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Voting Rights Act: 10 years After (1 of 2) January 1975

THE VOTING RIGHTS ACT: TEN YEARS AFTER

A Report of the United States
Commission on Civil Rights
January 1975

ERRATA

Footnote 55, p. 190 should read:

Staff interviews, Talladega County, Ala., Sept. 1974. As required by law the Commission has offered the county's sheriff the opportunity to reply to these statements. His reply starts on page 479, appendix 7 extended.

U.S. Commission on Civil Rights

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 to:

Investigate complaints alleging denial of the right to vote by reason of race, color, religion, sex, or national origin, or by reason of fraudulent practices;

Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;

Appraise Federal laws and policies with respect to the denial of equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;

Serve as a national clearinghouse for information concerning denials of equal protection of the laws because of race, color, religion, sex, or national origin; and

Submit reports, findings, and recommendations to the President and the Congress.

Members of the Commission:

Arthur S. Flemming, Chairman
Stephen Horn, Vice Chairman
Frankie M. Freeman
Robert S. Rankin
Manuel Ruiz, Jr.
Murray Saltzman

John A. Buggs, Staff Director

LETTER OF TRANSMITTAL

THE U.S. COMMISSION ON CIVIL RIGHTS
Washington, D.C.
January 1975

THE PRESIDENT
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

Sirs:

The Commission on Civil Rights presents this report to you pursuant to Public Law 85-315, as amended.

This document presents the Commission's evaluation of the current status of minority voting rights in jurisdictions covered under the Voting Rights Act of 1965, as amended in 1970. The information on which this report is based was obtained by the Commission primarily from staff interviews in these jurisdictions and from court decisions and analysis of the files of the U.S. Department of Justice.

The Voting Rights Act has contributed substantially to the marked increase in all forms of minority political participation in the last ten years. The very existence of the act as well as the specific remedies that it provides gives support to minority citizens as they exercise their constitutional right to vote. Nevertheless, though the Voting Rights Act has been effective, detailed examination of recent events reveals that discrimination persists in the political process. The promise of the 15th amendment and the potential of the Voting Rights Act have not been fully realized. We, therefore, conclude that the protections of the Voting Rights Act should not be allowed to expire in August 1975.

We urge your consideration of the facts presented and the Commission's recommendations for corrective action.

Respectfully,

Arthur S. Flemming, Chairman
Stephen Horn, Vice Chairman
Frankie M. Freeman
Robert S. Rankin
Manuel Ruiz, Jr.
Murray Saltzman

John A. Buggs, Staff Director

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PREFACE

The 1965 Voting Rights Act is one of the most significant pieces of civil rights legislation ever enacted. Its passage and enforcement have been responsible for substantial increases in the number of blacks registered, voting, and elected to office in the seven Southern States covered by the act. This study has a twofold purpose: (1) to determine whether the conditions which led to the act's original passage have been eradicated; and (2) to determine whether the promise of full participation has been fulfilled for blacks, Puerto Ricans, Mexican Americans, and Native Americans in jurisdictions covered by the act's special provisions.

In the course of the study, Commission staff members visited 54 jurisdictions in 10 States (Alabama, Arizona, California, Georgia, Louisiana, Mississippi, New York, North Carolina, South Carolina, and Virginia) between July and November 1974. Within these States, counties and cities were chosen on the basis of preliminary research that indicated that there were problems of minority participation in the political process. The selected counties represent a wide geographical range as well as rural and urban areas.

The staff conducted over 200 interviews with persons knowledgeable about the political process in these States. These persons included

county clerks, county registrars, and other city and county officials; minority office-holders; minority candidates for office; public officials at the State and national level; and other persons active in civil rights activities. Observations by Commission staff were made during the 1974 primaries in Louisiana, Georgia, and South Carolina, and during the 1974 general elections in Arizona and California.

Other sources of information included the Department of Justice, the Lawyers' Committee for Civil Rights Under Law, the Voter Education Project, and the Joint Center for Political Studies. Commission staff also reviewed State election codes for the 10 States, as well as trial and appellate court decisions and pleadings.

This report deals primarily with events that occurred since 1971. Previous reports of the Commission and others have discussed earlier years of the Voting Rights Act. The report treats examples of problems that continue to affect the enfranchisement of minority voters.[1] It is, therefore, not a complete review of all political activity in the jurisdictions covered by the act.

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1. Throughout this report, the terms black, Native American, Puerto Rican, and Mexican American (or Chicano) are used to refer to the predominant minority groups in the jurisdictions covered by the Voting Rights Act. The term white is used to refer to the nonminority population of these jurisdictions.

Prior to the publication of a report, the Commission, in accordance with its statutes, rules, and regulations, affords any individuals or organizations that may be defamed, degraded, or incriminated by any material contained in the report an opportunity to respond in writing to such material. All responses received in a timely fashion are incorporated or reflected in the body of the report, or included in Appendix 7.

ACKNOWLEDGMENTS

The Commission is indebted to Emilio E. Abeyta, Cynthia C. Matthews, Deborah P. Snow, and Thomas R. Watson, who prepared this report under the direction of Frank G. Knorr.

Appreciation is also extended to the following staff members and former staff members who provided support and assistance in the production of the report:

Mary Baltimore, Lucille Boston, Claudette C. Brown, Rodney J. Cash, Doris O. Chambers, Antoinette Foster, Joann Harris, Gwen Morris, Michael P. O'Connell, Gail Ross, Roberta Sanders, Patsy Washington, and Mary Watson.

The Commission is also grateful to David H. Hunter who returned to the Commission to lend his expert assistance to this effort.

The report was prepared under the overall supervision of John Hope III, Assistant Staff Director, Office of Program and Policy Review.

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1. INTRODUCTION

On March 25, 1965, 10 days after President Lyndon Johnson's dramatic appeal to Congress for effective voting rights legislation,[1] 25,000 black and white citizens assembled on the steps of the State Capitol in Montgomery, Alabama. They had marched from Selma under the protection of federalized National Guard troops to petition for the most basic of rights--the right to vote. In January 1975, 15 blacks took their seats in the same State Capitol as members of the Alabama legislature, duly elected under a court-ordered apportionment plan fashioned on principles developed in 10 years of implementing the Voting Rights Act of 1965.[2]

Clearly, substantial progress has been made toward full enjoyment of political rights. Because the headlines and front-page pictures of blacks marching to registrars' offices have faded, it is fitting to review the status of voting rights 10 years after passage of the Voting Rights Act. The very real gains that have been made, however, must not be allowed to obscure the persistence of racial discrimination in the electoral process.

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1. Reprinted in U.S., Congress, House of Representatives, Right to Vote, House Doc. No. 117, 89th Cong., 1st Sess. (1965).

2. 42 U.S.C. §§ 1973-1973p, as amended, 42 U.S.C. 1973aa-bb-4 (1970) (hereafter only specific provisions of the act will be cited). The text of the act, as amended, is reproduced in appendix 6.

The story of the progress in voting rights and of the persistence of some old discriminatory practices and development of new ones is more than the story of the Voting Rights Act.[3] But the Voting Rights Act is central to developments of the last 10 years and understanding its provisions and implementation is essential in assessing the current status of minority participation in the political process.

The Voting Rights Act is a complex piece of legislation that was developed in response to the failure of earlier legislation to remedy discrimination in voting.[4] There is no need to belabor the history

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3. In particular, it should be stressed that this report focuses on voting rights only in jurisdictions covered by the Voting Rights, Act. It, therefore, excludes consideration of progress and problems elsewhere in the United States. There is reason to believe that minority citizens in other areas encounter difficulties in exercising their political rights. See, e.g., reports of Voter Education Project Field Representatives covering Arkansas, Florida, and Texas during 1973-74 in the files of the Voter Education Project, Inc., Atlanta, Ga.; Arkansas State Advisory Committee Report to the U.S. Commission on Civil Rights, Blacks in The Arkansas Delta (1974); California State Advisory Committee Reports to the U.S. Commission on Civil Rights, Political Participation of Mexican Americans in California (1971) and Reapportionment of Los Angeles' 15 City Councilmanic Districts (1973). In addition, litigation in jurisdictions not discussed in this report raises many of the issues that are treated. See, e.g., White v. Regester, 412 U.S. 755 (1973) on the discriminatory aspects of multimember legislative districts in Texas. There is also extensive litigation attacking the use of at-large elections for local governmental bodies as racially discriminatory. The Commission will investigate such problems in a subsequent report.

4. See U.S., Congress, House, Judiciary Committee, House Report No. 439, reported in U.S. Code, Congressional and Administrative News (89th Cong., 1st Sess., 1965), vol. 2, pp. 2441-2508, and Joint Views of 12 members of the Judiciary Committee Relating to the Voting Rights Act of 1965, attached to Senate Report No. 162, reported ibid., pp. 2540-70.

of minority disfranchisement here. Earlier reports of the U.S. Commission on Civil Rights and others have told that story.[5] It is important to recall, however, that the frustration of Federal efforts to ensure free exercise of 15th amendment rights led directly to the enforcement mechanisms of the Voting Rights Act. Voting rights provisions of the Civil Rights Acts of 1957,[6] 1960,[7] and 1964[8] focused on streamlining the traditional remedies of the judicial process to enforce the 15th amendment. By contrast, the Voting Rights Act not only further strengthened judicial remedies, but also provided for direct Federal action through a variety of administrative remedies to counter immediate and potential barriers to full and effective minority political participation.[9]

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5. See Report of the U.S. Commission on Civil Rights, 1959; 1961 U.S. Commission on Civil Rights Report, Book 1: Voting; Report of the U.S. Commission on Civil Rights, 1963; U.S. Commission on Civil Rights, Freedom to the Free (1963); U.S. Commission on Civil Rights, Voting in Mississippi (1965); U.S. Commission on Civil Rights, The Voting Rights Act...the first months (1965); and U.S. Commission on Civil Rights, Political Participation (1968). See also Washington Research Project, The Shameful Blight: The Survival of Racial Discrimination in Voting in the South (Washington, D.C., 1972).

6. Pub. L. 85-315, 71 Stat. 637.

7. Pub. L. 86-449, 74 Stat. 90.

8. Pub. L. 88-352, 78 Stat. 241. The three civil rights acts, as well as some amendments from the Voting Rights Act of 1965 (Pub. L. 89-110, 79 Stat. 445) are codified as 42 U.S.C. § 1971 (1970).

9. For comparison of Federal enforcement strategies, see Armand Derfner, "Racial Discrimination and the Right to Vote," Vanderbilt Law Review, vol. 26 (1971), pp. 523 ff., and Note, "Federal Protection of Negro Voting Rights," Virginia Law Review, vol. 51 (1965), pp. 1050 ff.

Some provisions of the Voting Rights Act are permanent legislation of general application. Others are temporary, with special application. The temporary provisions were initially established for 5 years and were extended in 1970 for 5 more years.[10] The Supreme Court of the United States has upheld the constitutionality of the major provisions of the act.[11] This report is primarily concerned with the effect of the special provisions of the Voting Rights Act, but brief mention of its general provisions sets a context for understanding the potential of the act.

Among the general provisions, section 2 prohibits the imposition or application of any racially discriminatory "voting qualification or prerequisite to voting, standard, practice, or procedure."[12] Section 3 authorizes courts to apply the remedies established in the special provisions in suits brought by the Attorney General to enforce the 15th amendment.[13] Section 10 contains a congressional finding that the poll tax violated the 15th amendment and instructs the Justice Department to bring suit against its use.[14] Other sections establish civil and criminal penalities for violations of the act.[15]

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10. See p. 7 below.

11. South Carolina v. Katzenbach, 383 U.S. 301 (1966).

12. 42 U.S.C. § 1973 (1970).

13. 42 U.S.C. § 1973a (1970). The special provisions are summarized on pp. 5-6 and discussed in detail in chapter 2.

14. 42 U.S.C. § 1973h (1970). Harper v. Virginia State Board of Elections, 383 U.S. 663 (1966) and the 24th amendment ban payment of poll taxes as a requirement for voting.

15. 42 U.S.C. § 1973i-1.

One permanent provision, section 4(e), is discussed in detail in later chapters of this report. That provision defines Puerto Ricans educated in Spanish as literate if they have completed the sixth grade, regardless of their ability to speak, read, or write English.[16]

The heart of the Voting Rights Act is in its special provisions, sections 4 through 9. Essentially, section 4 provides a nondiscretionary, automatic formula, or "trigger," by which States or their political subdivisions (collectively called "jurisdictions") are covered, or made subject to the act's remedies.[17] Section 4 prohibits the use of "tests or devices"[18] as a prerequisite to registering or voting in any jurisdiction that maintained such tests or devices on November 1, 1964, and whose voter registration or turnout in the 1964 Presidential election was less than 50 percent of the voting age population. Section 5 freezes the electoral laws and procedures of such jurisdictions as of November 1, 1964, and prohibits enforcement of any changes in them until certification by the Attorney General or

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16. 42 U.S.C. § 1973b(e) (1970). Section 4(e) was upheld by the Supreme Court in Katzenbach v. Morgan, 384 U.S. 641 (1966).

17. 42 U.S.C. § 1973b (1970). Section 4 also establishes procedures for exemption of jurisdictions which come under the formula but can prove they have not discriminated against minority voters. See chapter 2, p. 13.

18. The act defines as a "test or device" a requirement that a person "(1) demonstrate the ability to read, write, or understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class." 42 U.S.C. § 1973b(c) (1970).

the District Court for the District of Columbia that the changes are not discriminatory in purpose or effect.[19] This process is often called "preclearance." Sections 6 through 9 provide for, but do not require, the assignment of Federal examiners to "list" eligible persons for registration by State officials in the covered jurisdictions and observers to report on the conduct of elections in some of the jurisdictions designated by the Attorney General for Federal examiners.[20]

The Voting Rights Act is a set of interacting mechanisms of varying application designed for both immediate and long-run impact. The act served the immediate goal of increasing registration by suspending literacy tests and other tests or devices in covered jurisdictions and providing for Federal examiners to speed the registration process. It also looked to the future by providing in section 5 a mechanism for preventing jurisdictions from thwarting the purposes of the act by changing their electoral laws and procedures. That the latter was not an idle fear is clear: as Congress debated the Voting Rights Act, the State of Mississippi repealed provisions of its laws that allowed illiterate persons to be assisted at the polls,[21] thereby attempting to disfranchise prospectively many persons whom the Voting Rights Act was about to enfranchise.

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19. 42 U.S.C. § 1973c (1970).

20. 42 U.S.C. §§ 1973d-g (1970). Section 13 (42 U.S.C. § 1973k (1970)) provides for termination of listing.

21. See United States v. Mississippi, 256 F. Supp. 344, 346 (S.D. Miss. 1966).

Thus, the act is aimed at facilitating registration but also at ensuring that increased registration will be meaningful. The act is designed to foster full minority participation in the process of self-government.

Congress found in 1970 that more time was necessary to guarantee that the purposes of the act were fulfilled.[22] In addition to extending the temporary provisions for 5 years, Congress amended the coverage formula of section 4 to include jurisdictions that had maintained a test or device on November 1, 1968, and had less than 50 percent turnout in the Presidential election of that year.[23] In doing this, Congress continued the special coverage of some jurisdictions for a total of 10 years (that is, their coverage would expire in 1975) and added jurisdictions whose 10-year coverage would expire in 1980 (or later, depending on exactly when they were first covered).[24] Also in 1970, Congress decided to suspend for 5 years all literacy tests

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22. See U.S., Congress, House, Judiciary Committee, Hearings on Voting Rights Act Extension Before Subcommittee No. 5, 91st Cong., 1st Sess. (1969) and U.S., Congress, Senate, Judiciary Committee, Hearings on Amendments to the Voting Rights Act of 1965 Before the Subcommittee on Constitutional Rights, 91st Cong., 1st and 2d Sess. (1969-70).

23. Voting Rights Act Amendments of 1970, Pub. L. 91-285, 84 Stat. 315, now codified in 42 U.S.C. §§ 1973b,c (1970).

24. See chapter 2 for explanation of when different jurisdictions were covered.

everywhere in the United States.[25]

If the temporary provisions of the Voting Rights Act (sections 4 through 9 and the national literacy test suspension) expire in August 1975, the authority for section 5 preclearance and for the use of examiners and observers will end. Jurisdictions covered by the act in 1965 would be permitted to resume the use of tests and devices. Jurisdictions covered later than 1965 would remain covered and could not impose their tests and devices until their 10-year coverage period had passed.

* * * *

The Voting Rights Act was designed to enable minority citizens to gain access to the political process and to gain the influence that participation brings. Before passage of the act, minorities had largely been excluded from politics. The remainder of this report details the recent experience of minority citizens as they have begun to participate in the political process in the jurisdictions covered by the Voting Rights Act.

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25. 42 U.S.C. § 1973aa (1970). The 1970 amendments also abolished durational residency requirements for Presidential elections and lowered the voting age to 18. Voting Rights Act Amendments of 1970, Pub. L. 91-285, 84 Stat. 316 and 84 Stat. 318, now codified in 42 U.S.C. § 1973bb (1970). In Oregon v. Mitchell, 400 U.S. 112 (1972) the Supreme Court upheld the 1970 amendments except for the provision lowering the voting age to 18 for State and local elections. That was subsequently accomplished by the 26th amendment.

Chapter 2 provides information about the coverage of the act and its enforcement mechanisms, and Chapter 3 discusses the impact of the act in terms of data on registration, voting, and the election of minorities to office in the covered jurisdictions. Chapters 4, 5, and 6 describe persistent barriers to full participation of minorities both as voters and as candidates. Chapter 7 deals with the continuing problems of fear, violence, and economic dependence that inhibit free exercise of minority voting rights. Chapters 8 and 9 focus on problems of political structure--the manipulation of electoral rules and representation formulas to minimize the impact of minority political participation.

2. IMPLEMENTATION OF THE VOTING RIGHTS ACT

The Voting Rights Act establishes a complex of interacting means for combating different kinds of discriminatory techniques.[1] Some features of the act are permanent (e.g., the litigation authority of section 3) and some are temporary (e.g., the suspension of all literacy tests). Some are automatic (e.g., the "trigger" of section 4) and some are discretionary (e.g., the use of examiners and observers). Some provisions had immediate effect (e.g., suspension of literacy tests in covered jurisdictions) and some were designed for prospective effect (e.g., the section 5 requirement of preclearance of changes in voting laws and practices). The Voting Rights Act was designed to provide new procedures and remedies that would allow a flexible response to changing circumstances instead of focusing on strengthening judicial remedies as previous civil rights acts had done.

Given the design of the act, it is difficult to consider one section or provision in isolation from others. The success and impact of the act results from the interaction of its provisions rather than the implementation of any single provision. In the discussion that follows, the major procedures and enforcement mechanisms of the act are presented basically in the order in which they appear in the sections

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1. The text of the act, as amended in 1970, is reproduced in appendix 6.

of the act. The order of discussion, however, does not reflect the importance of the provisions, and the interactive nature of the provisions will become evident only by reading through each section of the chapter.

The Civil Rights Division of the Department of Justice is primarily responsible for enforcement of the Voting Rights Act. Each section of the chapter gives some indication of the manner in which the Department has implemented the provisions discussed.[2]

LITIGATION

The Voting Rights Act strengthened the Attorney General's authority to bring suits to enforce the 15th amendment. Though other provisions of the act have made litigation less necessary and less frequent, it is still an important weapon in the enforcement arsenal. The authority to sue is particularly important for protecting voting rights in jurisdictions that are not specially covered[3] and for challenging

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2. For evaulation of the Justice Department's enforcement performance up to 1972, see U.S. Commission on Civil Rights, Political Participation (1968), pp. 162-70; Washington Research Project, The Shameful Blight: The Survival of Racial Discrimination in Voting in the South (Washington, D.C., 1972), pp. 145-57, 159-64 (hereafter cited as Shameful Blight); U.S., Congress, House, Judiciary Committee, Hearings on Enforcement of the Voting Rights Act before the Civil Rights Oversight Subcommittee, 92d Cong., 1st. Sess. (1971), pp. 253-74 (testimony of Armand Derfner, Lawyers' Committee for Civil Rights Under Law, Washington, D.C.) and the subsequent Report on Enforcement of the Voting Rights Act of 1965 in Mississippi 92d Cong., 2d Sess. (1972).

3. No court has yet used the authority of section 3, however, to impose the special coverage remedies on jurisdictions not covered by the act.

discriminatory laws and practices in force before jurisdictions were covered and, thus, not subject to section 5 review.

The Justice Department has initiated 45 suits under the act and has participated in private suits.[4] The purpose of the litigation has been to enforce section 5[5] and other provisions of the act.[6] The department has also sued to correct abuses in the conduct of elections which are not covered by the act.[7]

Private litigation under the act has had similar purposes.[8] Additionally, private suits have sought to clarify the Department's policies, to require it to enforce the act, and to force covered jurisdictions to comply with the act.[9]

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4. Gerald W. Jones, Chief, Voting Section, Civil Rights Division, Department of Justice, letters to David H. Hunter, U.S. Commission on Civil Rights, July 1, 1974, Attachment 5 and Dec. 6, 1974, Attachment 5.

5. See e.g., Georgia v. United States, 411 U.S. 526 (1973).

6. See e.g., United States v. Mississippi, 256 F. Supp. 344 (S.D. Miss. 1966).

7. See e.g., United States v. Anthone, Civil No. 2872 (M.D. Ga. Feb. 5, 1974).

8. See e.g., Allen v. State Board of Elections, 393 U.S. 544 (1969); Hadnott v. Amos, 394 U.S. 358 (1969); Perkins v. Matthews, 400 U.S. 379 (1971); Connor v. Johnson, 402 U.S. 690 (1971).

9. See Common Cause v. Mitchell, Civil No. 2348-71 (D.D.C. March 30, 1972); Harper v. Kleindienst, 362 F. Supp. 742 (D.D.C. 1973), appeal docketed, No. 73-1766, D.C. Cir. July 17, 1973.

COVERED JURISDICTIONS

A covered jurisdiction is a State--or a county, parish, or town (in New England) within a State that is not covered as a whole--that used a test or device and had less than 50 percent turnout in the 1964 or 1968 Presidential election.[10] Jurisdictions covered in 1965 and early 1966 were: the entire States of Alabama, Alaska, Georgia, Louisiana, Mississippi, South Carolina, and Virginia; 40 of the 100 counties in North Carolina and 4 of the 14 counties in Arizona. Honolulu County, Hawaii, and Elmore County, Idaho, also met the conditions of the trigger and were covered by the act.[11]

Section 4(a) of the Voting Rights Act provides that a jurisdiction may exempt itself from special coverage if it can persuade the District Court for the District of Columbia that it has not used a test or device in a discriminatory manner for five (since 1970, ten) years.[12]

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10. 42 U.S.C. § 1973 b(b) (1970).

11. Coverage of the seven States, Apache County, Ariz., and 26 North Carolina counties (Anson, Bertie, Caswell, Chowan, Craven, Cumberland, Edgecombe, Franklin, Gates, Granville, Greene, Halifax, Hertford, Hoke, Lenoir, Nash, Northampton, Onslow, Pasquotank, Person, Pitt, Robeson, Scotland, Vance, Wayne, and Wilson) was published in 30 Fed. Reg. 9897 (Aug. 7, 1965). Subsequently, other counties were added: Coconino and Navajo Counties, Ariz., Honolulu County, Hawaii and Elmore County, Idaho, 30 Fed. Reg. 14505 (Nov. 19, 1965); Martin and Washington Counties, N.C., 31 Fed. Reg. 19 (Jan. 4, 1966); Yuma County, Ariz., 31 Fed. Reg. 982 (Jan. 25, 1966); Camden and Perquimans Counties, N.C., 31 Fed. Reg. 3317 (March 2, 1966), and Beaufort, Bladen, Cleveland, Gaston, Guilford, Harnett, Lee, Rockingham, Union, and Wake Counties, N.C., 31 Fed. Reg. 5081 (March 29, 1966).

12. 42 U.S.C. § 1973 b(a) (1970). Although some of the covered jurisdictions perhaps could make the necessary showing, most jurisdictions have not filed suit to exempt themselves.

Between 1965 and 1970 the State of Alaska; Wake County, North Carolina; Elmore County, Idaho; and Apache, Navajo, and Coconino Counties, Arizona, successfully sued to exempt themselves.[13] Gaston County, North Carolina,[14] was unsuccessful in its exemption suit.

The Voting Rights Act Amendments of 1970 continued the special coverage of the jurisdictions listed above that had not been exempted. By amending the trigger to refer to the 1968 election as well as the 1964 election, Congress also brought under special coverage three counties in New York City (the boroughs of Manhattan, Brooklyn, and the Bronx); Campbell County, Wyoming; Monterey and Yuba Counties in California; and five additional counties in Arizona (Cochise, Mohave, Pima, Pinal, and Santa Cruz). Also, some counties which had been exempted after 1965 were re-covered in 1970: Apache, Coconino, and Navajo Counties in Arizona; Elmore County, Idaho; and Election Districts 8, 11, 12, and 13 in Alaska.[15] More recently it was discovered that certain New England towns met the tests and they have also been

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13. Alaska v. United States, Civil No. 101-66 (D.D.C. Aug. 17, 1966); Wake County v. United States, Civil No. 1198-66 (D.D.C. Jan. 23, 1967); Apache County v. United States, 256 F. Supp. 903 (D.D.C. 1966)--including Navajo and Coconino Counties, leaving Yuma County covered; and Elmore County v. United States, Civil No. 320-66 (D.D.C. Sept. 22, 1966).

14. Gaston County v. United States, 395 U.S. 285 (1969). See p. 18.

15. 36 Fed. Reg. 5809 (March 27, 1971).

covered.[16]

The election districts in Alaska were exempted in 1972.[17] The three New York City boroughs were exempted in April 1972, but the exemption was rescinded and the three counties re-covered 2 years later.[18] Only one of the covered Southern States, Virginia, has sued for exemption. The Attorney General did not consent to exemptions for Virginia, and the district court continued its coverage.[19]

It is important to note, as the list of covered jurisdictions shows, that the special coverage provisions of the Voting Rights Act reach into every corner of the United States. Obviously, the impact of the act has been greatest in the seven Southern States which are wholly or partially covered, but the act is not strictly regional legislation. Discrimination in voting is not limited to the South:

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16. 39 Fed. Reg. 16912 (May 10, 1974). Connecticut: the towns of Southbury, Groton, and Mansfield. New Hampshire: the towns of Rindge, Stewartstown, Stratford, Benton, Antrim, Boscawen, Newington, and Unity; Millsfield Township, and Pinkhams grant. Maine: the towns of Limestone, Ludlow, Woodland, New Gloucester, Sullivan, Winter Harbor, Chelsea, Charleston, Waldo, Beddington, and Cutler; Caswell, Nashville, Reed, Somerville, Carroll, and Webster plantations, and the unorganized territory of Connor. Massachusetts: the towns of Bourne, Sandwich, Sunderland, Amherst, Belchertown, Ayer, Shirley, Wrentham, and Harvard.

17. Alaska v. United States, Civil No. 2122-71 (D.D.C. July 2, 1972).

18. New York v. United States, Civil No. 2419-71 (D.D.C.) orders of April 13, 1972, January 10, 1974, and April 30, 1974. The New York case is discussed in Chapter 8.

19. Virginia v. United States, Civil No. 1100-73 (D.D.C. Sept. 18, 1974), appeal docketed 43 U.S.L.W. 3309 (U.S. Oct. 25, 1974) (No. 74-481). See p. 18.

the problems encountered by Spanish speaking persons and Native Americans in covered jurisdictions are not dissimilar from those encountered by Southern blacks, and the Voting Rights Act protects their rights as well.

SUSPENSION OF LITERACY TESTS

The Voting Rights Act suspended the use of tests and devices in jurisdictions with less than 50 percent turnout in the 1964 or 1968 Presidential election.[20] The 1970 amendments to the Voting Rights Act suspended all literacy tests, regardless of turnout, until August 1975.[21] Congress had found that such tests were particularly susceptible to abuse.

Literacy tests disfranchised illiterates; but, through the use of unfair tests or unfair administration of apparently fair tests, they also disfranchised large numbers of literates as well. Subjective "understanding" and "interpretation" tests and more extreme measures, such as Virginia's "blank form" (where applicants were required to supply the required information from memory without even a form to guide them), ensured that blacks could not register in substantial numbers.[22] The requirement of English-language literacy disfranchised

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20. 42 U.S.C. § 1973 b(a) and (b) (1970).

21. 42 U.S.C. § 1973aa (1970).

22. See sources cited in chapter 1, notes 4 and 5; See also Armand Derfner, "Racial Discrimination and the Right to Vote," Vanderbilt Law Review, vol. 26 (1973), pp. 563-64.

many otherwise qualified voters in jurisdictions such as New York, California, and Arizona.

The suspension of literacy tests permitted registration of literates who had been unfairly disfranchised, illiterates, and some persons whose usual language is not English. For the most part, the jurisdictions affected complied with the suspension of tests,[23] though the Attorney General, pursuant to section 5 of the Voting Rights Act, has objected to certain practices on the grounds that they constituted a test or device.[24]

The most important problem that has developed as a result of the suspension of literacy tests is the availability and quality of assistance to illiterates in the electoral process. To cast an effective ballot, illiterates must have meaningful help at the registration office and at the polls. The courts have held that the States must provide effective assistance.[25] States may not deny illiterates assistance which they permit physically disabled or blind persons.[26]

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23. See U.S. Commission on Civil Rights, The Voting Rights Act...The First Months (1965), pp. 24-25.

24. See David H. Hunter Federal Review of Voting Changes, How to Use Section 5 of the Voting Rights Act (Washington, D.C.: Joint Center for Political Studies et al., 1974), pp. 25-26 (hereafter cited as Federal Review of Voting Changes). Objections were made to changes in South Carolina (Oct. 2, 1967), Georgia (Aug. 30, 1968), Alabama (Nov. 13, 1969), and North Carolina (March 18, 1971 and April 20, 1971). See appendix 5 for list of objections under the Voting Rights Act.

25. United States v. Mississippi, 256 F. Supp. 344 (S.D. Miss. 1966) and United States v. Louisiana, 265 F. Supp. 703 (E.D. La. 1966), affirmed 386 U.S. 270 (1967).

26. Ibid. and Garza v. Smith, 320 F. Supp. 131 (W.D. Texas 1970).

Nor may a State unduly limit the number of persons whom a helper may assist[27] or deny illiterates, but not literates, the use of sample ballots.[28] However, courts have not required that black helpers be available to assist black illiterates,[29] and some jurisdictions require that assistance be given only by an election official or an election official and a family member.[30]

Although the Supreme Court of the United States upheld the constitutionality of literacy tests applied in a nondiscriminatory manner in 1959,[31] it has since held that reimposition of literacy tests in jurisdictions with a history of unconstitutional school segregation may unfairly punish the victims of racial discrimination in education by depriving them of their voting rights.[32] Courts have refused to exempt such jurisdictions from coverage under the Voting Rights Act when it was shown that their segregated schools had provided inferior education.[33]

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27. Morris v. Fortson, 261 F. Supp. 538 (N.D. Ga. 1966). Georgia had reduced the number of persons a helper could assist from 10 to one.

28. Gilmore v. Greene County Democratic Party Executive Committee, 435 F.2d 487 (5th Cir. 1970).

29. Hamer v. Ely, 410 F.2d (5th Cir. 1969).

30. For details of the types of assistance permitted by various jurisdictions and their practices, see chapter 5.

31. Lassiter v. Northampton County Board of Elections, 360 U.S. 45 (1959).

32. Gaston County v. United States, 395 U.S. 285 (1969).

33. Ibid. and Virginia v. United States, Civil No. 1100-73 (D.D.C. Sept. 18, 1974), appeal docketed, 43 U.S.L.W. 3309 (U.S. Oct. 25, 1974) (No. 74-481).

Congress suspended the use of all literacy tests as an experiment. There is no indication that governments have been burdened by the loss of their literacy tests. Indeed many States have begun to realize for the first time the seriousness of the literacy problem and the severity of the burden borne by illiterates and semiliterates in their dealings with their governments. In 1970 there were still more than 2 million persons 14 years old or over who had never attended school and 6.6 million persons 14 years old or over who had less than 5 years of school (i.e., were classified as functionally illiterate).[34] Minorities were disproportionately represented in these groups.

Some 5.5 percent of the total population 25 years old or older in 1970 had less than 5 years of school, while 15 percent of blacks and 16 percent of Spanish heritage persons 25 years old or older were functionally illiterate in 1970.[35] Of the 10 States wholly or partially covered by the Voting Rights Act that are discussed in this report, only New York and California had percentages of functionally illiterate population lower than the national figure. In

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34. U.S., Department of Commerce, Bureau of the Census, Educational Attainment by Age, Sex, and Race for the United States: 1970, no. PC(S1)-36 (April 1973). Of course, persons with limited or no schooling might be able to vote without assistance. These data, however, provide the only available estimate of the literacy problem for voting.

35. U.S., Department of Commerce, Bureau of the Census, City and County Data Book (1972), table 1, p. 3.

Alabama, Georgia, Louisiana, Mississippi, South Carolina, and North Carolina more than 10 percent of the population over 25 was functionally illiterate.[36]

In sum, literacy is still a problem in the United States, particularly for minorities and older people. The potential of literacy tests to disfranchise otherwise qualified voters remains. Although some States have removed literacy tests from their constitutions and codes,[37] without action by Congress, they will retain their power to reinstate tests when the suspension expires. Other States still have literacy tests on the books,[38] lending credence to the fears of many minority voters that tests will be reimposed, in one guise or another, as soon as the States are permitted to do so.[39]

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36. Ibid.

37. For example, in 1971, Virginia repealed the literacy requirement contained in Section 20 of its Constitution. Virginia v. United States, Civil No. 1100-73 (D.D.C. Sept. 18, 1974), slip opinion, p. 3.

38. See, for example, Code of Ala., Tit. 17 § 32 (Supp. 1973) and S.C. Code Ann. § 23-62 (4) (Supp. 1973).

39. Staff interviews in Alabama, Louisiana, Mississippi, and South Carolina, July-Sept. 1974.

Most literacy test States required English literacy as a prerequisite to registration and voting.[40] In the Voting Rights Act Congress addressed the particular problems of potential Puerto Rican voters. Education in Puerto Rico is in Spanish and Spanish is the usual language of Puerto Ricans born in Puerto Rico, whether resident on the island or the mainland. Until 1965, regardless of educational attainment or literacy in Spanish, Puerto Ricans, who are American citizens, could not vote in literacy test States unless they could demonstrate English language literacy. The largest concentration of Puerto Ricans was in New York City, where the State literacy test effectively disfranchised many of them. Indeed, this Commission found in its first report "that Puerto Rican American citizens are being denied the right to vote, and that these denials exist in substantial numbers in the State of New York."[41]

Section 4(e) of the Voting Rights Act enfranchised those Puerto Ricans who could prove they had completed 6 years of school in

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40. Hawaii accepted literacy in Hawaiian as well as English and Louisiana allowed the alternative of literacy in the applicant's mother tongue. See U.S. Commission on Civil Rights, Staff Memorandum, "Current Status of Literacy Tests or Devices for the Qualification of Prospective Voters" (Feb. 13, 1970), in U.S., Congress, Senate, Judiciary Committee, Hearings on Amendments to the Voting Rights Act of 1965 Before the Subcommittee on Constitutional Rights, 91st Cong., 1st and 2d Sess. (1969-70), p. 407.

41. Report of the U.S. Commission on Civil Rights, 1959, p. 68.

Puerto Rico even if they were not literate in English.[42] This provision is temporarily superseded by the national suspension on literacy tests, so otherwise qualified Puerto Ricans can register regardless of literacy in English or Spanish. If the suspension expires, New York's English-language literacy requirement will regain its force[43] and non-English-speaking Puerto Ricans will again have to demonstrate Spanish literacy by proving that they have completed the sixth grade.

Enfranchisement of Puerto Ricans has sharpened the focus on another aspect of the problem of helping voters use their ballots effectively. Court decisions in New York have resulted in specific orders that the board of elections provide extensive bilingual assistance to voters in election districts with substantial non-English-

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42. 42 U.S.C. § 1973b(e) (1970).

43. At the time it upheld section 4(e), the Supreme Court of the United States declined to rule New York's English-language literacy requirement (N.Y. Const., art. II sec. 1) unconstitutional. See Cardona v. Power, 384 U.S. 672 (1966). If the literacy test suspension expires, New York would be able to reinstate its test in all but the three specially covered counties in New York City. Since those counties were re-covered in 1974, the literacy test would remain in suspension there until 1984.

speaking population.[44] The rationale behind the decisions is the same as the reasoning that required help for illiterate voters: meaningful assistance to allow the voter to cast an effective ballot is implicit in the granting of the franchise. In Torres v. Sachs a Federal court found that the conduct of elections in English deprived Spanish speaking citizens of rights protected by the Voting Rights Act: "It is simply fundamental that voting instructions and ballots, in addition to any other material which forms part of the official communication to registered voters prior to an election, must be in Spanish as well as English, if the vote of Spanish-speaking citizens is not to be seriously impaired."[45]

As is the case with assistance to illiterates, the quality of bilingual assistance provided continues to be uneven. Courts in New York have ordered complete bilingual election assistance from dissemination of registration information through bilingual media to use of bilingual election inspectors. As subsequent sections of this report

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44. With reference to elections for the school board of Community School District One in Manhattan, see Lopez v. Dinkins, 73 Civ. 695 (S.D.N.Y. Feb. 14, 1973). The court invalidated the election because the bilingual assistanee was not adequately provided. Coalition for Education in School District One v. Board of Elections of the City of New York, 370 F. Supp. 42 (S.D.N.Y. 1974), affirmed, 495 F.2d 1090 (2nd Cir. 1974). With reference to city elections, see Torres v. Sachs, 381 F. Supp. 309 (S.D.N.Y. 1974).

