

# Straw Men and Stray Bullets: A Reply to Bullock\*

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Charles Bullock's rejoinder to my article "Multivariate Methods in the Analysis of Racially Polarized Voting: Pitfalls in the Use of Social Science by the Courts" is misleading in a number of ways and fundamentally wrong in its characterization of my views on measuring racial polarization in general and the evidence for racially polarized voting in Fort Lauderdale in particular.<sup>1</sup>

First and foremost, I have never taken a position on whether or not, in the light of the subsequent Supreme Court decision in *Thornburg v. Gingles*, 478 U.S. 30 (1986), *McCord v. City of Fort Lauderdale*, 617 F. Supp. 1093 (D. Fla. 1985) was correctly decided by the district court in 1985.<sup>2</sup> Rather,

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<sup>1</sup>Bullock's rejoinder (p. 838, n. 6) also contains some brief and misleading references to my own testimony in various other cases. With respect to the data he cited for *Gomez v. Watsonville*, the ecological regression estimate of a negative level of non-Hispanic support for the Hispanic candidate was set to its closest feasible value, namely zero. With respect to *Badillo v. City of Stockton*, I did not testify at trial in that case. I did prepare two affidavits (an initial one and a rebuttal) on the Motion for Preliminary Injunction. Based on review of another expert's data analysis of four elections (two local, two nonlocal), I concluded that there was "prima facie" evidence for polarization between minority (black and Hispanic) and nonminority (nonblack, non-Hispanic) voters in Stockton, and "prima facie" evidence of minority political cohesion. After I had conducted my own more detailed and more extensive analyses, I testified (at deposition) that there were elections in which it was impossible to be certain that both black and Hispanic voters had united behind a given black candidate. For some elections, this conclusion was at variance with that reached by plaintiffs' principal expert witness in the case. That expert witness's conclusions were rejected by the district court. However (as of 1 May 1991), the case is still on appeal.

Bullock begins his rejoinder with the statement that "Bernard Grofman has testified on behalf of plaintiffs in dozens of voting rights cases; I have worked for defendants in similar cases." The reader might take this to suggest the possibility that each of us is a committed "partisan," whose views reflect the side for which we invariably testify. I cannot judge the accuracy of that implication for Bullock; I can say that, unlike Bullock, I have testified for both plaintiffs and defendants, including the City of Boston, and the states of Indiana and Rhode Island (each of which prevailed), I have served as a court-appointed expert for the federal district court of the Southern District of New York, I am currently a consultant to the City of New York and the State of Alaska, and, most importantly, my testimony about the definition and measurement of racial bloc voting is consistent regardless of which side I have been retained by.

<sup>2</sup>*McCord v. City of Fort Lauderdale* was a challenge by black plaintiffs to an at-large election system in Fort Lauderdale. After *Thornburg v. Gingles* was decided by the Supreme Court,

my view in the *SSQ* article and in the earlier *UCLA Law Review* article that Bullock references but does not quote from was simply that "improperly used *multivariate* analyses (such as those presented by the expert witness<sup>3</sup> for defendants in *McCord*) can mislead a court" (Grofman, 1985: 141 n. 172; emphasis added). Of course, sometimes, an inappropriate multivariate methodology can lead to a *correct conclusion* about the presence or absence of racial polarization, but for the *wrong reasons*. That does not excuse the faulty methodology.

Second, Bullock omits from his discussion the key *legal* argument for why it is sensible to focus on bivariate rather than multivariate analysis of voting patterns in cases involving challenges brought under Section 2 of the Voting Rights Act. In amending Section 2 of the Voting Rights Act in 1982, Congress sought to return to an effects-based standard of vote dilution. In the Supreme Court's operationalization of that standard in *Thornburg* the first question to be answered re bloc voting is whether or not voting under the challenged at-large plan is such that "members of different races vote in bloc for different candidates."<sup>4,5</sup> Of necessity, the way to answer the question of whether blacks and whites vote for different candidates is to look at the levels of white and black support for black candidates, i.e., to look at simple bivariate descriptive statistics, not at complex multivariate models aimed at disentangling causation. Bullock may think that simply determining whether blacks and whites vote for different candidates is (a) not an interesting question or (b) not a question that he thinks courts should ask, but it is a critical question which expert

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the 1986 11th Circuit decision in *McCord* (sustaining the 1985 district court opinion) was vacated, and the case was remanded to the district for a new consideration in the light of the Supreme Court's definitive interpretation of Section 2 of the Voting Rights Act in *Thornburg*. This was appropriate because Justice Brennan's plurality opinion in *Thornburg* contained an explicit repudiation of the use of multivariate methodology in block voting analysis. It is fair to say that the outcome of that remand was in no way foregone because the *McCord* decision rested on a number of different grounds, only one of which was Bullock's multivariate analysis. However, before there could be any new legal action the case was mooted by a referendum in Fort Lauderdale that replaced the challenged plan with single-member districts—exactly the remedy that had been sought by the plaintiffs in the original lawsuit.

