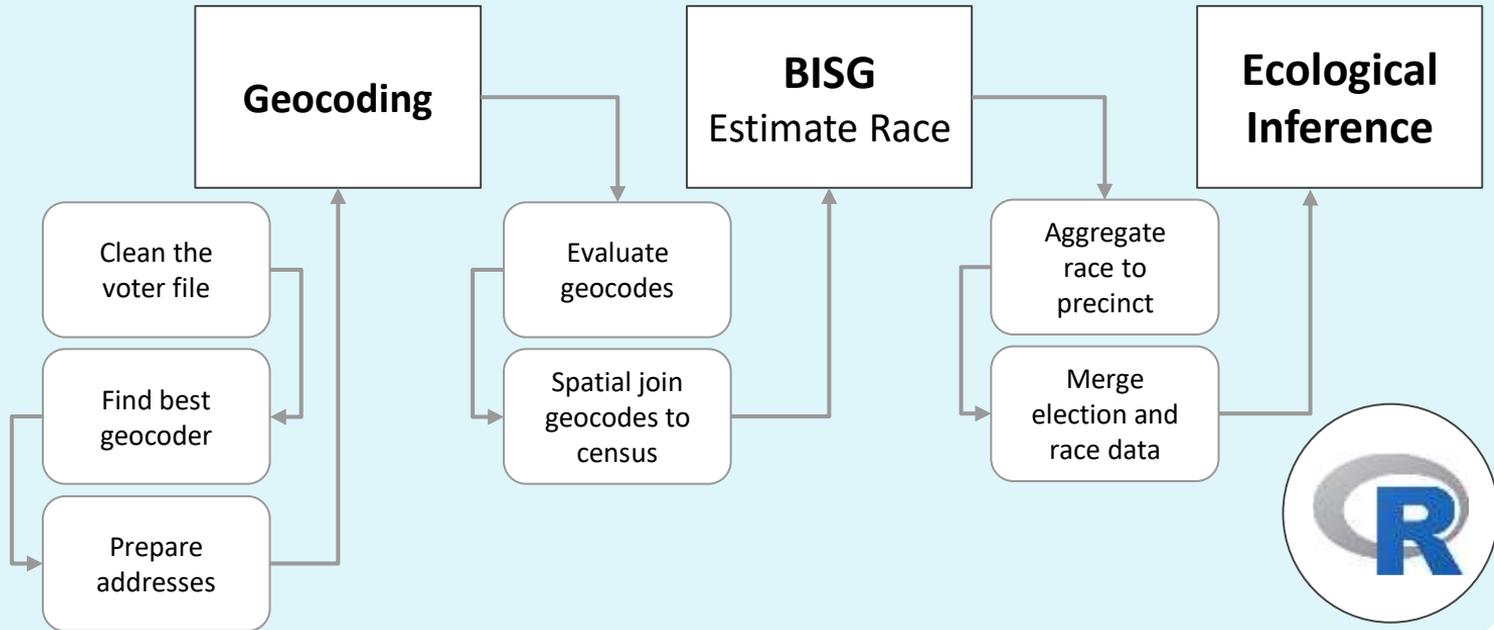


The Ecological Inference Pipeline





eiCompare: End-to-end ecological inference





eiCompare: Gathering the Data

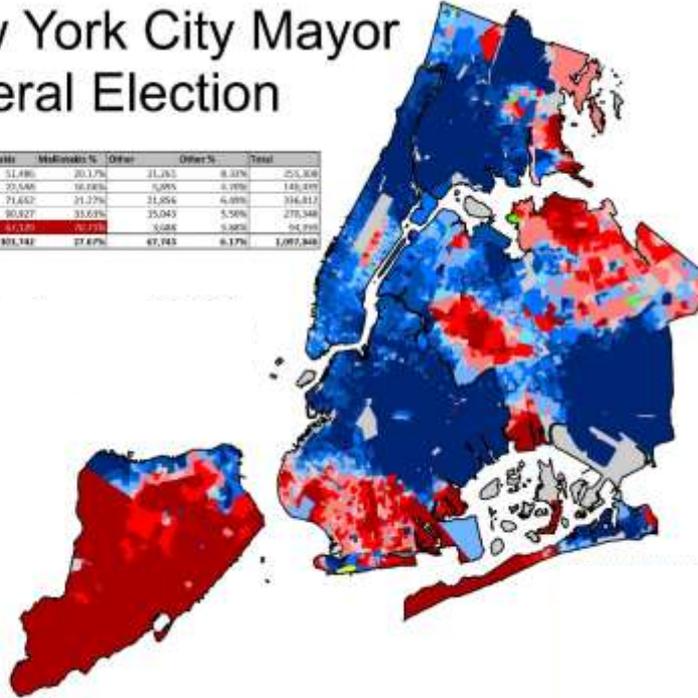
28

- Data comes from all public databases
- Election results at precinct-by-precinct level come from official state or county registrar of voters websites
- Data on the ethnicity of voters comes from either official county records:
 - In former Section 5 jurisdictions race is recorded
 - In non-Section 5 areas (CA) use surname lists or census data or now BISG
- Start by looking at endogenous elections – those being challenged by the lawsuit (e.g. Congressional, Assembly...)
- Best analysis will also bring in exogenous elections (Governor, Mayor...)

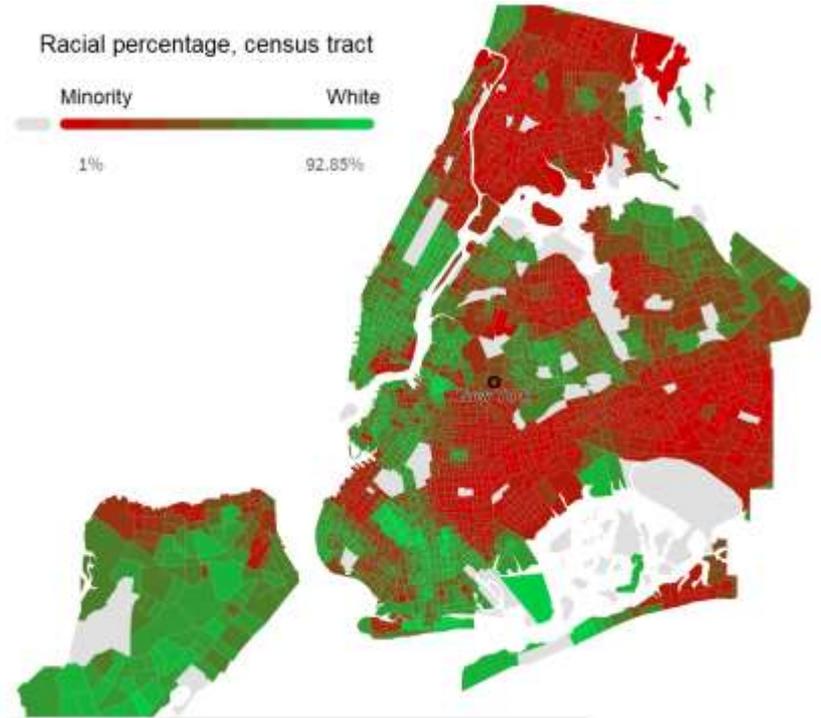
Old tools for assessing racially polarized voting