45. 381 F. Supp. at 312.

show, failure to comply adequately with such orders compounds voting problems and increases the burden on minority citizens.[46]

Courts in some jurisdictions not covered by the special provisions of the Voting Rights Act that have substantial Puerto Rican populations have also ordered the development of bilingual election systems.[47] Some jurisdictions not under court order have moved voluntarily to deal with the problem of assisting the non-English-speaking voter.[48] The California Supreme Court found that State's English-language literacy requirement a violation of the equal protection clause of the 14th amendment but did not eliminate the requirement of literacy altogether (since suspended by the 1970 Voting Rights Act Amendments) or order the development of "a bilingual electoral apparatus."[49] Subse-

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46. See chapter 5. See also Coalition for Education in School District One v. Board of Elections of the City of New York, note 44 above.

47. Puerto Rican Organization for Political Action v. Kusper, 490 F.2d 575 (7th Cir. 1973) (Chicago); Marquez v. Falcey, Civil No. 1447-73 (D.N.J. Oct. 9, 1973); Ortiz v. New York State Board of Elections, Civil No. 74-455 (W.D.N.Y. Oct. 11, 1974) (Buffalo); and Arroyo v. Tucker, 372 F. Supp. 764 (E.D. Pa. 1974) (Philadelphia).

48. New Jersey has adopted a statute requiring bilingual sample ballots and registration forms in election districts with 10 percent or more Spanish speaking registered voters (N.J. Laws, 1974, ch. 51). Westchester County, N.Y., provides bilingual registration forms and plans to institute bilingual ballots for any town whose Spanish-speaking population reaches 10 percent. Joseph A. McNamara, Commissioner of Elections, White Plains, N.Y., interview, Aug. 15, 1974.

49. Castro v. California, 85 Cal. Rptr. 20, 466 P.2d 244, 258 (1970).

quently the California legislature enacted legislation requiring county officials to make reasonable efforts to recruit non-English-speaking deputy registrars and election officials in precincts with 3 percent or more non-English-speaking voting age population.[50] In addition, California now requires the posting of a Spanish-language facsimile ballot, with instructions, that also must be provided to voters on request for their use as they vote.[51]

SECTION 5 PRECLEARANCE

Section 5 of the Voting Rights Act requires that covered jurisdictions submit changes in "any voting qualifications, or prerequisite to voting, or standard, practices, or procedure with respect to voting" to the United States Attorney General or the United States District Court for the District of Columbia for a determination that the change is not discriminatory in purpose or effect before it can be enforced.[52] The point of section 5 preclearance was to break the cycle of substitution of new discriminatory laws and procedures when old ones were struck down.

Section 5 has become the focus of the Voting Rights Act in recent years.[53] The history of section 5 provides an index of the types of

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50. Cal. Election Code §§ 201, 1611 (West Supp. 1974).

51. Cal. Election Code § 14201.5 (West Supp. 1974).

52. 42 U.S.C. § 1973c (1970).

53. In the first 6 years of the act, section 5 was hardly used at all. See the discussion in Shameful Blight, pp. 136-39 and sources there cited, summarizing the 1970 and 1971 controversies over enforcement. See also Perkins v. Matthews, 400 U.S. 379, 393, n. 11 (1971).

discriminatory practices that covered jurisdictions have attempted to put into effect since 1965 and 1970, though it does not record all discriminatory practices in those jurisdictions or those of other jurisdictions.[54]

The language of the act clearly shows that Congress intended to include a very broad range of subjects under section 5. Courts have interpreted the language broadly: "The legislative history on the whole supports the view that Congress intended to reach any State enactment which altered the election law of a covered State in even a minor way."[55] Preclearance focuses on the effect of changes as well as on their purpose. As

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54. Appendix 5 contains a list of all Attorney General objections to changes submitted under section 5. Information in this report about section 5 submissions and determinations is drawn from the letter of objection from the Assistant Attorney General for the Civil Rights Division to the appropriate State or local official, 28 C.F.R. § 51.21, cited " objection letter"; from summaries of section 5 objections contained in the section 5 chronological file, 28 C.F.R. § 51.26(b), cited "section 5 summary"; from the public section 5 file, 28 C.F.R. § 51.26(a), cited "section 5 files"; from the weekly list of section 5 submissions, 28 C.F.R. § 51.16, cited "section 5 weekly list"; and from the computer printout listing section 5 submissions and determinations that is maintained by the Voting Section of the Civil Rights Division, cited "section 5 printout, as of" the date of the printout. References to section 5 materials are included only to the extent necessary to identify the source and the date. For further information on section 5 procedures see David H. Hunter, Federal Review of Voting Changes.

55. Allen v. State Board of Elections, 393 U.S. 544, 566 (1969).

the Supreme Court of the United States said: "Section 5 is not concerned with a simple inventory of voting procedures, but rather with the reality of changed practices as they affect Negro voters".[56]

Thus, the covered jurisdictions are required to submit all changes in their voting laws, practices, and procedures, whether major or apparently trivial. Congress knew that seemingly minor changes in electoral law could, in fact, serve to exclude minorities from participation or to minimize the effect of their participation. Changes in polling places, registration times and places, qualifications for office, schedules of elections, city boundaries, and districting are among the matters that must be submitted.[57] The issue of whether court-approved reapportionment plans may be implemented without section 5 review by the Attorney General or the District Court for the District of Columbia awaits further clarification.[58]

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56. Georgia v. United States, 411 U.S. 526, 531 (1973).

57. See Federal Review of Voting Changes, especially pp. 23-46, for discussion of many of the types of changes that must be submitted. Some indication of the range of changes may be found in appendix 5.

58. In granting a motion to stay a district court order regarding a Mississippi reapportionment plan, the Supreme Court declined to reach a Section 5 argument, stating that "A decree of the United States District Court is not within the reach of Section 5 of the Voting Rights Act." Connor v. Johnson, 402 U.S. 690, 691 (1971). In Harper v. Kleindienst, 362 F. Supp. 742 (D.D.C. 1973), appeal docketed, No. 73-1776 (D.C. Cir. July 17, 1973), the court is being asked to overturn a district court ruling that the Attorney General is obligated under section 5 to review a reapportionment plan approved by the Federal district court in South Carolina. As of Dec. 20, 1974 the court had not decided the case. See chapter 8 for details of the South Carolina case.

Regulations to implement section 5 were not developed until 1971.[59] Under the statute and the regulations, it is up to the jurisdiction to make a submission and to persuade the Attorney General or the court that a change is not discriminatory. Should the Justice Department hear of a change that has not been submitted, it may request the jurisdiction to make its submission. Both the Department and private parties may sue to enjoin enforcement of any change which has not been submitted.[60]

Without more exact monitoring of the legislative activity of all governing bodies in covered jurisdictions, it is impossible to state the extent of compliance with the submission requirement. Although jurisdictions have been in substantially greater compliance in the second 5 years than they were in the first 5 years of the act, review of the Justice Department's May 1974 computer printout reveals that a large number of counties have never made any submissions under section 5. Spot checks by Commission staff indicate that in some cases, at least, changes have been made but not submitted or reviewed.[61] Noncompliance with the Voting Rights Act through failure to submit changes remains a problem in enforcement of the act.

The regulations specify the minimal information that jurisdictions must submit and encourage submission of detailed information to

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59. 28 C.F.R. Part 51. Issuance of the regulations was approved in Georgia v. United States, 411 U.S. 526 (1973).

60. See Allen v. State Board of Elections, 393 U.S. 544 (1966).

61. See discussion in Chapters 8 and 9.

assist the Attorney General's review.[62] The submitting jurisdiction may include whatever material it wishes to support its case. Public comment on the reasons for a change and its likely racial impact is welcomed and even solicited by the Department.[63] The Department has 60 days from the time the submission is complete (i.e., the jurisdiction has provided all information the Department thinks it needs to evaluate the change) to determine whether the Attorney General shall "interpose an objection."[64] The alternative of seeking a declaratory judgment without Attorney General review has been used only once.[65] The option of an administrative proceeding is clearly preferred by the covered jurisdictions.

If the Attorney General does not object to a change, the jurisdiction may enforce it, though it remains subject to constitutional challenge. If the Attorney General does object, then the jurisdiction may, in effect, appeal by asking the Federal district court for a declaratory judgment that the change is not discriminatory.[66] The

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62. 28 C.F.R. § 51.10.

63. 28 C.F.R. §§ 51.10-51.15.

64. 42 U.S.C. § 1973c (1970); 28 C.F.R. § 51.3.

65. Vance v. United States, Civil No. 1529-72 (D.D.C. Nov. 30, 1972).

66. See, for example, Beer v. United States, 374 F. Supp. 363 (D.D.C. 1974), prob. jur. noted 43 U.S.L.W. 3186 (U.S. Oct. 15, 1974) (No. 73-1869) in which the court rejected New Orleans' contention that its second city council redistricting plan was not discriminatory after the Attorney General had objected to two plans. See discussion in chapter 9.

jurisdiction also may amend its change to remove the discriminatory aspects and resubmit it.[67] Though the Department does not redraft changes itself, the process of evaluation may take on the cast of negotiation and the Department may help shape the new submission. Or the process may involve a "negotiated settlement" in which the Attorney General does not object based on certain stated understandings.[68]

Section 5 also acts as a deterrent to passage or enforcement of discriminatory legislation. That is, the fact that a change must be submitted and reviewed by "outside" officials specifically for its racial purpose or effect inhibits jurisdictions from passing such legislation. For example, an attorney reports that Virginia's attorney general monitors submissions from local areas to ensure that objectionable changes go no further.[69] Attorneys familiar with the

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67. A second submission may also be objected to, as was the case in New Orleans (note 66 above) but compare, for example, New York's redistricting in which the second submission was not objected to (see chapter 8).

68. This occurred with respect to the Georgia legislative redistricting plan (see chapter 8). Former staff member, Department of Justice, telephone interview, Nov. 22, 1974. Similarly, the Attorney General did not object to Arizona's prohibition of straight party voting on the understanding that Arizona would provide bilingual assistance in the 1974 general election. J. Stanley Pottinger, Assistant Attorney General for Civil Rights, letter to N. Warner Lee, Attorney General of Arizona, Oct 3, 1974. (See chapter 5.)

69. Armand Derfner, Charleston, S.C., interview, Nov. 18, 1974. Mr. Derfner has been counsel for the plaintiffs in a number of voting rights suits in Virginia, including the Richmond and Petersburg annexations (see chapter 9).

operation of section 5 invariably refer to its deterrent effect.[70] In Bessemer, Alabama, for example, the city rescinded an increase in filing fees rather than submit it for preclearance.[71] At the time Bessemer was approaching an election in which blacks were expected to mount a significant challenge for control of the city commission.

FEDERAL EXAMINERS AND OBSERVERS

The Voting Rights Act deals most directly with the registration of voters and the conduct of elections in sections 6 through 9, the provisions establishing the examiner and observer programs. Use of Federal registration of voters and the conduct of elections. Use of Federal registrars had been widely debated during consideration of the earlier civil rights acts, but establishment of an effective Federal registrar program was delayed until 1965. Failure of the earlier legislation forced acknowledgment that some Federal presence was necessary.

Federal examiners may be sent at the direction of the United States Attorney General to covered jurisdictions if the Attorney General has received 20 meritorious written complaints alleging voter discrimination or the Attorney General believes that the appointment of examiners

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70. Ibid. See also interviews with Stanley A. Halpin, Jr., attorney, New Orleans, La., Nov. 18, 1974, and David Coar, attorney, Birmingham, Ala., July 19, 1974.

71. Walter Jackson, Birmingham, Ala., interview, July 17, 1974. See also Birmingham News, June 14, 1974, p. 36.

is necessary to enforce the guarantees of the 15th amendment.[72] The times, places, and procedures for Federal examination are established by the Civil Service Commission with the advice of the Attorney General.[73] The Civil Service Commission actually appoints the examiners.[74]

The duty of the examiners is to list, that is, declare eligible and entitled to vote, those who satisfy State qualifications that are consistent with Federal law and that have not been suspended by the Voting Rights Act. Each person listed by the examiner is issued a certificate as evidence of eligibility to vote in any Federal, State, or local election.[75] The list is sent monthly to local election officials who must enter the names of the listed persons on the registration rolls.[76] The regulations also include procedures for

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72. 42 U.S.C. § 1973d (1970). The Attorney General has relied almost exclusively on the second of these grounds for designating jurisdictions for examiners, though complaints and requests from local citizens are investigated. Gerald W. Jones, Chief, Voting Section, interview, June 5, 1974. On April 29, 1974, the Attorney General designated Pearl River Co., Miss., for examiners on the basis of citizen complaints. Deposition of J. Stanley Pottinger, p. 9 in Connor v. Waller, Civil No. 3830 (S.D. Miss. Nov. 13, 1974).

73. J. Stanley Pottinger, Assistant Attorney General for Civil Rights, letter to John A. Buggs, Staff Director, U.S. Commission on Civil Rights, Dec. 23, 1974, attachment.

74. See 45 C.F.R. Part 801 for the Civil Service Commission's regulations for examiners.

75. 45 C.F.R. § 801.205.

76. 45 C.F.R. § 801.207. Shortly after the program began, State courts in Alabama, Louisiana, and Mississippi enjoined local officials from registering Federally-listed persons, but Federal courts voided the injunctions and ordered that they be registered. Reynolds v. Katzenbach, 248 F. Supp. 593 (S.D. Ala. 1965); United States v. Louisiana, 265 F. Supp. 703 (E.D. La. 1966), affirmed 386 U.S. 270 (1967); United States v. Mississippi, 256 F. Supp. 344 (S.D. Miss. 1966).

challenging listings and for removing the names of persons who have died or lost their eligibility to vote.[77]

Despite fears expressed when the Voting Rights Act was passed (or perhaps because of them), examiners have been used sparingly and most served during the first few years after the act went into effect.[78] Although local registrars continue to complain about the use of examiners,[79] only 60 counties and parishes have ever had examiners in the 10 years of the Voting Rights Act.[80] Only 155,000 of the more than 1 million new minority registrants in the covered States were registered through Federal listing.[81] No examiners have

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77. 45 C.F.R. § 801.301 et seq. and 45 C.F.R. § 801.401 et seq.

78. For detailed and critical discussion of the policy on and use of examiners up until 1972, see Shameful Blight, pp. 51-60. During the years 1972 through 1974 examiners have been used in only two Mississippi counties for a total of 10 days. They listed 454 new registrants. Gerald W. Jones, Chief, Voting Section, Civil Rights Division, U.S. Department of Justice, letter to David H. Hunter, U.S. Commission on Civil Rights, Dec. 6, 1974, Attachment 8.

79. For example, Nell Hunter, Chairman of the Board of Registrars, Jefferson Co., Ala., interview, July 17, 1974; Cecil Manning, Registrar, East Carroll Parish, La., interview, Sept. 5, 1974.

80. Seventy-three of the 553 counties in the seven covered Southern States have been designated for examiners, including two new ones on Oct. 31, 1974 (U.S. Department of Justice, Press Release, Nov. 5, 1974). That designation is a necessary formality for the appointment of observers. See appendix 3 for the list of designated counties and the total number of persons listed by Federal examiners in each.

81. In the 10 years, 170,276 persons (of whom about 7 percent are white) have been listed. Slightly over 15,000 were rejected or have since had their names removed from the lists. U.S., Civil Service Commission, Bureau of Manpower Information Systems, "Cumulative Totals on Voting Rights Examining" (June 30, 1974).

ever been sent to North Carolina and Virginia. (See table 1.)

Table 1. SUMMARY OF EXAMINER ACTIVITY AS OF JUNE 30, 1974

State	Number of Examiner Counties	Number of Persons Listed (Net)
Alabama	12	62,798
Louisiana	9	21,107
Mississippi	34	62,273
South Carolina	2	4,582
Georgia	3	3,388
TOTAL	60	155,148

Source: U.S., Civil Service Commission, Bureau of Manpower Information Systems, "Cumulative Totals on Voting Rights Examining" (June 30, 1974).

Some persons told the Commission that the mere threat of examiners stimulated local registrars to begin registering blacks.[82] A black politician stressed the deterrent effect of the examiner program when he commented, "Birmingham would be appalled and embarrassed if examiners were sent back here."[83]

Federal observers are appointed by the Civil Service Commission at the request of the Attorney General to serve in jurisdictions which

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82. For example, Sam Ely, Circuit Clerk, Sunflower Co., Miss., interview, Aug. 9, 1974.

83. Dr. Richard Arrington, city council member, Birmingham, Ala., interview, July 19, 1974.

have been designated by the Attorney General for the appointment of Federal examiners.[84] The duty of the observers is to act as poll watchers to observe whether all eligible persons are allowed to vote and whether all ballots are accurately counted. The people who serve as observers are either Civil Service Commission field employees or field employees of other Federal agencies who are recruited by the Civil Service Commission.[85]

Since enactment of the Voting Rights Act, more than 6,500 observers have been sent to cover elections in 5 Southern States.[86] Almost half of all observers have been used in Mississippi. In 1974, 430 observers watched primary and general elections in Alabama, Georgia, Louisiana, and Mississippi.[87]

Black residents of jurisdictions that have had observers view the program with mixed reactions.[88] Most believe that the presence of observers deters local officials from preventing blacks from voting and to a lesser extent, from treating black voters discourteously.

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84. 42 U.S.C. § 1973f (1970).

85. Charles Dullea, Voting Rights Task Force, U.S. Civil Service Commission, Washington, D.C., telephone interviews, Dec. 10 and 16, 1974. For background on the observer program see Political Participation, pp. 157-162 and Shameful Blight, pp. 87-88.

86. See Appendix 4 for distribution of observers by county and year.

87. Jones letter to Hunter (note 78 above), Attachment 2.

88. Staff interviews in Alabama, Louisiana, Mississippi, and South Carolina, July-Sept. 1974.

Most also believe that the presence of observers, if known in advance, encourages blacks to vote because the Federal presence can help to alleviate the widespread distrust of local election officials. Department of Justice staff attorneys who have served with observers have expressed similar views.[89]

Nevertheless, black residents of observer jurisdictions visited by the Commission staff expressed some dissatisfaction with the program. They complain that most observers are white Southerners from nearby States and often indistinguishable from the local election officials.

Neither the Department of Justice nor the Civil Service Commission maintains records showing the race of all observers,[90] but the limited information available indicates that few observers are black. According to the Civil Service Commission, 126 of the 191 Federal observers present at the November 1974 election were recruited from other Federal agencies, and there is no record of their race. Only 7 of the 65 who were Civil Service Commission employees were black.[91] A Civil Service Commission spokesman explained that arrangements for observers are made just before an election when there is no time to attempt to ensure that a substantial percentage of the observers are minorities.[92]

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89. Staff interviews with Department of Justice staff attorneys, August-September, 1974.

90. Jones letter to Hunter, (n. 78 above), Dullea interviews.

91. Dullea interviews.

92. Ibid.

Black residents of observer jurisdictions also complain that the practice of last-minute assignment of observers tends to diminish the effectiveness of the program. One attorney noted that the observers arrive just before the election and are not well-informed about local conditions.[93] Their last-minute assignment precludes widespread publicity about their presence, so the reassuring effect of their presence for minority voters may well be lost.

One of the least understood aspects of the Federal observer program is the role of the observer in actual practice. The number of complaints about the passivity of observers or the need for observers made to Commission staff during the preparation of this report indicates a lingering belief, or perhaps hope, that the observers are there on election day either to "do something" or "prevent the doing of something."[94] In fact, Federal observers merely observe and report the conduct of the election in the polling place they are assigned to; they do not participate in managing the poll in any way.[95]

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93. J. L. Chestnut, Selma, Ala., interview, Sept. 3, 1974.

94. Staff interviews in Alabama, Louisiana, Mississippi, and South Carolina, July-Sept. 1974.

95. James v. Humphreys County Board of Election Commissioners, No. GC72-70-K (N.D. Miss. Oct. 4 1974) illustrates the function of observers and use of the fruits of poll watching by a court. For the general election on Nov. 2, 1971, 30 Federal observers served in Humphreys County. The observers witnessed at least 634 assisted voters as they voted. They noted the method and manner of assistance at each polling place. The observer reports provided a relatively complete record of the conduct of the election that the court relied on in ordering that illiterates receive the same form of assistance afforded blind and disabled persons.

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The Voting Rights Act works through the interaction of its provisions. If a jurisdiction meets the conditions of the section 4 trigger, it is automatically covered by the special provisions. Coverage automatically suspended a jurisdiction's test or device (until the national suspension of literacy tests temporarily banned them all) and brings the section 5 review requirement into force. Use of examiners and observers under sections 6 through 9 is at the discretion of the Attorney General. Litigation under the act is both independent of the temporary provisions and in support of them. The act addressed the immediate problem of facilitating registration of minorities through provision for suspension of literacy tests and assignment of Federal examiners. It also anticipated the development of later problems through provision for observation of elections and review of changes in electoral laws and procedures.

As minority citizens have begun to exercise their political rights, the Justice Department's enforcement emphasis has shifted from using examiners for registration to using section 5 preclearance to block efforts to minimize the influence of new minority voters, candidates, and officeholders.

The Voting Rights Act was designed and has been implemented to change local circumstances in which minorities encountered severe difficulties in exercising their constitutional rights. Its impact can be seen through analysis of statistics on political participation and through review of the recent experience of minority citizens in the political process in jurisdictions covered by the act.

3. IMPACT OF THE VOTING RIGHTS ACT

Minority political participation has increased substantially in the 10 years since enactment of the Voting Rights Act. There are more minority citizens registered, voting, running for office, and holding office than at any time in the Nation's past. Though the potential of minority political participation has yet to be realized, the progress of the last 10 years is striking. A large part of this progress is due directly or indirectly to the impact of the Voting Rights Act. Minority citizens are no longer politically invisible. As a close observer of black politics commented, "[B]lack politics is much too important these days to be ignored."[1]

The extremely low participation of blacks in the South was a major stimulus for enactment of the Voting Rights Act. Review of "before and after" statistics on registration, voting, and office-holding for the seven Southern States wholly or partially covered by the act shows both that more blacks are participating in the political process

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1. Eddie N. Williams, president, Joint Center for Political Studies, "The Impact of the Black Vote on National Politics" (speech before the Public Affairs Council, Nov. 7, 1974), p. 2.

now and that the disparity between white and black participation has diminished substantially. Real progress has been made in ensuring that all citizens may exercise their political rights, and the available statistical evidence indicates that minority citizens have responded to the opportunity to participate.

PROGRESS IN THE COVERED SOUTHERN STATES

Inability or failure to register to vote usually prevents a citizen from running for or holding office as well as from voting. Thus, low registration generally means low levels of other forms of political participation. While increased registration rates are achievements in themselves, their real importance is that they create the potential for increased impact on the political process through voting, candidacy, and office-holding. Not only are black votes almost always critical to the success of black candidates, they are also often essential for the victory of white candidates as well. Thus, increased registration allows black voters to influence and sometimes determine election outcomes. In addition, the existence of a substantial number of black voters requires that candidates pay some heed to their needs and policy preferences. Registration is the key to full political participation.

More than 1 million new black voters were registered in the seven covered Southern States between 1964 and 1972, increasing the percentage of eligible blacks registered from about 29 percent to

over 56 percent.[2] The numerical increase in black registration in each State is shown in table 2.

Table 2. NUMERICAL INCREASE IN BLACK REGISTRATION IN SOUTHERN STATES COVERED BY THE VOTING RIGHTS ACT, 1964-1972

State	Number of New Black Registrants
Alabama	197,320
Georgia	282,337
Louisiana	190,006
Mississippi	239,940
North Carolina	40,427
South Carolina	67,850
Virginia	130,741
TOTAL	1,148,621

Sources: Calculated from "pre-act" estimates in U.S. Commission on Civil Rights, Political Participation (1968), appendix VII and 1971-72 data provided by the Voter Education Project, Inc.

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2. Most registration data by race are unofficial figures estimated by county personnel, the Department of Justice, the Voter Education Project, or other unofficial sources. The pre-act dates of estimates vary widely from State to State; for a complete list of sources and dates, see U.S. Commission on Civil Rights, Political Participation (1968), Appendix VII (hereafter cited as Political Participation). Only Louisiana kept official figures in 1965; that State, North Carolina, and South Carolina maintained such data in 1972. Although Title VIII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(f), requires the Bureau of the Census to conduct surveys on registration for selected jurisdictions, these surveys have never been done. See Washington Research Project, The Shameful Blight: The Survival of Racial Discrimination in Voting in the South (Washington, D.C., 1972), pp. 49-50 and sources there cited (hereafter cited as Shameful Blight).

The sharp increase in numbers of blacks registered in these States has also contributed to the substantial reduction in the gap between white and black registration rates.[3] Registration rates report the percentage of voting age population that is registered. Table 3 presents black and white registration rates in each State before and after the Voting Rights Act was passed and for 1971-72. In addition, the table shows the gap, or difference, between white and black registration rates. The rates are based on statewide figures and thus do not indicate the differences in registration rates among the counties of one State or all the States.[4]

The most striking feature of these data is the steady decline in the gap between white and black registration rates since passage of the act. In the seven States, this disparity has been reduced from 44.1 percentage points to 11.2 percentage points. The gap diminished in each of the States, though in some States it remained relatively large. For example, the statewide gaps in South Carolina and Georgia were reduced by 1972 to less than 5 percentage points, but in Alabama and Louisiana the gaps were still greater than 20 percentage points.

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3. It should be noted that in some States reduction of the gap is attributable to decreased white registration as well as to increased black registration.

4. Registration rates vary widely within a State. Analysis of 1974 data for three States shows a very wide range in disparities among counties. See pp. 55-56 and appendix 1.

Table 3. REGISTRATION BY RACE AND STATE IN SOUTHERN STATES COVERED BY THE VOTING RIGHTS ACT

	Pre-act Estimate[a]			Post-act Estimate[b]			1971-72 Estimate		
	White	Black	Gap*	White	Black	Gap*	White	Black	Gap*
Alabama	69.2%	19.3%	49.9	89.6%**	51.6%	38.0	80.7%	57.1%	23.6
Georgia	62.6	27.4	35.2	80.3**	52.6	27.7	70.6	67.8	2.8
Louisiana	80.5	31.6	48.9	93.1	58.9	34.2	80.0	59.1	20.9
Mississippi	69.9	6.7	63.2	91.5	59.8	31.7	71.6	62.2	9.4
North Carolina	96.8	46.8	50.0	83.0	51.3	31.7	62.2	46.3	15.9
South Carolina	75.7	37.3	38.4	81.7	51.2	30.5	51.2	48.0	3.2
Virginia	61.1	38.3	22.8	63.4	55.6	7.8	61.2	54.0	7.2
TOTAL	73.4	29.3	44.1	79.5	52.1	27.4	67.8	56.6	11.2

a. Available registration data as of March 1965.

b. Available registration data as of Sept. 1967.

* The gap is the percentage point difference between white and black registration rates.

** The race was unknown for 14,297 registered voters in Alabama, and for 22,776 in Georgia.

Sources: U.S. Commission on Civil Rights, Political Participation (1968), appendix VII; Voter Education Project, Attachment to Press Release, Oct. 3, 1972.

Although blacks are still underregistered, compared to whites, substantial progress has been made toward equalizing statewide registration. Some of this progress is due to listing for registration by Federal examiners appointed pursuant to the Voting Rights Act.[5] Most of it, however, is due to the willingness of blacks to seek to register and of registrars to comply with the law.

The substantial increases in registration since 1964 are reflected in increased voting by blacks in the seven Southern States wholly or partially covered by the Voting Rights Act. It is impossible to document that assertion with exact statistics because most States do not maintain records of voting by race.[6] However, analysis of statewide turnout in national elections and of survey data indicates trends which support that conclusion. Also, the gap between turnout in those States and national turnout has diminished, a change which may be attributable to both increased voting by Southern blacks and decreased voting by others in the population.

Table 4 shows the percentage of persons of voting age that voted for President in the elections of 1964, 1968, and 1972, in the United States as a whole and in each of the seven Southern States discussed in

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5. The Federal examiner program is discussed in chapter 2.

6. South Carolina now reports turnout by race (see p. 61).

this report. Presidential election data are used because in most cases turnout in Presidential elections is higher than in any other kind of election and because turnout in Presidential elections is less likely to be affected by strictly local considerations. The figures are totals for States and therefore do not indicate either the range of turnout among counties within a State or the race of the voters. The table also shows the change in turnout between the 1964 and 1968 elections and between the 1964 and 1972 elections.

Table 4. VOTER TURNOUT IN THE PRESIDENTIAL ELECTIONS OF 1964, 1968, AND 1972 IN SOUTHERN STATES COVERED BY THE VOTING RIGHTS ACT

	1964	1968	1972	Percentage Point Change in Turnout 1964 to 1968	Percentage Point Change in Turnout 1964 to 1972
Alabama	35.9%	52.7%	44.2%	+16.8	+ 8.3
Georgia	43.3	43.4	37.8	+ 0.1	- 5.5
Louisiana	47.3	54.8	45.0	+ 7.5	- 2.3
Mississippi	33.9	53.2	46.0	+19.3	+12.1
North Carolina	52.3	54.3	43.9	+ 2.0	- 8.4
South Carolina	39.4	46.7	39.5	+ 7.3	+ .1
Virginia	41.1	50.1	45.6	+ 9.0	+ 4.5
United States	61.8	60.7	55.7	- 1.1	- 6.1

Source: U.S., Department of Commerce, Bureau of the Census, Statistical Abstract of the United States 1974, 95th ed., table no. 704, p. 438.

In the 1964 election, all of the States fell well below the national average, and only in North Carolina did statewide turnout exceed 50 percent of the voting age population. In 1968, while national turnout dropped slightly, turnout increased in all seven Southern States covered by the Voting Rights Act in 1965-66. The increase ranged from 0.1 percentage point in Georgia to 19.3 percentage points in Mississippi. Some of this increase in voting is probably due to the impact of the Voting Rights Act in the covered States.

Furthermore, although turnout in all seven States declined between the 1968 and 1972 elections and national turnout dropped sharply during the same period, in four of the seven States 1972 turnout remained higher than 1964 turnout. In North Carolina, which had the highest turnout among these States in the 1964 election, turnout had dropped 8.4 percentage points by the 1972 election. But in Mississippi, which had the lowest turnout in 1964, turnout by 1972 had increased 12.1 percentage points. Similarly, in Alabama, which had the second lowest turnout in 1964, turnout between 1964 and 1972 increased 8.3 percentage points. Where persons vote in States with traditionally low turnout, despite a strong national trend toward nonvoting, it seems likely that many of the voters are persons who had previously been denied the opportunity to vote.

Survey data concerning reported voting by race and region also tend to support this inference. After each national election since 1964 the Bureau of the Census has conducted a survey on voting in that election.[7] Although these are the most complete surveys available, their utility is limited by the fact that more persons are reported as having voted than actual votes were cast.[8] Their utility for this study is further limited by the fact that, although statistics are presented for blacks and whites by major regions of the country, there are no data by race for individual States and the Bureau of the Census definition of the South includes the District of Columbia and nine other States in addition to the seven Southern States discussed in this report. Also, the Bureau of the Census has not surveyed voting by any other minority group discussed in this report.[9]

With these qualifications stated, the surveys show clearly that the pattern of participation in Presidential elections reported by

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7. The surveys since 1966 have also included some questions about registration.

8. There are several explanations to account for this overreporting, including, e.g., spoiled ballots as well as simple misreporting by the persons surveyed. Because the overreported figures are different from the actual turnout discussed above, to avoid confusion this discussion describes patterns of voting rather than the reported numbers.

9. In 1972 the Bureau of the Census did obtain a national figure for registration and voting by persons of Spanish origin, but no regional breakdowns were obtained.

Southern blacks is toward increased participation since passage of the Voting Rights Act.[10] Southern black voting increased sharply between 1964 and 1968. Though it declined somewhat between 1968 and 1972, Southern black voting in 1972 remained higher than in 1964. That is, the pattern of voting reported by Southern blacks was similar to that exhibited by several of the seven States, whose 1972 turnout remained higher than 1964 turnout despite the low national turnout in 1972.

Thus, both types of data suggest that Southern blacks are taking advantage of the opportunity to participate in politics that the Voting Rights Act has attempted to secure. There has been substantial progress even though turnout in the seven Southern States and voting by Southern blacks continues to lag behind national turnout and voting by whites.

Increased registration and voting by blacks in the seven Southern States covered by the Voting Rights Act has resulted in a substantial increase in the number of blacks running for and winning election to

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10. This discussion is based on analysis of data reported in the post-election surveys of the three most recent Presidential elections: U.S., Department of Commerce, Bureau of the Census, Voter Participation in the National Election November 1964, Series P-20, no. 253 (Oct. 1965); Voting and Registration in the Election of November 1968, Series P-20, no. 192 (Dec. 1969); and Voting and Registration in the Election of November 1972, Series P-20, no. 253 (Oct. 1973) (hereafter cited as Voting and Registration in the Election of November 1972).

public office. The number of black elected officials has grown throughout the country, but the change is especially striking in the States discussed in this report.

There is no available estimate of the number of black elected officials in the seven States before passage of the Voting Rights Act. Certainly it was a small number, well under 100 black officials.[11] By February 1968, 156 blacks had been elected to various offices in the seven States. This total included 14 State legislators, 81 county officials, and 61 municipal officials.[12] Table 5 shows their distribution by State and type of office.

More recent statistics show greater progress in electing black officials. By April 1974, the total number of black elected officials in the seven States had increased to 963. This total included 1 member of the United States Congress, 36 State legislators, 429 county officials, and 497 municipal officials. Table 6 sets out their distribution by State and type of office.

In all of the covered Southern States there are now some blacks in the State legislature[13] and in at least some counties of each State

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11. Political Participation, p. 15.

12. Ibid.

13. The number of blacks elected to State legislatures in these States has increased again as a result of the Nov. 1974 election. The total is now 68 black State legislators. See p. 62.

Table 5. BLACK ELECTED OFFICIALS, AS OF FEBRUARY 1, 1968, IN SOUTHERN STATES COVERED BY THE VOTING RIGHTS ACT

	State Legislature	County Offices				Municipal Offices			
	Senate/House	Governing Body	Law Enforcement	School Board	Others	Mayor	Council	Others	Total
Alabama	0/0	0	3	3	4	2	12	0	24
Georgia	2/9	3	0	1	0	0	4	2	21
Louisiana	0/1	10	16	4	0	1	5	0	37
Mississippi	0/1	4	15	1	2	1	5	0	29
North Carolina	0/0	0	0	1	0	0	9	0	10
South Carolina	0/0	3	2	0	5	0	1	0	11
Virginia	0/1	2	1	0	1	0	12	7	24
SEVEN STATES	2/12	22	37	10	12	4	48	9	156
TOTALS	14	81				61			156

Source: U.S. Commission on Civil Rights, Political Participation (1968), appendix 1.

Table 6. BLACK ELECTED OFFICIALS, AS OF APRIL 1, 1974, IN SOUTHERN STATES COVERED BY THE VOTING RIGHTS ACT

	U.S. Congress	State Legislature	County Offices				Municipal Offices			Total
		Senate/House	Governing Body	Law Enforcement	School Board	Others	Mayor	Council	Others	
Alabama	0	0/3	9	52	16	12	8	48	1	149
Georgia	1	2/14	8	6	26	3	2	69	6	137
Louisiana	0	0/8	32	19	41	0	4	38	7	149
Mississippi	0	0/1	8	41	23	19	7	62	30	191
North Carolina	0	0/3	7	2	29	0	8	104	5	158
South Carolina	0	0/3	18	12	23	2	6	51	1	116
Virginia	0	1/1	15	4	0	2	1	38	1	63
SEVEN STATES	1	3/33	97	136	158	38	36	410	51	963
TOTALS	1	36	429				497			963

Source: Joint Center for Political Studies, National Roster of Black Elected Officials, vol. 4 (April 1974).

there are blacks on county governing boards. Although the number of offices held by blacks is rather small in comparison to the total number of offices in these States, the rapid increase in the number of black elected officials is one of the most significant changes in political life in the seven States since passage of the Voting Rights Act.

ANALYSIS OF CURRENT STATISTICS

Although blacks are beginning to catch up, the U.S. Assistant Attorney General for Civil Rights noted recently, "Some of the gains of the past ten years are more apparent than real."[14] Analysis of current statistics shows that, though the gaps between white and black participation rates have diminished, there remain significant disparities. Furthermore, though the number of black elected officials has increased rapidly, blacks have gained only a meager hold on the most significant offices. Participation data on other minority groups discussed in this report are very scarce; but, overall, their participation seems to lag behind that of both whites and blacks in the covered Southern States.

The most recent estimates of registration by race for the seven covered Southern States as a group are those of the Voter Education Project for 1971-72.[15] Table 7 shows black and white voting age

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14. J. Stanley Pottinger, "Justice and the Voting Rights Act of 1970" (speech before the Congressional Black Caucus, Sept. 27, 1974), p. 12.

15. As noted previously, the Bureau of the Census has never done a registration survey as required by Title VIII of the Civil Rights Act of 1964 (42 U.S.C. 2000(f)).

Table 7. VOTER REGISTRATION IN SOUTHERN STATES COVERED BY THE VOTING RIGHTS ACT, 1971-1972

State	White VAP*	Black VAP*	Whites Registered**	Blacks Registered**	Percent White VAP Registered	Percent Black VAP Registered
Alabama	1,697,434	508,326	1,369,542	290,057	80.7%	57.1%
Georgia	2,263,467	663,581	1,598,268	450,000	70.6	67.8
Louisiana	1,644,732	600,425	1,315,981	354,607	80.0	59.1
Mississippi	936,704	431,617	670,710	268,440	71.6	62.2
North Carolina	2,647,812	644,511	1,648,254	298,427	62.2	46.3
South Carolina	1,200,907	429,598	614,383	206,394	51.2	48.0
Virginia	2,532,537	508,995	1,550,000	275,000	61.2	54.0
TOTALS	12,923,589	3,787,053	8,767,138	2,142,925	67.8	56.6

* VAP or voting age population is the number of persons 18 years old or older in 1970, according to the 1970 census, calculated by Commission staff. The Voter Education Project population figures are projections to 1972.