<sup>3</sup>Bullock was that witness. He was not referred to by name in my 1985 article.

<sup>4</sup>Bloc voting rises to legal significance if the minority community is "politically cohesive" and the majority voting bloc "usually defeats the minority's preferred candidate."

<sup>5</sup>According to Bullock (p. 838, emphasis added), the contention in voting rights suits is that "minority candidates lose *because* of their race or ethnicity." This mischaracterizes the case law and the claims of expert witnesses such as myself, neither of which are asserting *causal* claims. Moreover, when Bullock asserts (p. 838) that "if blacks lose because they are Democrats in a heavily Republican area where all Democrats, black or white, lose, then black defeats are not due to race but to party," even if our concern is causal, this is far too simple an analysis, since it neglects the possibility that one reason that Democrats lose is that some whites identify Democratic candidates as being particularly sympathetic to black interests. In any case, regardless of *why* black candidates lose, the *effect* of an at-large plan will be to deny them an opportunity to elect candidates of choice, and that is what the effects-based test of Section 2 is intended to rule out.

witnesses in voting rights cases *must* answer if they are to be *legally* relevant.<sup>6,7</sup>

Third, contrary to Bullock's claim that the number of social scientists who continue to embrace the standard bivariate methods "is surely dwindling like the ranks of the Flat Earth Society" (p. 834), virtually all social science testimony about bloc voting in the scores of voting rights cases decided by the federal courts since *Thornburg* has involved the bivariate methods, including, interestingly enough, Bullock's own testimony on behalf of the City of Springfield in December 1986 in *McNeil v. City of Springfield*, 685 Supp. 1015 (C.D. Ill. 1987). Moreover, I am not aware of any case decided since *Thornburg* in which multivariate methods have been accepted in preference to bivariate ones.

Of course, the fact that an expert makes use of bivariate rather than multivariate methods does not guarantee that he will reach appropriate conclusions. Indeed, in *McNeil v. City of Springfield* (numbered paragraphs 15-16 in the section on racially polarized voting, internal citations omitted) the district court characterized Bullock's testimony as below:

Dr. Charles Bullock was not a credible witness. The court rejects Dr. Bullock's opinion that racially polarized voting exists only where ninety percent or more of a population votes consistently for candidates of a particular race. No writings in the social science literature support Dr. Bullock's opinion other than an article authored by himself. . . . Dr. Bullock also candidly admitted on cross-examination that his definition of racially polarized voting is contradicted by *Thornburg v. Gingles*. . . . In an attempt to support his opinion, Dr. Bullock tried to develop a multivariate model of the share of the vote received by black candidates in partisan general elections. He abandoned the effort and withdrew that portion of his report after conferring with Dr. Jerome Sacks, Chairman of the University of Illinois Department of Statistics. Dr. Sacks told Dr. Bullock that the multivariate model was not valid since there was no way to disentangle the variables to obtain a reliable estimate.

Finally, Bullock notes a remarkable lack of collinearity between various variables (e.g., newspaper endorsements, campaign spending) and race in

<sup>6</sup>I certainly do not wish to claim that social science criticism of the legal uses of social science methodology is inappropriate. Quite the contrary. I have frequently criticized a particular court's treatment of social science evidence. However, as the case law in a given area jells (as it has in the voting rights area post-*Thornburg*), I do distinguish between questions that I, as a social scientist, may find of considerable interest and the questions which courts have decided are the legally relevant ones. Bullock appears oblivious to that distinction.

<sup>7</sup>Let me be clear, however, that I am not endorsing the definition of racial bloc voting offered by plaintiffs' expert in *McCord* except insofar as it is inconsistent with the analysis in *Thornburg v. Gingles*, 478 U.S. 30 (1986). Bullock and I would apparently agree that, in situations such as that in Ford Lauderdale and in North Carolina, where voters in an at-large election could vote for several candidates, it is necessary to look to see what proportion of the white voters supported *each* black candidate, and to compare that proportion with the support each of those minority candidates received from the minority community—as I did in my testimony in *Thornburg*.

the actual Fort Lauderdale data and suggests that this fact vitiates my critique of his use of multivariate methods *in that case*.<sup>8</sup> However, in Fort Lauderdale the problem with the model remains that it does not answer the right question, namely whether blacks supported black candidates and whites did not. Bullock's analysis includes all candidates, *regardless of race*. There were 75 white candidacies (37 successful) and only seven black candidacies (three successful), so that even if most whites never voted for any black candidate and most blacks never voted for any white candidate, race could not possibly be expected to explain *which* 40 of the 82 candidates were successful, since 38 of the 42 unsuccessful candidates are white. SSQ

#### REFERENCE

Grofman, Bernard. 1985. "Criteria for Districting: A Social Science Perspective." *UCLA Law Review* 33:77-184.

<sup>8</sup>I can state from personal knowledge of other jurisdictions that this lack of collinearity is unusual.