2017 New York City Mayor General Election

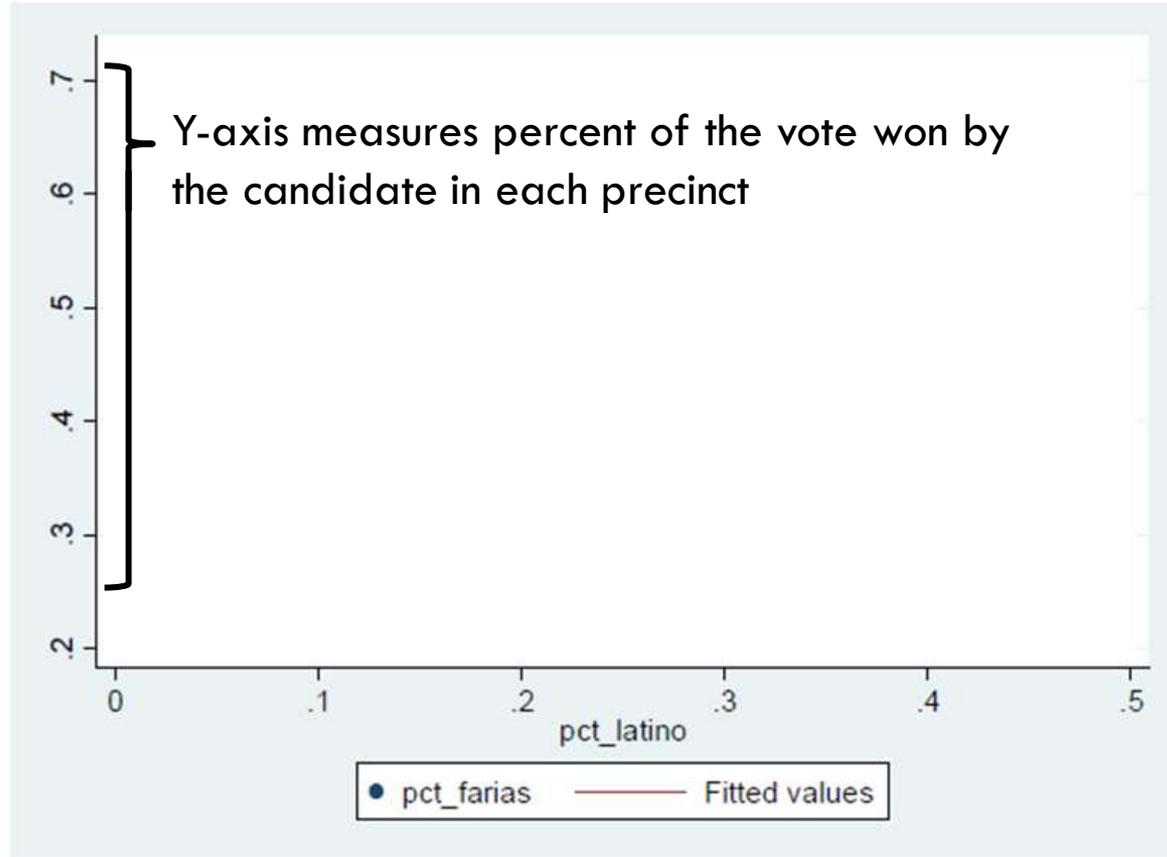
| Borough | de Blasio | de Blasio % | Malliotakis | Malliotakis % | Other | Other % | Total |
|---------------|------------------|---------------|----------------|---------------|---------------|--------------|------------------|
| Manhattan | 360,561 | 75.37% | 11,486 | 20.17% | 21,762 | 8.33% | 473,809 |
| Brox | 111,906 | 78.05% | 25,566 | 16.08% | 5,005 | 3.87% | 142,477 |
| Queens | 161,309 | 72.26% | 71,652 | 31.77% | 21,856 | 4.96% | 224,817 |
| Richmond | 264,378 | 96.82% | 8,827 | 3.18% | 35,043 | 5.56% | 278,248 |
| Staten Island | 28,333 | 35.41% | 37,159 | 46.73% | 5,006 | 6.30% | 70,498 |
| Total | 1,016,587 | 86.35% | 151,789 | 13.46% | 87,713 | 7.77% | 1,256,089 |