** Registration figures shown are for the following dates: Ala., Jan. 1972; Ga., May 1971; La., Dec. 1971; Miss., Dec. 1971; N.C., Dec. 1971; S.C., Dec. 1971; and Va., Jan. 1972.

Source: Voter Education Project, Inc., 1972.

populations and numbers registered as well as registration rates. In all of the States black registration was lower than white. The disparity ranged from 3 percentage points in Georgia to 24 in Alabama.

Of the seven Southern States covered by the act, only three--Louisiana, North Carolina, and South Carolina--collect registration data by race. Table 8 shows 1974 registration in those States.

Table 8. VOTER REGISTRATION IN LOUISIANA, NORTH CAROLINA, AND SOUTH CAROLINA, 1974

State	Whites Registered	Blacks Registered	Percent White VAP Registered	Percent Black VAP Registered
Louisiana	1,335,027	391,666	81.2	65.2
North Carolina	1,911,448	350,560	72.2	54.4
South Carolina	736,302	261,110	61.3	60.8

Voting age populations (VAP) as of the 1970 census are shown in table 7 above.

Sources: Louisiana State Board of Registration (as of Oct. 5, 1974); North Carolina State Board of Elections (as of Oct. 30, 1974); South Carolina State Election Commission (as of Oct. 25, 1974).

The trend of increasing black registration has continued in these three States since 1971-72. Also, in Louisiana and South Carolina the statewide gap between white and black registration rates has been further reduced, by 4.9 and 2.7 percentage points, respectively. In North Carolina, however, the disparity between white and black registration has increased by 1.9 percentage points since 1972.

The lack of current data on registration by race for the other covered Southern States precludes drawing firm conclusions about

registration for all the covered States.[16] If the three States are typical, then the black registration rate will have increased, but the disparity between black and white registration may have increased or decreased slightly.

All of the registration figures mentioned above are statewide figures. They obscure the disparities between white and black registration rates which actually exist within the States.[17] In Louisiana where 81 percent of eligible whites are registered, compared to 65 percent of the eligible blacks, the gap is much more evident in rural than in urban parishes.[18] In 8 of the 10 least populous parishes, the disparity is greater than 20 percentage points, while only 2 of the 10 most populous parishes have gaps of that size. For example, in Orleans Parish (New Orleans), the difference is only 3 percentage points while in Lincoln Parish (population 34,000) there is a 34 percentage point interval. Blacks constitute 45 percent and 40 percent of the population in the two parishes, respectively.[19]

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16. The Voter Education Project estimates that overall the gap is about 15 percent. John Lewis, Executive Director of the Voter Education Project, Inc., Atlanta, Ga., speech reported in the Washington Post, Nov. 15, 1974, p. A-8.

17. See appendix 1 for 1974 registration by race and the gap between white and black registration by county for these three States.

18. Data supplied by Louisiana State Board of Registration as of Oct. 5, 1974.

19. Unless otherwise noted in this report, all population and voting age population figures are calculated from 1970 census data for each State: U.S., Department of Commerce, Bureau of the Census, 1970 Census of Population: General Characteristics of the Population, vol. 1. For black percentages of the population in counties 25 percent or more black in the seven Southern States, see appendix 2-A.

A similar range of disparities exists in North Carolina. In the State as a whole the white registration rate is 18 percentage points higher than the black rate, and in the 39 counties covered by the act white registration exceeds black by 11 percentage points.[20] The difference is more than 25 percentage points in 6 of the covered counties. For example, in 54 percent black Halifax County, the gap is 31 percentage points. The gap is 33 percentage points in Beaufort County, which is 44 percent black.

In South Carolina the black registration rate now approaches that of whites.[21] This is so both because the black rate is actually higher than the white rate in two urban counties (Charleston and Richland) and because the white rate has dropped substantially since 1964. In many rural counties, however, whites are registered at much higher rates than blacks. For example, in Newberry County (33 percent black population) the gap is 37 percentage points and in McCormick County (60 percent black population) it is 28 percentage points.

Thus, despite the increase in numbers of blacks registered and the steady decline in the disparity between white and black registra-

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20. Data supplied by North Carolina State Board of Elections as of Oct. 30, 1974.

21. Data supplied by South Carolina State Election Commission as of Oct. 25, 1974.

tion in Southern States covered by the Voting Rights Act, black registration continues to lag behind that of whites. Among counties for which data are available, a wide range of disparities exists. There is no reason to believe that this is not also true in the States for which racial data are not available. To the extent that the Voting Rights Act was intended to equalize black and white registration rates, its promise has yet to be fulfilled.[22]

Data on registration of Mexican Americans, Puerto Ricans, and Native Americans in the covered jurisdictions are even more scarce than data on black registration. Apparently, registration of Spanish-speaking voters throughout the United States lags behind that of blacks and well behind that of whites. According to the Bureau of the Census' postelection survey in 1972, only 46.0 percent of Mexican Americans and 52.7 percent of Puerto Ricans reported themselves registered, compared to 65.5 percent of blacks and 73.4 percent of whites.[23] One study reports that the registration rate of Mexican Americans in South Tucson, Arizona, was reduced to about 35 percent after a 1970 re-

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22. Only 9 of Louisiana's 64 parishes and 2 of South Carolina's 46 counties have had Federal examiners. No examiners have been used in North Carolina. See appendix 3.

23. Voting and Registration in the Election of November 1972, table 1, pp. 22-23, and table 2, p. 27. As mentioned above, p. 47, data from these surveys are overreported so the figures should be considered as estimates of the differences among the groups rather than as actual registration rates. See ibid., pp. 7-8.

registration.[24] Another study estimated Puerto Rican registration in New York City at 30 percent, about half that of the city as a whole.[25] More recent data, which might reflect the impact of the suspension of literacy tests, are not available. Whatever the actual numbers, there is general agreement that registration of Spanish-speaking voters is very low.

Lack of data prevents direct comparison of white and Native American registration rates in covered counties of Arizona.[26] However, Navajo registration has increased substantially in recent years, reflecting both the suspension of literacy tests and energetic efforts by Navajo leaders. In Apache County, where Native Americans account for 74 percent of the population and about 69 percent of the voting age population, the overall registration rate has increased from 62.8 percent for the 1972 primary to 81.8 percent for the 1974 general election.[27] During the same period the share of the total registra-

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24. Penn Kimball, The Disconnected (New York: Columbia Univ. Press, 1972), p. 193.

25. Mark R. Levy and Michael S. Kramer, The Ethnic Factor: How America's Minorities Decide Elections (New York: Simon and Schuster, 1972), p. 90.

26. The Bureau of the Census does not report registration and voting statistics for Native Americans. One study estimated 1972 registration in two heavily Native American Arizona counties to be 20 to 40 percent below the rest of the State. Kimball, The Disconnected, p. 191.

27. Registration data supplied by Virgie B. Heap, County Recorder, Apache Co., Ariz. Assessing the meaning of changes in Arizona registration data is difficult because of the frequent purges (see chapter 4). Also, some Arizona counties have been covered, exempted, and re-covered by the Voting Rights Act.

tion accounted for by reservation precincts increased from 71.1 percent to 78.6 percent.[28]

In Coconino County, which also includes part of the Navajo Reservation, Native Americans constitute 25 percent of the population and about 17 percent of the voting age population. Total registration in the county has increased from 44.1 percent for the 1970 primary to 80.1 percent for the 1974 primary.[29] The proportion of registration accounted for by the reservation precincts has increased from 10.8 percent for the 1970 primary to 23.5 percent for the 1974 primary. The actual number of persons registered in those precincts has increased fourfold during the same period. The most substantial increase in registration in the reservation precincts occurred between 1970 and 1972, after the reregistration and the literacy test suspension.

In sum, the available data indicate that minority registration rates in jurisdictions covered by the Voting Rights Act are increasing. Where the data permit comparison of white and minority registration, however, minority registration continues to lag behind that of whites.

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28. Reservation precincts are those which are located on the Navajo Reservation. Most, but not all, of the registered voters in those precincts are Native Americans. Furthermore, not all Native Americans live on the reservation, so these figures only partially reveal the status of Native American registration.

29. Registration data supplied by Pat Fabritz, County Recorder, Coconino Co., Ariz. The caveats in notes 27 and 28 also apply to Coconino County.

As mentioned above, increased black registration apparently results in increased voting.[30] This is probably true for other minority groups as well. Nevertheless, minority turnout apparently continues to lag behind that of whites.

In the 1972 Presidential election national voter turnout was 55.7 percent. Turnout in all but 2 of the 10 States discussed in this report was below the national average.[31] It is likely that some of this difference is due to relatively low minority voting rates. According to the 1972 postelection survey, minority turnout nationally was significantly lower than white turnout. Voters in different groups reported the following turnout percentages: white, 64.5; black, 52.1; Puerto Rican, 44.6; and Mexican American, 37.4.[32] No figure was reported for Native American voting. Furthermore, black turnout in the South was reported to be 9.2 percentage points lower than Southern white turnout and 19.7 percentage points below white turnout in the North and West.[33]

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30. See p. 44 above for discussion of the problems of ascertaining the racial composition of voter turnout.

31. For turnout in the seven Southern States, see table 4 above. Turnout in Arizona (50.3 percent) also fell below the national average. Turnout in New York (56.1 percent) and California (60.0 percent) was above the national average. U.S., Department of Commerce, Bureau of the Census, Statistical Abstract of the United States 1974, 95th ed., table 704, p. 438.

32. Voting and Registration in the Election of November 1972, table 1, pp. 22-23 and table 2, p. 27. For difficulties in the use of this survey data, see p. 47 above.

33. Ibid., table 1, pp. 24, 26.

Review of recent election returns in South Carolina, which maintains records of voter turnout by race, supports the conclusion that minority turnout is lower than white turnout. In the 1974 general election 44.4 percent of the white voting age population and 35.5 percent of the nonwhite (almost all black) population voted.[34] The statewide disparity of 8.9 percentage points may mask a wide range of disparities in turnout by race among the counties, as is the case with registration statistics.

Just as examination of current statistics on registration and voting reveals persistent disparities between minority and white political participation, analysis of the types of offices to which blacks have been elected in covered jurisdictions reveals that the overall picture is not as bright as sheer numbers suggest. Most offices held by blacks are relatively minor and located in small municipalities or counties with overwhelmingly black population.[35] Atlanta is the most notable exception to this phenomenon.

There is only one black representative in Congress from the seven Southern States which are wholly or partially covered by the

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34. Calculated from election returns supplied by the South Carolina State Election Commission.

35. Data for this analysis are taken from Joint Center for Political Studies, National Roster of Black Elected Officials, vol. 4 (April 1974). There are no similar rosters of Mexican American, Puerto Rican, or Native American elected officials.

Voting Rights Act. No black holds statewide office in the South and no black candidate for statewide office has even come close to election. Under the impact of the Voting Rights Act and court-ordered, single-member districting, blacks have begun to appear in State legislatures, county commissions, school boards, and city councils. But this occurs almost always in places where blacks are sufficiently numerous and concentrated residentially to dominate a district by a substantial population margin and a comfortable registration margin.

As a result of the November 1974 general election, 68 blacks will now serve in the seven State legislatures, over half of them in Alabama and Georgia.[36] (See table 9.) Blacks will hold 60 of 856 lower house seats (7.0 percent) and 8 of 318 senate seats (2.5 percent). This is a substantial increase over previous years, but it does not even approach the proportion of the population which is black. Mississippi, which is 37 percent black, has only one black legislator, first elected in 1967. Alabama, with the highest percentage of blacks in the legislature, still falls short of fair representation of blacks.

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36. Data supplied by Voter Education Project and Joint Center for Political Studies, Nov. 15, 1974. No regular State legislative elections were held in Louisiana, Mississippi, and Virginia in 1974. One black was elected to the Louisiana senate in a special election in 1974.

Table 9. BLACKS ELECTED TO STATE LEGISLATIVE SEATS IN SOUTHERN STATES COVERED BY VOTING RIGHTS ACT, AS OF NOVEMBER 15, 1974

	Lower House			Upper House				
State	Black Seats	Total Seats	Percent Black Seats	Black Seats	Total Seats	Percent Black Seats	Percent of Total Seats Held by Blacks	Black Percent of Population (1970)
Alabama	13	105	12.3%	2	35	5.7%	10.6%	26.2%
Georgia	20	180	11.1	2	56	3.6	9.3	25.9
Louisiana	8	105	7.6	1	39	2.6	6.3	29.8
Mississippi	1	122	0.8	0	52	0.0	0.6	36.8
North Carolina	4	120	3.3	2	50	4.0	3.5	22.2
South Carolina	13	124	10.5	0	46	0.0	7.6	30.7
Virginia	1	100	1.0	1	40	2.5	1.4	18.5
TOTALS	60	856	7.0	8	318	2.5	5.8	25.8

Sources: Joint Center for Political Studies, Washington, D.C.; Voter Education Project, Atlanta, Ga.

Political power continues to elude blacks in most local governments as well.[36] In Mississippi, for example, of the 410 county supervisors, only 10 are black.[37] There are no black sheriffs or judges. Thirteen of the 25 counties with majority black populations have no blacks elected to any county office. Most black elected county officials are justices of the peace, constables, or school board members, with little authority for county policymaking.

Blacks in the other covered Southern States have had little more success. They have barely begun to appear on county governing boards. In Alabama there are nine black supervisors in four counties, all of which have an overwhelmingly black population majority. In the 39 covered counties in North Carolina there are only three black county supervisors. Louisiana has only 32 black police jurors, while South Carolina and Virginia have only 18 and 15 black county commissioners, respectively. There are eight black county commissioners in Georgia. There are only five black elected judges in all seven States. The only four black sheriffs in the seven States are from the same four counties in Alabama with black county supervisors.

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36. See appendix 2, table 2-A, for the distribution by type of office of black elected officials in counties with 25 percent or more black population in the seven Southern States covered by the Voting Rights Act.

37. Since the national roster was compiled, blacks have been elected as county supervisors in special elections in Adams and Marshall Counties, Miss., bringing that State's total to 10. Frank R. Parker, attorney, Lawyers' Committee for Civil Rights Under Law, Jackson, Miss., letter to Rims Barber, Delta Ministry, Jackson, Miss., July 3, 1974 (copy in Commission on Civil Rights files); county clerk's office, Marshall Co., Miss., telephone interview, Dec. 5, 1974.

Although substantial numbers of blacks have been elected to municipal governing bodies, most of them serve in small towns which often have an overwhelmingly black population.[38] While the functions of mayors and council members may be similar regardless of the size of a municipality, the political influence of such officials often varies directly with the size of the municipality. A large majority of cities have only one or two black elected officials.

The lack of data on the election of other minorities precludes drawing strong conclusions about their political success. However, there is no reason to assume that Mexican Americans, Puerto Ricans, and Native Americans in the covered jurisdictions are more successful than blacks in winning public office.

In situations where members of a minority group dominate in the population, they have begun to elect representatives from their group. For example, in Arizona, the reservation Navajos dominate one legislative district from which one senator and two representatives are elected. In the 1974 general election three Native Americans were elected to the State legislature from that district. The first Native American county supervisor was elected in 1972. Native Americans also sit on school boards serving the reservation.[39]

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38. See appendix 2, table 2-B, for the distribution of black elected municipal officials by type of office and size of municipality.

39. Staff interviews, Apache Co., Ariz., July 1974, and telephone interviews, Nov. 1974. See chapter 6 for discussion of the election of the Native American county supervisor.

Similarly in the covered counties of New York City, Puerto Ricans have been elected to six State legislative seats, representing districts either predominantly Puerto Rican or predominantly Puerto Rican and black. One member of the congressional delegation is Puerto Rican. They have been less successful, however, in winning city council elections. Two of 43 city council members are Puerto Rican, though the city's population is about 10 percent Puerto Rican.[40]

In Monterey County, California, which is 21 percent Mexican American, none of the five county supervisors is Mexican American. Salinas, the largest city in Monterey County with 59,000 people, 27 percent of whom are Mexican American, has no Mexican Americans on its five-member city council.[41]

Some minorities have been elected even though their group is not dominant in a district. For example, black registration is less than 40 percent of the total in the Georgia congressional district served by Andrew Young.[42] Similarly, Mexican Americans hold two of

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40. Staff interviews, New York City, Oct. 1974, and telephone interviews, Nov. 1974. See also the discussion of New York redistricting in chapter 8.

41. Staff interviews, Monterey Co., Calif., Nov. 1974, and telephone interviews, Dec. 1974. It was reported in 1971 that 3 of 205 local government offices in Monterey County were held by Mexican Americans. See California State Advisory Committee Report to the U.S. Commission on Civil Rights, Political Participation of Mexican Americans in California (1971), pp. 84-88.

42. Stuart E. Eizenstat and William H. Baruto, Andrew Young: The Path to History (Atlanta, Ga.: Voter Education Project, Inc., 1973), p. 2.

five city council seats in Tucson, Arizona (24 percent Mexican American) and one of five supervisor seats in Pima County (18 percent Mexican American). In the 1974 general election, a Mexican American was elected to one of five seats on the Tucson District One School Board, which encompasses most of the city.[43] A Mexican American was also elected Governor of Arizona in 1974.

Progress obviously has been made in recent years in electing minorities to public office in jurisdictions covered by the Voting Rights Act. However, the significance of the apparently startling gains in numbers of minorities elected diminishes when the types of offices won are analyzed. There is a very long way to go before minorities have gained an equitable share of political offices.

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Despite the substantial progress toward full enjoyment of political rights by minority citizens in jurisdictions covered by the Voting Rights Act, significant disparities between white and minority participation rates persist. In part such disparities

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43. Staff interviews, Pima Co., Ariz., Nov. 1974, and telephone interviews, Dec. 1974.

simply reflect the fact that minorities have only recently begun to participate in all aspects of the political process. The years of the Voting Rights Act have been years of catching up, a process that is clearly underway, but also clearly not completed.

The statistical review presented in this chapter sheds some light on the current status of minority voting rights, but statistics, particularly statewide or national data and estimates, cannot communicate the experience of minority citizens as they become involved in the political process. Statistics provide clues, but they do not answer the question of whether minorities encounter discrimination in their efforts to exercise their voting rights. In the following chapters, this report addresses directly the issue of persistent barriers to full political participation. Since rights are exercised or denied in local contexts, the focus now shifts from aggregate data and a national perspective to the problems and events which comprise the actual experience of minorities attempting to register, vote, and run for office in localities around the country, many of which have long been hostile to the idea of minority political participation.

4. BARRIERS TO REGISTRATION

Registration prior to 1965 frequently functioned as a barrier to exclude minorities from political participation rather than being an entry into the process.[1] The end of formal barriers brought about by the Voting Rights Act resulted in an immediate increase in minority registration. The use or threat of use of Federal examiners and the suspension of literacy tests are undoubtedly important factors leading to that increase.

Perhaps an equally important factor in the immediate success of the Voting Rights Act was the work of private organizations in voter registration drives.[2] These drives depended chiefly on foundations for financial support. Congress in 1969 enacted legislation, however, which prevents an organization from receiving more than 25 percent of its support from one foundation and which prohibits the use of foundation grants to finance voter registration programs in more than one State or in more than one "election season."[3] According to John Lewis,

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1. See chapter 1, p. 3, n. 5, for a listing of earlier Commission reports which contain information on registration barriers to minorities prior to passage of the Voting Rights Act.

2. See U.S. Commission on Civil Rights, Political Participation (1968), pp. 154-56 (hereafter cited as Political Participation). Pat Watters and Reese Cleghorn, Climbing Jacob's Ladder: The Arrival of Negroes in Southern Politics (New York: Harcourt, Brace & World, 1967).

3. 26 U.S.C. § 4945(d)(2) and (f)(4) (Supp. 1974).

executive director of the Voter Education Project, these restrictions have "seriously hampered" the ability of his organization, the principal voter registration organization in the South, to remain active in voter registration work.[4]

The work of organizations such as this is important because the Voting Rights Act does not require affirmative efforts to register voters on the part of county registrars. The attitude of many of these registrars is that people who really want to vote can find the time and the means to come to the courthouse to register. As one registrar said, "They can come in during these hours [8:00 a.m. - 4:30 p.m.] if they really want to."[5] The chairman of one State board of registrars commented: "If people really care about voting, they will come to the registrar's office like they are supposed to."[6]

While formal barriers for the most part no longer exist, the lack of interest and of affirmative attempts to register voters on the part of county registrars become hindrances to participation. These hindrances include restrictive time and location for registration, the inadequate number of minority registration personnel, and purging of the registration rolls and reregistration. These are more than minor

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4. John Lewis, Atlanta, Ga., telephone interview, Nov. 25, 1974.

5. Staff interview, Louisiana, Sept. 1974.

6. Staff interview, Sept. 1974.

annoyances. To minority persons, who not long ago were excluded almost entirely from the political process, they represent more obstructions on the part of white officials to prevent their participation. In many cases these officials are the same persons who were in charge of registration before the Voting Rights Act. The memories of violence and economic repression linger on in the minds of many blacks and others. Furthermore, minority registration still lags behind that of whites, in some cases far behind.[7] Any hindrance which makes it hard to register ensures that the gap will persist.

TIME AND PLACE OF REGISTRATION

Restrictive periods and location of registration, inadequate information, and dual registration for county and municipal elections reportedly contribute to low registration of minorities in the areas visited by Commission staff members.[8] Registration is usually centralized in the county courthouse during normal business hours. Counties in most of the States visited also permit registration offices to open during other hours or take registration books into other parts of the counties.[9]

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7. See chapter 3, and appendix 1.

8. Staff interviews in Alabama, Georgia, Louisiana, Mississippi, North Carolina, and South Carolina, July-Sept. 1974.

9. For specific laws regarding time and place of registration in the States discussed in this section, see the following State election codes: Code of Ala., Tit. 17 §§ 28, 30, 30(1) (1959); A.R.S. § 16-106 (Supp. 1974); Ga. Code Ann. § 34-610 (1970); L.S.A.-R.S. 18:270.301, 270.302 (Supp. 1974); Miss. Code § 23-5-29 (1972); N.C. Election Laws § 163-67 (1972); S.C. Code Ann. 23-63, - 65.1 (Supp. 1973).

Black leaders allege that in many areas the hours and location of registration offices are so restrictive that a large number of blacks are unable to register.[10] For example, hours of registration in York County, South Carolina, are allegedly inconvenient for blacks in Rock Hill, the county's largest city. People must travel 20 miles from Rock Hill to the county seat in the town of York to register. The hours are 8:30 a.m. to 12:00 noon and 1:00 p.m. to 5:00 p.m., Monday through Friday. County officials travelled to Rock Hill and registered voters for 1 day during working hours just prior to the 1973 municipal primary elections in that city. Blacks in Rock Hill believe that because of these restrictions many persons who wanted to register for the primary were denied the opportunity.[11]

In some areas even the hours prescribed by law are reportedly not followed. In one county in Alabama a politically active black told a Commission interviewer that the registrar's office literally had no set hours of business. The office, according to this person, is supposed to be open from 8:30 a.m. to 5:00 p.m.[12]

> I have told people to be there at 8:30 a.m. and they tell their employers that they will be a little late and then they get there and the registration people don't show up. After waiting an hour or so they get disgusted and leave. The registrar, of course, closes the office during the lunch hour and in the afternoon when he feels like it. Before the

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10. Staff interviews in Alabama, Mississippi, and North Carolina, July-Sept. 1974.

11. Complaint, p. 4, Cleveland v. Reese, Civil No. 73-1618 (D.S.C. filed Dec. 5, 1973).

12. Staff interview, Alabama, Sept. 1974.

> 1972 election, it seemed that when there was a line of people to be registered the registrar would close the doors and go home; and it certainly wasn't five o'clock. 13

According to Myrtis Bishop, the registrar in Madison Parish, Louisiana, she closes the registration office only "on rare occasions for meetings and such, but I always put it in the paper."[14] Zelma Wyche, chief of police of Tallulah, the parish seat, and president of the Madison Voters League, said that the registrar is ready with excuses for closing the office whenever she feels like it, often to the disadvantage of blacks, as for example, during a voter registration drive.[15] Frequently the office is closed earlier than it should be.

Blacks in Mississippi informed the Commission that when they do go to register, there is no way of knowing whether the circuit clerk and registrar will be there. On some days when a number of blacks were brought in to register, the circuit clerk had left.[16]

The scheduled hours for registration in one county in Georgia are 9 a.m. to 4 p.m. Monday through Friday with an hour off for lunch,

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13. Ibid.

14. Myrtis Bishop, Tallulah, La., interview, Sept. 4, 1974.

15. Zelma Wyche, Tallulah, La., interview, Sept. 3, 1974. As required by law the Commission has offered Mrs. Bishop the opportunity to reply to these statements. Her reply is included in appendix 7.

16. Staff interview, Mississippi, Sept. 1974; see also Washington Research Project, The Shameful Blight: The Survival of Racial Discrimination in Voting in the South (Washington, D.C., 1972) pp. 12-24 (hereafter cited as Shameful Blight).

and 9 a.m. to 1 p.m. Saturday. Blacks have had continuing problems with the registrar's not keeping the registration office open, especially when a group of blacks try to register.[17] One black leader told the Commission, "If you bring in a lot of people to the courthouse, like two carloads at once, the registrar says there isn't time to register everyone and closes the office."[18]

If the courthouse is the only place to register, even if it has regular hours, there may still be the problem of having to travel long distances to register. Especially in rural areas such travel puts a great burden on persons without transportation and on people who cannot leave work for long periods. In rural Wilcox County, Alabama, it is 30 miles from Boykin, an all-black town, to Camden, the county seat.[19] In Talladega County, Alabama, blacks from Munford, mainly sharecroppers and farmers, must travel 20 miles to the county seat, losing a half day's work and a half day's pay. "These are all [poor] working people...they can't afford this."[20]

Blacks also report problems in finding transportation to travel the long distances to the courthouse in Jasper and Beaufort Counties, South Carolina, and in Bertie County, North Carolina.[21] Mexican Americans

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17. Shameful Blight, p. 15.

18. Staff interview, Aug. 1974.

19. The Rev. Thomas L. Threadgill and Charles McCarthy, community leaders and former candidates, Camden, Ala., interview, Sept. 5, 1974.

20. Frank Strickland, NAACP leader, Talladega, Ala., interview, Sept. 7, 1974.

21. Staff interviews, South Carolina, Sept. 1974; staff interview, North Carolina, July 1974.

have experienced the same problems in Pima County, Arizona.[22]

The restricted times and places of registration have led many minority group persons to ask registrars to visit other parts of the county to register. Blacks in two predominantly black parishes in Louisiana--Madison and Tensas--have asked for such visits by the registrars. Their requests have been refused.[23] White registration rates in both parishes exceed the black rates by more than 25 percentage points.[24]

Charleston County, South Carolina, is over 100 miles long and 20 miles wide. Most registration is centered in Charleston, the county seat. Although mobile units may be sent into the county upon request, it is reported that they have not been sent to areas of heavy black concentration despite requests.[25]

Even when there is decentralized registration, there often is no notification of the times and places. The registrar in one county in Alabama rarely adheres to a schedule to go to various locations in the county. Notices of time and place usually are not posted, and even

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22. William Edward Morgan, attorney and professor, Tucson, Ariz., interview, Nov. 7, 1974.

23. Bruce Baines, Madison Voters League, Tallulah, La., interview, Sept. 3, 1974; Woodrow Wiley, Tensas Parish police juror, Waterproof, La., interview, Sept. 5, 1974.

24. Registration information supplied by State of Louisiana, Board of Registration, Oct. 5, 1974.

25. Septima Clark, author and long time civil rights activist, Charleston, S.C., interview, Sept. 4, 1974.

when they are, often the registrar does not appear.[26] In another county registration personnel do not post notice of their schedule for precinct visits. The only way blacks know the time and place of these visits is through notices sent out by the NAACP or other black organizations.[27]

In an effort to alleviate the problems related to having a small registration staff and limited hours, many minority persons have expressed a need for deputy registrars who would be able to register voters at any time. In Talbot County, Georgia, blacks recently requested the appointment of 11 black deputy registrars whose names they submitted to the county. In a July 26, 1974, agreement between the black community and representatives of local government in Talbot County all parties agreed that deputy registrars would be appointed. Despite urgings of the official representatives and the Georgia Secretary of State, the registrar, who did not sign the agreement, has refused to appoint any deputies.[28]

Problems with registration are multiplied if dual registration is required. In some areas persons must register with the county to

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26. Staff interview, Alabama, Sept. 6, 1974.

27. Staff interview, Alabama, Sept. 7, 1974.

28. J.B. King, Jr., former candidate, Talbot Co., Ga., interview, Sept. 3, 1974.

be eligible to vote in county, State, and national elections, but must register separately with the municipality in which they reside to vote in municipal elections.[29] This requirement imposes a burden because registering twice and at two different places increases the costs of time and transportation. In addition, many persons complain that minorities are not informed by county officials that they must register with the city in order to vote in city elections. This has resulted in confusion and frustration at the polls when minorities are told that they are not registered for a particular election.

In Leflore County, Mississippi, blacks are not informed that they must register separately for municipal elections, and many think that they are registered. Election officials have a difficult time convincing blacks that they cannot vote.[30] A deputy clerk in Warren County, Mississippi, said: "We try to send Vicksburg residents to city hall to register but sometimes we forget."[31] Blacks in Bertie County, North Carolina, do not realize they must register separately for municipal elections and are not told at the registrar's office in

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29. Five States have provisions requiring or permitting dual registration: A.R.S. § 16-114 (1974) (West 1956); Ga. Code Ann. § 34A-501(b) (1970); Miss. Code § 21-11-3 (1972); N.C. Election Laws § 163-285 (1972); Va. Const., art. 11, § 8.

30. David Jordan, Greenwood Voters League, Greenwood, Miss., interview, Aug. 8, 1974; James Moore, Chairman, Greenwood Movement, and John Henry Johnson, former candidate for mayor, Greenwood, Miss., interview, Aug. 8, 1974.

31. Staff interview, Vicksburg, Miss., Sept. 3, 1974.

Windsor to register in the towns for these elections.[32]

REGISTRATION PERSONNEL

When minorities go to the registration office they are frequently greeted by whites unsympathetic with their desire to register. In the case of blacks, very often it is the same person who refused to register them before the passage of the Voting Rights Act. For Puerto Ricans, Mexican Americans, and Native Americans, it may be someone who has little knowledge or feeling for their language and culture. Only rarely are registration personnel of the same race or ethnic background as the minorities they register.

The process of selecting registrars and other registration personnel is generally in the hands of public or party officials who are almost always white.[33] In only one of the jurisdictions visited by Commission staff was the registrar or other officials responsible for registration a minority person. In most cases the staffs were also predominantly white.[34]

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32. Staff interview, Bertie Co., N.C., July 1974.

33. The following State election code provisions specify the method of selection of county registration officials in those States discussed in this section: A.R.S. § 16-105, 16-141 (Supp. 1974); Code of Ala., Tit. 17 § 21 (1959); Ga. Code Ann. § 34-603 (1970); S.C. Code Ann. § 23-51 (Supp. 1973); Miss. Code Ann. §§ 23-5-1, 23-5-7 (1972); Va. Code Ann. §§ 24.1-32, 24.1-43 (1973); N.C. Election Laws § 163-41 (1972); L.S.A.-R.S. 18:1 (1969).

34. In Tucson, Arizona the registrar and over half the staff are Mexican American. Observation by Commission on Civil Rights staff, Nov. 6, 1974.

In Birmingham, Alabama, the chairman of the board of registrars is a white who has a staff consisting of 16 full-time clerks and typists, with part-time help hired for rush periods. Blacks have been hired but only as part-time help during rush periods around election time.[35]

The black communities in two rural counties in Alabama for a number of years have sought the appointment of black registrars. But this has been a very frustrating experience for blacks, since appointment of registrars is in the hands of persons not sympathetic to their requests. Although the Governor, the State auditor and the commissioner of agriculture and industries jointly appoint the registration board,[36] in reality, a Commission staff member was told, "The Governor's office calls the probate judge and that's who decides, and he's not going to appoint a black."[37] In two Virginia counties blacks have also requested that a black registrar or assistant be appointed, but with no success.[38]

Many white registrars reportedly treat blacks discourteously at the registration office. Blacks find the registration process under these circumstances at best embarrassing and humiliating. In Madison

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35. Nell Hunter, Chairman of the Board of Registrars of Jefferson Co., Birmingham, Ala., interview, July 17, 1974. As required by law the Commission has offered Ms. Hunter the opportunity to reply to this statement.

36. Code of Ala., Tit. 17 § 21 (Supp. 1973).

37. Staff interview, Alabama, Sept. 1974.

38. Staff interviews, Virginia, July 1974.

Parish, Louisiana, the person to handle the entire registration process is the registrar, Myrtis Bishop. Black community leaders and officials have found her incompetent, uncooperative, and hostile. One black official stated that her behavior was that of a "vicious racist."[39] In addition to closing the office without notice when it is scheduled to be open, the registrar is charged with harassing black registrants. She is particularly strict in demands for identification. Many blacks, especially the more elderly, do not have adequate identification with them, lacking such things as social security cards or birth certificates. Even blacks who have identification with them have difficulties.[40]

> Sometimes she will accept social security cards as sufficient identification. Other times she will require much more and make people go back home three and four times. 41

According to another source, Mrs. Bishop often intimidates registrants. A black volunteer in a registration drive took two young blacks to register. One of them, while filling out the registration form, asked the registration volunteer a question, at which point Mrs. Bishop yelled: "I'll answer your questions here...you don't ask anyone for information here except me."[42] In another instance she

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39. Zelma Wyche, Chief of Police, Tallulah, La., interview, Sept. 3, 1974.

40. Ibid.

41. Ibid.

42. Staff interview in Tallulah, La., Sept. 4, 1974. As required by law the Commission has offered Ms. Bishop the opportunity to reply to these statements. Her reply is included in appendix 7.

was involved in a fight with a registrant.[43]

According to a black civic leader in another Louisiana parish, when blacks come to register, the registrar constantly finds ways to slow down the process. He tells people to come back with more proof of their identification. He seems especially adept in delaying the registration process just before elections. His occasional demonstrations of anger also intimidate some black registrants.[44]

The registrar in one Mississippi county has been in the position since 1960 and has steadfastly opposed the black franchise. A few years ago he is reported to have operated a segregated facility with separate waiting areas for the races in the registration office.[45] Among the complaints made against him at that time was that "he operates his office in such an arrogant manner that registrants come away thoroughly denigrated, embarrassed and intimidated."[46] Black political leaders indicated that the registrar's reputation was such "that many people would not register if he came knocking at their door."[47] In a recent interview a Commission staff

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43. This incident is described in chapter 7, pp. 183-185.

44. Staff interview, Louisiana, Sept. 1974.

45. Staff interview, Mississippi, Sept. 4, 1974.

46. For a discussion of barriers to voter registration in Mississippi, see Shameful Blight, p. 12-24.

47. Ibid.

member was told that the registrar continues to behave in a manner that makes registration a grueling process.[48]

The circuit clerk in another Mississippi county has a reputation in the black community for discourtesy. "She lets you stand there a long time" and "looks at you as though you have no business in her office."[49] Often when blacks go to register she asks them, "Who sent you here?" or "Who told you to come here and register?" In many instances she tells them they don't have to register.[50]

The registration personnel in one Alabama county are reportedly composed of whites who are unconcerned with the voting rights of blacks. They have shown a lack of courtesy to black registrants with such comments as, "I don't see why you need to vote if you can't even read."[51]

A recent case in Marshall County, Mississippi, illustrates some of the more subtle tactics currently used to minimize black registration. The Department of Justice charged that county registration officials improperly entered the names of 256 white persons on the registration books before the 1971 elections.[52] These persons voted in the primary

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48. Staff interview, Mississippi, Sept. 4, 1974.

49. Staff interview, Aug. 1974.

50. Ibid.

51. Staff interview, Sept. 1974.

52. Complaint, p. 4, United States v. Marshall County, Miss., Civil No. WC-73-28-K (N.D. Miss. filed Jan. 26, 1973).

and general election. The complaint further alleged that 104 voters, the majority of whom were black, were assigned to the wrong polling places, thereby preventing most of them from voting.[53] The court ordered the defendants to purge the names of improperly registered persons and to specifically notify the misassigned black voters of their proper polling places.[54]

PURGING AND REREGISTRATION

When registered voters move away, die, or are convicted of a felony, their names may be purged from the registration rolls. Most of the States visited by Commission staff also remove names of persons who have not voted within a specified length of time.[55]

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53. Ibid., p. 5.

54. United States v. Marshall County, Miss., Civil No. 73-28-K (N.D. Miss., consent decree, June 10, 1974). Other litigation in Marshall County resulted in an order requiring that uniform standards be applied to all applicants for registration, including black students attending college in Marshall County. Registration officials were enjoined from refusing to register all student applicants who had previously been denied registration because of the application of a stricter or more stringent standard than that applied to other applicants. Frazier v. Callicutt, Civil No. WC-72-77-S and U.S. v. Callicutt, Civil No. WC-73-28-S (N.D. Miss. Sept. 1974).

55. A.R.S. § 16-151 (Supp. 1974); Cal. Election Code § 383(f) (West Supp. 1974); Ga. Code Ann. § 34-620(c) (1970); L.S.A.-R.S. 18:240, 165 (1969); N.Y. Election Law § 17-405 (McKinney 1964); N.C. Election Laws § 163-69 (1972); Va. Code Ann. § 24.1-59 (1973).

Notification that a voter is to be purged is an important factor in the process. Notification may provide the necessary means of preserving the registration, through such measures as the return of the notice with indication of a desire to remain on the rolls or by other more time-consuming requirements such as reregistration or reapplication.

Purging may have many salutary effects on the electoral process. It removes names of persons who never participate as well as those no longer available to do so. It decreases opportunity for vote fraud because it prevents persons out of the area from voting and persons voting under the names of others who no longer participate in the political process. Nevertheless, purging, particularly when it is done for nonvoting at short time intervals, removes from the registration rolls large numbers of minority voters. Their lack of participation may be due to a combination of factors, including long working hours, lack of transportation, or previous mistreatment at the polls. Purging may be for nonvoting in the general election when the primary may be perceived by minority persons to have greater importance.

In addition, minority voters often are not adequately notified that they are to be purged. Frequently they fail to receive the notice. In jurisdictions with large non-English-speaking populations

notices are provided only in English, so that many people are not aware that they are being purged.

Arizona has particularly strict purging statutes. Failure to vote every 2 years in the general election results in the cancellation and removal from the general county registration rolls.[56] The county recorder then mails to the elector a postcard stating that registration has been cancelled and informs that voter that he or she has 2 months to sign and return the card in order to be reinstated.[57]

This purging procedure has eliminated large numbers of Native Americans from the rolls in Coconino and Apache Counties, Arizona. The attrition rates in these counties, both of which have large Navajo populations, were particularly high after the 1972 election. In Apache County 4,277 of 11,783 (36 percent) registered voters were purged for not voting.[58] In Coconino County 25 percent of the 24,358 registered voters were purged for failure to vote. Most of the more than 6,000 purged were Navajos.[59] According to Pat Fabritz, the Coconino County

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56. A.R.S. § 16-151A (Supp. 1974).

57. A.R.S. § 16-151B, C (Supp. 1974).

58. Unpublished data on "Cancellation totals after general election 1972," obtained from Virgie Heap, County Recorder, Apache County, n.d.

59. Unpublished registration and voting data, Nov. 1972 general election obtained from Pat Fabritz, County Recorder, Coconino County.

Recorder, many Navajos received their notice of cancellation after a delay of several weeks. Most get their mail at the trading post and in bad weather infrequently make the trip from their homes to the post. Moreover, purge notices are often discarded, since few Navajos can read English.[60]

The attrition rate for nonvoting among Chicanos in Tucson also has reportedly been very high. In 1974 research in Tucson on lists of challenged and purged voters in Pima County showed that a much higher percentage of Mexican Americans had been purged than other voters. A sample of these cancelled voters showed that many were not aware they had been purged and did not know what to do to get reinstated.[61]

New York law also contains strict purge provisions.[62] Many Puerto Ricans in New York also have been eliminated from the rolls for not voting. According to a Puerto Rican community leader:

> It seems so unfair to remove voters from the list for failing to vote in the general election. Many people vote only in the primaries and believe that

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60. Pat Fabritz, Flagstaff, Ariz., interview, July 25, 1974.

61. Dr. Anne McConnell, community leader, Tucson, Ariz., interview, Nov. 6, 1974.

62. Voters can be purged if they do not vote in the general election every 2 years. For nonvoters who have not voted since a previous reinstatement the registration is cancelled. Other nonvoters are notified and unless they fill out, sign, and return an affidavit within 3 weeks of the date of postmark, their registration is cancelled. N.Y. Election Law § 405.2 (McKinney Supp. 1974).

> the general elections are mostly pro forma. The Democratic candidate elected in the primary is usually assured of victory. 63

The system of notification has also caused Puerto Rican voters problems, according to a campaign organizer in New York. Frequently people do not receive their purge notification in the mail. Even if they do, they are often not able to understand what the notice says because they do not read English.[64]

In Monterey County, California, the system of notification of purging allegedly does not work well for Mexican Americans.[65] John Saavedra, mayor of Soledad, California, told a Commission staff member that many people do not receive such notifications.[66] The county clerk said that the cards are mailed out but only a few are returned. None of the purge notices are in Spanish.[67]

Discriminatory purging, among other irregularities, led a Federal court to set aside the April 1970 Democratic primary in Tallulah,

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63. Frank Lugoviña, president, Mobicentrics Consultant Corporation, New York City, interview, Oct. 10, 1974.

64. Paul Mejia, campaign manager and community leader, New York City, interview, Oct. 3, 1974.

65. Staff interviews, Salinas, Cal., Nov. 4, 1974. According to California law, not later than the first of January following a general election the county clerk mails a double postcard to those persons who have failed to vote. The individual can either contact the clerk prior to cancellation or return the postcard within 60 days to remain on the list. Cal. Election Code §§ 383(f), 386, 387 (West Supp. 1974).

66. Staff interview, Nov. 6, 1974.

67. Ernest Maggini, Salinas, Cal., telephone interview, Nov. 22, 1974.

Madison Parish, Louisiana.[68] According to the court, the registrar failed to provide adequate notification of the purge and reinstatement procedures to 141 persons purged for nonvoting, all but 11 of whom were black. Conducting the purge during the 30-day preelection period when the books were closed violated the spirit of the law, according to the State attorney general.[69] Louisiana requires that purged voters have 10 days in which to appear personally to reaffirm their eligibility, but the registrar's office was open only for 4 days during the 10-day period. Although the registrar extended the reinstatement period for 4 days, she failed to inform the public or the purged voters of that fact. In addition, the registrar purged 29 other blacks from registration lists when whites submitted their names allegedly for failing to report nonresidence or a change of address in the town.[70] In purging these names she failed to follow procedures to safeguard the rights of registrants set forth by Louisiana law. She also failed to require

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68. Toney v. White, 348 F. Supp. 188 (W.D. La. 1972), reversed in part, 476 F. 2d 203 (5th Cir.), original decision as modified, 488 F.2d 310 (5th Cir. 1973) (en banc). The lower court had previously set aside elections in Madison Parish. See Brown v. Post, 279 F. Supp. 60 (W.D. La. 1968) and U.S. v. Post, 297 F. Supp. 46 (W.D. La. 1969). See generally, Note, "Voting Rights: A Case Study of Madison Parish, Louisiana," Univ. of Chicago Law Review, vol. 38 (1971), pp. 726ff.

69. Toney v. White, 348 F. Supp. 188, 192-93 (W.D. La. 1972).

70. 348 F. Supp. 193.

affidavits from the whites presenting the lists and to satisfy notice requirements.[71] Moreover, some of the 29 names were improperly included.

Another discriminatory purging technique was allegedly used by white officials in a small Georgia town.[72] In December 1971 blacks won three of five city council seats in the municipal election. Whites, it is alleged, were determined to prevent a similar black election victory in 1973.[73] According to a complaint filed by black plaintiffs, white election officials illegally purged black voters from the voting list.[74] Prior to the December 5, 1973, election, a committee of four was established to purge voters for nonresidency in the town. There were, however, no procedures to determine whether a registered voter lived in the town. This decision was left to the unsupported personal opinion of those members of the committee who were in attendance at particular sessions. It was further alleged that the purge "was instituted for the purpose of removing black voters from the list of electors in order to insure that black candidates for office would be defeated in the December 5, 1973, general election."[75] The

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71. 348 F. Supp., p. 193-94. Failure to administer the law requiring verification of the eligibility of persons who regularly vote absentee resulted in the casting of illegal absentee ballots. See chapter 5, p. 126.

72. Seals v. Moye, Civil No. 74-16 MAC (M.D. Ga., filed Jan. 23, 1974).

73. Staff interview, Sept. 1974.

74. Complaint, p. 7, Seals v. Moye.

75. Complaint, p. 8, Seals v. Moye.

result of the election was that blacks lost all five seats on the municipal council.[76]

In addition, the plaintiffs alleged that neither the committee nor the municipal officials charged with supervising the elections notified blacks that their names had been removed from the list. In fact, it was further alleged that the purged voters did not discover that they had been disqualified until the day of the election when it was too late for them to be reinstated, a practice in violation of Georgia laws.[77]

Blacks in the town filed suit to overturn the December 1973 election. They argued that the failure to give notice as required by statute amounted to changes in the practice and procedure of conducting the general election which should have been submitted to the Justice Department for approval under section 5 of the Voting Rights Act.[78] The plaintiffs subsequently voluntarily accepted a consent judgment from the court. In the consent decree issued on September 9, 1974, the court's judgment was that to the extent that changes in municipal elections are made they must be submitted for section 5 preclearance.[79]

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76. Julian Davis, black community leader, Sandersville, Ga., interview, Sept. 4, 1974.

77. Complaint, p. 7, Seals v. Moye.

78. Ibid., p. 8.

79. Seals v. Moye, Civil No. 74-16 MAC (M.D. Ga., consent decree, Sept. 9, 1974).

Purging of individuals convicted of a felony or other disqualifying crime is usually an automatic process. It particularly affects minorities in that a disproportionate share of their numbers are convicted of crimes that disqualify them from voting. Moreover, in addition to being purged, minorities often find difficulty in having their rights restored since they may face discrimination in obtaining a pardon.

In several of the jurisdictions visited, the Commission was told of problems minorities convicted of crimes encounter in attempting to have their civil rights restored.[80]

Woodrow Wiley, a black police juror in Tensas Parish, Louisiana, said that he knew from personal experience that blacks encounter major difficulties in having their right to vote restored "if they have been convicted of any offense, even misdemeanors."[81] In a number of instances where minor offenses have been involved, blacks have been told by the registrar that they have lost their right to vote; and, rather than argue or seek expensive legal counsel, they have allowed their names to be stricken from the rolls.[82]

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80. Staff interviews in Louisiana, South Carolina, and Virginia, July-Sept., 1974.

81. Wiley Interview.

82. Ibid.

In some cases young people who have had difficulties with the law as juveniles are denied the right to vote when they reach voting age. Wiley cited the example of a young woman who as a juvenile had been charged with assault and battery. She was registered by the registrar, who later learned about the conviction and purged her from the rolls without informing her. This young woman has been in the process of trying to reregister for several months.[83]

A black attorney in Columbia, South Carolina, informed a Commission staff member that a significant number of blacks in South Carolina are denied the right to vote because of criminal convictions.[84] It is charged that the police in many towns file serious charges against blacks without just cause. The blacks, who are afraid of jail sentences, may plead guilty even when innocent, in exchange for a suspended sentence or fine. They then lose their voting rights and pardons to restore these rights are difficult to obtain.[85]

In Dorchester County, South Carolina, Victoria DeLee, a black community leader, said that large numbers of blacks are unable to vote

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83. Ibid.

84. Thomas Broadwater, attorney, Columbia, S.C., interview, July 31, 1974.

85. Ibid.

because they have been convicted of crimes. DeLee also reports that she has seen whites voting who she knows have been convicted of crimes. The chances of a black in Dorchester County ever voting again after conviction appear almost nil, since no black in Dorchester County has ever been pardoned.[86]

A large number of blacks in Southampton County, Virginia, are unable to vote because they have served time at the county correctional farm. Many have tried but have been unable to have their civil rights restored.[87]

Closely related to purging, both in its function and in its effect on minority voters, is reregistration. This requires that every person, regardless of past voting habits, register again if he or she wishes to remain on the rolls. Reregistration is undertaken in order to eliminate from the rolls persons who have died or moved away or have no interest in voting.

The process places a substantial burden on the minority voter, who has often succeeded in registering only after overcoming many obstacles. The result of a reregistration can be a decline in the number of minorities who are registered. For example, a complete reregistration in Arizona in 1970 eliminated from the books the names of many Native

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86. Victoria DeLee, long-time civil rights activist and former Congressional candidate, Dorchester Co., S.C., interview, Aug. 2, 1974.

87. Staff interviews, Southampton Co., Va., July 10-13, 1974.

Americans and Mexican Americans who had only recently been able to register because of the Voting Rights Act.[88]

Many counties in Mississippi have undergone reregistration, generally in connection with the adoption of a new districting plan. These counties have been widely criticized for undertaking reregistration and the Department of Justice has been criticized for not objecting to reregistration under section 5 of the Voting Rights Act or suing to prevent reregistrations which have not received section 5 clearance.[89] The most recent reregistration in Mississippi is that of Grenada County, approval for which was requested from the Attorney General on May 25, 1974.[90]

Warren County conducted a reregistration in 1971 without section 5 clearance.[91] The president of a black civic association in the county told a Commission interviewer that it was difficult getting blacks registered originally. He felt that many would not go back again. The reregistration, he said, was "another trick" which "accomplished its aim." It "got many black people off the books."[92]

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88. See Shameful Blight, pp. 47-49 and Pat Fabritz Interview.

89. See Shameful Blight, pp. 24-27 and sources there cited.

90. Section 5 printout, as of July 30, 1974.

91. Shameful Blight, pp. 43-44.

92. Frank Summers, president, Warren County Improvement League, Vicksburg, Miss., interview, Sept. 3, 1974.

Another black active in county politics was critical of the requirement that a voter go in person to reregister. He said this was difficult to accomplish.[93]

In Sunflower County there was underway, as of late 1974, a reregistration of registered voters.[94] According to the circuit clerk, notices of reregistration were sent to all persons with their property tax assessment. In addition to regular hours at the courthouse, the clerk plans to visit each precinct in the county for a period of 2 or 3 days. The only way to reregister is at the courthouse or during these visits. Reregistration by mail is not allowed.[95]

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93. Eddie Thomas, former candidate for election commissioner, Vicksburg, Miss., interview, Sept. 3, 1974.

94. The reregistration was not objected to by the Department of Justice, June 8, 1972. Section 5 printout, as of May 8, 1974.

95. Sam Ely, Indianola, Miss., interview, Aug. 9, 1974.

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The Voting Rights Act of 1965 led to large increases in the registration of minority persons. These increases for the most part have been the result of large scale efforts on the part of minority organizations who have informed people of their right to vote. Nevertheless, these efforts and increases are threatened by such tactics of registration officials as making registration an inconvenient or humiliating experience or forcing newly-enfranchised voters to register again. Registration should be an easy step for all who wish to cast the ballot. It is not. Instead it is often difficult and inconvenient. For those who only recently have been able to exercise the franchise, it is often a barrier that is not surmounted.

5. BARRIERS TO VOTING

Registration is merely the beginning of participation in the political process. Once registered, minorities have no guarantee that they may easily cast a ballot. What is done at the local level by local officials has the most impact upon the ability of minorities to vote and the effectiveness of that vote. Minority persons do not control the election or appointment of local officials and are seldom in positions of influence. Many obstacles placed by these officials frighten, discourage, frustrate, or otherwise inhibit minority persons from voting. Outright exclusion and intimidation at the polls are only two of the problems they face.

Other problems that have a discriminatory impact on minority voters are denial of the ballot by such means as failing to locate voters' names on precinct lists; location of polls at places where minority voters feel unwelcome or uncomfortable, or which are inconvenient to them; inadequacy of voting facilities; underrepresentation of minority persons as poll workers; unavailability or inadequacy of assistance to illiterate voters; lack of bilingual materials at the polls for non-English-speaking persons; and problems with the use of absentee ballots. Memories of past discourtesies or physical abuse may compound the problems for many minority voters. The people in charge are frequently the same ones who so recently excluded minorities

from the political process.

DENYING MINORITIES THE BALLOT

Minority persons may be denied the right to vote for various reasons. In some places, white officials may treat minority voters in a discourteous manner or otherwise show a bias against them or minority candidates. One poll watcher in the 1971 election in Noxubee County, Mississippi, reported:

> The white officials who checked the list of registered voters were consistently hostile and uncooperative with black voters. They were difficult and technical in verifying the registration of blacks, and they frequently cross-examined blacks about their identity and registration. This was in marked contrast to the manner in which they received and treated white voters. They were consistently helpful to whites, but not to blacks.[1]

Frequently, election officials are not able to find a person's name on the roster for that precinct. This may be legitimate; for example, if a person moves from one precinct to another and does not notify the county registrar. In other cases, however, many minority persons registered in the precinct, some for many years, go to vote only to find that their names are not on the roster. They are turned away without any aid from election officials or are told to go to another precinct. This presents a special hardship for the elderly or

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1. Affidavit of Larry Miller, Stewart v. Waller, Civil No. EC-73-42-S (N.D. Miss., filed May 3, 1973).

others with limited means of transportation, those who vote after work and may not have time to straighten out the situation, and non-English-speaking persons who may not understand what is happening.

According to black candidates and campaign workers in Oktibbeha County, Mississippi, election officials frequently claim they cannot find black voters' names on the list. The voters are told to go to the city hall or the courthouse to verify their registration. In most cases, the registration is verified and the voter is eventually allowed to vote.[2] Such incidents, however, waste voters' time and tend to deter people from voting.

> The effect of incidents such as these on voters whom I have driven to polling places has been to discourage these persons from voting, especially since most of the voters we drive to the polls are elderly persons or persons otherwise unable to get to the polls.[3]

Sometimes voters whose names are allegedly not on the precinct list are not allowed to vote at all. In the 1973 municipal election in Starkville, Mississippi, election officials refused to allow a woman to cast a challenge ballot when she came to vote about 20 minutes before the polls closed. They claimed her name was not on the list, and it was impossible for her to verify her registration before the polls closed.[4]

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2. Affidavits of Harold Williams and Dr. Douglas L. Conner, Stewart v. Waller.

3. Affidavit of Harold Williams, Stewart v. Waller.

4. Affidavit of Dr. Douglas L. Conner, Stewart v. Waller.

In a similar incident in the 1973 municipal election in Moss Point, Mississippi, two blacks were not allowed to vote because the election officials could not locate their names on the list at their usual polling place. The precinct manager refused to call city hall and also refused to let them cast challenge ballots. A black poll watcher reports:

> When I and other poll watchers inquired why the election official refused to let them file challenge ballots, she replied, "you all can't talk to me like that 'cause I'm a white."[5]

Another black voter in Mississippi described her experience when she attempted to vote in a 1973 municipal election:

> In the election in Macon last year I attempted to vote at the polling place at the Courthouse. I was told that they could not find my name on the list of registered voters. As a result, I did not vote. Two or three days later my sister and I went back to the Courthouse and asked them again to look for my name. That time he found my name easily.[6]

Similar incidents led to a suit to void the November 7, 1972, election in Wilcox County, Alabama. Several National Democratic Party of Alabama candidates charged that the names of numerous black electors were left off lists provided to election officials at several polling places. Those whose names were not on lists were not permitted

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5. Affidavit of Marcus Harris, Stewart v. Waller.

6. Affidavit of Fannie Bee Hopkins, Stewart v. Waller.

to cast challenge ballots.[7] The defendant election officials agreed to instruct all poll workers to inform voters whose names cannot be found on the official voter list of their right to cast challenge ballots and the procedure for doing so.[8]

Black voters in Camden in Wilcox County were also denied the ballot through questionable challenges at the polls. According to Charles McCarthy, an official with the Alabama Migrant and Seasonal Farm Workers Union, no one really knows Camden's boundaries. During the 1972 municipal election, however, any blacks who did not live near the center of the city were likely to be refused ballots. Two blacks hired by the white voting officials sat at one poll McCarthy visited and pointed out blacks who supposedly did not live within the city limits. These individuals were then denied ballots. As a result, several hundred blacks were not permitted to vote. On the other hand, whites were not questioned on residence nor were they denied a ballot, in spite of the fact that many of them, according to McCarthy, lived much farther from the center of town than some of the blacks who were not permitted to vote.[9]

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7. Complaint, p. 5, Threadgill v. Bonner, Civil No. 7475-72-P (S.D. Ala. Nov. 7, 1973).

8. Consent Decree, Threadgill v. Bonner.

9. The Rev. Thomas L. Threadgill and Charles McCarthy, community leaders and former candidates, Wilcox Co., Ala., interview, Sept. 5, 1974.

Blacks have complained of problems of names being left off voter lists in several Georgia counties.[10] One black community leader reported that in the 1973 municipal election in Sandersville white election officials told elderly blacks that their names were not on the list. The rejected registrants had to go to city hall to verify their registration. Many did not do this. Others, who found that their names were listed, did not return to the polling place to challenge white election officials and ask again for a ballot.[11]

In Southampton County, Virginia, there have been a number of instances where blacks reported that they registered but were unable to vote when election officials could not find their names listed. According to a black who has been active in voter registration drives:

> When black people go to vote, often the polling officials do not have a record of their names. This has happened fairly frequently. The blacks come to me and tell me their problem. I know some of these people are registered because I went with them so I could see them registered.[12]

In one instance the omission of blacks' names from the list was reportedly a significant factor in the election of a county supervisor in Southampton County in 1972.[13] Blacks were not informed of polling

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10. Lynmore James, former candidate for county commissioner, Macon Co., Ga., interview, Sept. 4, 1974; Joseph B. Williams, president, Stewart County Movement, Louvale, Ga., interview, Aug. 15, 1974.

11. Julian Davis, Sandersville, Ga., interview, Sept. 4, 1974.

12. Staff interview, Southampton Co., Va., July 13, 1974.

13. Ibid.

place changes after redistricting in 1971. Many went to their old precinct to vote, but election officials said that they did not have their names, and that they should go to the new polling site. In most cases the second polling place did not have their names either and many blacks could not vote at all. The black candidate lost by 16 votes.[14]

A Mexican American voter who went to the polls in the November 1974 election in Monterey County, California, could not find his name on the list posted outside the polling place and asked the election workers if he could vote there. He showed them his registration stub dated October 3, 1974. He was told he could not vote because he had registered too late.[15] In fact the deadline for registering was October 5.

Poll workers who speak only English sometimes have difficulty finding names of persons with Spanish or other non-English surnames. In the 1974 election in Tucson, Arizona, a Chicana voter told a campaign worker that she was unable to vote because the roster clerk did not find her name on the list. The clerk had offered no further information or assistance as to how the voter might verify her registration or cast a challenge ballot. The campaign worker took the voter to the courthouse and found that she was registered to vote in that

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14. Ibid.

15. Staff interview, Salinas, Cal., Nov. 6, 1974.

precinct. They returned to the polls and showed the roster clerk her name on the list, and she was allowed to vote.[16] One community leader alleged that this is not an uncommon occurrence in predominantly Chicano precincts.[17]

POLLING PLACES: LOCATION AND ADEQUACY

The location and adequacy of polling facilities are of special importance to minority voters. Many polls are located in all-white clubs or lodges, where minority persons are otherwise not allowed to go, or in white homes or stores that present a hostile atmosphere for minorities. Some blacks have complained that they are often required to vote in white areas but the reverse is rarely the case, allegedly because whites do not want to go into black neighborhoods to vote.[18]

Polling places include the National Guard Armory in a white neighborhood in Talladega, Alabama;[19] the all-white American Legion Hall and Elks Club in Vicksburg, Mississippi;[20] and white-owned general

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16. Connie Duarte, community leader, Tucson, Ariz., interview, Nov. 5, 1974. Election day observation by Commission on Civil Rights staff, Tucson, Ariz., Nov. 5, 1974.

17. Dr. Anne McConnell, Tucson, Ariz., interview, Nov. 6, 1974.

18. Moses Knox, chairman, Greensville County NAACP, Emporia, Va., interview, July 11, 1974.

19. Frank Strickland, NAACP leader, Talladega Co., Ala., interview, Sept. 7, 1974.

20. Staff interview, Vicksburg, Miss., Sept. 3, 1974.

stores, private homes of whites, and white churches in various parts of the South.[21] In the 1971 election in Humphreys County, Mississippi, one polling place was in the same building as a white candidate's office.[22]

The courts and the Department of Justice have been concerned about the location of polling places and have objected when a proposed change would put the polling place in a more inconvenient location or in a more hostile environment. When Leflore County, Mississippi, was redistricted in 1973, changes were made in election precincts and polling place locations. The court found all changes reasonable except for the selection of the VFW Club as one of the polling places.

> The VFW Club, a private organization, has a membership of whites only; and black citizens who constitute the voter majority in Southeast Greenwood may likely be inhibited or embarrassed in free access to vote at that location.[23]

In another case, a group of black voters successfully sued the Atlanta election officials in Federal court for changing polls to inconvenient or too-distant places after the 1971 decennial redistricting.[24] The complaint alleged that officials changed virtually all the

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21. Staff interviews in Louisiana, Mississippi, and Virginia, July-Sept. 1974.

22. James v. Humphreys County Board of Election Commissioners, Civil No. GC-72-70-K (N.D. Miss. Oct. 4, 1974).

23. Moore v. Leflore County Board of Election Commissioners, 361 F. Supp. 609, 613 (N.D. Miss. 1973), affirmed, Civil No. 73-3090 (5th Cir. Oct. 10, 1974).

24. Davis v. Graham, Civil No. 16891 (N.D. Ga. 1972).

polling places located in predominantly black areas of the Fifth Congressional District without considering possible discriminatory effects on poor and black voters.[25] The court found that 9 of the 18 sites objected to by the plaintiffs were discriminatory and ordered the defendants to establish new or additional polls more convenient to the voters.[26] Subsequently the Department of Justice objected to a number of polling place changes in Atlanta.[27]

The Department of Justice has also objected to moving a polling place in Jones County, Georgia, from a store in the central part of the precinct to the Lions Club Fairground Building on the outer fringe. In addition to the fact that the Lions Club does not accept blacks as members, many blacks would have had to travel an additional 3 1/2 miles to vote.[28]

Another polling place change was objected to by the Department of Justice in a 95 percent black precinct in New Orleans because it would have required voters to travel an excessive distance outside

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25. Complaint, p. 5, Davis v. Graham.

26. Davis v. Graham.

27. Objection letters, Nov. 27, 1972, and March 1, 1973.

28. Section 5 Summary, Aug. 12, 1974.

the precinct to vote. Furthermore, the change was deemed unnecessary because several more convenient polling sites were available.[29]

A recent objection was made to polling place changes in Newport News, Virginia. The city planned to move one polling place from the courthouse to an elementary school. The change would have meant that blacks had to travel an additional 1 to 1 1/2 miles to vote, without public transportation.[30]

Whenever changes in polling place location are made, voters accustomed to voting at a particular place are burdened. This is especially true for minority voters who may already be hesitant about voting. When a polling place change is not publicized, many voters go to the wrong place to vote. Told to go somewhere else, many see it as a runaround and may not vote at all.

Most States covered by the Voting Rights Act have minimal provisions for notifying voters of polling place changes. Alabama and Virginia provide for publishing changes in newspapers.[31] Posting changes in several locations is required in Alabama and Georgia.[32] North Carolina county election boards may use either of these methods.[33]

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29. Section 5 Summary, July 17, 1974.

30. Objection letter, May 17, 1974.

31. Code of Ala., Tit. 17 § 85 (1959); Va. Code Ann. § 24.1-36 (1973).

32. Code of Ala., Tit. 17 § 85 (1959); Ga. Code Ann. § 34-703 (1970).

33. N.C. Election Laws § 163-128 (Supp. 1972).

Notices are mailed to registered voters in Virginia and South Carolina.[34] In Arizona, the county may either indicate the new polling site on the sample ballot mailed to each voter or mail a separate notice.[35] Similarly, in California, the location of new polling sites may be determined from sample ballots mailed to all voters.[36] Changes are published in the parish police jury proceedings in Louisiana.[37]

Counties frequently do only the minimum the law requires. Many minority persons have reported that voters are unaware of changes. Several polling sites were recently changed in East Carroll Parish, Louisiana, to more central locations. However, many blacks were confused about where to vote. A black civic organization, the East Carroll Citizens for Progress, has been chiefly responsible for undertaking the difficult task of letting blacks in rural areas know about the changes.[38]

The campaign manager in Tucson for Governor Raul Castro told Commission staff that in a predominantly Chicano precinct a polling place change had been made for the November 1974 election from "the traditional landmark in that neighborhood to a place that is less

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34. Va. Code Ann. § 24.1-39 (1973); S.C. Code Ann. § 23-222 (Supp. 1973).

35. A.R.S. § 16-762 (Supp. 1974).

36. Cal. Election Code § 10009 (West Supp. 1974).

37. L.S.A.-R.S. 18:585 (1969).

38. Theodore Lane, president, East Carroll Citizens for Progress, Lake Providence, La., interview, Sept. 4, 1974.

centrally located and less accessible."[39] Reportedly, people were not informed of the change. "No signs had been put up at the old polling place to inform people of the change. The typical voter in this precinct has no transportation [or] money to pay for transportation."[40]

Similarly in Soledad, California (about 80 percent Mexican American), a polling place was changed from an entrance on the side of the police station to the new city hall directly behind it. The only indication of the new polling place was a small flag required by State law. Persons arriving at the old polling place found the door locked. If they inquired at the police station, they were directed to the new polling place.[41] No sign was there to inform voters of the new location.

Even when some type of notification is made, it is not effective unless it is in the language a voter knows. In Arizona, as well as in California, the only notification each registered voter received prior to the 1974 election was a sample ballot saying, "Your polling place is. . .[location]."[42] This announcement was in English only.

Inadequate facilities at the polls may lead to crowded situations that deter voters from returning to the polls in future elections. A

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39. R. Dan Valdenegro, Tucson, Ariz., interview, Nov. 7, 1974.

40. Ibid.

41. B. J. Jimenez, Chief of Police, Soledad, Cal., interview, Nov. 5, 1974. Election day observation by Commission on Civil Rights staff, Soledad, Cal., Nov. 5, 1974.

42. Election day observation by Commission on Civil Rights staff, Pima Co., Ariz., and Monterey Co., Cal., Nov. 5, 1974.

serious shortage of polling places on the Navajo Reservation in Apache and Coconino Counties in Arizona caused hardships and curtailed the reservation vote in the 1972 general election.[43] In Apache County only 10 polling places served the extensive reservation area,[44] where turnout was heavy. Many Navajos waited several hours in bad weather to vote. At Chinle, in the northern part of the county, 900 voters were expected but nearly 3,000 came, causing voters to wait 2 1/2 hours to cast their ballots.[45] According to the Apache County manager, it was 12:30 a.m. before all the people in line at the Chinle polling place voted. Many did not have the stamina for the long wait; others had to return to work.[46]

After much haggling with the county board of supervisors, the reservation portion of Apache County recently obtained new polling places, raising the total number of polling places on the Reservation to 21.[47] Some problems remain, however, because the county assigned people to precincts arbitrarily and without firsthand knowledge of location of residence.[48]

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43. Benjamin Hanley, member of the Arizona House of Representatives for District 3, Window Rock, Ariz., interview, July 19, 1974.

44. Office of County Recorder, Apache Co., Ariz., General Election Registration List for 1972.

45. Lucy Hilgendorf, Justice of the Peace, Chinle, Ariz., interview, July 22, 1974.

46. Buzz Hawes, St. John, Ariz., interview, July 26, 1974.

47. Office of County Recorder, Apache Co., Ariz., Registration for General Election 1974.

48. Lucy Hilgendorf, Chinle, Ariz., letter to David H. Hunter, U.S. Commission on Civil Rights, Nov. 10, 1974.

In neighboring Coconino County, the overcrowding of voting facilities in the 1972 election was most obvious at the community center in Tuba City on the Navajo Reservation, where people waited in line for several hours before voting.[49] According to the county recorder, the number of polling places in the county has increased from 31 to 39 since the 1972 election.[50] Eight of those polling places are on the Navajo Reservation, an increase of four over the 1972 total.[51]

Crowded and confused conditions prevailed at several schools in predominantly Mexican American areas of Tucson during the 1974 election. Voting booths were placed in hallways near the front door and students and other persons who were not voting continually walked through the polling area. At one polling place, conditions were so crowded that the line of persons waiting to vote wound around the booths. Some of those waiting were so close to the booths that they could see the choices of persons voting.[52]

ELECTION OFFICIALS

One of the major obstacles to minority voting is the inadequate number of minority election workers. Minority persons frequently view

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49. Hanley Interview.

50. Pat Fabritz, Flagstaff, Ariz., interview, July 25, 1974.

51. Unpublished maps and tables, 1972-74, obtained by Commission staff from Pat Fabritz, Sept. 1974.

52. Election day observations by Commission on Civil Rights staff member, Tucson, Ariz., Nov. 5, 1974.

whites as opposed to minority enfranchisement. They feel that needed assistance is not nearly as likely to come from whites as from persons of their own background. Although the number of minority election workers has grown since the passage of the Voting Rights Act, they are still seriously underrepresented.

Even when minorities do work as poll workers, they are generally not in supervisory positions. Since the choice of poll workers is made by election officials[53] who are almost always white, blacks charge that only those blacks who are easily influenced are chosen.[54] According to one black leader in Alabama, blacks are asked to serve "who don't know what they are doing and whom they can tell, 'Go take a long lunch hour.'"[55]

Most counties rarely have to recruit new election officials for each election. When blacks in Sandersville, Georgia, complained about the lack of black poll workers, county officials said that the people who work at the polls had served for years and that training new people

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53. Code of Ala., Tit. 17 §§ 120-125 (1959); A.R.S. § 16-771 (Supp., 1974); Cal. Election Code §§ 1618-1618.5 (West Supp. 1974); Ga. Code Ann. § 34-401, § 34-501 (1970); L.S.A.-R.S. 18:555 (1969); N.Y. Election Law §§ 39-40 (McKinney, 1964); N.C. Election Laws § 163-41 (Supp. 1972); S.C. Code Ann. § 23-400 (1962); Va. Code Ann. § 24.1-32.

54. Staff interviews in Mississippi, Sept. 1974, Virginia, July 1974, Alabama, Aug. 1974, and Louisiana, Aug. 1974.

55. Albert Gordon, 1974 candidate for State senate, Camden, Ala., interview, Sept. 5, 1974.

would be difficult.[56] There was only 1 black among the 20 poll workers in the September 1974 runoff even though the city is 53 percent black. One source said that blacks usually constitute only 5 or 10 percent of the poll workers in county elections, even though Washington County is 54 percent black.[57] Blacks are never poll managers.

In Macon County, Georgia, 61 percent black, 3 of the 30 election workers in the September 3, 1974, primary were black. None of them was in charge. Although blacks requested more black poll workers, white officials refused to appoint them.[58]

One source in Tucson, Arizona, stated:

> There are simply too few minorities working at the polls and there is no doubt that this has a serious adverse effect on the participation of minorities in voting. They are made to feel like strangers at the polling places. 59

In a Mississippi town in 1973, a black poll worker was not asked to work in the runoff election because of her participation in a voting rights lawsuit against the city. She was the only black of six officials in one precinct in the first election. As election returns were announced on the radio, the announcer stated that she had instituted a suit challenging at-large voting. When she asked a local party

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56. James Interview.

57. Davis Interview.

58. James Interview.

59. William Edward Morgan, attorney and professor, Tucson, Ariz., interview, Nov. 7, 1974.

official why she was not reappointed, he told her it was because of the lawsuit.[60]

The need for minority poll workers is accentuated in areas where large portions of the population do not speak English. Communication between a non-English speaker and a person who speaks only English becomes almost impossible. As a result the poll worker may become angry, the voter frustrated or embarrassed and not vote.

Recent legislation in California and court orders in New York require the recruitment of bilingual poll workers, but this has not always been carried out adequately.

California law now requires county officials to recruit bilingual poll workers in precincts where 3 percent of the voting age population is non-English-speaking.[61] Nevertheless, in obtaining poll workers, the county clerk depends chiefly on word of mouth for publicity.[62] Not only were no special recruitment efforts made,[63] but interested and qualified Chicanos who requested assignments from the

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60. Affidavit of Rosa Stewart, Stewart v. Waller, Civil No. EC-73-42-S (N.D. Miss., filed May 3, 1973).

61. Cal. Election Code § 1611(c) (West Supp. 1974).

62. Staff interview, Calif., Nov. 6, 1974.

63. The job announcement on October 15 listed a job opening for Election Aide III ($3.052/hr.) or Election Aide II (($2.69/hr.). Nowhere did the announcement specifically advertise for bilingual elections aides.

county clerk were told that the quota was already filled.[64] Visits to eight polling places by a Commission staff member revealed that there were only two bilingual election officials, both at one precinct.[65] At one polling place in an elementary school, an election worker said: "We had a few voters who couldn't speak English, but we finally got through to them. We had some of the teachers come and help with interpretation."[66]

California has recently passed legislation that allows Spanish to be spoken at the polls. Nevertheless, a Commission staff person was told by one election official: "We are not supposed to speak Spanish, but someone can for the purposes of interpretation."[67]

According to John Saavedra, mayor of Soledad, California, older whites with "hard core anti-Chicano attitudes" generally work at the polls in Monterey County. Although some poll workers are bilingual, they are not given positions of major responsibility. A Chicano whom Saavedra had recommended worked at the last election but was not hired for the 1974 election.[68]

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64. Staff interview, Calif., Nov. 5, 1974.

65. Election day observation by Commission on Civil Rights staff, Calif., Nov. 5, 1974.

66. Ibid.

67. Ibid.

68. John Saavedra, Soledad, Calif., interview, Nov. 6, 1974.

One former candidate for New York city council criticized that city's efforts to obtain bilingual poll workers:

> In recent years a few Hispanos have been appointed poll workers but they are definitely not a good cross section of the community nor are their numbers proportionate to the total population.[69]

Congressman Herman Badillo also criticized the fact that there is an insufficient number of bilingual election workers. He pointed out that the burden of assisting the voter is borne by volunteer groups when it should be the responsibility of election officials.[70]

Despite assurances from Arizona officials which were accepted by the Department of Justice that bilingual election workers would be available where they were needed,[71] visits by a Commission staff member to several polling sites in November 1974 revealed that there were few, if any, bilingual workers in most precincts. At one precinct, the election inspector had to ask campaign workers to interpret for non-English-speaking voters several times during the day. In addition, only one of the election supervisors in the eight predominantly Chicano precincts visited was bilingual.[72]

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69. Yolanda Sanchez, New York City, N.Y., interview, Oct. 3, 1974.

70. U.S. Representative Herman Badillo, New York City, N.Y., interview, Oct. 3, 1974.

71. J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division, Department of Justice, letter to N. Warner Lee, Attorney General, State of Arizona, Oct. 3, 1974.