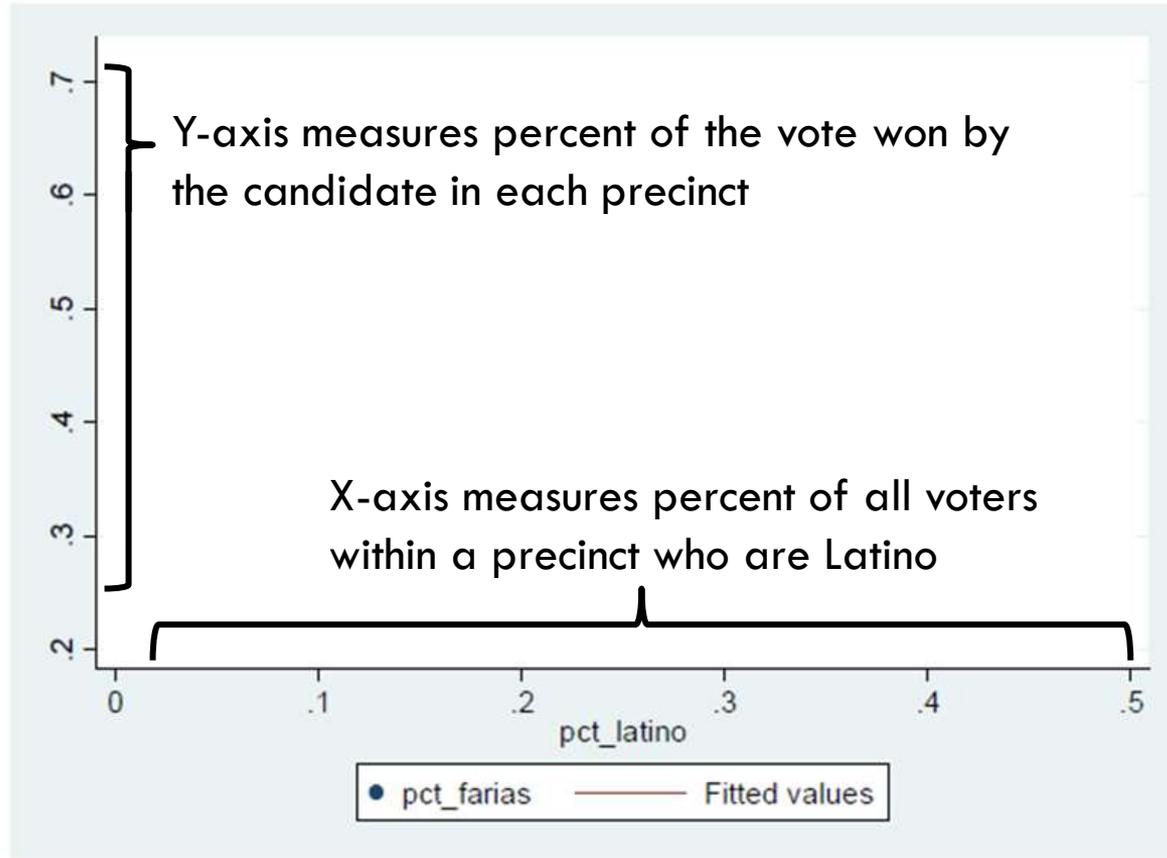
Racial percentage, census tract



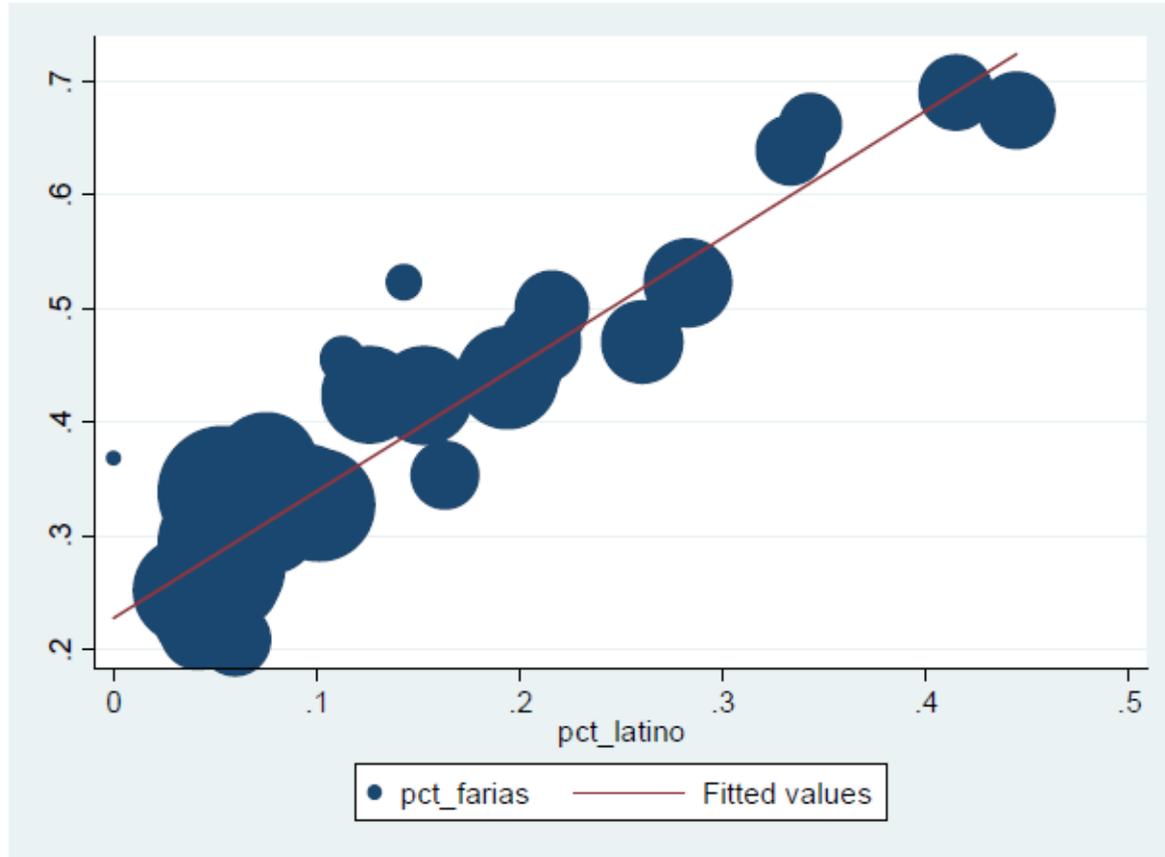
Measuring Polarized Voting Today



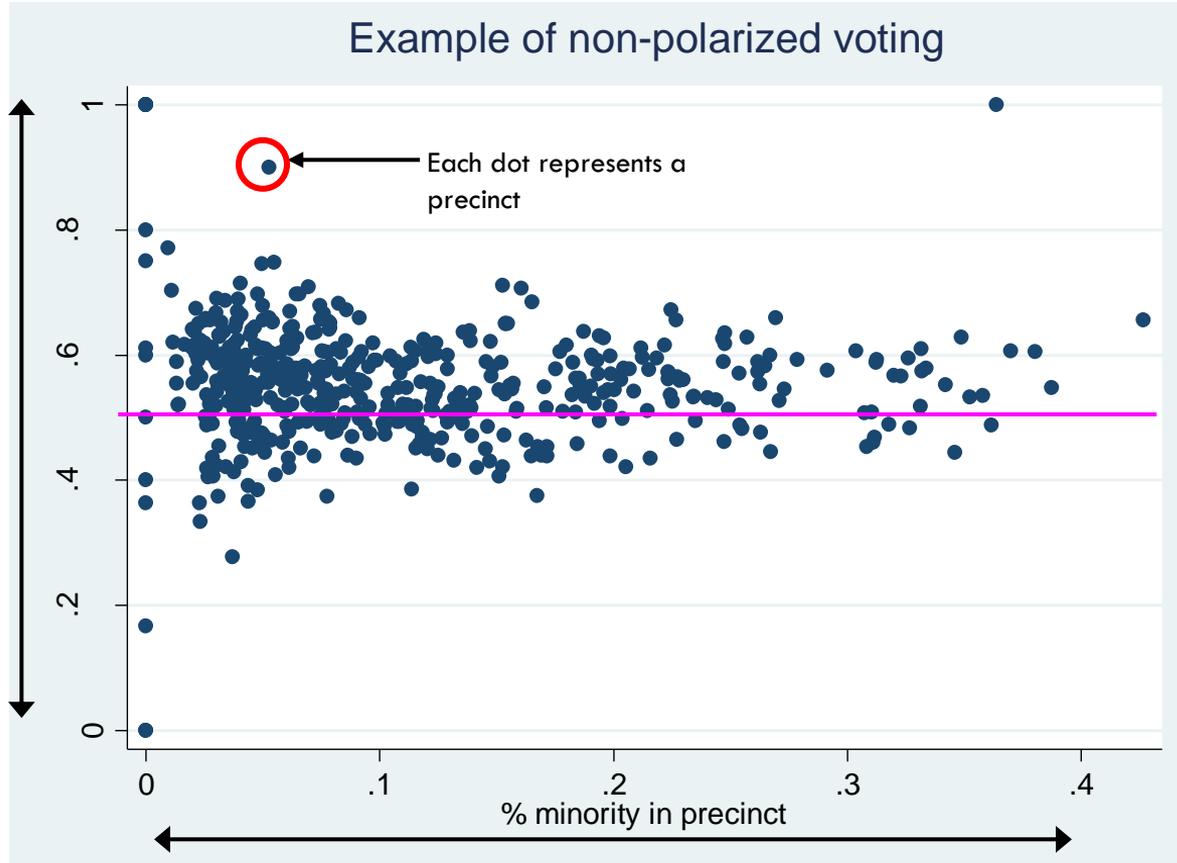