72. Election day observations by Commission on Civil Rights staff, Tucson, Ariz., Nov. 5, 1974.

The need for adequate assistance in the voter's language is perhaps best exemplified by the situation on November 5, 1974, at the Tuba City precinct on the Navajo Reservation in Coconino County. Since many Navajos do not speak or read English, they needed assistance in the use of voting machines and in translating the 10 propositions on the ballot. Even though there were 13 voting booths, there was only one interpreter to assist all the voters who needed help. Consequently the lines were 3 hours long throughout the day. Many people left without voting and indicated that they would not want to vote again because of the difficulties they encountered.[73]

INADEQUATE BILINGUAL INFORMATION AND MATERIALS

In the past the laws of most States required that most governmental proceedings, including elections, be conducted only in English.[74] Realization that bilingual materials are needed if a non-English-speaking voter is to cast an effective ballot is a recent phenomenon. Court cases in New York and other areas, and recent legislation in California and New Jersey have required bilingual assistance and translation of parts

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73. Robert Miller, attorney, Dinebeiina Nahiilna Be Agaditahe (DNA), Tuba City, Ariz., telephone interview, Nov. 13, 1974. DNA is a Navajo legal services organization.

74. For a State-by-State compilation of laws which discriminate against the non-English-speaking, see Arnold H. Leibowitz, "English Literacy: Legal Sanction for Discrimination," Notre Dame Lawyer, vol. 45 (1969), pp. 52-53.

of the voting instructions and the ballot.[75]

Of the three States under consideration which have substantial non-English-speaking populations, only California has a law requiring the translation of propositions and voting instructions into a language other than English. The translation must be posted in at least one conspicuous place at each polling site and be available for non-English speaking voters to use as sample ballots.[76] New York City is under court order to provide bilingual assistance, including personnel, publicity, ballots, signs, and other election materials.[77]

California county officials have yet to comply fully with the translation provisions. Before the 1972 election the secretary of state sent instructions on the use of the Spanish ballot to all county clerks.[78] Nevertheless, there was still confusion about its use during the 1974 election. In the instructions sent by Ernest A. Maggini, county clerk of Monterey County, to all election officers, the only instruction regarding the Spanish ballots was to "[p]lace...about the polling place...Spanish facsimile ballots."[79] Although the county offers

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75. For a discussion of recent legislation and litigation regarding bilingual developments, see chapter 2.

76. Cal. Election Code § 14201.5 (West Supp. 1974).

77. Torres v. Sachs, 381 F. Supp. 309 (S.D. N.Y. 1974).

78. Memo to the County Clerk and Registrar of voters from Edmund G. Brown, Jr., Secretary of State, Nov. 3, 1972.

79. Votomatic Election General Instructions to election officers, p. 2A.

training for election workers, attendance is voluntary and many do not attend and may not be aware of new legislation. The assistant registrar, who conducts the training, reported that she told the workers to "distribute the Spanish ballot around the precinct."[80]

No Spanish facsimile ballot was posted at any of the eight polling places in Monterey County visited by a Commission staff member on November 5, 1974. Asked about use of the Spanish ballot, some election officials did not know what they were to do with them; others said they were supposed to be placed on the tables and made available to people who asked for them.[81] According to some persons in the area, the existence of Spanish facsimile ballots is not well known by the Spanish speaking citizens, nor is the fact publicized by the county either in English or Spanish.[82]

In New York City, the election board is under court order to provide Spanish translation of the ballot.[83] According to one Puerto Rican candidate, translation for the September 10, 1974, primary was so inadequate that it created "confusion and disillusionment" among

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80. Doris J. Peterson, Salinas, Cal., interview, Nov. 6, 1974.

81. Election day observations by Commission on Civil Rights staff, Monterey Co., Cal., Nov. 5, 1974.

82. Staff interviews, Salinas and Soledad, Cal., Nov. 1974.

83. Torres v. Sachs, 381 F. Supp. 309, 312 (S.D. N.Y. 1974).

Puerto Ricans.[84] A New York Times article reported that it was "so full of mistakes that Spanish-speaking voters may be confused or seriously misled...."[85] Some of the voting instructions were at best ambiguous and, at worst, diametrically opposite to their meaning. For example,

> ...the English version tells voters to 'vote for any two' candidates for the Court of Appeals.... The Spanish tells voters to vote for 'cualquiera de los dos' [which means] any of the two.... [86]

Arizona has no law governing the use of bilingual voting materials. Chicano and Navajo leaders agree that such materials would be extremely helpful. A Tucson attorney active in civil rights work suggested that "complete, balanced information on elections and the issues involved should be the responsibility of the board of elections."[87] A local television station aired a half hour voter education class in Spanish prior to the 1974 election, but one politically active Chicano believes that "this should be an official function of those who are responsible for the participation of all people in the voting process."[88] The only official effort was a translation of a small section on the sample ballot

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84. Sanchez Interview.

85. New York Times, Sept. 10, 1974, p. 70.

86. Ibid. As required by law the Commission has offered the New York City election board the opportunity to reply to these statements. Its reply is included in appendix 7.

87. Morgan Interview.

88. Valdenegro Interview.

mailed to each voter listing three recent changes in election law. Neither the section on the use of the voting machine nor the propositions were translated. Several years ago Pima County prepared a leaflet with instructions in Spanish on the use of the Votomatic.[89] However, some election workers are not aware of the existence of this leaflet.[90]

Navajos are concerned about the lack of information in their native language. Suggestions include putting candidates' pictures on the ballots and the use of cassette recordings translating the ballot for non-English speaking voters. Apache County has not made any provisions, however, for making translations available.[91]

THE PROBLEMS OF ILLITERATE VOTERS

The Voting Rights Act Amendments of 1970 temporarily banned the use of literacy tests. Nevertheless, to make their votes effective illiterate voters must receive some type of aid at the polls in casting their ballots. Both the people permitted to assist illiterate voters and the kind and quality of the assistance they provide constitute serious problems for illiterate voters. There is a belief among some minority persons that a white poll worker assisting an illiterate

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89. The Votomatic is a voting device in which a stylus is used to indicate choices on a punch card using a booklet form ballot.

90. Election day observations by Commission on Civil Rights staff, Tucson, Ariz., Nov. 5, 1974.

91. Staff interviews, Window Rock, Ariz., July 1974.

minority voter will vote for the candidate the poll worker chooses, or advise the voter for whom to vote regardless of the voter's preference.[92]

The Mississippi State legislature repealed the provision regarding assistance to illiterates just prior to the passage of the Voting Rights Act of 1965.[93] A Federal court held that it was "the duty and the responsibility of the precinct officials at each election to provide to each illiterate voter who may request it such reasonable assistance as may be necessary to permit such voter to cast his ballot in accordance with the voter's own decision."[94] The State interpreted this to mean that illiterate voters could receive assistance only from election officials, although blind or disabled persons may receive help from a poll manager or other persons of their choice.[95] This distinction, however, has been held a violation of the equal protection clause of the 14th amendment.[96] The court declined to require that the assistance be provided by persons of the same race.[97]

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92. Staff interviews in Mississippi, Aug. 1974.

93. Miss. Code § 3212.7.

94. United States v. Mississippi, 256 F. Supp. 344 (S.D. Miss. 1966).

95. Miss. Code § 23-5-157.

96. James v. Humphreys County Board of Election Commissioners, Civil No. GC-72-70-K (N.D. Miss. Oct. 4, 1974).

97. Ibid., p. 30.

Straight party voting allows an elector to vote for a full slate of candidates in a particular party by pulling one lever on a voting machine or marking one box on a ballot. Where straight party voting exists, it allows illiterates who wish to vote for candidates of one party to vote with a minimum amount of assistance. Without straight party voting, the illiterate voter may have to receive assistance for each race or may not be able to finish voting because of time limits. For this reason, the Department of Justice approved Arizona's prohibition of straight party voting on the condition that adequate assistance would be available to minority voters and that sufficient time would be allowed for voting.[98]

Nevertheless, in the November 1974 election in Tucson, a Commission staff member observed a Chicana who was quite confused by not being able to vote a straight party ballot. She continued to ask for an explanation from an election supervisor who did not offer assistance but merely said, "I can't tell you how to vote, I can only tell you that straight party voting is no longer allowed."[99]

In Madison Parish, Louisiana, and Surry County, Virginia, poll workers reportedly do not assist black illiterate voters but instead, leave them alone so that they will make a mistake and disqualify their ballot.[100]

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98. J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, letter to N. Warner Lee, Attorney General, State of Arizona, Oct. 3, 1974.

99. Election day observation by Commission on Civil Rights staff, Tucson, Ariz., Nov. 5, 1974.

100. Zelma Wyche, Chief of Police, Tallulah, La., interview, Sept. 3, 1974; M. Sherlock Holmes, Chairman, Surry County Board of Supervisors, Surry, Va., interview, July 9, 1974.

A black political leader in South Carolina alleged that in the July 1974 primary a white candidate had paid his campaign workers to masquerade as election officials at the polls. These people saw how illiterates voted and in some instances took ballots from them and cast them themselves.[101] He further noted that in Hampton County campaign workers for a white candidate allegedly took illiterates into the booths and marked their ballots for them.[102]

Two incidents involving illiterate voters reportedly occurred in Macon County, Georgia, in the September 1974 primary. In one case two blacks asked for assistance from a poll worker. She said that the first man, after voting, could help the second, even though both required assistance. In another case a voter was receiving assistance when a poll worker pulled the lever to open the curtain before the voter was finished.[103]

ABSENTEE VOTING

Problems with absentee voting were reported in many of the States visited by Commission staff. Because the process is very complex, there is ample opportunity for abuse. Blacks report that they have more difficulty obtaining absentee ballots than whites. Blacks look suspiciously at the large number of white absentee voters compared to

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101. George Hamilton, former executive director, South Carolina Human Relations Commission, Walterboro, S.C., interview, July 27, 1974.

102. Ibid.

103. James Interview.

black, as well as at the vote totals giving white candidates substantial majorities in the absentee vote count. In some close elections this has meant defeat for black candidates.

All States allow absentee voting for certain groups of voters, including the military, students, sick people, institutionalized persons, and those who are out of the county on business or vacation.[104] A person wishing to vote absentee may obtain an application either in person or by mail from the county registrar. The application usually contains an oath or affidavit of identity and eligibility that must be signed before a notary public. The application is returned and the person's signature verified by the appropriate county official. The ballot, instructions, and special envelopes are then mailed to the voter. If the oath is taken before a county official, these materials may be obtained in person.

The voter must mark the ballot in the presence of, but not in view of, a county official if in person, or a notary public if to be mailed, and place it in the envelope according to specific instructions. On

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104. This explanation is not meant to present the procedures for any particular State but only to demonstrate the complexity of the process. It is based on the following sections from State Election Codes: Code of Ala., Tit. 17 § 64(15) to 16-64(34) (1959); A.R.S. § 16-1101 to 16-1110 (Supp. 1974); Cal. Election Code § 14600 to 14634 (West 1961); Ga. Code Ann. § 34-1401 to 34-1411 (1970); L.S.A.-R.S. 18:1071 to 18:1081 (1969); Miss. Code § 23-9-401 to 23-9-613 (Supp. 1974); N.Y. Election Law § 117 to 130 (McKinney, 1974-75); N.C. Election Laws § 163-226 to 163-253 (Supp. 1974); S.C. Code Ann. § 23-441 to 23-449.41 (Supp. 1973); Va. Code Ann., § 24.1-227 to 24.1-234 (Supp. 1974).

the outside of the sealed envelope is usually a ballot affidavit, which is to be executed by the official or notary. The ballot is then placed in an outer envelope and mailed or given to the county official. Absentee ballots, usually due prior to or on election day, are counted separately after the close of the polls. The whole process usually must be completed within 30 days, including mailing time.

Blacks in Madison Parish, Louisiana, brought suit in Federal court to void the 1970 Democratic primary in Tallulah.[105] If only votes cast in person had been counted, blacks would have won every office in which they were candidates. Only two of the nine blacks won election, however. The victorious whites won by margins ranging from 24 to 104 votes, all provided by absentee ballots. Of the 222 absentee ballots cast, 62 were cast by whites whose eligibility to vote absentee should have been challenged under Louisiana law, but the county registrar had failed to do this.

Though a Federal court set aside the election,[106] a panel of the Fifth Circuit Court of Appeals reinstated its outcome.[107] The full Fifth Circuit Court of Appeals agreed with the lower court,[108] but by then it was almost time for the regularly scheduled election in 1974.

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105. For a discussion of discriminatory purging prior to this election, see chapter 4, pp. 87-89.

106. Toney v. White, 348 F. Supp. 188 (W.D. La., 1974).

107. 476 F.2d 203 (5th Cir.).

108. 488 F.2d 310 (5th Cir. 1973) (en banc.).

In the 1972 municipal election in Fort Valley, Georgia, three blacks were defeated by whites in the runoff on the strength of absentee votes. In 1973 the Department of Justice filed suit to overturn the election, alleging that city officials had allowed ineligible white voters to cast absentee ballots.[109] Although the court declined to set aside the election, it enjoined the city officials from issuing absentee ballots to nonresidents of Fort Valley and from issuing them on grounds of disability without a medical certificate. All future applications must show the reason the voter required an absentee ballot.[110]

In Talbot County, Georgia (68 percent black), irregularities with absentee ballots allegedly occurred in the June 1973 special election for school superintendent between a white teacher and a black principal. There were only 15 days between the white candidate's announcement and the deadline for receiving absentee ballots. Blacks believe that there was not enough time for the 102 people to receive absentee ballots and return them either in person or by mail. Most of the margin of victory for the white candidate came from absentee votes.[111]

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109. Complaint, pp. 5-8, United States v. Anthone, Civil No. 2872 (M.D. Ga., filed June 29, 1973).

110. United States v. Anthone.

111. Bob Marvin, Voter Education Project, letter to Lawrence Guyot, Jr., attorney, Lawyers' Committee for Civil Rights Under Law, Washington, D.C., June 28, 1973 (copy in Commission on Civil Rights files).

In the 1972 general election in Wilcox County, Alabama (68.5 percent black), the count of absentee ballots showed the white candidate for county commissioner receiving 178 votes, the black candidate, 2. The black candidate would have won by more than 100 votes had it not been for the absentee votes.[112] Subsequent investigation indicated that blacks had great difficulty even obtaining absentee ballots. According to a black attorney, county officials

> ...always found something wrong with black applications for absentee ballots, they were signed wrong...or they checked the wrong box ....This never happened to whites...their applications weren't rejected...and perhaps 200 absentee ballots were mailed to whites.[113]

In addition, a black poll watcher charged that people known to be sympathetic to the black candidates but unable to vote in person did not receive absentee ballots at all or received them too late to be returned in time to be counted.[114]

John Hulett, black sheriff of Lowndes County, Alabama, said that many blacks had trouble voting absentee. In the 1972 election blacks who were ill had difficulty obtaining a doctor's certificate to allow them to vote absentee. The attitude of the doctors purportedly was that "people should be able to go out on their own and vote."[115] All doctors in Lowndes County are white.

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112. Threadgill and McCarthy Interview.

113. Henry Sanders, Selma, Ala., interview, Sept. 4, 1974.

114. Threadgill and McCarthy Interview.

115. Hulett Interview.

In Eutaw, Greene County, Alabama, blacks charged that in the 1972 municipal election, in which white candidates won all offices, white election officials had violated various State laws concerning absentee voting.[116] The blacks contended that the official list of qualified voters was not published in the county paper prior to the election, as required by Alabama law;[117] a separate list of absentee voters was not made; and absentee ballots were not separated from other ballots.[118] The NAACP field office forwarded the complaint to the Department of Justice on August 16, 1972, and asked to be informed of further action.[119] On August 20, 1972, the Department acknowledged the NAACP letter, saying that they would investigate and

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116. O. B. Harris, chairman, Investigating Committee, Eutaw Chapter NAACP, letter to the Rev. K. L. Buford, Alabama Field Director, NAACP, Tuskegee Institute, Ala., Aug. 10, 1972 (copy in Commission on Civil Rights files).

117. Code of Ala., Tit. 17 § 38 states that a list of qualified electors by precinct shall be published by April 15 in some newspaper with a general circulation in the county.

118. Code of Ala., Tit. 17 § 64 (Supp. 1973) requires that by March 15 of each year a list of absentee voters of each county be filed with the county probate judge and the secretary of state. The ballots of these voters must be placed in an absentee box and nowhere else.

119. The Rev. K. L. Buford, letter to Gerald W. Jones, Chief, Voting and Public Accommodations Section, Civil Rights Division, U. S. Department of Justice, Washington, D.C., Aug. 16, 1972 (copy in NAACP Field Office files, Tuskegee Institute, Ala.).

inform the NAACP if they found grounds for complaint.[120] No further reply had been received as of September 4, 1974.[121]

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The Voting Rights Act of 1965 has had a great impact on the opportunity of minority persons to vote. The number of overt actions to exclude them on the part of white officials has decreased substantially. Nevertheless, abuses of the past have left scars on the memories of many minority group members. Furthermore, certain methods used by county officials and poll workers have the intent or the effect of convincing them not to vote or making their votes less effective. This chapter has been concerned with several of these methods which discourage or inhibit minority voters. In the areas covered by the Voting Rights Act many Puerto Ricans, Native Americans, Mexican Americans, and blacks believe that these attempts to discourage them from voting will continue as long as there are barriers which keep them from gaining political office.

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120. Gerald W. Jones, Chief, Voting and Public Accommodations Section, Civil Rights Division, U.S. Department of Justice, Washington, D.C., letter to the Rev. K. L. Buford, Alabama Field Director, NAACP, Tuskegee Institute, Ala., Sept. 20, 1972 (copy in Commission on Civil Rights files).

121. The Rev. K. L. Buford, Ala. Field Director, NAACP, and Rufus C. Huffman, NAACP Education Field Director, Tuskegee Institute, Ala., interview, Sept. 4, 1974.

6. BARRIERS TO CANDIDACY

Since the passage of the Voting Rights Act of 1965 minority citizens have begun to seek elective office in ever-increasing numbers. To a great extent whether they are elected or not depends on the same factors that determine whether any candidate is elected. But minority candidates also face problems which other candidates typically do not have.

Minority candidates are more likely than white candidates to feel helpless in trying to cope with the difficulties of running for office. As a group they are inexperienced at politics. Moreover, they do not have the luxury of assuming the good will of officials whose cooperation is necessary. Unlike whites they start as outsiders in the political process and do not have the practical experience of coping with the inevitable problems of a political campaign. Intensifying these problems in many rural areas is a shortage of lawyers who are able and willing to defend the political rights of minorities and to give legal guidance to minority candidates.

The problems which minority candidates encounter range from structural problems, like expensive filing fees or legal restrictions on third party or independent candidates, to problems of the abuse of discretion, such as the dishonest counting of votes.

Some of the events described may strike the reader as minor and the complaints petty. This is not how they are viewed by those who experience them. They may affect the outcome of an election and are even more likely to discourage future candidates, reinforcing the notion that minorities should stay away from politics.

FILING FEES

Typically a candidate for office must pay a fee as part of the qualifying process. Because minorities are more likely to be poor than whites, a substantial filing fee is a more significant barrier to them. Even when a minority candidate is able to pay the fee, that much money is taken away from the campaign effort.

Two justifications are given for fees: They help meet the expenses of elections, and they deter frivolous candidates from running. There are, of course, other ways to finance an election and other ways--such as petition requirements--to limit the field to serious candidates. Moreover, fees do nothing to deter the frivolous candidate who happens to be rich.[1]

The fact that filing fees are set or administered by political party committees does not exempt them from the scrutiny of the courts under the 14th and 15th amendments. The fees are an integral part of the electoral

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1. See Lubin v. Panish, 415 U.S. 709 (1974), and Harper v. Vance, 342 F. Supp. 136 (N.D. Ala. 1972).

system which is controlled by the State and thus requiring a fee is "state action" for constitutional purposes.[2]

Because a change in the method of qualifying to run for office is a change with respect to voting, it is subject to the requirements of section 5 of the Voting Rights Act.[3] It must be submitted either to the United States District Court for the District of Columbia or to the Attorney General for a determination that its purpose is not discriminatory and that it will not have a discriminatory effect. Under section 5 the Attorney General has objected to fees and to other qualifying requirements that might be burdensome for minorities.[4]

Recent decisions of the Supreme Court of the United States have made highly questionable the legal standing of more than a nominal filing fee where there is no readily accessible alternative to paying the fee.[5] Yet the barrier to minority candidates of substantial fees has not been removed in many jurisdictions. Where increases in fees have been prevented

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2. Bullock v. Carter, 405 U.S. 134, 140 (1972). See Smith v. Allwright, 321 U.S. 649 (1944), and Terry v. Adams, 345 U.S. 461 (1953).

3. See discussion of section 5, chapter 2, pp. 25-31.

4. But see Washington Research Project, The Shameful Blight: The Survival of Racial Discrimination in Voting in the South (Washington, D.C., 1972), pp. 72-73 (hereafter cited as Shameful Blight) for a description of Department policy in the past.

5. See Lubin v. Panish and Bullock v. Carter.

or already substantial fees lowered it has been through the time- and resource-consuming efforts of private litigation, through the aid of section 5, or through a combination of the two.

In 1970 a Federal court found the qualifying fee for candidates for the Mobile, Alabama, city commission unconstitutional.[6] Two percent of the commissioner's salary, or $360, was required. In response to the court's decision the city created two alternatives to the fee: a petition containing the names of 2,000 registered voters or a pauper's oath. In August 1973 the Attorney General objected under section 5 to these alternatives.[7] The petition put a greater burden on blacks than whites because there are fewer blacks than whites in the city. The pauper's oath did not relieve the financial burden of the fee on those who were not totally destitute. The Attorney General withdrew his objection after the city revised its oath and agreed to interpret it liberally, allowing anyone who shows a reasonable inability to pay the fee to use the oath.[8]

In 1970 the Georgia legislature set the qualifying fee for the general assembly at $400. For other State and local offices the fee was set at 5 percent of the annual salary for the office.[9] The Attorney General did

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6. Thomas v. Mims, 317 F. Supp. 179 (S.D. Ala. 1970).

7. Objection letter, Aug. 3, 1973.

8. Section 5 summary for Oct. 10 and Oct. 24, 1973. The city was also allowed to reinstate the petition requirement, although no reason was given for this change in attitude on the part of the Attorney General.

9. Ga. Code. Ann. § 34-1013 (1970).

not object to this schedule of fees when it was submitted in 1970,[10] but in Fulton County a court struck down the 5 percent requirement in 1972.[11] In 1973 the 5 percent requirement was still being applied elsewhere in Georgia. For example, candidates for county superintendent of education in Talbot County in 1973 were required to pay a fee of $600.[12] The legislature in 1974 reduced the fee to 3 percent and allowed qualifying by a petition as an alternative.[13]

Fees have also been reduced through section 5 objections or litigation in Ocilla and Albany, Georgia, and in Rock Hill, South Carolina. Increases in fees in Ocilla and Albany were disallowed by the Attorney General.[14] A Federal court struck down the $818 filing fee for the office of mayor in Rock Hill, South Carolina.[15]

Section 5 has been useful as a bargaining tool in preventing fees from being raised. The city of Bessemer, Alabama, adopted a $50 qualifying

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10. Non-objection letter, May 22, 1970.

11. The court ordered the name of a candidate placed on the ballot though he had not paid a fee of $1,006. Price v. Fulton County, Civil No. B-75710 (Super. Ct. of Fulton Co., Ga., June 29, 1972).

12. Talbotton New Era, June 14, 1973, p. 1.

13. Act No. 757, H.B. 227, 1974 General Assembly. The new provision has not yet been cleared under section 5.

14. Ocilla, Ga.: June 27, 1972. Albany, Ga.: Dec. 7, 1973.

15. Agurs v. Reese, Civil No. 73-1411 (D.S.C. Nov. 6, 1973).

fee for commission candidates, reportedly to discourage "spurious candidates." When informed by the Legal Evaluation Action Project that the new fee would have to be submitted to the Attorney General, the fee was rescinded.[16]

In many other areas, however, minorities are still burdened by qualifying fees. Zelma Wyche, chief of police, Tallulah, Louisiana, and president of the Madison Voters League, reported that filing fees in the parish have been raised repeatedly since 1966. Until that year, he said, fees had always been set at the minimum allowed by State law. As more and more blacks have run for office the Democratic Party executive committee has raised the fees, which are now at the maximum allowable.[17] No change in fee from the parish has been submitted to the Attorney General under section 5 of the Voting Rights Act.[18] Wyche further alleged that this tactic is widespread in other parts of Louisiana.[19]

In 1968 the Louisiana legislature passed special legislation setting the filing fees for offices in Caddo Parish. The fee required for members of the legislature, sheriff, clerk of court, treasurer, coroner, and district judge was $250. For police jury and school board a fee of $75

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16. Walter Jackson, director, Legal Evaluation Action Project, Birmingham, Ala., interview, July 17, 1974.

17. Zelma Wyche, Tallulah, La., interview, Sept. 3, 1974.

18. Section 5 Printout, as of May 8, 1974.

19. Wyche Interview.

was set; for constable and justice of the peace, $25.[20] This provision has not received section 5 clearance.[21]

A black candidate for the Louisiana State Senate, Mrs. Annie Smart, who is the mother of 13 and a welfare activist, reportedly attempted to be excepted from the qualifying fee requirement to run in the primary but was unsuccessful. Exceptions for indigents were only made for delegates to the Democratic Party national convention. The fee for the senate can be as much as $500.[22]

OBSTACLES TO QUALIFYING

The informal qualifying requirements can be as great a barrier to potential minority candidates as the formal. At the outset they may find it difficult to obtain the required information on the legal requirements of candidacy. In some instances they may encounter a lack of cooperation or resistance from officials to their candidacy. A variety of other difficulties--rarely twice the same--can prevent minorities from becoming viable candidates.

In 1972 a black businessman who had been active in registration efforts among blacks attempted to run for the city council in a small town in Sussex County, Virginia. When he and another black candidate filed their

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20. L.S.A.-R.S. 18:311 (1968).

21. Section 5 Printout, as of May 8, 1974.

22. David Robinson, school board member, East Feliciana Parish, La., interview, Aug. 17, 1974.

petitions on the last day for filing they were assured by the clerk at the courthouse that nothing more had to be done in order to qualify. Subsequently, the two candidates were informed that they had not satisfied the recently enacted requirement of naming a campaign treasurer and, therefore, their names would not appear on the ballot on election day.[23]

In the most recent county elections in Humphreys County, Mississippi, held in 1971, blacks had great difficulty finding out how to qualify. One prospective candidate phoned the circuit clerk to find out how to run for the county board of education. He told a Commission interviewer that the clerk claimed not to know the answer or whom he should ask. The chairman of the election commission was also uncooperative, he reported. Another prospective candidate succeeded in getting information only with the assistance of an attorney from the Lawyers' Committee for Civil Rights Under Law in Jackson.[24]

Blacks reportedly also have difficulties obtaining information about qualifying to run for office in Sharkey County, Mississippi. According to one person active in black political efforts in the county, election information appears in the newspaper only a few days before the deadline

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23. Wiley Mitchell, Waverly, Va., and the Rev. Curtis Harris, Hopewell, Va., interviews, July 9, 1974. A State court denied them relief because they had not exhausted administrative remedies.

24. Sam Liddell and Kermit James, Humphreys Co., Miss., interviews, Sept. 4, 1974.

for qualifying. For example, before the 1973 municipal election in Rolling Fork, the county seat, a newspaper notice of the election appeared only 2 days before the deadline. County officials, a Commission interviewer was told, make it hard for blacks to participate in politics by denying they have information that potential candidates need.[25]

In Wilcox County the probate judge has attempted to make it more difficult for blacks to run for office by giving them inaccurate information, according to an active member of the National Democratic Party of Alabama, a predominantly black party. He told a potential challenger for his position that the filing fee was higher than it actually was.[26]

Blacks have also reported difficulties in obtaining information about running for office in Southampton[27] and Greensville Counties,[28] Virginia, Tensas Parish, Louisiana,[29] and Camp Hill, Alabama.[30]

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25. Staff interview, Sharkey Co., Miss., Sept. 1974.

26. Albert Gordon, Camden, Ala., interview, Sept. 5, 1974.

27. Staff interview, Southampton Co., Va., July 10, 1974.

28. Moses Knox, chairman, Greensville County NAACP, Emporia, Va., interview, July 11, 1974.

29. Woodrow Wiley, police juror, Tensas Parish, Waterproof, La., interview, Sept. 5, 1974.

30. Lewis Martin, Camp Hill, Ala., letter to the Rev. K. L. Buford, Alabama Field Director, NAACP, Tuskegee Institute, Ala. (n.d., refers to the Aug. 8, 1972 municipal election) (copy in Commission on Civil Rights files).

An unsuccessful black candidate for county commissioner in Macon County, Georgia, in 1974, told a Commission interviewer that William F. Blanks, chairman of the county Democratic executive committee, had tried to discourage him from running. The candidate said that when he went to see him at his office, Blanks treated him discourteously and argued that he should not run. Blanks reportedly told the candidate that the other commissioners would not work with him and that he did not have the proper knowledge and sufficient time for the job. In addition, at a meeting Blanks reportedly had said that they "could not afford to let this damn nigger win."[31] At the time Blanks was also the vice chairman of the Georgia State election board.[32]

In 1974 Dorothy Jones ran for school board in East Carroll Parish, Louisiana, but only with difficulty, according to the president of East Carroll Citizens for Progress. Because Jones, who had taken the name of her common-law husband, had registered to vote under her maiden name, Dorothy Lee, the local newspaper questioned whether she was a registered voter and thus eligible to be a candidate. The Democratic county executive committee disqualified her and returned her filing fee. Later, after blacks in the parish had hired a lawyer, the committee agreed to let her run.[33]

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31. Staff interviews, Montezuma, Ga., Sept. 1974.

32. As required by law the Commission has offered Mr. Blanks the opportunity to reply to these statements. His reply is included in appendix 7.

33. Theodore Lane, Lake Providence, La., interview, Sept. 4, 1974.

In 1971 Casey Clark ran for sheriff in Sharkey County, Mississippi. According to persons knowledgeable about the political efforts of blacks in the county, an attempt was made by whites to disqualify Clark by hiding narcotics in his car. Local police tore his car apart in search of the narcotics which had allegedly been planted. He subsequently left the area.[34]

In 1973 Doug Durant was a candidate for city council in Itta Bena, the second largest town in Leflore County, Mississippi. According to a leader of the county voters league, local officials tried to prevent Durant from qualifying for the race on the ground that he had served time in the State prison. In fact, it was someone else with the same surname in a neighboring county who was the ex-felon. Durant was allowed to run but allegedly received "threats" of an unspecified nature.[35]

Florence Farley, a candidate in the 1973 municipal election in Petersburg, Virginia, reported that her opponent sought to have the title M.D. placed after his name on the ballot. When she asked to have her profession, psychologist, listed, the board of electors refused. Only after she threatened court action did the board agree to drop her opponent's title.[36] When a black ran for a second term on the Southampton

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34. Staff interviews, Sharkey Co., Miss., Sept. 1974.

35. William McGee, Leflore Co., Miss., interview, Aug. 8, 1974.

36. Florence Farley, former councilmember, Petersburg, Va., interview, July 9, 1974.

County, Virginia, board of supervisors in 1972, he was listed on the ballot by his first name although he is generally known in the community by his initials and would have preferred their use on the ballot. He lost the election by 16 votes.[37]

CAMPAIGNING

Once the qualifying obstacles have been hurdled, the minority candidate still faces the campaign necessary to get elected. A particularly bothersome problem for minority candidates, who are often new to politics, is how to get the information necessary for a serious campaign from officials who are uncooperative.

One prerequisite to an effective campaign and a fair election is that a candidate know who his or her opponent is. Without this basic knowledge the candidate will not be able to campaign effectively or know how much effort to expend. Voters have on their part as great an interest in knowing who the candidates will be. It is, therefore, reasonable to have some regulation of write-in candidates to guard against surprise and to assure that such a candidate meets the statutory requirements for filling the office.[38]

In Stewart County, Georgia, a black, David White, ran unopposed in the August 1974 primary for the Democratic nomination for school board

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37. Staff interview, Southampton Co., Va., July 1974.

38. See Byrd v. Short, 228 Ark. 369, 307 S.W.2d 871 (1957).

in the majority black Louvale district.[39] At that time there was some suspicion in the black community that there would be a write-in campaign for a white candidate in the general election.[40] Rumors circulated in the black community prior to the election that such a campaign was under way, but no confirmation could be obtained from county officials.[41]

On election day the write-in effort was still a secret withheld from the black community. At the Louvale polling place no black election workers and no black poll watchers were present during the voting or the count. The tally showed that Raymond Miller, a white, had received 59 votes and David White, 58.[42] Miller, however, had failed to satisfy the 20-day notice requirement for write-in candidates contained in Georgia law.[43] Representatives of the black community suspected also that the vote totals were rigged. They have complained to the Department of Justice and sought the assistance of Georgia Legal Services.[44]

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39. Charles L. Rodgers, former school board candidate, Richland, Ga., interview, Aug. 15, 1974.

40. Joseph B. Williams, president, Stewart County Movement, Louvale, Ga., telephone interview, Aug. 15, 1974.

41. Robert Mants, Voter Education Project, Albany, Ga., telephone interview, Nov. 12, 1974; Williams, telephone interview, Nov. 13, 1974.

42. Ibid.

43. Ga. Const. Art. 2., § 7, par. 1.

44. Williams Interview, Nov. 13, 1974; Mants Interview; staff attorney, Voting Section, Civil Rights Division, Department of Justice, telephone interview, Nov. 12, 1974; Dan Steer, attorney, Georgia Legal Services, Columbus, Ga., telephone interview, Dec. 6, 1974.

While not knowing the name or even the existence of one's competitor is an extreme problem, more prosaic information problems also inhibit the campaigns of minority candidates. One necessary ingredient of a successful campaign is a list of the registered voters, which tells the candidate whom he has to reach and who can be ignored.

A leader of the Leflore County (Mississippi) Voters League told a Commission interviewer that black candidates in that county were not allowed to have a certified list of registered voters. Blacks had to copy names from the official list themselves and could not prove the registration of challenged black voters at the polls because they did not have the certified list.[45]

Black candidates in St. Helena Parish, Louisiana, were also unable to obtain a list of registered voters from the registrar. A black leader in the parish reported spending many days handcopying names of registered voters from the parish books.[46]

The Tucson manager for the 1974 Arizona gubernatorial campaign of Mexican American Raul Castro reported that Castro campaign workers received "very, very rude" treatment from the Pima County Recorder's office when they went there for information or assistance. "They reacted like they were being bothered by these requests."[47]

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45. McGee Interview.

46. Pearl Bryant, St. Helena Parish, La., interview, Aug. 17, 1974.

47. R. Dan Valdenegro, Tucson, Ariz., interview, Nov. 7, 1974.

ACCESS TO VOTERS AT THE POLLING PLACE

To preserve the neutrality of the polling place States prohibit campaigning within the place of voting itself and usually limit campaign activities in the vicinity of polling places. Such regulations are a necessary safeguard, but, if carried to extremes, they can infringe upon the candidate's right to communicate with the voter. Traditionally, candidates take advantage of the polling place on election day as the last chance to communicate with the voter. Overly restrictive regulations can be especially burdensome for minority candidates. They are less likely than whites to be incumbents and therefore need more publicity. In addition, they often have less money for their campaigns and consequently are less able to reach the voter through television, radio, and newspaper advertising.

While Alabama believes that keeping a distance of 30 feet from the polls clear of campaign activity is sufficient, Louisiana has a 300-foot limit; Georgia, 250 feet; South Carolina, 200 feet; and Mississippi, 150 feet.[48] Such distances can often prevent the campaign worker from having any contact with the person going to vote. Even more serious are the instances in which the statutory prohibitions of campaigning within a certain distance of polling places are enforced in a way that discriminates against minority candidates.

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48. Code of Ala., Tit. 17 § 144 (Recomp. 1958); L.S.A.-R.S. 18:1534; Ga. Code Ann. § 34-1307; S.C. Code Ann. § 23-658 (1952); Miss. Code § 23-3-17 (1972).

The campaign of Raul Grijalva, a Mexican American elected to the Tucson, Arizona, school board in November 1974, encountered difficulties because of heavy-handed enforcement of regulations on campaigning near polling places. Under Arizona law posters may be placed no closer than 150 feet from a polling place.[49] At the Santa Cruz Church School polling place the sign indicating the 150-foot limit appeared to Grijalva campaign workers to be about 250 or 300 feet away. Campaign workers requested that the sign be moved. Instead two police cars arrived. The workers were threatened with arrest but, though they were told three times that they were under arrest, they were never taken into custody. The signs were moved, but not enough to satisfy the campaign workers. By 1:30 p.m., when a representative of the county attorney's office arrived with a tape measure, the campaign workers had gone to another polling place.[50]

At the Manzo School polling place the election marshal tried to prevent Grijalva campaign workers from passing out their literature. In response to his request they indicated that they were beyond the sign marking the 150-foot limit.[51] They were allowed to stay. At three other polling places[52] Grijalva workers protested to marshals that the signs

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49. A.R.S. § 16-862.

50. Election day observations by Commission on Civil Rights staff, Tucson, Ariz., Nov. 5, 1974.

51. While Arizona law prohibits posters within 150 feet of the polling place, campaign workers are allowed as close as 50 feet. A.R.S. § 16-862. This distinction was apparently not observed at some polling places.

52. Tully School, No. 37; Menlo Park, No. 19; Pueblo Gardens, No. 85.

had been placed without proper measurement and were located too far away from the polling place.[53]

In Greensberg, Louisiana, a polling place official, who happened to be the son-in-law of one of the white candidates, vigorously enforced the 300-foot rule. The one black candidate sat most of the day behind a post on a porch across the street from the poll. She was prevented from communicating with her poll watchers unless they came out to see her. The official, however, had frequent conferences with his father-in-law, apparently keeping him informed of all the events inside the poll.[54] At several other polling places in the parish campaign posters for white candidates were observed within the 300-foot limit.[55]

On election day in 1973 in Petersburg, Virginia, law enforcement officers stationed at the polling places removed signs of black city council candidates that they said were posted illegally but did not touch signs in the same area belonging to white candidates.[56]

Campaign workers for a black candidate in Moss Point, Mississippi, in 1973 were standing beyond the State's 150-foot limit while distributing sample ballots on election day. Nevertheless, "they were repeatedly

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53. Election day observations.

54. Election day observations by Commission on Civil Rights staff, St. Helena Parish, La., Aug. 17, 1974.

55. Ibid.

56. The Rev. Clyde Johnson, councilman, Petersburg, Va., interview, July 8, 1974.

harassed by police officials, who said that they did not have a right to hand out such ballots."[57]

In Stewart County, Georgia, in the August 1974 primary, a "checkoff" worker for Charles Rodgers, unsuccessful black school board candidate, was not allowed to sit outside the Louvale polling place checking off the names of persons who entered to vote. In addition, although Rodgers' white opponent, J. D. Richardson, was allowed to enter the polling place freely during the day to check the voting machines, which were being used for the first time in Louvale, Rodgers was not.[58]

Lynmore James, who lost in his bid to become a commissioner of Macon County, Georgia, in 1974, complained of partiality shown to his opponents by the election officials. At the Montezuma polling place James requested a table for the use of his checkoff people. He was told that none was available. When his opponent asked for a table, one that was being used for refreshments was made available immediately. Later, the polling place manager bought refreshments for the other election workers and for the checkoff people for James' opponent, but not for James' checkoff people.[59]

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57. Affidavit of Billy Frank Broomfield, Stewart v. Waller, Civil No. EC-73-42-S (N.D. Miss., filed May 3, 1973).

58. Williams Interview, Aug. 15, 1974; Rodgers Interview.

59. Lynmore James and others, Montezuma, Ga., interview, Sept. 4, 1974.

POLL WATCHERS

It is traditional in the United States for political parties and candidates for public office to have poll watchers at primary and general elections. While the election officials are expected to run a fair election, the poll watcher is present as the advocate for a party or candidate--to challenge ineligible voters, to point out the errors in the conduct of an election that are inevitable on a long election day, and in general to assure that the candidate or the party and its supporters are treated fairly. Just as important are representatives at the count of the vote to assure that the votes are counted accurately and that disputes over ballots are resolved in the desired direction.

If the candidate is a black in the South who has no reason to trust the honesty of election personnel, the need to be represented when the votes are cast and counted becomes urgent. Despite this clear need--and in some cases because of it--black candidates have in some elections been unable to have poll watchers present for either the voting or the counting. In some instances watchers were present but not as many were allowed as were needed, they were not allowed to be effective, or they received less cooperation than did poll watchers for white candidates.

One example of an attempt to exclude a poll watcher for a black candidate from a polling place altogether comes from a special election in 1974 in Adams County, Mississippi. The white poll manager of one polling place would not let in the poll watcher for the black candidate

for county supervisor until after 10:00 a.m., 3 hours after the polls opened.[60]

In another incident which occurred during the 1974 election in Mississippi two poll watchers for a black candidate for school board in Copiah County were arrested. The poll watchers had tried unsuccessfully to challenge white voters who allegedly were not qualified to vote in the county school board election and to ensure that qualified black voters were given the proper ballot.[61]

In Wilcox County, Alabama, in 1972 black poll watchers at some polling places were either excluded from the polls entirely or otherwise hampered. In Pine Hill, a village in the western part of the county, the polling place was located in a store owned by a white. Shortly after the poll watcher for a black candidate arrived, he was ordered off the property by the store owner. He spent the day standing on the road in the rain about 10 or 15 feet from the store.[62]

Juanita White, a defeated black candidate for the South Carolina State House in 1974, reported that one of her poll watchers was forceably barred from a polling place by a white candidate.[63]

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60. Frank R. Parker, attorney, Lawyers' Committee for Civil Rights Under Law, Jackson, Miss., letter to David H. Hunter, U.S. Commission on Civil Rights, Nov. 8, 1974.

61. Ibid.

62. The Rev. Thomas L. Threadgill and Charles McCarthy, community leaders and former candidates, Wilcox Co., Ala., interview, Sept. 5, 1974.

63. Juanita White, Hardeeville, S.C., interview, Sept. 6, 1974.

Even when poll watchers for black candidates are not physically excluded from the polling place, they frequently encounter isolation from the activities that they are to watch. In effect, they serve at the pleasure of the manager of the poll to which they are assigned.

According to the chairman of the Leflore County (Mississippi) Board of Election Commissioners, "anyone may observe an election but if they interfere the State statute allows poll workers to eject them."[64] A poll watcher's standing too close or looking over a poll worker's shoulder would be grounds for ejection.[65]

A black resident of Moss Point, Mississippi, was assigned to be a poll watcher during the March 1974 municipal election. She was instructed by the precinct manager of the old City Garage polling place to sit at a location about 30 feet from the ballot box. Later she moved closer to the ballot box and was able to remain there until the polls closed.[66]

Similarly, a black who was defeated in a race for a county board of supervisors in Virginia in 1972 reported that his watcher at the election was not permitted to be behind the table where the voters' names were checked off. He was thus unable to verify that the persons who voted were actually on the voters' list. He could only observe

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64. George Dulin, Chairman, Leflore County Board of Election Commissioners, Greenwood, Miss., interview, Aug. 7, 1974.

65. Ibid.

66. Affidavit of Melodie Shelton, Stewart v. Waller.

who went in and out of the voting booth. He was also not allowed to observe the counting of the ballots.[67]

The poll watcher who actually is close enough to observe the conduct of the election may see seriously improper behavior. A watcher for a black candidate in Moss Point, Mississippi, in 1973 has sworn:

> On at least two occasions white voters at the community center stated aloud that they weren't sure who they should vote for.... [T]he precinct manager--who was a white woman--wrote a name on a slip of paper and handed it to these voters. On one of these two occasions I was close enough to see that the name of a white candidate was written on the piece of paper.[68]

Equally important as representation during voting is representation after the polls have closed and the votes are being counted. Black candidates whose poll watchers have been excluded from this phase of the election day process often suspect that the votes have not been counted honestly.

During the 1972 election in Pine Apple, in the southeastern corner of Wilcox County, Alabama, the white election officials told the black poll watcher that the votes would not be counted that night. Arriving at the polling place in the morning, he found the results of the election posted on the door.[69] At another site, it was reported that shortly before the poll was to close the black poll watcher stepped outside to his

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67. Staff interview, July 1974.

68. Affidavit of Melodie Shelton, Stewart v. Waller.

69. Threadgill and McCarthy Interview.

car to get a pack of cigarettes and on his return found the door locked and whites inside busy counting the votes. Blacks in the county expressed the belief that a white poll watcher would not have been treated in this fashion.[70]

A similar incident was reported in Lafayette, Alabama, during the municipal elections of August 1972. According to the Chambers County branch of the NAACP, the black poll watchers were sent home at the close of the polls. The doors were then locked, the voting machines unlocked, and the votes tallied by the white election officials. In this election a black candidate lost by only two votes.[71]

Blacks in predominantly black Twiggs and Washington Counties, Georgia, alleged they were not allowed to see the counting of the vote in the August 1974 election primary.[72]

COUNTING THE VOTES

If voters and candidates cannot rely on the honesty of the persons counting the votes or on the system for counting votes they will have

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70. Ibid.

71. Ruth Nunn, vice president, Chambers County-Valley Branch NAACP, letter to the Rev. K. L. Buford, Tuskegee Institute, Ala., Aug. 12, 1972. A complaint was filed with the Department of Justice, which determined the facts of the case did not justify their taking action. J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division, Department of Justice, letter to the Rev. K. L. Buford, Mar. 22, 1973. (Correspondence in NAACP Field Office files, Tuskegee Institute, Ala.)

72. Staff attorneys, Voting Section, Civil Rights Division, Department of Justice, telephone interviews, Aug. 29 and 30, 1974.

very little faith in the electoral system as a whole and will see little reason to participate in it. Commission staff interviews in Alabama, Georgia, Louisiana, and South Carolina revealed widespread distrust of the activities of this crucial phase of the electoral process.[73]

Some black citizens of Mississippi do not feel that they can win an election even if they receive a majority of the votes. A resident of Noxubee County active in the campaign of a black candidate for sheriff in the 1971 election recalled that blacks frequently felt that their votes would not matter.

> Many expressed the view that they could not get a black elected even if they all voted. Many felt that a black candidate would not win even if he or she, in fact, received a majority of the votes cast. These are both views that I myself shared at that time. I still have this view.[74]

A poll watcher who observed the count in that election indicated that this distrust was not without justification. He reported that the election workers discriminatorily reviewed ballots for disqualification:

> When a ballot cast for a black was examined, white vote counters would often remark, "Here's another one of <u>these</u>." Many ballots cast for black candidates were disqualified because the checkmark was on the boundaries of the parenthesis or box next to the candidate's name. Ballots cast for white candidates were much less frequently disqualified for similar technicalities.[75]

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73. Staff interviews in Alabama, Georgia, Louisiana, and South Carolina, July-Sept. 1974.

74. Affidavit of Sherell Williams, Stewart v. Waller.

75. Affidavit of Larry Miller, Stewart v. Waller.

Blacks also had reason to distrust the count of the vote in Moss Point, Mississippi, in 1973. A defeated black candidate reported that, although normal procedure is for the votes to be counted by the Democratic election committee, at this election the votes "were counted by and called off by" two white candidates. "Black poll watchers present at the time objected to this procedure, but to no avail."[76]

A black candidate defeated for the nomination for the South Carolina State house seat from Hampton and Colleton Counties sought to investigate and obtain affidavits regarding possible election fraud by his opponent. He reported that he was prevented from carrying out his investigation by local law enforcement officials, who detained him without cause for 2 hours.[77]

OBSTACLES TO MULTIRACIAL AND MULTIETHNIC POLITICS

In many areas the great increase in minority registration and voting since the passage of the Voting Rights Act in 1965 has meant that politicians can no longer afford to ignore minority voters. This has brought about a significant decline in racial appeals by candidates and has made incumbents and candidates more responsive to minority needs. Nevertheless, in many areas the political process remains segregated. For example, black candidates in the South are often unable to reach white voters in their campaigns, and many white voters refuse to vote for black candidates

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76. Affidavit of Billy Frank Broomfield, Stewart v. Waller.

77. George Hamilton, former executive director, South Carolina Human Relations Commission, Walterboro, S.C., interview, July 27, 1974.

solely because of their race. This was the view of the United States District Court for the District of Columbia in its analysis of a 1970 election for a seat in the Louisiana legislature. In a New Orleans district a white Republican defeated a black Democrat, producing the first Republican legislator from that district in this century.[78]

In many situations minority candidates must receive a substantial number of votes from the white community in order to win. Even if white votes are not essential to victory, minority candidates have the right to take their campaign to the white community, and white voters have the right to hear from minority candidates. In some instances these rights have been denied.

A former black candidate for sheriff in Noxubee County, Mississippi, believes that black candidates running for office have virtually no access to the white community other than through newspaper advertisements. He stated: "I was never invited to appear before white organizations when I was a candidate. I, as a black, do not feel free or welcome to campaign in the white community."[79]

Another black candidate in Noxubee County reported that the separation of the white and black communities in Macon severely limited his access to the white community during his campaign. He doubts that it is possible in Macon to form coalitions with whites in support of a black

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78. Beer v. United States, 374 F. Supp. 363, 375 (D.D.C. 1974).

79. Affidavit of Albert Walker, Stewart v. Waller.

candidate. He recalled from his campaign experiences: "I entered the store of one white merchant in Macon, approached him, and told him that I was soliciting votes. When I said that, he and the other white with him broke into laughter."[80] One white who did work with him reported that he was "completely ostracized" from the white community because of his campaign activity and his other involvement with the black community.[81]

A black candidate in Moss Point, Mississippi, in 1973 reported approaching a prominent white politician to discuss the possibility of forming a coalition. His response was that there were "too many rednecks here and they are not ready for this yet."[82]

A black physician was a candidate for alderman in Starkville, Mississippi, in 1973. He reported:

> No black candidate in Starkville has ever been supported by the white business community or by white-dominated political organizations. The general atmosphere and political climate in Starkville deter attempts to form black-white coalitions in support of black candidates. I would be very reluctant to approach white organizations in Starkville and ask for their support for my candidacy. I have no realistic expectation that I could obtain the support of white business or political organizations in Starkville.[83]

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80. Affidavit of Garfield Triplett, Stewart v. Waller.

81. Affidavit of Larry Miller, Stewart v. Waller.

82. Affidavit of W. M. Williams, Stewart v. Waller.

83. Affidavit of Dr. Douglas L. Conner, Stewart V. Waller.

Black candidates also reported that they were not invited to appear before white organizations. In a 1973 campaign in Jackson County, Mississippi, a black reform ticket for the Moss Point aldermanic board included a white candidate. The white candidate before black community meetings, but a black candidate reported:

> [A] women's business club in Moss Point invited all the candidates running for mayor or alderman to come and appear before their organization. This was to be a political rally at the football field. I and other black candidates received written invitations. Before this rally was held, however, it was cancelled for no apparent reason.[84]

He and another black candidate in the same election reported that this was a general problem they encountered.[85]

Although racial or ethnic appeals to voters have declined as minority voting strength has increased, they still occur. They are more subtle now, but for many a clear message is presented.

Congressman Herman Badillo, a Puerto Rican who ran unsuccessfully for the Democratic nomination for mayor of New York in 1973, complained of campaign materials containing distorted statements and appeals to prejudice which were circulated.[86] The most extreme piece was a leaflet, written in Italian with an English translation and circulated in Italian neighborhoods, which included the following accusations:

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84. Affidavit of W. M. Williams, Stewart v. Waller.

85. Ibid.; Affidavit of Billy Frank Broomfield, Stewart v. Waller.

86. U.S. Representative Herman Badillo and Shirley Remeneski, Administrative Assistant to Mr. Badillo, New York City, N.Y., interview, Oct. 4, 1974.

"Abe Beame's opponent is in favor of quotas in hiring and education."

"Abe Beame's opponent is supported by the Black Panthers and Young Lords."[87] Another of the unsigned, unidentified leaflets showed a picture of a burned-out slum block with the caption, "Badillo country."[88] There were several other pieces of literature used in the campaign which exploited the fear and frustrations of white urban dwellers toward minority group members.[89]

The October 1973 city council election in Birmingham, Alabama, was infected with "raw racial" campaigning, according to Dr. Richard Arrington, a black member of Birmingham's city council not up for election in 1973.[90] Four blacks and two whites were in the runoff for three positions, guaranteeing victory to at least one black.[91] An organization formed to support white incumbents, the Birmingham Action Group (BAG), sponsored advertising in the newspapers and on radio and television and telephoned voters in predominantly white areas to encourage turnout. One advertisement contained the following material:

> Do you want to let somebody else run Birmingham . . . or do you want to help run it? If you don't vote next Tuesday, somebody else <u>will</u> run Birmingham.

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87. Leaflet provided by Cong. Badillo.

88. Leaflet provided by Cong. Badillo.

89. Badillo and Remeneski Interview. As required by law the Commission has offered Mayor Beame the opportunity to reply to these statements. His reply is included in appendix 7.

90. Dr. Richard Arrington, Birmingham, Ala., interview, July 19, 1974.

91. Ibid.

> And they'll run Birmingham the way they want. Not the way you want it. Next Tuesday's election will determine the future of Birmingham . . . and whether you like it or not: the future of Birmingham is your future. It's entirely up to you.[92]

The advertisement encouraged citizens to vote for the incumbents, the two whites and one black.[93] Because of Birmingham's full-slate requirement voters were required to vote for three candidates for their votes to be counted. Thus, it was necessary for BAG to support one black candidate.[94] This advertising was criticized editorally by a Birmingham newspaper for injecting race into the campaign.[95]

In November 1974 Raul Castro, a Mexican American, defeated Russ Williams to become Governor of Arizona. Some Mexican Americans in Arizona charged that some of Williams' campaign slogans used on television contained racial slurs. Williams urged the voters to "Elect a man who looks like a governor." Another slogan was "Elect a governor you can be proud of."[96]

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92. Birmingham Post-Herald, Oct. 26, 1973, p. B5.

93. Ibid.

94. For a discussion of full-slate voting, see chapter 8, p. 207. For additional discussion concerning full-slate voting in Birmingham, see chapter 8, p. 207.

95. Birmingham Post-Herald, Oct. 27, 1973, p. A4.

96. Salomon Baldenegro, Raul Grijalva, and other community leaders, Tucson, Ariz., interview, Nov. 4, 1974.

PROBLEMS OF INDEPENDENT AND THIRD PARTY CANDIDATES

Because they have traditionally been excluded from the dominant Democratic Party in the South,[97] blacks have often found it necessary or advantageous to form a separate party or to run as independents. While blacks now have a role in the Democratic Party in several Southern States,[98] independent and third party efforts continue.

Third parties have been formed in three States: the Mississippi Freedom Democratic Party, the National Democratic Party of Alabama, and the United Citizens Party in South Carolina.[99] The independent candidates and third parties in Mississippi and Alabama have needed decisions of the Supreme Court of United States and other Federal courts and section 5 objections to counter restrictive measures taken by those

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97. See U.S. Commission on Civil Rights, Political Participation (1968), 133-52 (hereafter cited as Political Participation); William C. Havard, ed., The Changing Politics of the South (Baton Rouge: Louisiana State Univ. Press, 1972); Commission on the Democratic Selection of Presidential Nominees, The Democratic Choice (1968) 54-57; Commission on Party Structure and Delegate Selection to the Democratic National Committee, Mandate for Reform (Washington, D.C., 1970); Washington Post, Nov. 14, 1974, p. A2.

98. Staff interviews in Alabama, Mississippi, South Carolina, and Virginia, July-Sept. 1974. Curtis Harris was an independent candidate for Congress in 1974 in Virginia's Fourth District, which is 37 percent black. He finished third, receiving 16.9 percent of the vote.

99. See generally Hanes Walton, Jr., Black Political Parties: A Historical and Political Analysis (New York: The Free Press, 1972).

States.[100] The South Carolina party has sought court assistance each general election year since 1970, twice successfully and once, in 1974, unsuccessfully.[101]

A recent case from Wilcox County, Alabama, demonstrates the ingenuity of those who resist sharing political power with minorities. The number of blacks who are registered to vote in that county "far exceeds" the number of registered whites.[102] The 1972 county election

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100. Mississippi: Whitley v. Williams, decided sub nom. Allen v. State Board of Elections, 393 U.S. 544 (1969); Evers v. State Board of Election Commissioners, 327 F. Supp. 640 (S.D. Miss. 1971), appeal dismissed 405 U.S. 1001 (1972); objections of May 21, 1969 and April 26, 1974. For a discussion of the April 26, 1974 objection see pp. 273-74. A black candidate attempted in 1974 to run as an independent in the race for Congress in Mississippi's Second District after running in the Democratic primary for the same position. A Federal court denied his claim that he had a right to have his name on the ballot. Meredith v. Mississippi State Bd. of Election Commissioners, Civil No. J 74-253(R) (S.D. Miss. Oct. 30, 1974). Alabama: Hadnott v. Amos, 394 U.S. 358 (1969); Hadnott v. Amos, 320 F. Supp. 107 (M.D. Ala. 1970); objections of Aug. 1, 1969 and Aug. 14, 1972.

101. 1970: United Citizens Party v. South Carolina State Election Commission, 319 F. Supp. 784 (D.S.C. 1970). 1972: Harper v. West, decided sub nom. Toporek v. South Carolina State Election Commission, 362 F. Supp. 613 (D.S.C. 1973). 1974: Fowler v. White, Court of Common Pleas, Allendale Co., S.C., Oct. 22, 1974; Murdock v. Snipes, Order of Chief Justice, S.C. S.Ct., Nov. 1, 1974. A Federal suit is pending. White v. West, Civil No. 74-1709 (D.S.C., filed Oct. 31, 1974). Storer v. Brown, 415 U.S. 724 (1974), and American Party of Texas v. White, 415 U.S. 767 (1974), permit States to place some limitation on the access of third party and independent candidates to the ballot.

102. Complaint, p. 5, Threadgill v. Bonner, Civil No. 7475-72-P (S.D. Ala. Nov. 7, 1973).

was a contest between the predominantly white Democratic Party and the predominantly black National Democratic Party of Alabama (NDPA). The Democratic Party nominated a slate of white candidates and the NDPA a slate of black candidates.

In September 1972, following the primary, however, the Democratic Party added the names of 21 blacks to their slate for the office of constable. This was done without the knowledge or the consent of most of the people involved; in fact, many were active members of the NDPA. The purpose of this action, the NDPA alleged, was to confuse black voters and to split the black vote.[103] According to persons interviewed by Commission staff members, it succeeded in doing this.[104] Some blacks voted for the Democrats because there were blacks on their slate; others stayed home on election day because of the confusion. A lawsuit brought by blacks because of this and other irregularities ended in a consent decree, in which the Democratic Party was enjoined from "nominating and placing any person's name as a candidate on the ballot without first securing the written permission of the proposed candidate."[105]

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103. Ibid., pp. 4-5.

104. Threadgill and McCarthy Interview; Henry Sanders, attorney for plaintiffs in Threadgill v. Bonner, Selma, Ala., interview, Sept. 4, 1974.

105. Consent Decree, Threadgill v. Bonner.

The NDPA also encountered problems in 1974 in Dallas County. Four black candidates of the NDPA for the State legislature sought to run in the November 1974 general election but were prevented by the county probate judge. A fifth, who was white, was the NDPA candidate for district attorney and was also excluded.[106] The judge left the names of the five off the ballot because they had not satisfied the requirement of Alabama law that they inform the county probate judge of the names of the members of their financial committees within 5 days of announcing their candidacies.[107] In a suit brought to require the judge to place the names of the NDPA candidates on the ballot, the Department of Justice alleged that candidates of the Republican, Democratic, and Alabama Prohibition Parties had also not satisfied the notice requirement but that their names were placed on the ballot nevertheless.[108] The court granted temporary relief, requiring that the names be placed on the ballot for the November 5 election.[109]

A problem encountered by independent black candidates in Mississippi is that Mississippi law contains no provisions for poll watchers for independent candidates.[110] During the 1971 general election the State

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106. Complaint, pp. 2-3, United States v. Dallas County, Civil No. 74-459-H (S.D. Ala., filed Nov. 1, 1974).

107. Code of Ala., Tit. 17 § 274.

108. Complaint, p. 3, United States v. Dallas County.

109. Order of Nov. 1, 1974, United States v. Dallas County.

110. Miss. Code § 3267.

agreed to allow independents collectively to have two poll watchers at each polling place, the same number allowed a political party, even though not all the independents might be in alliance.[111]

Nevertheless, the State attorney general declined to inform county election officials of this ruling prior to the November 2, 1971, general election.[112] As a result independent black candidates in Humphreys County were denied the right to have poll watchers. Poll managers ordered the black poll watchers off the premises as soon as the polls opened at 7:00 a.m. They were only permitted to come back after a number of phone calls to the secretary of state and the attorney general.[113] There is no assurance, moreover, that poll watchers for independent candidates will be allowed in the 1975 elections.[114]

MINIMIZING THE IMPACT OF MINORITY SUCCESS

Not all the problems which a minority candidate faces are those of qualifying as a candidate, running an effective campaign, and receiving fair treatment on election day. In some instances legal obstacles have

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111. For a discussion of events leading to this decision, see Shameful Blight, p. 77.

112. James v. Humphreys County Board of Election Commissioners, Civil No. GC 72-70-K (N.D. Miss. Oct. 4, 1974), slip opinion, p. 10.

113. Kermit James Interview.

114. Frank R. Parker, attorney, Lawyers' Committee for Civil Rights Under Law, Jackson, Miss., interview, Nov. 18, 1974.

been placed in the path of candidates successful in the primary or general election. Some minorities who have been elected have found that lack of cooperation from other officials limits their effectiveness. And in some places the prospect of minority success has led communities or States to abolish the office that the minority candidate had a chance to win.

Apache County, Arizona, is 74 percent Native American. Most of the county's population resides on the Navajo Reservation. In November 1972 a Navajo was elected for the first time to the three-member county board of supervisors. He was not allowed to take office, however, without a favorable ruling from the State's supreme court.[115] Tom Shirley received 3,169 votes; his opponent, Thomas E. Minyard, 1,105. Despite this clear margin of victory, Minyard and others sued to prevent Shirley from taking office. Minyard argued principally that Shirley should not be seated because he is immune from civil process while on the Navajo Reservation and he does not own any taxable property. The State supreme court decided in favor of Shirley, finding Minyard's arguments unpersuasive.

Bolton is a majority black town of fewer than 1,000 residents in Hinds County, Mississippi. Prior to the spring 1969 municipal elections no blacks held public office in Bolton.[117] In the May 13 primary

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115. Shirley v. Superior Court in and for County of Apache, 109 Ariz. 510, 513 P.2d 939 (1973), cert. denied, 415 U.S. 917 (1974).

116. Shirley v. Superior Court.

117. Political Participation, pp. 218-19.

three blacks received the Democratic nomination for alderman.[118] The losing white candidates brought an action challenging the result according to a new State procedure which had not received section 5 clearance. The United States Court of Appeals for the Fifth Circuit, therefore, ruled that the challenge proceeding violated the federally protected rights of the defendants.[119] Because the general election had already been held without challenge to the blacks' victory in it, the Fifth Circuit dismissed the case.[120]

Four years later, at the next municipal election in Bolton, blacks had greater success at the polls, winning the positions of mayor, town clerk, and five aldermen.[121] Again, defeated whites challenged the result. They filed with the Bolton Democratic executive committee a complaint alleging various irregularities. The white-controlled committee decided in favor of the contestants, declaring that the black candidates were not the nominees. The black-dominated municipal election committee went ahead with the general election and the black candidates won.[122]

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118. Thompson v. Brown, 434 F.2d 1092 (5th Cir. 1970).

119. Ibid., pp. 1095-96.

120. Ibid., p. 1096. The case had been removed from a State court to the Federal court system, which is allowed in civil rights cases under 28 U.S.C. § 1443.

121. Mashburn v. Daniel, Civil No. 73J-138(R) (S.D. Miss. Aug. 20, 1973), slip opinion, p. 1.

122. Ibid., pp. 3-4.

The party executive committee then brought suit in two Hinds County courts to set aside the election and to prevent the blacks from taking office.[123] The blacks were vindicated, however, by the Federal district court, which decided in their favor. The most important irregularity which the Federal court could find was that ballots of voters receiving assistance had been initialed on the wrong side.[124]

In some instances minorities have been elected to office only to find that the powers and responsibilities of the office have been reduced, either formally or in practice.

A 1974 election in Lake Providence, Louisiana, resulted in a black's being elected mayor and blacks winning control of the town council. Before the white council members of the 60 percent black town left office they attempted to transfer control of a municipal power plant to a newly created power commission, whose members would all be white. The power plant is the town's sole source of revenue.[125] The new government filed

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123. Mashburn v. Daniel, Cause No. 6518 (Chancery Court of the 2d Jud. Dist. of Hinds Co., Miss., filed June 13, 1973); Mashburn v. Thompson, Cause No. 3683 (Circuit Court of the 2d Jud. Dist. of Hinds Co., Miss., filed June 14, 1973). The two cases were removed by the defendants to the Federal district court, following the procedures used 4 years earlier.

124. Mashburn v. Daniel, slip opinion, pp. 9-10. The defendants in Mashburn brought a separate action in Federal court also. This was decided by consent following the decision in Mashburn. Thompson v. Bolton Municipal Democratic Executive Committee, Civil No. 73J-131 (N) (S.D. Miss., Order of Sept. 14, 1973).

125. Dr. Thomas E. Smith, Southern University, Baton Rouge, La., telephone interview, Dec. 5, 1974; Joint Center for Political Studies, Focus, Aug. 1974, p. 8.

for relief in the Federal district court, which enjoined the action of the deposed white council.[126]

In Wilcox County, Alabama, in the November 1972 general election, six black candidates of the National Democratic Party of Alabama were elected to the office of constable. It was reported to a Commission interviewer that the county probate judge, Roland Cooper, had failed to give these constables their cards of commission, as the judge is required to do by law. Numerous requests for the cards did not result in their issuance.[127] This reportedly has proved to be a handicap to the performance of the duties of constable.[128]

Whites attempted to circumvent the authority of the black-controlled Democratic Party county executive committee in Sumter County, Alabama, in 1974. Under Alabama law candidates in a party primary file their qualifying papers with the chairperson of the county party executive committee. The chairperson then certifies the names of candidates to the probate judge of the county.[129] In Sumter County the chairperson of the party committee is black, while the secretary is white. Black candidates filed their papers with the chairperson and white candidates (and one black) with the secretary. Both

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126. Jackson v. Town of Lake Providence, Civil No. 74-599 (W.D. La. July 11, 1974).

127. As required by law the Commission has offered Mr. Cooper the opportunity to reply to these statements. His reply is included in appendix 7.

128. Threadgill and McCarthy Interview.

129. Code of Ala., Tit. 17 §§ 344, 348.

party officials submitted lists to the probate judge, who announced that he would put both lists on the ballot. The black candidates and the county committee brought suit in Federal district court, claiming that the probate judge was depriving them of their rights as voters and candidates and that the certification of names by the secretary was a new practice not approved under section 5 of the Voting Rights Act.[130]

When a suit is filed alleging violation of section 5, it is the responsibility of the district court judge to convene a three-judge court. Neither the single judge nor the three-judge court is to decide whether the change is discriminatory. This question is reserved for the District Court for the District of Columbia or for the United States Attorney General. The duty of the three-judge court is simply to decide whether there has been a change in a practice or procedure with respect to voting and, if the court finds that there has been a change, to determine whether the requirements of section 5 have been satisified. If not, the court enjoins the change or gives other appropriate relief.[131]

Nevertheless, the single judge declined to call a three-judge court and decided the case on the merits himself, finding that the certification

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130. Brief for Appellants, pp. 3-4, Sumter County Democratic Executive Committee v. Dearman, appeal docketed, No. 74-2124, 5th Cir., Apr. 30, 1974.

131. Perkins v. Matthews, 400 U.S. 379, 383-85 (1971).

responsibility had been delegated to the secretary and denying plaintiffs any relief.[132] The case is on appeal.[133]

When an office is abolished or changed from elective to appointive in response to growing black electoral strength or when such changes would have the effect of reducing black voting effectiveness, the Attorney General has objected under section 5 of the Voting Rights Act.

In 1973 the Attorney General objected after Clarendon County, South Carolina, abolished the office of superintendent of education. The abolition came at a time when blacks had become 49 percent of the registered voters in the county.[134] The Attorney General also objected in 1973 when the offices of city clerk in Hollandale and in Shaw, Mississippi, both of which are 70 percent black, were changed from elective to appointive.[135] Earlier the Attorney General objected to Alabama's abolishing the office of justice of the peace[136] and to

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132. Brief for Appellants, p. 4, Sumter County Committee v. Dearman.

133. W. E. Still, Jr., counsel for plaintiffs, Tuscaloosa, Ala., letter to David H. Hunter, U.S. Commission on Civil Rights, Nov. 1, 1974. The court took the same action in Maples v. City of Tuscaloosa, Civil No. 73-M-663-W (N.D. Ala. Aug. 7, 1973), in which the change of date for the Tuscaloosa city election had not been cleared under section 5.

134. Objection letter, Nov. 13, 1973. Objection not withdrawn, March 22, 1974.

135. Objection letters, July 9 and Nov. 21, 1973.

136. Objection letter, Dec. 26, 1972.

Mississippi's changing the office of superintendent of education from elective to appointive in 11 counties generally having in common a predominantly black population.[137]

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As more and more minority group members have become registered and begun to vote since the passage of the Voting Rights Act, minorities have become an important political force. This has resulted in a diminution of racial appeals in political campaigns and greater influence of minority votes in deciding elections between whites. It also has resulted in many more minority group members deciding to become candidates. While many minority candidates have been successful, many among them have not been. Often their lack of success has been because of race or ethnic background, not because of any qualities that are relevant to their performance if elected. Some would-be minority candidates have been unable to qualify, either because of formal requirements or because of uncooperative local officials. Others have been unable to mount an effective campaign because of discriminatory actions taken against them. Some have been defeated by racial prejudice. Still others have been cheated. Finally, in some instances the prospect of minority success has led to changes in the rules of the game to try to prevent such success.

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137. Objection letter, May 21, 1969. See Bunton v. Patterson, decided sub nom. Allen v. State Board of Elections, 393 U.S. 544 (1969).

7. PHYSICAL AND ECONOMIC SUBORDINATION

Blacks, Mexican Americans, Puerto Ricans, and Native Americans, throughout their history in the United States, have been subordinated socially, economically, and physically by the white majority. While recent decades have witnessed an improvement in the treatment and status of all these groups, their subordinate position, its causes, and its effects persist.

Examination of the political participation of these minorities reveals the effects of this history. Although physical violence appears no longer to be commonly used to prevent blacks in the South from registering and voting, such episodes still occur. More common are economic reprisals against minority political activity. Fear of both violence and economic reprisals remains, especially in the rural South and among the older members of the black population. The events of 5, 10, or even 20 years ago and the experience of generations are not easily forgotten or discounted. An isolated recurrence of violence or economic reprisal can nullify years of progress.

Underlying many of the abuses reported here is the economic dependence of these minorities. People whose jobs, credit, or housing depend on someone who wishes to keep them politically powerless are not likely to

risk retaliation for asserting or acting on their views.[1]

MISSISSIPPI

Acts of violence against blacks involved in the political process still occur often enough in Mississippi that the atmosphere of intimidation and fear has not yet cleared.

In 1970 John Buffington, who is black, was a candidate for mayor in West Point, Mississippi.[2] During the campaign he received so many threatening telephone calls that it was necessary to get three additional lines in order to conduct the campaign. He recalled:

> Some of the callers threatened my life, others told me that I should not start the ignition of the car. Many were obscene or racial in nature. Frequently, my car was tailgated during the campaign by cars driven by whites. On several occasions white West Point police officers called obscenities to me as they drove by in their patrol cars.[3]

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1. See Lester Salamon and S. Van Evera, "Fear, Apathy, and Discrimination: A Test of Three Explanations of Political Participation," American Political Science Review, vol. 67 (1973), p. 1288; Lester Salamon, "The Time Dimension in Policy Evaluation: The Case of the New Deal Land Reform Experiments" (paper presented at the 1974 Annual Meeting of the American Political Science Association, Chicago, Ill., Aug. 29-Sept. 2, 1974); Washington Research Project, The Shameful Blight: The Survival of Racial Discrimination in Voting in the South (Washington, D.C., 1972) pp. 17-21, 89-92 (hereafter cited as Shameful Blight).

2. Affidavit of John Buffington, Stewart v. Waller, Civil No. EC-73-42-S (N.D. Miss., filed May 3, 1973).

3. Ibid.

Despite the threats and intimidation Buffington placed second in the first primary and resumed campaigning for the runoff. On August 15, 1970, John Thomas, Jr., a "key campaign worker" was murdered as he sat parked in a campaign van. "A white man approached the van and shot Johnnie Thomas five times and killed him."[4]

Although a white factory worker was disarmed at the scene of the crime and subsequently tried for the murder, he was acquitted by an all-white jury.[5]

The murder of John Thomas frightened Buffington's campaign workers. Some withdrew from the campaign. Buffington was also frightened:

> The killing also made me apprehensive about my own welfare. Following the shooting I never went anywhere alone; I campaigned only with a group of people. At night friends and campaign workers guarded my house.[6]

One campaign worker commented on the political effect:

> It caused me to stop attending political meetings held at night. The Thomas killing also scared many black persons in West Point and Clay County. After the killing attendance at black political meetings fell off substantially. At black political meetings after the incident many blacks tried to persuade John Buffington not to run. I was myself afraid that he might be assassinated, and I said so to many of my friends.[7]

Clearly the murder impeded the campaign of John Buffington, who was defeated in the runoff. More important than the political fate of

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4. Ibid.

5. Ibid.

6. Ibid.

7. Affidavit of Minnie Mae Johnson, Stewart v. Waller.

one candidate, however, is the long-lasting deterrent effect of the murder. Not only did a man lose his life, but blacks in West Point are still reluctant to participate actively in politics.

Fear of physical or economic harm inhibits black residents of Noxubee County also from taking an active role in politics. This fear is not an irrational reminder from an era long passed but has a rational basis in events preceding the most recent municipal and county elections.

A local black minister, who was active in voter registration from 1969 to 1971 and actively campaigned for a black candidate in 1972, described threatening telephone calls received during the former period:

> These anonymous callers threatened to bomb and burn my church, they threatened to run me off the highway in my automobile. In most instances the callers told me to get out of town. They also threatened to bomb Miller's Chapel where we were holding community meetings.[8]

The minister had reason to take these threats seriously. On two occasions in 1971 bottles were thrown at his house, and on another occasion bottles were thrown in front of his car while he was driving.[9]

A Noxubee County white has been threatened, harassed, and "completely ostracized by the white community" because he actively campaigned for the black candidate for alderman in Macon in 1972 and engaged in other civic activities in the black community. On one occasion a brick

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8. Affidavit of the Rev. John W. Hunter, Stewart v. Waller.

9. Ibid.

was thrown through the windshield of his car while his wife was driving. She was unhurt though the windshield was "completely destroyed." During the political campaign he was stopped by a Macon policeman for a burned out headlight. Initially the officer did not give him a ticket, but as the policeman returned to his car he noticed the black candidate's bumper sticker on the man's car. He returned and gave him a ticket.[10]

The same man also received numerous threatening telephone calls:

> On several occasions callers told me that they were going to have to get me because I didn't catch on to what goes and what does not go around Noxubee County. On another occasion a caller said that he and others were going to have to kill me. [11]

Garfield Triplett, the black candidate in Macon stated that "widespread fear throughout the black community" deters participation in politics.[12] Albert Walker, a black candidate for sheriff of Noxubee County in 1971, said "many blacks expressed concern" that he "would be physically harmed."[13] He acknowledged receiving threatening phone calls and also stated that many blacks in the county "felt that if they registered or voted they might lose their jobs."[14]

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10. Affidavit of Larry Miller, Stewart v. Waller.