Measuring Polarized Voting Today



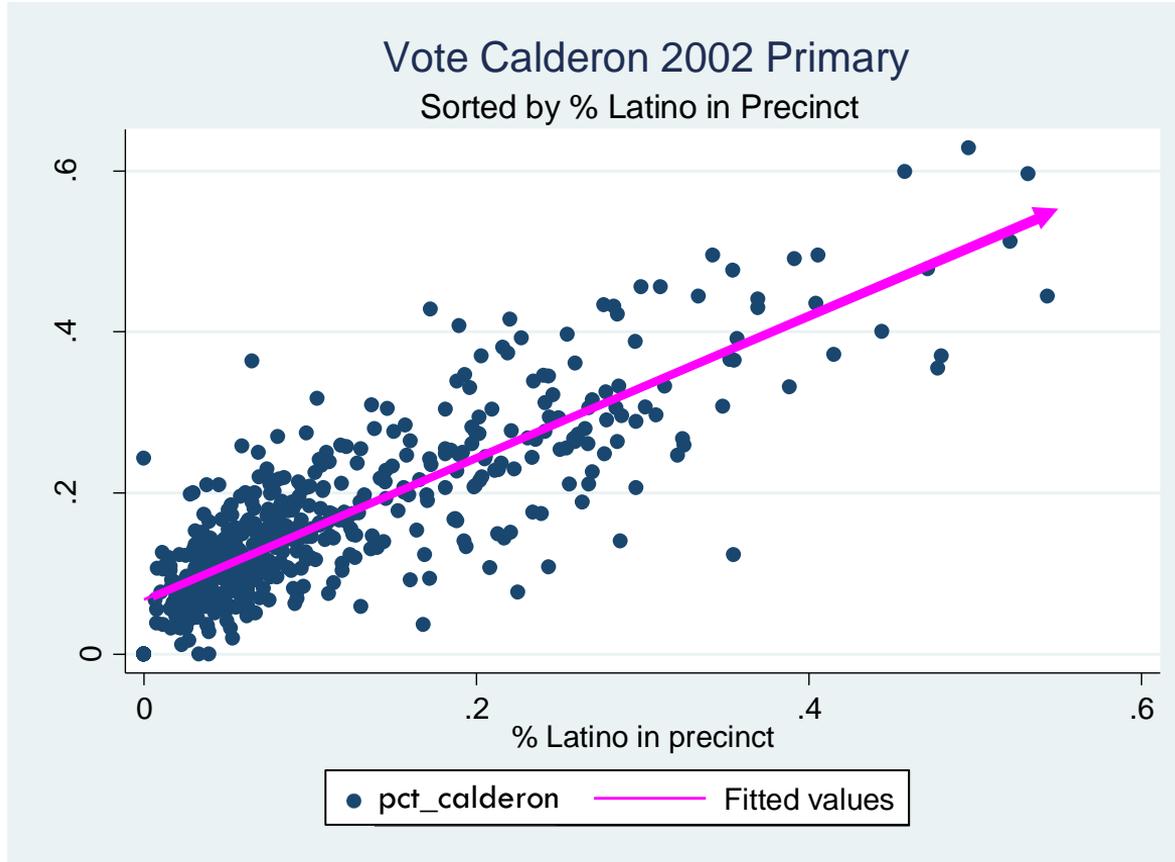
Yakima, WA County Commission, 2008



What if there is not polarized voting?

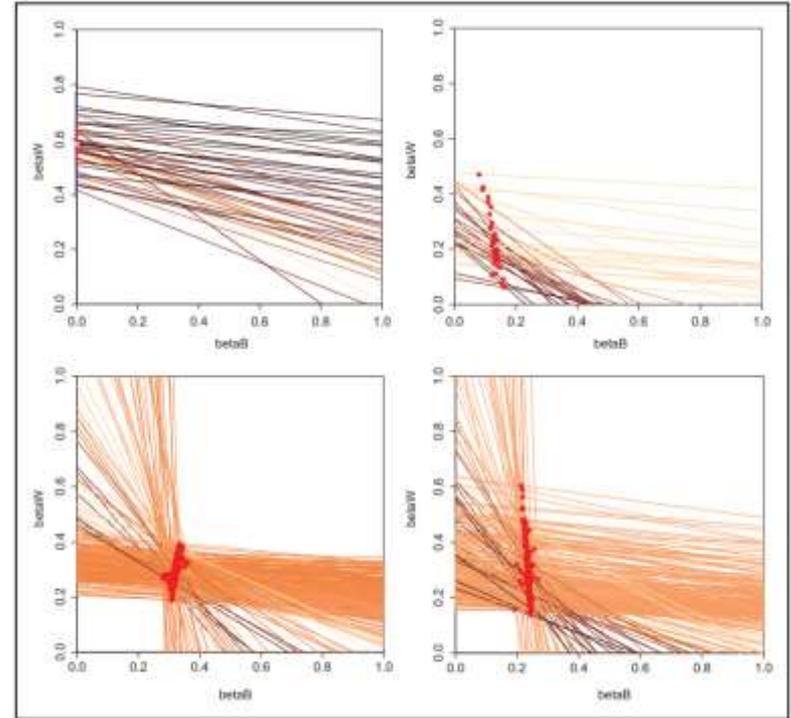
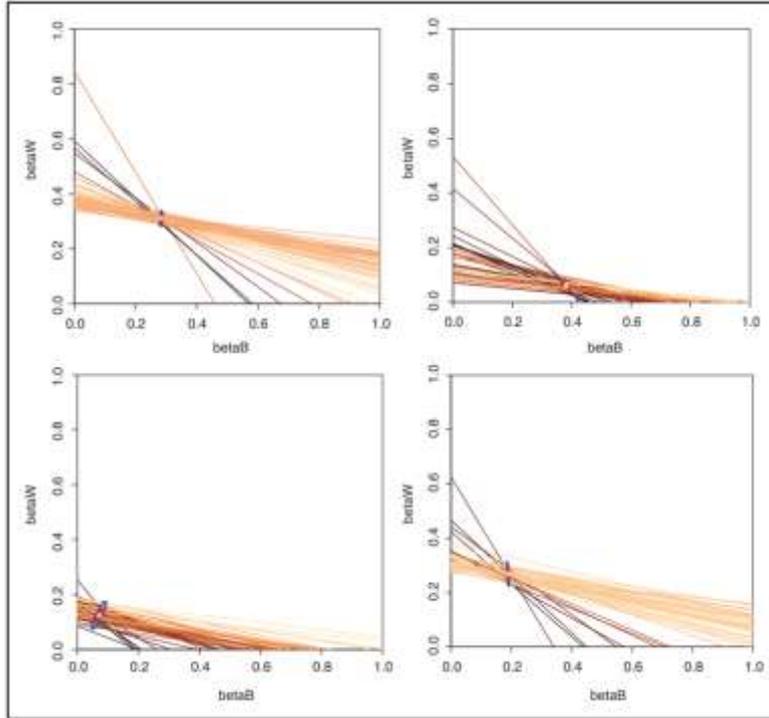


What Does Polarized Voting Look Like?





Assessing statistical methods consistency



Tomography plots



eiCompare: Estimating Race of Voters

37

- Data on the ethnicity of voters comes from either official county records:
 - In former Section 5 jurisdictions race is recorded
 - In non-Section 5 areas (CA) use surname lists or census data or now BISG
- Prior accepted methods for estimating race of voters in a precinct
 - Use Census Data (Decennial or 5-year ACS) → HOWEVER, not actual voters
 - Use of Surname matching against voter file → HOWEVER, limited to Latino/Asian
- BISG also accepted and uses best of both of these techniques
 - NAACP vs. East Ramapo Central School District 2020

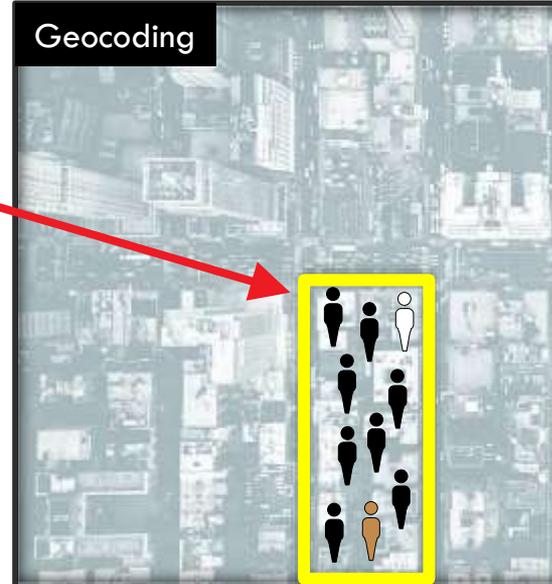
Using Bayesian methods for estimating race

- Debates over how to properly estimate race of voters
- Elliott et al. (2008) and Imai and Khanna (2016)

Surname List

| | % White | % Black | % Latino | Total |
|----------------|---------|---------|----------|-------|
| <u>Jackson</u> | 39 | 53 | 3 | 100 |
| Washington | 5 | 88 | 3 | 100 |
| Hernandez | 4 | 1 | 95 | 100 |
| Mueller | 96 | 0 | 2 | 100 |
| Kantor | 97 | 0 | 1 | 100 |

Geocoding



This City Block

| | |
|-----------|-----|
| % White: | 5 |
| % Black: | 85 |
| % Latino: | 10 |
| Total: | 100 |