11. Ibid.

12. Affidavit of Garfield Triplett, Stewart v. Waller.

13. Affidavit of Albert Walker, Stewart v. Waller.

14. Ibid.

Physical violence against blacks occurred during the most recent general election in Humphreys County on November 2, 1971. According to Kermit James, who was a candidate for county supervisor in that election, several incidents took place at polling places. In the town of Midnight, a white farmer struck James and a fight ensued. At Isola whites pushed and shoved blacks who were trying to go in to vote. At another polling place several blacks were "slapped around."[15] Another report indicated that a number of whites were riding around with guns in their trucks, which frightened many blacks away from the polls.[16]

Because of these and other irregularities James and others filed suit in a Federal district court to set aside the election.[17] They alleged that "poll watchers for certain black candidates, at several election precincts, were either assaulted, physically abused, or threatened with physical abuse."[18]

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15. Kermit James, Belzoni, Miss., interview, Sept. 4, 1974. For a more detailed description of violent incidents at the polls, see Shameful Blight, pp. 89-91.

16. Staff interviews, Humphreys County, Miss., Sept. 1974.

17. James v. Humphreys County Board of Election Commissioners, Civil No. GC-72-70-K (N.D. Miss. Oct. 4, 1974).

18. James v. Humphreys County, slip opinion, p. 4.

Although the court declined to order a new election it found three instances of physical abuse--two at Isola, one at Putnam--which were directed at three black attorneys who were poll watching for black candidates. According to the court's description, one attorney was pushed from behind by two election managers as he was leaving the poll. The attorney noted that the election officials uttered racial slurs as they ejected him from the polling place. The election officials claim that the attorney's presence inside the polling place was improper since the black candidates who were running as independents already had two challengers on duty.[19]

On entering the Isola polling place the second attorney was seized by an election bailiff and shoved out of the building. Again racial slurs were uttered. He appealed to the poll manager and was permitted to reenter the building as a poll watcher.[20]

The third attorney was physically attacked as he watched the vote count at Putnam. He was knocked to the floor and sustained injuries to his teeth and head. His assailant, the court said, was a drunken white man with no election responsibilities.[21]

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19. Ibid, p. 16.

20. Ibid.

21. Ibid.

The court noted the "occasional verbal altercations and isolated acts of physical abuse involving poll watchers," but concluded that "from the credible evidence the election was unattended by harassment, intimidation or coercion directed at the black citizens of Humphreys County who sought to vote in the election."[22]

The violence in the general election of 1971, against the background of black economic dependence, has left a legacy of fear, according to blacks in Humphreys County. Kermit James feels that the incidents in that election kept a lot of blacks away from the polls in the 1972 election.[23] Others expressed the view, moreover, that blacks will still be afraid to vote in the next election, in 1975, because of what happened in 1971.[24]

Fear deters black political participation in Oktibbeha County as well. A woman active in a 1971 voter registration drive in Starkville "encountered substantial fear and reluctance" among blacks, many of whom refused to register. "I was told by several blacks that if we continued to participate in the registration drive that white folks would kill us."[25]

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22. Ibid.

23. James Interview.

24. Staff interviews, Humphreys Co., Miss., Sept. 1974.

25. Affidavit of Maggie Yvonne Henry, Stewart v. Waller.

A black physician who ran for local office in Starkville in 1973 reported that both he and his wife had received anonymous threatening and obscene telephone calls.

> These callers have stated, for example, that if I did not withdraw from the election I would be run out of town. I have received numerous telephone calls in which the callers used obscene language and have stated such things as "You know better than to be running for office in Starkville." 26

In Jackson County the violence of the recent past continues to inhibit black political participation. A young black girl was shot and critically wounded at a Moss Point voter registration rally about 10 years ago.

> This had a great impact on members of the black community and generated concern that other similar acts of violence might also occur. This incident also created a great deal of fear within the black community which, to some extent, still exists. Because of this fear some blacks are still reluctant to participate in voter registration rallies, workshops, etc. 27

More recently in Moss Point an anonymous caller threatened an unsuccessful black candidate after a newspaper reported his intent to seek a recount of the 1973 primary vote. "He knew where my little girl went to school and ... who picked her up and what time she got out of school and ... I had best not cause any trouble." 28

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26. Affidavit of Dr. Douglas L. Conner, Stewart v. Waller.

27. Affidavit of Ennis Millender, Stewart v. Waller.

28. Affidavit of Billy Frank Broomfield, Stewart v. Waller.

Blacks in a number of counties who are active in voter registration or political activities told a Commission interviewer that the dependent economic position of blacks hinders their political activity. Some blacks are afraid to register and vote, fearing that their employers will check the registration books,[29] or they fear that they will be fired or evicted if they vote.[30] Some workers cannot take time off to vote; others can vote on their lunch hour but lack transportation to the polls.[31] Some blacks receive instructions from their employers or landlords about the proper candidates to support when they go to the polls.[32] Many blacks receiving welfare or social security payments fear losing this income if they vote.[33]

LOUISIANA

As is the case in Mississippi, the economically dependent and insecure position of blacks in much of Louisiana acts as a brake on the political activity of blacks in that State. While force and violence are mainly things of the past as means to prevent black participation,

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29. David Jordan, Greenwood Voters League, Greenwood, Miss., interview, Aug. 8, 1974.

30. James Interview.

31. Staff interviews, Rolling Fork, Miss., Sept. 1974.

32. Clarence Hall, Mississippi Delta Council for Farmworkers, Greenville, Miss., interview, Sept. 5, 1974.

33. Staff interviews, Warren Co., Miss., Sept. 1974.

occasional incidents still reinforce the fears that are the result of decades of suppression.

One such incident occurred in Madison Parish early in 1974. A fight involving the registrar of Madison Parish, Myrtis Bishop, and a black woman attempting to register occurred on February 19, 1974. Arnicey Tyson, accompanied by her husband Ramon and their 3-year-old son, went to the courthouse in Tallulah to register. According to an account of the incident sent to the Department of Justice by Mr. Tyson, Mrs. Bishop, after exchanging angry remarks with Mrs. Tyson over the lack of information concerning previous registration, refused to register her. Mrs. Tyson questioned this refusal, and the registrar slapped her in the face. Mrs. Tyson then slapped Mrs. Bishop several times, at which point Mr. Tyson intervened to separate the two women. Mr. Tyson was then attacked by three men including a deputy sheriff and in the ensuing struggle thrown to the floor, beaten and had his clothes torn. The Tysons were then taken to jail and subsequently released on bond.[34]

The following day the Tysons went before a justice of the peace to have warrants issued against the four persons who had assaulted them. According to Mr. Tyson, the justice of the peace refused to issue warrants

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34. Ramon E. Tyson, letter to Michael Shaheen, Voting Rights Section, U.S. Department of Justice, Feb. 20, 1974 (copy in Commission on Civil Rights files). Sworn statements and complaints about this incident have been made by Ramon E. Tyson and Arnicey Tyson to State and Federal officials.

against two of the persons involved because they were "peace officers."[35]

Criminal charges were subsequently filed against the Tysons.[36] The defendants, on the ground that the criminal prosecution violates their civil rights, have removed the case to the Federal district court.[37] The case has not yet been brought to trial.[38]

The Madison Voters League, as a result of the Tyson incident, petitioned the board of registrars on June 11, 1974, asking for the dismissal of Myrtis Bishop.[39] As of December 18, 1974, no response from the board had been received.[40]

A Commission interviewer was told that the Tyson incident has brought back many of the old fears to the black community.

> It is not easy nowadays to find incidents of intimidation as we used to find in years past, but the beating of Mr. Tyson and his wife in the court-

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35. Ramon E. Tyson, letter to William J. Guste, Jr., attorney general, State of Louisiana, Baton Rouge, La., Feb. 20, 1974 (copy in Commission on Civil Rights files).

36. State v. Ramon Elwood Tyson, Jr., State v. Arnicey Tyson (Sixth Judicial District Court, La., filed March 18, 1974).

37. Petition for Removal to the U.S. District Court, (W.D. La., filed June 26, 1974).

38. Walter C. Dumas, attorney for the Tysons, Baton Rouge, La., telephone interview, Nov. 15, 1974.

39. Zelma Wyche, chief of police, Tallulah, La., interview, Sept. 3, 1974.

40. Moses Williams, vice president, Madison Voters League, Tallulah, La., telephone interview, Dec. 18, 1974.

> house proved to many of the older folks that things haven't changed that much, and they have plenty to fear in going to the courthouse. [41]

Other events have reinforced the fear of participation in the political process that many blacks in Madison Parish have. According to Zelma Wyche, during the last election the head of a city department in Tallulah told all his black employees that they should vote for the white candidates in the municipal elections if they wanted to keep their jobs.[42] Black domestics also were under severe pressure from their employers. They were unable to say openly for whom they intended to vote or show that they supported a black candidate, for example, with campaign buttons or bumper stickers. On the other hand, their employers advised and urged them to vote for white candidates.[43]

Economic pressure against blacks does not cease when they have been elected to public office. In Tallulah the newly elected mayor, Adell Williams, and two of the three black aldermen work for the school system as teacher and principals, respectively. The third alderman may be less dependent economically on local whites because he is manager of the town's largest department store. Since the new administration has

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41. Bruce Baines, Madison Voters League, Tallulah, La., interview, Sept. 3, 1974.

42. Wyche Interview.

43. Ibid.

taken office, the superintendent of schools has appeared at almost all council meetings and has served on several committees bringing petitions before the city council. His presence alone puts pressure on the three blacks who work for him.[44] Ramon Tyson made this comment on the situation:

> When the man controls your paycheck he controls you. We can see the pressure on them already. And the most likely to be intimidated are people like the principals who to a large extent have made it and are not willing to risk losing something that has taken them so long to get.[45]

The economic intimidation of blacks is reportedly still in evidence in many other rural areas of Louisiana. In a polling place in East Feliciana Parish a Commission staff member heard a white poll manager comment to an elderly black man: "Why, Mr. Brooks, Mr. Lesley let you come here?" The remark was made in what seemed to be a joking manner.[46] However, according to a black educator familiar with the area, Brooks has worked on the Lesley plantation for a long time and rarely does anything without Lesley's approval. The white woman's attitude toward Brooks seemed to be one of patronizing benevolence,[47] but how it appeared to the elderly black farmworker may have been another matter.

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44. Baines Interview.

45. Ramon E. Tyson, Tallulah, La., interview, Sept. 3, 1974.

46. Election day observations by Commission on Civil Rights staff, East Feliciana Parish, La., Aug. 17, 1974.

47. Dr. Malcolm Byrnes, professor of political science, Southern University, Baton Rouge, La., interview, Aug. 17, 1974

In East Carroll and Tensas Parishes a Commission interviewer also heard that economic pressure has been applied by whites to curtail or control the black vote. During a recent registration drive among blacks in East Carroll Parish, a black principal very active in the drive encountered at the registrar's office a white school board member and the superintendent of schools, neither of whom was there to register.[48] He felt their presence was not coincidental.

The school board member, Lloyd Clement, is an employee of the firm that supplies the city's gas and, according to the principal, "has a way of getting to certain blacks, especially if some of them may have trouble paying their bills." Clement, he said, claims to be extremely nice to blacks and says that he very seldom cuts off their gas even when he should. Nevertheless, the principal alleged, people have had their gas cut off without warning after certain elections, whereas prior to the election it had been left on for quite some time without full payment of the bill. There is no doubt in his mind that "blacks going to register would feel tremendous pressure in front of Lloyd Clement."[49]

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48. Theodore Lane, president, East Carroll Citizens for Progress, Lake Providence, La., interview, Sept. 4, 1974. As required by law the Commission has offered Mr. J. T. Harrington, Superintendent, East Carroll Parish Schools, the opportunity to reply to these statements. His reply is included in appendix 7.

49. Ibid. As required by law the Commission has offered Mr. Clement the opportunity to reply to these statements. His reply is included in appendix 7.

In Waterproof, in Tensas Parish, according to police juror Woodrow Wiley, in many instances employers have tried to talk their employees, mostly domestics and farmworkers, out of voting. They tell their employees, "There is no use wasting time voting," or "No need to go vote, the elected officials are going to do what they please anyway, so it doesn't matter who gets elected." This type of pressure on employees, according to Wiley, is probably the biggest reason for low voter turnout.[50]

Wiley also said that other more direct types of economic and social pressure are used on black voters. Whites frequently have been known to tell blacks that their food stamps are going to be taken away if they vote for black candidates. Although these whites may actually have no power to do anything about food stamps, the effect is still one of intimidating blacks, who fear that they may really lose their stamps. According to Wiley, many people in Waterproof are on some sort of welfare program, so any threat to restrict welfare benefits can be a very powerful factor in limiting the black vote.[51]

The Rev. P.N. Germany, a black minister and city alderman, told a Commission interviewer that he heard from several blacks in Waterproof that the town's only doctor, a white, had recently been telling black patients

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50. Woodrow Wiley, Waterproof, La., interview, Sept. 5, 1974.

51. Ibid.

that if they kept voting for and electing blacks, he would leave. Germany believes that the possibility of the doctor's departure could keep many blacks from the polls.[52]

Black candidates in Tensas Parish were also subjected to various kinds of pressure during the 1974 elections, according to Wiley. An elementary school principal who was a candidate for city alderman in Newellton reportedly had a confrontation with his supervisor, the superintendent of schools. According to Wiley, the principal was told by the superintendent that he could work with him very well as a principal, but not as a principal and councilman. The principal stayed in the race but lost the election. A council member in Waterproof told a Commission interviewer that she has been refused promotion since 1970 despite excellent academic qualifications and 12 years of seniority. She attributed this lack of promotion to reaction to her political activity.[53]

ALABAMA

In Talladega County incidents of violence as well as threats of economic retaliation against economically dependent blacks marred the electoral process in 1974. As a result, there were 54 Federal observers present in the county for the November general election, the most sent

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52. The Rev. P.N. Germany, Waterproof, La., interview, Sept. 5, 1974.

53. Staff interviews, Tensas Parish, La., Sept. 1974. As required by law the Commission has offered Dr. Charles Edgar Thompson, Superintendent, Tensas Parish Schools, the opportunity to reply to these statements. His reply is included in appendix 7.

to any county for an election in 1974.[54]

During the June 1974 Democratic primary runoff the incumbent sheriff considered antiblack by members of the black community, is said to have deputized black police officers who then struck, shoved, and handcuffed blacks at the polls who were known to favor the sheriff's opponent. It was also reported that the sheriff had used city police and county deputies in his campaign, having them perform such tasks as putting up posters and handing out leaflets. This further intimidated black voters. Moreover, blacks who receive welfare and food stamps were warned that they would no longer be eligible for assistance if they voted for the sheriff's opponent.[55]

Elsewhere in rural Alabama the economically dominant position of whites gives them a role in politics that their numbers alone would not provide. In some instances economic pressure was actually applied to discourage black political activity.

A Commission interviewer was told of threats to discharge employees if they voted the wrong way. For example, the white principal of a Wilcox County high school called the black teachers, cooks, janitors,

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54. Gerald W. Jones, Chief, Voting Section, Civil Rights Division, U.S. Department of Justice, letter to David H. Hunter, U.S. Commission on Civil Rights, Dec. 6, 1974, attachment 2.

55. Staff interviews, Alabama, Sept. 1974.

and bus drivers on his staff and told them: "You vote for these folks [white candidates] or you lose your job."[56]

The white owner of a lumber mill who was running for mayor of a town in Monroe County threatened his black employees with dismissal if they did not vote for him.[57]

During the 1972 election in one county the superintendent of schools reportedly told blacks who worked for the school system that he would not hire them again in the next school year if they did not vote for him.[58] They included many of the custodial and kitchen workers. The assistant superintendent further informed them that he had people watching them and their jobs were in jeopardy if they did not vote the expected way.[59]

Agricultural workers are in an especially vulnerable position. They often depend on one person for employment, housing, and credit. Sometimes the white farm owners use their position directly. For example, a black attorney who headed a recent voter registration drive

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56. Albert Gordon, 1974 candidate for State senate, Camden, Ala., interview, Sept. 5, 1974.

57. The Rev. K.L. Buford, Alabama Field Director, NAACP, and Rufus C. Huffman, NAACP Education Field Director, Tuskegee Institute, Ala., interview, Sept. 4, 1974.

58. Buford Interview.

59. Staff interviews, Sept. 1974.

in Dallas County told a Commission staff member that the owner of one large farm told his workers they would have to get off his land if they registered. Moreover, the owner informed them that, if they even went to a meeting on registration called by the attorney, they would have to leave the farm immediately. One black farmer who registered anyway was promptly evicted. Later he was arrested and charged with stealing a hog. The grand jury failed to indict him, but such incidents create enough fear among farmworkers to make it that much more difficult to get them out to register, much less to vote.[60]

More often such explicit pressure is not considered necessary. A farmer may be dominant enough that he can take his workers to register and rely on their voting the way he directs, as was reported in Lowndes County.[61] Since farmworkers frequently will need assistance, they have reason to fear that how they vote will be reported back to their employers.

Dependence on whites for credit is also a problem in Alabama. Sometimes the problem is presented directly. For example, in Wilcox County a black needed tires for his delivery truck, the use of which was necessary for his livelihood. According to one account, the white

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60. Henry Sanders, attorney, Selma, Ala., interview, Sept. 4, 1974.

61. Buford Interview.

owner of an auto supply store from whom he usually bought tires refused him credit because he had supported a black candidate in a previous election.[62]

In other situations the economic relationship does the damage without any direct pressure. In Wilcox County, for example, a number of polling places are in small, white-owned stores. Many blacks, primarily poor ones, are reluctant to go to such stores to vote. They need credit for the goods they buy and feel they will not get it if they vote, or unless they vote the way the whites want them to. "You see, they are going to go there and get groceries [on credit] until they get their checks or food stamps."[63]

GEORGIA

As is true elsewhere in the rural South blacks in an economically dependent position in rural Georgia are reluctant to vote or to vote the way they want. For example, one civic leader in Taliaferro County told a Commission interviewer that many black voters in the county are reluctant to vote their true feelings for fear of losing welfare or credit. Many of these voters need assistance in voting, which is given by the person in charge of welfare or by people connected with a finance

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62. The Rev. Thomas L. Threadgill and Charles McCarthy, community leaders and former candidates, Wilcox Co., Ala., interview, Sept. 5, 1974.

63. Gordon Interview.

company. By law voters could bring persons of their own choosing along to help, but they are afraid to do this.[64]

Blacks have interpreted some specific events in Georgia as direct pressure to prevent political activity. For 40 years J.B. King was a teacher and principal in the schools of Talbot County, Georgia. For the last 17 he was a high school principal. In June 1973 he ran unsuccessfully for county school superintendent in a special election held after the previous superintendent resigned.[65] On March 22, 1974 he was informed by his election opponent that his contract for the following year would not be renewed.[66] King believes that he was fired because he ran for the office of superintendent. This conclusion, it was reported, is widely accepted in the black community.[67]

The Professional Practices Commission of the State of Georgia upheld the Talbot County school board, finding that the board had sufficient cause for terminating the contract.[68] The Professional

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64. Calvin Turner, civic leader, Taliaferro Co., Ga., interview, Sept. 7, 1974. See Turner v. Fouche, 396 U.S. 346 (1970).

65. J.B. King, Jr., Woodland, Ga., and Tyrone Brooks, Southern Christian Leadership Conference (SCLC), Atlanta, Ga., interview, Sept. 3, 1974.

66. King v. Rowe, Case No. 73/74-028, Professional Practices Commission, State of Georgia (Sept. 23, 1974), Report of the Hearing Examiner, p. 1.

67. King and Brooks Interview.

68. King v. Rowe, Findings of Fact and Recommendations.

Practices Commission, however, criticized the board's timing. It stated that the board had knowledge of King's "purported deficiencies... at least as early as 1970."[69]

In June 1973 Julian Davis was fired from his job as principal of an elementary school in Sandersville, Georgia, in Washington County. In the same month Eloise Turner was fired from her job as teacher in the same school system. Both had actively campaigned for a black candidate the previous year and believe that they were fired because of their political activity.[70] The National Education Association has agreed to support a suit on their behalf.[71]

Against the background of the generally dependent economic position of blacks in rural Georgia, incidents such as the dismissals of King, Davis, and Turner--whether claims of discrimination are ultimately upheld or not--deter other blacks from more active participation in the political process.

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69. King v. Rowe, Special Presentment.

70. Julian Davis, community leader, Sandersville, Ga., interview, Sept. 4, 1974, and Richard Turner, husband of Eloise Turner, Sandersville, Ga., interview, Sept. 4, 1974.

71. Bernice Turner, attorney, Macon, Ga., telephone interview, Oct. 3, 1974.

NORTH CAROLINA

Older blacks in rural northeastern counties are still afraid to register or vote, a Commission interviewer was told.[72] What appears to be apathy is the result of "oppression," which "has them whipped down," according to a long-time black leader in Bertie County.[73]

Some younger blacks also believe they must be cautious about participating too actively in politics. A Commission staff member was told that blacks in Halifax County fear disapproval from their employers if they become involved in politics.[74]

Dock Brown was both a teacher and a coach in the Weldon, North Carolina, school system for 18 years. His basketball and baseball teams were quite successful during the 1973-74 school year, he reported, and he was named "coach of the year" in basketball. The high school's 1974 yearbook was dedicated to him and he was president-elect of the teacher's association in Weldon.[75]

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72. James Gilliam, community leader, Windsor, N.C., interview, July 10, 1974, and Earl Lewis, county commissioner, Hertford Co., N.C., interview, July 9, 1974.

73. Gilliam Interview.

74. Horace Johnson, Sr., candidate in 1974 for Halifax County Commission, Hollister, N.C., interview, July 11, 1974.

75. Dock M. Brown, Halifax, N.C., interview, July 11, 1974.

Brown ran for but failed to win the Democratic nomination for Halifax County clerk in the May 1974 primary.[76] After the athletic season ended in the spring of 1974 the superintendent relieved Brown of all his coaching duties. Brown believes that this was in retaliation for his political activity. He said he had campaigned throughout the county on the issue of county employment for blacks. He thought the "white power structure" saw him as a threat.[77]

Myron Fisher, superintendent of the Weldon public schools, denied that Brown's removal was related to his political activity. He said that the school system encourages political involvement. For example, another black teacher, Robert Knight, was a candidate for State representative in 1974. Also, the chairman of the county election board, an appointed position, is a Weldon teacher. According to Fisher, Brown's removal was the result of various derelictions of duty as a coach and friction between Brown and another coach. Both coaches were dismissed.[78]

Nevertheless, Brown's removal is well known among blacks in the county, and Brown feels that it will deter other blacks from being politically active.[79]

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76. Roanoke Rapids (N.C.) Daily Herald, May 8, 1974, sec. 1, p. 1.

77. Brown Interview.

78. Myron L. Fisher, Jr., superintendent, Weldon Public Schools, Weldon, N.C., interview, July 12, 1974. Brown's job as teacher was not affected but he chose to teach for the Halifax County school system instead for the 1974-75 school year. Brown Interview.

79. Brown Interview.

SOUTH CAROLINA

Some employers in rural areas, it was reported to a Commission staff member, set working hours on election day to prevent blacks from voting. Others reportedly "herd" their workers to the polls, specifying who the right candidate is.[80] One black candidate for a State house seat in 1974 charged that economic pressure from her opponent contributed to her defeat.

Albert Kleckley, who is white, and Juanita White, who is black, were opponents for the Democratic nomination for State house seat 122 (composed of Jasper County and part of Beaufort County) in the July 30, 1974, primary runoff election. The Kleckley family's gas company provides most people in the district with butane for heating and cooking. About 75 percent of the district's voters, a Commission interviewer was told, have credit with the Kleckley Gas Co. Some people were reportedly told that if they did not vote for Kleckley they would not have gas for the winter. At the Sheldon polling place a black driver for the company was present all day in his company uniform identifying customers of the company.[81]

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80. John R. Harper II, attorney, Columbia, S.C., interview, July 31, 1974.

81. Juanita White, Hardeeville, S.C., interview, Sept. 6, 1974. As required by law the Commission has offered Mr. Kleckley the opportunity to reply to these statements. His reply is included in appendix 7.

The defeated candidate, Juanita White, charged:

> Mr. Albert Kleckley and several other persons took photographic pictures inside and outside of the Sheldon precinct polling building. Pictures were taken of cars, license tags, voters and other persons at the poll in general. This produced an atmosphere of fear, frustration, coercion and tyranny. 82

A Commission staff member also heard an allegation that Kleckley had threatened one black, telling him that he "had better not" enter a polling place again. The man allegedly refused to testify about this event for fear of physical harm to himself or to his business.[83]

VIRGINIA

According to the Rev. Curtis Harris, independent candidate for Congress in the Fourth Congressional District, overt intimidation to keep people from registering and voting is now no longer a common practice in Virginia. Instead, pressure is more subtle. "They let people know they just might lose their jobs if they register and vote. If they work at a factory or on a farm, they are never given time off to go and register."[84]

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82. Juanita White, letter to Don Fowler, chairman, South Carolina Democratic Party, Columbia, S.C., Aug. 2, 1974 (copy in Commission on Civil Rights files).

83. Staff interview, Frogmore, S.C., Sept. 1974. As required by law the Commission has offered Mr. Kleckley the opportunity to reply to these statements. His reply is included in appendix 7.

84. The Rev. Curtis Harris, Hopewell, Va., interview, July 9, 1974.

There is considerable fear about registering and voting among blacks in Petersburg, according to the Rev. Clyde Johnson, a city council member. He said that blacks have been threatened with economic reprisal if they registered or voted. Such tactics, Johnson believes, are particularly effective against people in domestic service and in low-paying factory jobs. For example, two manufacturers in the area hire many blacks in low-paying jobs. Supervisory help, he alleges, often tell such workers who the "right" candidate is.[85]

Florence Farley, a former Petersburg council member, thinks there are now more blacks than whites registered in her ward. In her opinion black turnout is lower than white because many blacks, particularly the older ones, believe they have to own property or pay a poll tax in order to vote, or that they will be penalized for voting by losing their social security.[86] It is very difficult to convince them otherwise, she said.

A Commission interviewer was told in Southampton County also that economic fear keeps blacks away from the polls or influences their vote. According to a former commissioner in the county, many domestics and farmworkers fear they will lose their jobs if they register and vote. Their employers do not tell them this outright but suggest which candi-

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85. The Rev. Clyde Johnson, council member, Petersburg, Va., interview, July 8, 1974.

86. Florence Farley, former council member, Petersburg, Va., interview, July 9, 1974.

date would be preferable. A black farmer in the same county told a Commission interviewer that he had been told by a white farmer that if any blacks working on his farm "ever get to the point of registering and voting he is going to let them go."[87]

The black chairman of the board of supervisors in Surry County told a Commission interviewer that he obtains all necessary bank loans elsewhere. He does this because he believes that if he were to fall behind in his payments, the white-controlled bank would foreclose more quickly on him than on someone else. This is, he believes, because he is an elected official in an area where whites previously held power.[88]

MONTEREY COUNTY, CALIFORNIA

The subordinate economic position of Mexican Americans in Monterey County, California, deters them from greater political participation. Part of the problem is widespread fear, the cause of which cannot be grounded in any recent incident. A Commission staff member was told that people who have been scared away from registering or voting in the past are reluctant to try now. Often this fear takes the form of

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87. Staff interviews, Southampton County, July 1974.

88. M. Sherlock Holmes, Surry, Va., interview, July 9, 1974.

Chicanos' being unwilling to ask their employers for time off to vote. Some Mexican Americans are afraid they will lose their jobs. Some also feel coerced to vote in accordance with the wishes of landlords and creditors. In addition, a common fear among them is that their votes can be traced.[89]

According to a number of people active in politics in Monterey County, some whites take advantage of their economic dominance to make political participation more difficult for Chicanos. For example, at one farm it was reported that the workers were given more work than normal to do on election day in the hope that this would prevent them from casting their ballots. At another farm two tractor drivers declined to register when solicited by a registration worker because, they said, their boss would not give them time off to vote anyway. It was also alleged that Mexican Americans who work in voter registration drives sometimes lose their jobs and are blackballed from alternative employment.[90]

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89. John Saavedra, mayor, Soledad, Cal., interview, Nov. 6, 1974; B.J. Jimenez, chief of police, Soledad, Cal., interview, Nov. 5, 1974; and other staff interviews, Monterey Co., Cal., Nov. 1974.

90. Ibid.

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For minority group members in many areas the decision to register, to vote or to become involved in politics requires careful weighing of what are believed to be substantial costs and speculative benefits. The deliberations are unlikely to take into account abstract rights found in amendments to the United States Constitution or in the United States Code. Instead, the potential participants' view of the openness of the political process will be formed by their own experiences and those of their friends and relatives. In many instances the collective wisdom of minority group members in a community is that participating in politics is risky, sometimes even dangerous. While incidents of violence against minorities attempting to participate have declined, they have not altogether disappeared, and memories of them are still vivid. The possibility of economic retaliation against people who are economically dependent on political opponents is seen as very real. The end product is fear: fear that results in nonparticipation or that leads the minority citizens to vote the way considered safe. They do not wish to take the chance that economic reprisals or violence against them and their families will result.

8. FAIR REPRESENTATION IN STATE LEGISLATURES AND CONGRESS

INTRODUCTION

If a person is not permitted to register, or if registered, not allowed to vote, that person is obviously denied full participation in the political process. The same result occurs when a candidate whom a voter might support is kept from running. But these blatant examples are not the only barriers obstructing equal opportunity for political influence. This chapter and the next deal with the question of representation, that is, the rules and procedures by which voting strength is translated into political success. The central problem is that of dilution of the vote--arrangements by which the vote of a minority elector is made to count less than the vote of a white. There are two kinds of decisions which affect the fairness of representation. These concern the formation of boundaries for voting units and the selection of voting rules.

Boundary Formation

Consider a town of 1000 people, 600 of whom are white and 400 of whom are black; the town has a 10-member city council. Assume also that everybody is of voting age and registered to vote. Further assume that whites will almost never vote for blacks and blacks will almost always vote for a black running against a white, which is a reasonable assumption for many of the places to be discussed in this chapter.

The city council might be chosen in a number of ways. The city could be divided into 10 wards, or single-member districts, with each ward selecting one member of the council. Each ward might have in it 60 whites and 40 blacks, in which case none of the 10 members elected is likely to be black. Or there could be four wards 100 percent black and six 100 percent white, in which case there would be four black council members. Or there could be percentages somewhere in between. All wards must have approximately the same number of people residing in them in order to satisfy the one person, one vote rule,[1] but the number of different ways in which the lines can be drawn is practically infinite. Line drawing that unfairly reduces the number of districts controlled by minority voters is called racial gerrymandering.[2]

While this example is of the selection of city council members, the same principles apply to the selection of members of county councils and school boards, State legislatures, and the United States House of Representatives.

Instead of dividing the town into 10 wards, the town governing body or the State legislature might decide that all council members should be chosen by the entire electorate, or elected at large. As a result the white majority could control the selection of all the members. Intermediate arrangements are also possible. The town might be divided

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1. See Reynolds v. Sims, 377 U.S. 533 (1964), and its progeny.

2. See Frank R. Parker, "County Redistricting in Mississippi: Case Studies in Racial Gerrymandering," Mississippi Law Journal, vol. 44 (1973), pp. 402-03.

into two multi-member districts, with each electing five members. Or two members might be elected at large and the other eight from single-member districts.

County councils and school boards can also be elected at large or with the use of multi-member districts as well as from single-member districts. State legislators in many of the States under consideration have been elected from multi-member districts.

Voting Rules

A second problem considered in this chapter and the next is the selection of voting rules. Suppose there are three candidates for a position--a white Democrat, a white Republican, and a black third party or independent candidate. The black receives the most votes, winning 40 percent of the total, and the two whites share the remainder. If the candidate receiving the most votes is the winner, then the black has won. But if a majority rather than a plurality is required, then the black must face a runoff election with one of the two white candidates.[3] If voting is split along racial lines, the white will win.

Consider again the town of 600 whites and 400 blacks with an at-large election to choose four council members. Each voter is able to cast four votes. Suppose there are eight white candidates, with the votes of the whites split among them approximately equally, and one black candidate, with all the blacks voting for him and no one else. The

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3. For other consequences of plurality voting see Douglas W. Rae, The Political Consequences of Electoral Laws, rev. ed. (New Haven: Yale Univ. Press, 1971), pp. 25-28.

result is that each white candidate receives about 300 votes and the black candidate receives 400 votes. The black has probably won a seat. This technique is called single-shot voting. Single-shot voting enables a minority group to win some at-large seats if it concentrates its vote behind a limited number of candidates and if the vote of the majority is divided among a number of candidates.

There are a number of voting rules which have the effect of frustrating single-shot voting. The simplest is the anti-single shot, or full-slate, requirement. This requires a voter to vote for as many candidates as there are positions available in order for the ballot to be counted. With this rule each of the black voters in the example would have had to vote for three white candidates in addition to the black candidate. This would probably give the white candidates enough additional votes to prevent the black from being elected.

Second, instead of having one race for four positions, there could be four races, each for only one position. Thus for post no. 1 there might be one black candidate and one white, with the white winning. The situation would be the same for each post, or seat--a black candidate would always face a white in a head-to-head contest and would not be able to win. There would be no opportunity for single-shot voting. A black still might win if there were more than one white candidate for a post, but this possibility would be eliminated if there were also a majority requirement.

Third, each council member might be required to live in a separate district but with voting still at large. This--just like numbered posts--separates one contest into a number of individual contests.

Fourth, the terms of council members might be staggered. If each member has a 4-year term and one member is elected each year, then the opportunity for single-shot voting will never arise.

Fifth, the number of council members might be reduced. If the council only has three members rather than four, a higher proportion of the votes will be needed to acquire one seat.

Other changes in voting rules are similar. If the terms of white incumbents are extended, the opportunity for a black to be elected is delayed. To give a more extreme possibility, considered in the final section of Chapter 6, if an office is changed from elective to appointive or is abolished altogether, a black cannot be elected to it.

It should be noted that in some circumstances, nonpartisan elections can be less advantageous to blacks than partisan elections. With partisan elections, it is possible that a voter will consider the party of a candidate more important than the race of the candidate. Thus, a white Democrat might vote for a black Democrat over a white Republican. If party labels were removed, however, the voter would be more likely to use race as a criterion for choice.

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In general, if voting district boundaries or election rules discriminate against minorities, the courts will forbid their use or the

Attorney General will object to their use under section 5 of the Voting Rights Act.[4] The courts, however, have not yet developed clear legal rules indicating which situations are remediable and which are not.[5] Thus in the examples that follow in this chapter and the next different courts have applied different standards, and minority litigants have often been dissatisfied with a court's analysis of a particular situation.

One voting rule that is court-endorsed despite its potential for discrimination is the residence requirement.[6] Under this system each council member must live in a separate district, but voting is at large. The Fifth Circuit appears to favor this requirement because it makes more likely the election of a minority candidate where there is a predominantly minority district than would straight at-large election. The disadvantage of the residence requirement is that the minority candidate chosen is the choice of the entire--white dominated--electorate and not of the voters of the predominantly minority district. Moreover, the candidate elected could be a white resident of a predominantly black

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4. See discussion of section 5, pp. 25-31 above.

5. See White v. Regester, 412 U.S. 755 (1973), further proceedings sub nom. Graves v. Barnes, 378 F. Supp. 640 (W.D. Tex.), prob. jur. noted sub nom. White v. Regester, 412 U.S.____, 94 S.Ct. 2601 (1974) (No. 73-1462); Beer v. United States, 374 F. Supp. 363 (D.D.C.), prob. jur. noted 95 S.Ct. 37 (1974), (No. 73-1869); Zimmer v. McKeithen, 485 F.2d 1297 (5th Cir. 1973), petition for cert. filed sub nom. East Carroll Parish School Board v. Marshall, 43 U.S.L.W. 3055 (U.S. Dec. 3, 1973) (No. 73-861).

6. Zimmer v. McKeithen, note 5 above; Turner v. McKeithen, 490 F.2d 191, 194 (5th Cir. 1973). The use of staggered terms has also been upheld. Cherry v. County of New Hanover, 489 F.2d 273 (4th Cir. 1973).

district. The Attorney General, on the other hand, has frequently objected to residence requirements.

An analysis of the impact of any change in boundaries or in voting rules must consider that the total population of white and minority groups is not a completely accurate indication of the group's actual or possible political strength. The average age among minority groups tends to be younger than the average age of whites. Thus, the minority percentage of the voting age population of a district will be less than the minority percentage of the total population. In addition, for reasons discussed in Chapters 4 and 7, the percentage of minorities who are registered is generally lower than the percentage of whites who are registered. Therefore, if the minority percentage of the total population of a district is between 50 and 60 percent one should not conclude without further inquiry that minorities will have a controlling voice in the election.

Each of the nine States which will be discussed in this chapter has redistricted its legislature since the 1970 census. For each State, either a court has found all or part of the redistricting plan discriminatory, or the Department of Justice has objected to it under section 5 of the Voting Rights Act. Also, in two States--Georgia and New York--congressional district lines were found objectionable by the Attorney General. These court holdings and section 5 objections have covered the use of multi-member districts, the way that boundaries between districts are drawn, and the voting rules that are used.

The districting process is now complete in all but two of the nine States, Mississippi and South Carolina. All of the States, however, will face the problems of redistricting again following the 1980 census.[7]

MISSISSIPPI

In the spring of 1971, the Mississippi legislature adopted a new districting plan for both houses, using population data from the 1970 census.[8] The plan, as revised by a Federal district court,[9] respected county lines, used multi-member districts, imposed numbered post and residence requirements.[10] The result of the use of the plan in 1971 was to keep the number of blacks in the Mississippi legislature at one.[11]

Prior to the 1971 election the plan was attacked in court as discriminatory against blacks.[12] The district court decided that the

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7. See generally on fair representation and dilution of the vote Armand Derfner, "Racial Discrimination and the Right to Vote," Vanderbilt Law Review, vol. 26 (1973), pp. 552-55 and 572-81, and Washington Research Project, The Shameful Blight: The Survival of Racial Discrimination in Voting in the South (Washington, D.C., 1972) pp. 93-169 (hereafter cited as Shameful Blight).