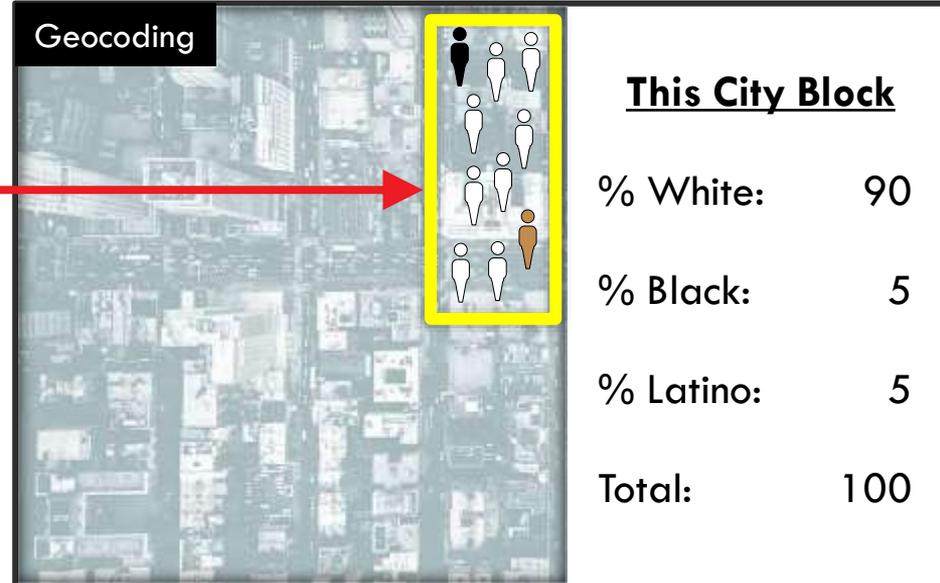
Using Bayesian methods for estimating race

- Debates over how to properly estimate race of voters
- Elliott et al. (2008) and Imai and Khanna (2016)

Surname List

| | % White | % Black | % Latino | Total |
|----------------|---------|---------|----------|-------|
| <u>Jackson</u> | 39 | 53 | 3 | 100 |
| Washington | 5 | 88 | 3 | 100 |
| Hernandez | 4 | 1 | 95 | 100 |
| Mueller | 96 | 0 | 2 | 100 |
| Kantor | 97 | 0 | 1 | 100 |

Geocoding



Geocoding Voter Addresses



Voter ID: 001

Surname: Jackson

Address: 105 Leaf Lane

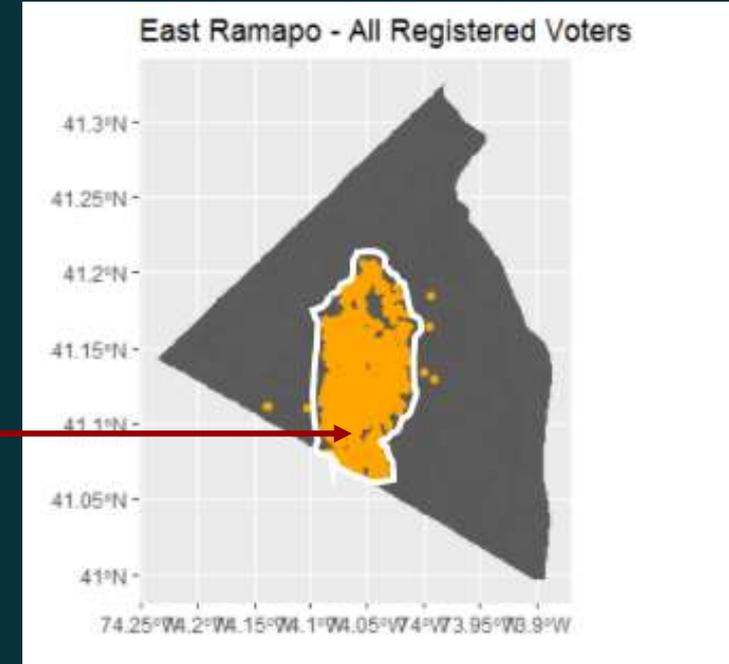
⋮

Latitude, Longitude (point)

(45°, 75°) ●

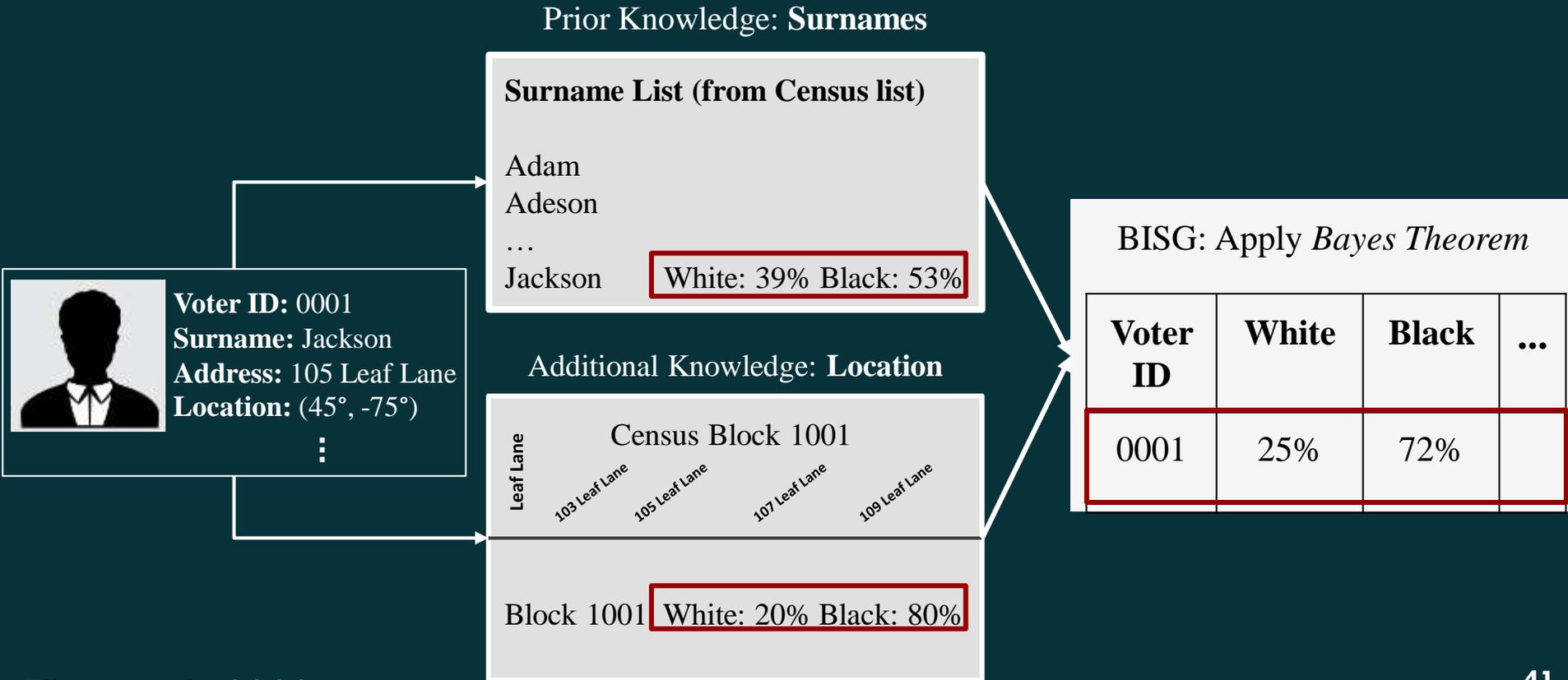


Map Points onto Geographic Area



Race/Ethnicity of the voter(s)?

Leveraging surnames and location to infer race



Validating BISG against self-reports

BISG is “19% more efficient than its predecessor (and **41% and 108% more efficient than single-source surname and address methods**, respectively.”

Marc. N. Elliott et al., *Using the Census Bureau's surname list to improve estimates of race/ethnicity and associated disparities*,
9 Health Serv Outcomes Res Method 69 (2009)

“Concordance statistics represent the probability that a randomly selected observation self-reporting a given race/ethnicity would have a higher BISG probability of that race/ ethnicity than a randomly selected observation not self-reporting that same race/ethnicity. The concordance statistics were **0.95 for Hispanic**, 0.94 for API, **0.93 for Black and White**, 0.77 for multiracial, and 0.61 for AI/AN, yielding a weighted average of 0.93 concordance.

Validating BISG against self-reports

“Bayesian Improved Surname Geocoding (BISG), can produce accurate estimates of racial/ethnic disparities within populations served when self-reported data are lacking.”

“Numerous validation studies have shown that BISG and related methods have an excellent ability to measure race/ethnicity. *Concordance between self-reported race/ethnicity and BISG estimates is typically 90 to 96 percent* for the four largest racial/ethnic groups—Blacks, Asians/Pacific Islanders, Hispanics, and Whites.”

Allen Fremont et al., *When Race Ethnicity Data Are Lacking*, RAND HEALTH QUARTERLY Vol. 6,1 16 (2016)

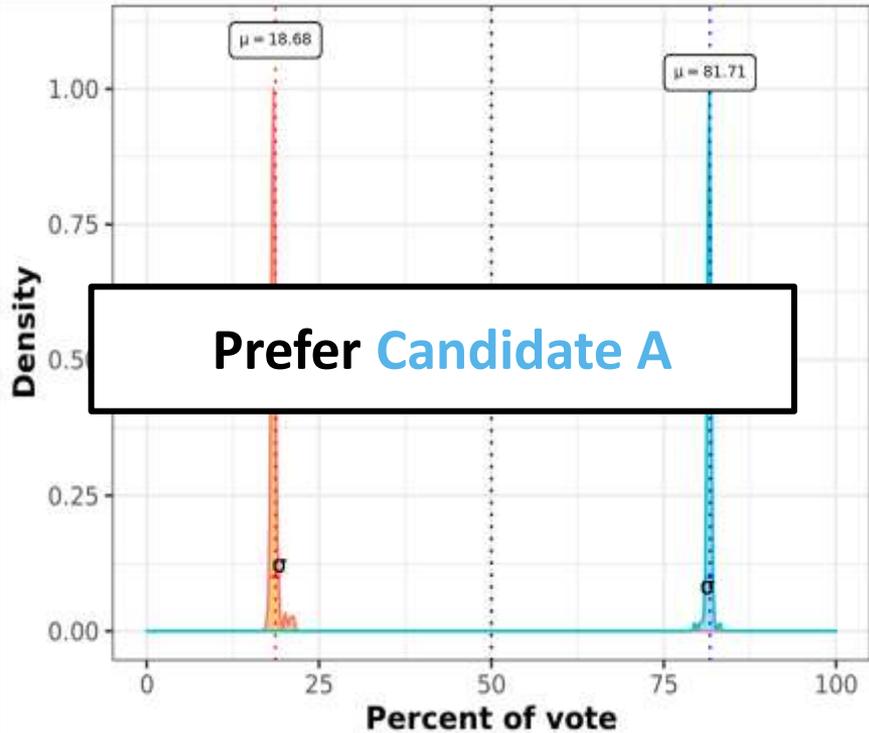


eiCompare: Estimating Voting Patterns

44

- Once we have precinct-level data that includes election results (from SOS or County) and race/ethnicity estimates of voters
- We run the Ecological Inference regression models
- These will produce vote choice estimates by race/ethnicity and these will include confidence intervals

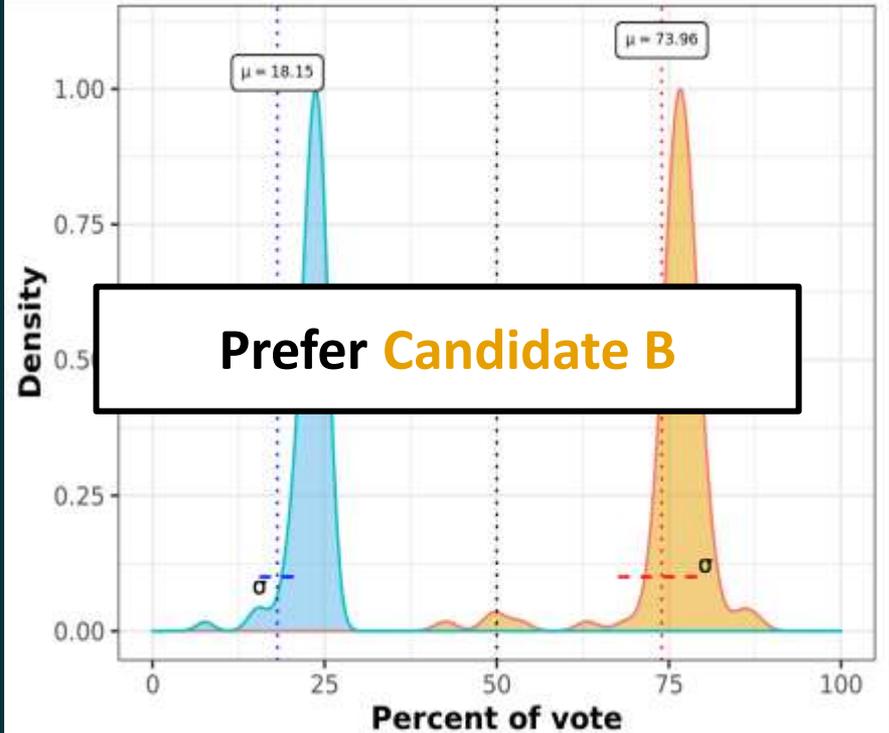
White Voters



Prefer Candidate A

Candidate A

Minority Voters



Prefer Candidate B

Candidate B

Better understanding of confidence intervals

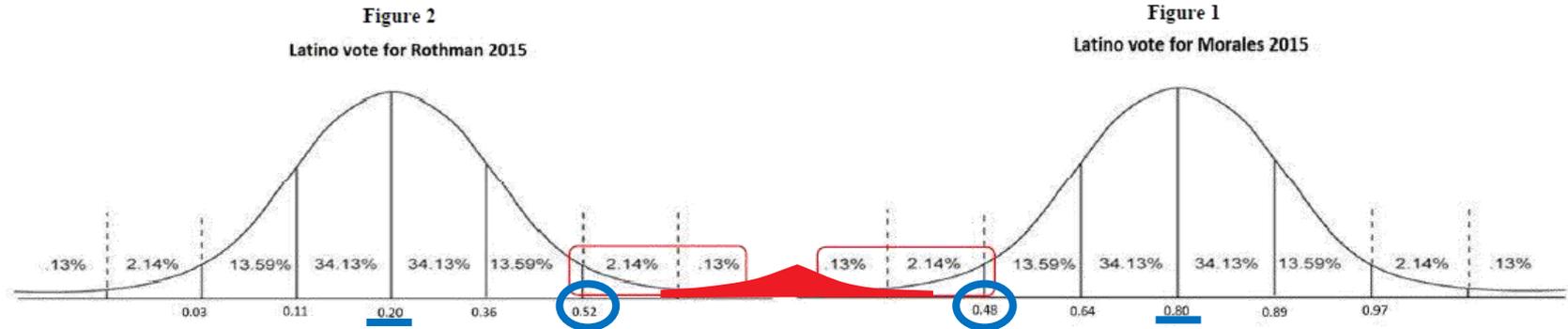
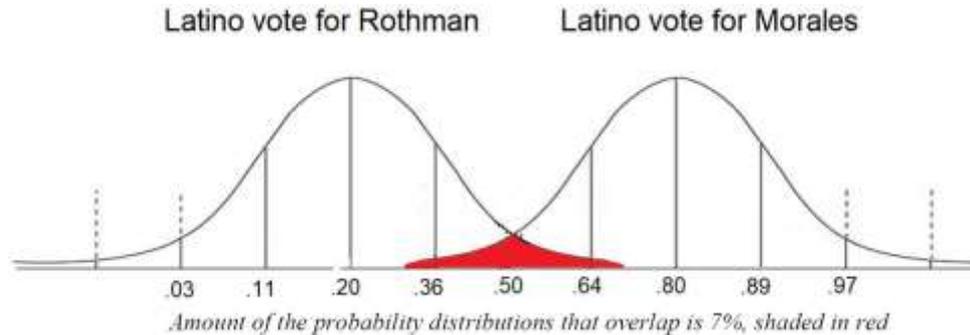
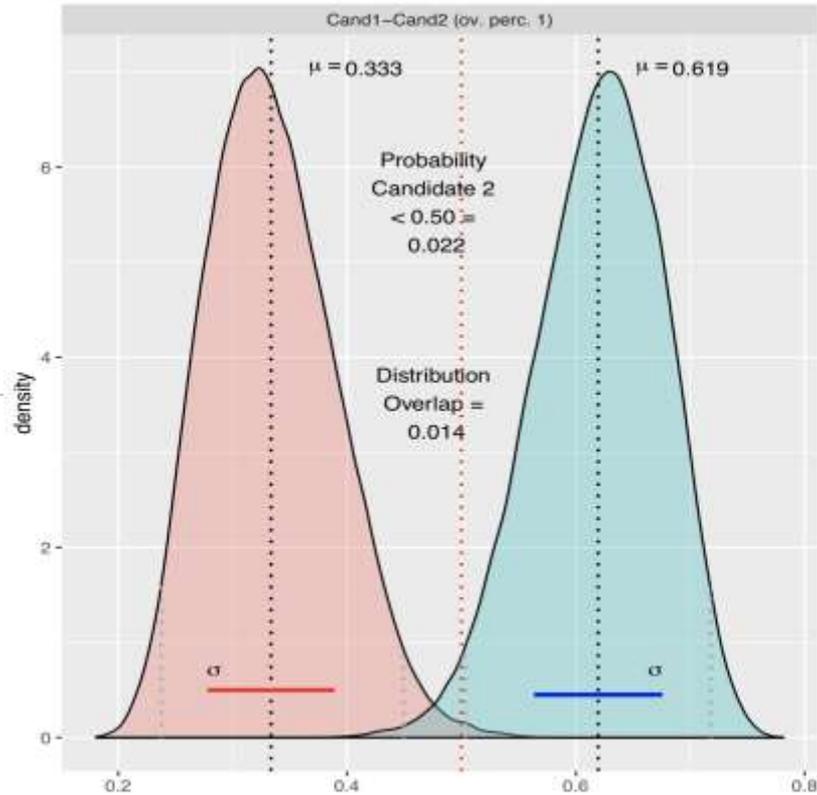


Figure 3: Comparison of confidence intervals for Latino vote 2015



**Only 3.5%
chance Morales
not Latino
preferred**

Better understanding of confidence intervals



Redistricting and the Voting Rights Act

- Commission must balance many important considerations, including the Federal Voting Rights Act
- To understand the VRA, where appropriate, we need to assess and examine the potential prevalence of minority vote dilution
- Properly studying and reporting racially polarized voting is increasingly technical and should be done with great care, using the latest social science methods and tools

CALIFORNIA REDISTRICTING AND THE FEDERAL VOTING RIGHTS ACT

Matt A. Barreto



Department of Political Science
UCLA Voting Rights Project