8. Miss. Code §§ 5-1-1, 5-1-3 (1972).

9. Connor v. Johnson, 330 F. Supp. 506 (S.D. Miss. 1971). The court had earlier redistricted the legislature. Connor v. Johnson, 265 F. Supp. 492(S.D. Miss.), affirmed, 386 U.S. 483 (1967).

10. Connor v. Johnson, 330 F. Supp. 506, 507-20.

11. U.S. Commission on Civil Rights, Political Participation, (1968), p. 218 (hereafter cited as Political Participation); Joint Center for Political Studies, National Roster of Black Elected Officials (Washington, D.C., 1973), p. 95 (hereafter cited as 1973 Roster).

12. Conner v. Johnson, 330 F. Supp. 506. See Appellant's Jurisdictional Statement, pp. 4-13, Conner v. Williams, 404 U.S. 549 (1972).

three largest counties in the State should be divided into single-member districts, but the court allowed this division to await the 1975 election.[13] The Supreme Court upheld the use of the 1971 plan in the election for that year and gave the lower court a chance to reconsider the entire plan before it ruled on the charges that the plan was racially discriminatory and failed to meet the requirements of the one person, one vote rule.[14]

In April 1973 the legislature adopted a new plan.[15] This plan was similar to the one used in 1971 in that again county lines were respected, multi-member districts used, and numbered post and residence requirements imposed. Though the district court had required single-member districts to be used in the State's three largest counties in 1975, the plan does not divide any of these counties.

The 1973 plan has been submitted to the Federal district court in Mississippi, but that court has not decided whether the plan is acceptable.[16] The 1973 plan has not been submitted to the Attorney General

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13. Ibid. pp. 518-19, reversed as to Hinds County, 402 U.S. 690, 692-93; original decision adhered to because of "insurmountable difficulties," 330 F. Supp. 506, 521, 523; further stay denied, 403 US. 928 (1971).

14. Connor v. Williams, 404 U.S. 549 (1972). For a more detailed discussion of the 1971 court-ordered plan and the proceedings surrounding its use, see Shameful Blight, pp. 151-54.

15. Miss. Code §§ 5-1-1, 5-1-3 (Supp. 1974).

16. Frank R. Parker, attorney, Lawyers' Committee for Civil Rights Under Law, Jackson, Miss., interview, Nov. 18, 1974.

under section 5 of the Voting Rights Act.[17] While the 1971 plan was exempted from section 5 review because it was a plan prepared by the Federal court, the 1973 plan is entirely a legislative effort. The new plan, therefore, cannot be legally implemented until section 5 clearance has been obtained.[18]

The use of single-member districts through the subdivision of counties would have created a much larger number of majority black districts than did the legislature's plan, which does not subdivide counties. Single-member districts would especially facilitate the creation of districts in which the black percentage is high enough to enable the black electorate to have a chance to determine who is elected. Also, the smaller size and population of single-member districts would place a more manageable burden on black candidates.

For example, Hinds County, which is 39 percent black, elects 12 representatives countywide. In the past no blacks had been elected under this arrangement. With single-member districts blacks would have a good chance of winning from two to four seats. In the senate plan Hinds County is a five-member district. Again, single-member districts would give blacks a better chance to be influential.

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17. Deposition of J. Stanley Pottinger, Assistant Attorney General, Nov. 13, 1974, p. 33; Connor v. Waller, Civil No. 3830 (S.D. Miss.) (Connor v. Waller is the continuation of Connor v. Johnson and Connor v. Williams.)

18. On Dec. 20, 1974, the Department of Justice requested the State of Mississippi to submit the 1973 plan. J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division, letter to John A. Buggs, Staff Director, U.S. Commission on Civil Rights, Dec. 23, 1974.

The house plan submerges three majority black counties with populations greater than the ideal district size into majority white, multi-member districts.[19] Each of these counties could stand alone as one (or more) single-member districts. Four majority black counties with populations over half the ideal size are placed in multi-member districts with white majorities, although the use of single-member districts would result in some majority black districts.[20] Fifteen other majority black counties are in majority black multi-member districts.[21] Here also single-member districts would offer a more realistic possibility for black success at the polls by providing smaller districts in which the black percentage is higher.

SOUTH CAROLINA

The November 1974 general election resulted in an increase from 3 to 13 in the number of black members of the South Carolina State house. While this increase is substantial, it came only after substantial litigation in the Federal courts and action by the Department of Justice under section 5 of the Voting Rights Act in the years since the State legislature's

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19. Marshall, Panola, and Madison.

20. Noxubee, Jefferson Davis, Kemper, and Claiborne.

21. Coahoma, Quitman, Tunica, Sunflower, Bolivar, Issaquena, Washington, Holmes, Humphreys, Leflore, Carroll, Copiah, Jefferson, Wilkinson, and Amite.

adoption in 1971 of new plans for both the State house and the State senate.[22]

In the house plan each county was a separate district, with one or more representatives elected at large.[23] Full-slate and majority vote requirements were imposed.[24] On April 7, 1972, the Attorney General declined on procedural grounds to object to the house plan.[25] The features of the plan that might have been considered objectionable--the multi-member districts, and full-slate and majority requirements--did not, in his view, constitute a change from past practice.[26]

The plan also survived an attack in court which challenged it on the ground that it discriminated against blacks. The court was not troubled by the use of multi-member districts but struck down the full-slate requirement, though not on racial grounds.[27] Because the court expressed a preference for numbered posts rather than a full-slate requirement to remedy the same "obvious difficulty,"[28] the legislature,

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22. Senate: Act 932, [1971 Reconvened Sess.] Stat. at Large of S.C. 2071-2078. House: Act 380, [1971] Stat. at Large of S.C. 509.

23. See Stevenson v. West, Civil No. 72-45 (D.S.C. April 7, 1972), slip opinion, p. 3.

24. S.C. Code Ann. § 23-357 (1962); David L. Norman, Assistant Attorney General, letter to Daniel L. McLeod, attorney general, State of South Carolina, April 7, 1972.

25. Norman letter.

26. Ibid.

27. Stevenson v. West, slip opinion, pp. 7, 10-12.

28. Ibid.

in May of 1972, required the use of numbered posts in the house[29] and also in all other multi-member districts in the State, whether State or local.[30] The numbered post requirement for the house was enjoined by the Federal court on June 14, on the ground that it had not yet received section 5 clearance.[31] This clearance did not come; the Attorney General objected on June 30.[32]

This did not end the judicial or Justice Department review of the house plan, for the original court decision which had upheld all aspects of the plan except the full-slate requirement was appealed to the Supreme Court of the United States. The Supreme Court rejected the house plan for its failure to satisfy one person, one vote requirements.[33]

The Supreme Court's action required the legislature to adopt a new plan, which it did in October 1973.[34] The Attorney General objected to the new plan saying that the plan adopted the features which had been

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29. Act 1205, [1972] Stat. at Large of S.C. 2384-2390.

30. Act 1204, [1972] Stat. at Large of S.C. 2383.

31. Johnson v. West, Civil No. 72-680 (D.S.C. June 14, 1972).

32. Objection letter, June 30, 1972.

33. Stevenson v. West, 413 U.S. 902 (1973).

34. Act 836, [1973 Extra Session] Stat. at Large of S.C. 1874.

found objectionable in earlier plans--multi-member districts that submerged "significant concentrations" of black voters combined with numbered posts and majority requirements.[35]

Finally, on April 26, 1974, the legislature passed a single-member district plan for the house,[36] which was not objected to by the Attorney General on June 21, 1974. Under the new plan, the November 1974 general election increased the number of blacks in the house from 4 to 13.[37]

The legislature in 1971 provided alternative plans for the senate, plans A and B.[38] These plans used multi-member districts, a majority vote requirement, residence requirements, and numbered posts.[39] The plans were promptly challenged in court on the ground that they discriminated against blacks.[40]

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35. Objection letter, Feb. 14, 1974.

36. H-2275, adopted April 26, 1974, as received by the U.S. Department of Justice for section 5 preclearance, May 2, 1974.

37. Joint Center for Political Studies, National Roster of Black Elected Officials (Washington, D.C., 1974), p. 199 (hereafter cited as 1974 Roster). Washington Post, Nov. 7, 1974, p. 6A. Armand Derfner, attorney, Charleston, S.C., letter to Debbie Snow, United States Commission on Civil Rights, Jan. 8, 1975.

38. See Harper v. Kleindienst, 362 F. Supp. 742 (D.D.C. 1973).

39. Objection letter, March 6, 1972.

40. See Twiggs v. West, Civil Nos. 71-1106, 1123 and 1211 (D.S.C. April 7, 1972) and Stevenson v. West.

Before the court could pass on the plans, however, the Attorney General objected to the combined use of multi-member districts, numbered posts, and a majority requirement.[41]

A month later the court found the senate plans unconstitutional because they did not satisfy one person, one vote requirements. It also struck down the use of residence requirements in the multi-member districts of the senate plan because their use was inconsistent in identical situations. On the other hand, the court did not find the use of multi-member districts, numbered posts, or a majority requirement discriminatory.[42]

On May 5, 1972, the legislature adopted new alternative plans for the senate.[43] The plans retained the features previously found objectionable by the Attorney General--the combination of multi-member districts, numbered posts, and a majority vote requirement.[44] On May 23, 1972, the court approved the plans, without opinion.[45] Subsequently, the Attorney General accepted the plans out of deference to the court, not because he had found the new plans to be nondiscriminatory.[46]

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41. Objection letter, March 6, 1972.

42. Twiggs v. West, note 40.

43. Act 1205, note 29 above.

44. Plaintiffs' Brief, p. 29, Harper v. Kleindienst.

45. Twiggs v. West, Order of May 23, 1972, cited in Harper v. Kleindienst, 362 F. Supp. 742, 744.

46. Norman, letter to McLeod, June 30, 1972.

This section 5 nondetermination was challenged in court on August 10, 1972, by attorneys representing black voters in South Carolina.[47] On May 16, 1973, Judge June L. Green of the United States District Court for the District of Columbia found that the Attorney General had acted improperly and ordered him to make a "reasoned decision" concerning the senate plans.[48] In response to this order the Attorney General admitted that the senate plan was discriminatory but again refused, for his original reason, to object under section 5.[49] On July 19, 1973, the court again ordered the Attorney General to consider the senate plans without regard to the South Carolina district court decision upholding them.[50] The next day the Attorney General notified the State of his objection.[51] However, since the next senate election is not until 1976 and since the Attorney General has appealed the district court's ruling,[52] the legislature has taken no action to replace or modify the senate plans.[53] The South Carolina Senate has no black members.[54]

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47. Harper v. Kleindienst.

48. Ibid. p. 746.

49. Ibid.

50. Ibid.

51. Objection letter, July 20, 1973.

52. Appeal docketed, No. 73-1766, D.C. Cir., July 13, 1973. As of Dec. 20, 1974 the court of appeals had not ruled on the case.

53. Office of the Clerk of the South Carolina Senate, Columbia, S.C., telephone interview, Dec. 30, 1974.

54. 1974 Roster, p. 199.

NEW YORK

Three New York counties--the New York City boroughs of Manhattan (New York County), Brooklyn (Kings County), and the Bronx (Bronx County)--were covered by the Voting Rights Act after its extension in 1970.[55] In anticipation of new reapportionment legislation, the State sued for and the Justice Department consented to exemption of the three counties from the act's special coverage.[56] The legislature adopted plans which were used for the 1972 election.[57]

Late in 1973, however, the Justice Department moved to reopen the New York case,[58] and on January 10, 1974, the court rescinded the exemption.[59] New York was then required under section 5 to submit its

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55. 36 Fed. Reg. 5809 (March 27, 1971).

56. New York v. United States, Civil No. 2419-71 (D.D.C., Order of April 13, 1972). The NAACP sought unsuccessfully to intervene in this case. The lower court's denial of the NAACP's motion was upheld on appeal. NAACP v. New York, 413 U.S. 345 (1973).

57. Ch. 11 [1st Extraordinary Session 1971] Laws of New York 49-135, and Ch. 76, 77, 78 [1972] Laws of New York 221-257.

58. On Oct. 23, 1973, the Justice Department moved to reopen on the ground that the Sept. 26, 1973, order in Torres v. Sachs, 381 F. Supp. 309 (S.D.N.Y. 1974), constituted a finding that New York had employed a test or device (conducting elections only in English) with a discriminatory purpose or effect and therefore should not be exempted from the act.

59. New York v. United States, Civil No. 2419-71 (D.D.C., Order of Jan. 10, 1974). On April 30, 1974, the court denied New York's motion to be exempted again. Both district court orders were affirmed, 95 S.Ct. 166 (1974) (Nos. 73-1371 and 73-1740.)

districting plans to the Attorney General. On April 1, 1974, the Attorney General objected to certain State legislative and congressional district lines in New York and Kings Counties. The new plans adopted by the legislature[60] received section 5 clearance from the Attorney General on July 1, 1974,[61] and were used in the 1974 election.

According to the 1970 census, 35.5 percent of Brooklyn's population is minority (about 25.5 percent black and 10 percent Puerto Rican.)[62] The minority population is concentrated in central Brooklyn, with the black population heavily concentrated in the Bedford-Stuyvesant and Brownsville areas and the Puerto Rican population generally located on the fringes of the black areas roughly along a line paralleling the "hump" formed by the western, northern, and eastern boundaries of Kings County. Brooklyn also has well-defined white ethnic communities.

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60. Ch. 588, 589, 590, 591 [1974 Extraordinary Session] Laws of New York 811-33.

61. U.S. Department of Justice, Civil Rights Division, In the Matter of Chapters 588, 589, 590, and 591 of the Laws of 1974 Amending New York State Law in Relation to Certain Congressional, Assembly, and Senate Districts in Kings and New York Counties, New York, Memorandum of Decision, July 1, 1974 (hereafter cited as Memorandum of Decision).

62. The parties differ on exact percentage figures. For the sake of consistency, population statistics for the boroughs are taken from the State's figures in Memorandum in Support of Chapters 11, 76, 77, and 78 the New York Laws of 1972 (March 19, 1974) and Comment on NAACP's Memo in Opposition to Chapters 11, 76, 77, and 78 of the 1972 Laws of New York (n.d.) (hereafter cited as New York Memorandum).

Under the 1972 reapportionment, Brooklyn lost 0.2 senators, 1.9 assemblymen, and part of a congressional district.[63] The 1972 plan gave Brooklyn 8 senatorial districts and 21 assembly districts.[64] One black senator and 5 black assemblymen were elected under the plan, and one of five congressional districts elected a black representative.[65]

The NAACP charged,[66] and the Attorney General agreed, that all the districting in Brooklyn followed a pattern of creating overwhelmingly minority districts in the heart of the ghetto and then dispersing the balance of the minority population among a number of other districts.[67] The only minority senator came from the heavily minority 18th district. (See map no. 1.)

Among the smaller assembly districts the pattern was the same, though the number of minority seats was greater. Three assembly districts

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63. Figures on changes in the number of seats apportioned to the boroughs are taken from Interim Report of the Joint Legislative Committee on Reapportionment to Accompany Uni-bill (S. 1, A. 1) (Dec. 14, 1971 (hereafter cited as Joint Committee Report 1972). Population equalization among districts requires that some districts be shared by two or more counties. The State of New York calculates to three decimal places the number of representatives to which a county is entitled.

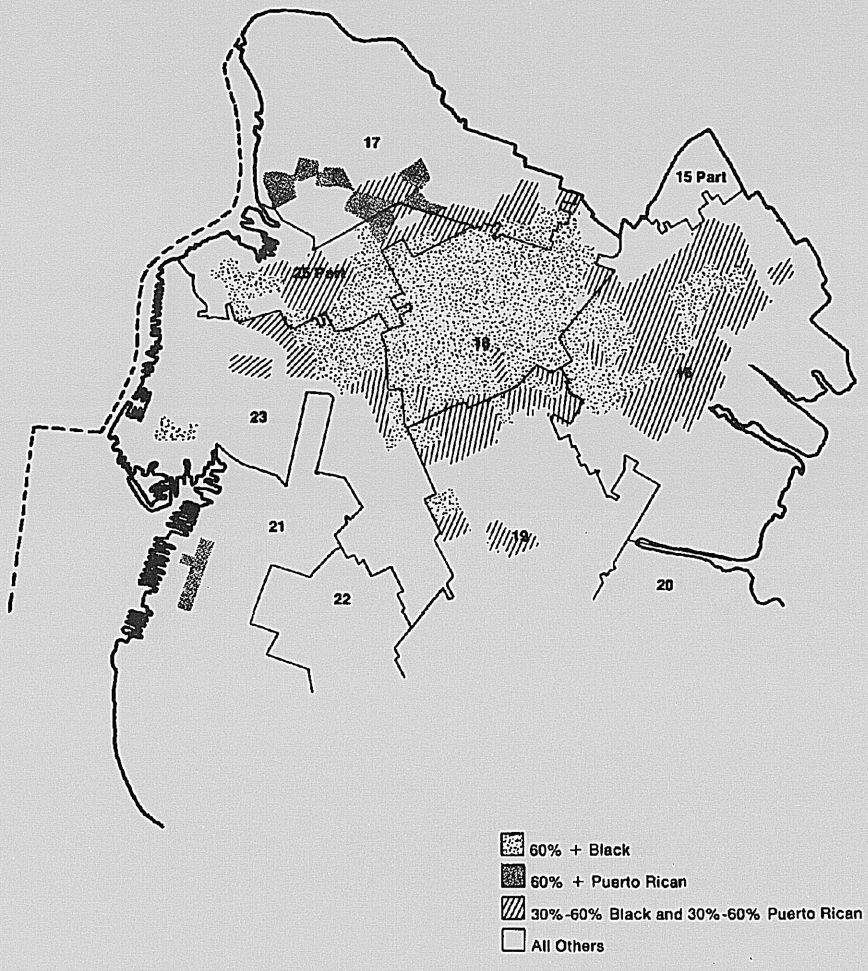
64. Ibid. Brooklyn also shares one assembly and two senate districts with other counties.

65. New York Memorandum, p. 9.

66. The NAACP's contentions are contained in Memorandum in Opposition to Approval of Chapters 11, 76, 77, and 78 of the New York Laws of 1972 and Eric Schnapper, attorney, NAACP Legal Defense Fund, New York, N.Y., letter to J. Stanley Pottinger, Assistant Attorney General for Civil Rights, March 21, 1974 (hereafter jointly cited as NAACP Memorandum).

67. Ibid. pp. 23-24, and New York Memorandum (Comment). Objection letter, April 1, 1974, p. 2.

BROOKLYN, KINGS COUNTY



Map No. 1. The 1972 plan for Brooklyn senate districts concentrates much of the minority population in a few districts and divides the remainder among majority white districts.

encompassed the heart of the ghetto, and all had black assemblymen (as did two other districts). Two districts with a majority black and Puerto Rican population but majority white electorates elected white assemblymen. Other districts included some of the minority area in overwhelmingly white districts.

After the Attorney General objected to these lines, the State developed lines that redistributed population among assembly districts to create five districts with minority population over 75 percent and two additional districts with minority population over 65 percent.[68] With respect to the senate districts, north-south lines with appropriate adjustments on the southern boundaries permitted three minority-dominated districts (all with a black majority). Another senate district, shared by Brooklyn and Manhattan, is 44 percent minority with Puerto Ricans the predominant minority group. Italians of Green Point and Hasidic Jews of Williamsburg (both in North Brooklyn) vigorously but unsuccessfully protested the new lines.[69] With the use of the new plan another black was elected to the senate from Brooklyn.[70]

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68. Unless otherwise noted figures on the racial composition of the new districts are taken from the Interim Report of the Joint Legislative Committee on Reapportionment to Accompany Uni-bill (S.1, A.1) and (S.2, A.2), May 27, 1974 (hereafter cited as Joint Committee Report 1974).

69. The Justice Department received petitions with more than 7,000 signatures opposing the lines (Memorandum of Decision, p. 2) and a suit charging racial gerrymandering was filed. After the Justice Department did not object to the plan, the court dismissed the complaint. United Jewish Organizations of Williamsburgh v. Wilson, 377 F. Supp. 1164 (E.D.N.Y. 1974). As of Dec. 20, 1974, this case was on appeal.

70. New York Times, Nov. 7, 1974, p. 40.

The minority population of Brooklyn had been fragmented among a number of congressional districts until the first minority district, the 12th, was created in the court-ordered reapportionment of 1968.[71] The 1970 and 1972 redistrictings further concentrated the minority population in the 12th district. Under the 1972 plan, it included all but one of Brooklyn's 45 census tracts 90 percent or more black in the 1970 census. Its population was 89.4 percent minority (75.9 percent black and 13.5 percent Puerto Rican).[72] The adjoining 14th district had a 46 percent minority population (22 percent black and 24 percent Puerto Rican).[73] (See map no. 2.)

After the Attorney General objected to these lines, New York drew a plan that created minority congressional districts in Brooklyn. Essentially, the plan combined the territory of the previous 12th and 14th districts and divided it in half by a line running north-south.[74] The resulting District 12 was 72.2 percent minority (53 percent black and 19.2 percent Puerto Rican) and the new District 14 was 63.3 percent minority (45.1 percent black and 18.2 percent Puerto Rican). (See map no. 3.)

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71. Wells v. Rockefeller, 281 F. Supp. 821 (S.D.N.Y. 1968).

72. Racial composition figures from Memorandum of Decision, p. 14.

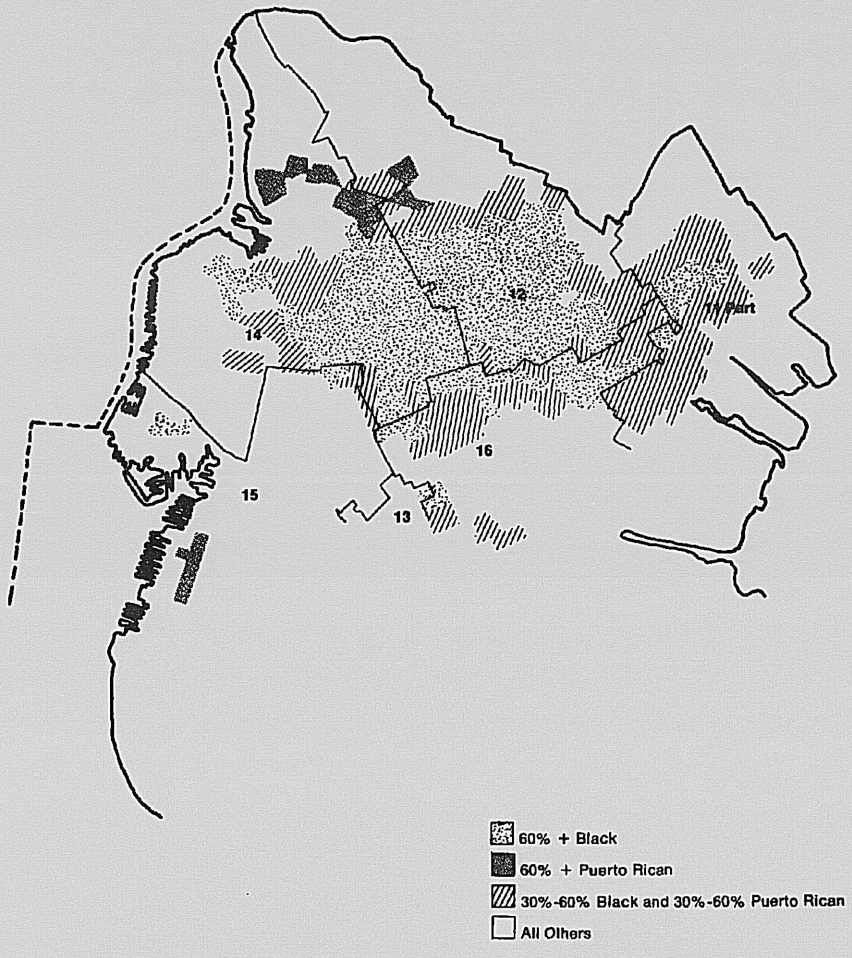
73. Ibid.

74. Joint Committee Report 1974.

BROOKLYN, KINGS COUNTY

Map No. 2. The 1972 plan for congressional districts in Brooklyn concentrated minorities in District 12.

BROOKLYN, KINGS COUNTY



Map No. 3. Under the 1974 plan minorities form a majority of the population in both Districts 12 and 14.

The black incumbent in the 12th district was renominated and re-elected handily. In the 14th, a white who had challenged the incumbent in 1972 defeated three opponents--a white, a black, and a Puerto Rican--in the primary and was subsequently elected.[75]

After the 1970 census, Manhattan lost half a senate seat and two assembly seats, leaving 4 senate districts and 12 assembly districts wholly within the borough.[76] The 1970 minority population was 39.0 percent of the total.[77] Blacks are concentrated in Harlem and Puerto Ricans in East Harlem. There is also a smaller area of Puerto Rican concentration on the lower East Side. The borough president in Manhattan is black, and Harlem has had a black representative in Congress for years. Under the 1972 districting plan, Manhattan had three black assemblymen and one black senator.[78] Although most Democrats had voted against the 1972 plan, the three black incumbent assemblymen from Manhattan supported it.[79]

The NAACP argued that redrawing of the lines could produce a fourth minority assembly district in Manhattan because the 1972 lines

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75. New York Times, Sept. 12, 1974, p. 33 and Nov. 7, 1974, p. 40.

76. See note 63 above. Manhattan also shares one assembly and three senate districts with other boroughs.

77. See note 62 above.

78. New York Memorandum, pp. 6-8.

79. Ibid., p. 7.

fragmented or "siphoned off" substantial numbers of minority voters (particularly Puerto Ricans from East Harlem).[80] The Justice Department agreed that the lines appeared to have unnecessary dilutive effect on minority voting strength and found the plan's shift of minority neighborhoods among senate districts to have a similar effect.[81]

Though the State had argued that attempting to draw four minority districts would so disperse the minority votes that election of minority candidates would be endangered,[82] the plan submitted after the objection did create four minority assembly districts. Essentially the difference between the two plans is that the new lines are drawn across the island rather than lengthwise.[83] By drawing the lines in this way, it was possible to create a potentially Puerto Rican district in the 72nd assembly district, where both blacks and Puerto Ricans have slightly more than 40 percent of the population. Previously that district extended far west into Harlem and was a black district.

In the September 10, 1974, primary a Puerto Rican was nominated in the 72nd district; he was subsequently elected. Two black incumbents

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80. NAACP Memorandum, p. 25.

81. Objection letter, April 1, 1974, pp. 2-3.

82. New York Memorandum, pp. 7-8.

83. Joint Committee Report 1974.

were reelected, a third was defeated in the primary by a white, but apparently racial considerations were not involved.[84]

The Attorney General objected to the plan for the senate districts for Manhattan because the concentration of minorities in the 28th district was insufficient to ensure minority representation. The report of the Joint Legislative Committee on Reapportionment protested this approach,[85] but the State drew lines which created a safer district. The old 28th district was 58.5 percent nonwhite and had a black incumbent. The new plan increased the nonwhite population to 64.1 percent.[86]

GEORGIA

In 1972 the Department of Justice objected to the redistricting plans for the Georgia congressional delegation, the State senate and the State house of representatives.[87]

In 1970 the city of Atlanta was 51.6 percent black; its population was also about 38,000 over the ideal size for a Georgia congressional district. The city was divided by the redistricting plan among three different districts. Most of the city was placed in the fifth district,

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84. New York Times, Sept. 12, 1974, p. 33 and Nov. 7, 1974, p. 40.

85. Joint Committee Report 1974.

86. Data on racial composition of new districts taken from Memorandum of Decision, p. 20.

87. Objection letters, Feb. 11 and March 3, 1972.

which was 38.3 percent black.[88] The Department noted in its letter of objection that the plan "cut likely black congressional candidates, including Reverend Andrew Young (who ran a solid race against an incumbent white in 1970) and Maynard Jackson (popular Vice-Mayor of Atlanta) out of the Fifth District by a few blocks...."[89]

A revision of the plan by the State[90] increased the black percentage in the fifth district to 43.8.[91] Although blacks argued in court that this percentage was still too low, the revised plan was accepted by the Attorney General and by the court.[92] It created a district which provided "a more realistic opportunity for victory" for a black candidate than had the earlier plan or the plan in effect in 1970 when a black candidate was defeated.[93] In November 1972 the Rev. Andrew Young became the first black Congressman since Reconstruction from a Southern State covered by the Voting Rights Act.[94]

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88. Bacote v. Carter, 343 F. Supp. 330, 331 (N.D. Ga. 1972).

89. Objection letter, Feb. 11, 1972.

90. Act 871 Ga. L. 1972, 235 (House bill no. 1862 amending Code § 34-1801).

91. Bacote v. Carter, p. 332.

92. Nonobjection letter, April 11, 1972; Bacote v. Carter. See Stuart E. Eizenstat and William M. Barutio, Andrew Young: The Path of History (Atlanta: Voter Education Project, Inc., 1973), p. 11.

93. Eizenstat and Barutio, p. 11.

94. Ibid., p. 1.

With respect to the senate plan the Department thought that the boundaries of two districts--one in Fulton County and one in Richmond County--might dilute the black vote.[95] A revision of the senate plan that remedied this situation was not objected to by the Department.[96] Neither seat is now held by a black. There are now, after the November 1974 general election, two blacks in the 56-member Georgia State Senate, the same number as there were in 1968.[97]

The house plan was turned down by the Department because of its extensive use of multi-member districts combined with numbered post and majority vote requirements and because of discriminatory changes in potential black majority single-member districts.[98] The plan created 49 multi-member and 56 single-member districts.[99] After minor revision by the legislature the plan was again turned down by the Department.[100]

The Georgia legislature then "resolved that it would take no further steps to enact a plan," and the Department went to court to enjoin the State "from conducting elections for its House of Repre-

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95. Objection letter, March 3, 1972.

96. Nonobjection letter, April 11, 1972.

97. Political Participation, p. 216; Washington Post, Nov. 7, 1974, p. 6A.

98. Objection letter, March 3, 1972.

99. Ibid.

100. Objection letter, March 24, 1972.

sentatives under the 1972 legislative reapportionment law."[101] The Supreme Court of the United States agreed to stay the order of the district court[102] and allowed the 1972 election to proceed under the plan objected to by the Attorney General. But the Court stated that any future elections for the State house of representatives must be held under a plan which has received section 5 clearance.[103]

In 1974 the legislature adopted a plan that relies substantially less on the use of multi-member districts.[104] The configuration of this plan was the result of negotiations between the State and the Department that increased the number of districts black voters might control.[105] For example, district 83 in Burke and Jefferson Counties was altered from 43.60 percent black to 60.38 percent black.[106]

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101. Georgia v. United States, 411 U.S. 526, 527 and 530 (1973).

102. The district court order is found in United States v. Georgia, 351 F. Supp. 444, 446-47 (N.D. Ga. 1972).

103. Georgia v. United States, 411 U.S. 526, 541.

104. Act 769, as received by the U.S. Department of Justice for section 5 preclearance, Feb. 26, 1974. The 1974 plan calls for 180 members to be elected from 154 districts.

105. Former staff member, Voting Section, Department of Justice, telephone interview, Nov. 23, 1974.

106. Ibid. and section 5 file.

This plan was not objected to by the Department.[107] Its use in the 1974 elections facilitated an increase in the number of blacks in the State house from 14 to 20.[108]

LOUISIANA

Before 1971 only one black served in the Louisiana legislature, a house member from New Orleans.[109] A new legislative districting plan was adopted in 1971, but it would not have facilitated the election of additional blacks.[110] The Attorney General objected to it and a Federal judge would have rejected it on the grounds of discrimination if the Department had not.[111]

The dilutive effect of the plan came from a combination of gerrymandered district lines, frequent use of multi-member districts,[112]

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107. Nonobjection letter, April 29, 1974.

108. Stanley Alexander, research director, Voter Education Project, Inc., Atlanta, Ga., telephone interviews, Nov. 22 and 25, 1974.

109. Stanley A. Halpin, Jr. and Richard Engstrom, "Racial Gerrymandering and Southern State Legislative Redistricting: Attorney General Determinations Under the Voting Rights Act," Journal of Public Law, vol. 22 (1973) p. 37 (hereafter cited as Halpin and Engstrom). Stanley A. Halpin, Jr. was counsel for Dorothy Taylor et al. in the case cited in note 111 below.

110. Objection letter, Aug. 20, 1971.

111. Bussie v. Governor of Louisiana, 333 F. Supp. 452, 454 (E.D. La. 1971).

112. Objection letter, Aug. 20, 1971.

and use of numbered posts in certain multi-member districts.[113] The plan placed as many blacks as possible into--and, indeed, over-populated--the district of the State's only black legislator to prevent the formation of another majority black district.[114] It split up three majority black rural parishes that together could have formed a house district that was majority black.[115] It used multi-member districts to dilute the political effectiveness of concentrations of black population,[116] and it also submerged black voters by creating noncontiguous districts.[117]

The Federal court did not revise the State's plan but promulgated its own, single-member district plan.[118] The use of the Steimel plan (named for the district court's special master)--modified in one major respect by the United States Court of Appeals for the Fifth Circuit--led to an increase from one to eight in the number of black legislators elected in the February 1972 election.[119] (See map no. 4.)

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113. Stanley A. Halpin, Jr., attorney, New Orleans, La., letter to David L. Norman, Acting Assistant Attorney General, July 28, 1971, cited in Halpin and Engstrom, p. 54.

114. Objection letter, April 20, 1971. House district 43.

115. Ibid. Madison, East Carroll, and Tensas.

116. Ibid. New Orleans, district 48 in Iberia Parish, and De Soto Parish.

117. Ibid. House district 48 and De Soto Parish.

118. Bussie v. Governor of Louisiana, p. 455.

119. Voter Education Project, Inc., Atlanta, Ga., "Black Elected Officials in the South," Feb. 3, 1972.

Map No. 4. The Senator's Plan for lakefront to river senate districts in New Orleans follows traditional ward lines and cuts across black neighborhoods, dividing the black population among the four districts.

Map No. 5. The Steimel Plan departs from the traditional lakefront to river alignment, creating substantial black majorities in Districts 2 and 4.

The court of appeals rejected the configuration of four New Orleans senate districts in the Steimel plan and substituted for it a plan developed by New Orleans senators. These boundaries followed more faithfully the city's traditional ward boundaries, and would preserve the seats of the incumbent senators.[120] In rejecting the senators' plan (see map no. 5) the district court had stated that it "would...operate to diversify the Negro [sic] voting population throughout the four districts and thus significantly dilute their vote. Their plan practically eliminates the possibility of a negro being elected from any of the four districts, while the court approved plan at least gives them a fair chance in two out of the four districts."[121] (See table 10.)

Table 10. BLACK PERCENTAGES CREATED BY ALTERNATIVE PLANS FOR SENATE DISTRICTS IN NEW ORLEANS

District	Steimel plan	Senators' plan
2	64.0%	42.6%
3	16.0	43.7
4	70.2	54.4
5	21.7	42.0

Source: Bussie v. Governor of Louisiana, 333 F. Supp. 452, 457 (E.D. La. 1971).

120. Bussie v. McKeithen, 457 F.2d 796 (5th Cir. 1971) and Taylor v. McKeithen, 499 F.2d 893 (5th Cir. 1974).

121. Bussie v. Governor of Louisiana, 333 F. Supp. 452, 457.

Because the court of appeals did not explain its action in rejecting the Steimel plan, the Supreme Court did not review the case but returned it to the court of appeals for a discussion of the legal issues involved.[122] Over two years later, in August 1974, the court produced an opinion justifying its earlier action.[123] "Considering the shrinking white population, the increasing black population, and the accelerating black registration in New Orleans," the court explained, "the Senators' plan gave black voters in the four districts better access to participation in the election of State legislators than the Steimel plan."[124]

ALABAMA

In January 1972, a Federal court ordered into effect a districting plan for the Alabama legislature which used single-member districts exclusively.[125] Under the old plan multi-member districts were extensively used, and largely because of this the State senate had no black members and the State house only two.[126] The court, however, did not require new elections to be held in 1972 but allowed the incumbent legislators to remain in office until replaced through the regular

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122. Taylor v. McKeithen, 407 U.S. 191 (1972).

123. Taylor v. McKeithen, 499 F.2d 893 (5th Cir. 1974).

124. Ibid. p. 896.

125. Sims v. Amos, 336 F. Supp. 924, 935-36 (M.D. Ala.), affirmed, 409 U.S. 942 (1972).

126. See Sims v. Amos, p. 931 and Shameful Blight, pp. 112-13. An additional black was elected to the House in a 1972 special election. New York Times, Dec. 1, 1974, sec. 1, p. 33.

election scheduled for November 1974.[127] The court subsequently told the legislature that if it could enact an acceptable plan the legislature's plan would be substituted for the court's.[128]

On May 16, 1973, a new plan adopted by the legislature was submitted to the court.[129] The court rejected the new plan 2 1/2 months later for two principal reasons. First, the requirements of the one person, one vote rule were not satisfied.[130] Second, the court was not convinced that the plan was not racially discriminatory.[131]

The court explained that it was the duty of the State to show that the plan was not discriminatory. This is required by section 5 of the Voting Rights Act, but even without section 5 "the history of racial gerrymandering in Alabama would...create a presumption that defendant's plan is discriminatory and impose upon the State the burden of proving that its present plan, unlike past plans, does not dilute minority votes."[132]

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127. Sims v. Amos, pp. 940-41.

128. Order of Feb. 26, 1973, quoted in Sims v. Amos, 365 F. Supp. 215, 217 (M.D. Ala. 1973), affirmed sub nom. Wallace v. Sims, 415 U.S. 902 (1974).

129. Act No. 3, House Bill 2, 1973 Special Session of the Alabama Legislature, cited in Sims v. Amos, 365 F. Supp. 215, 217.

130. Sims v. Amos, pp. 221-23.

131. Ibid., pp. 219-20.

132. Ibid., p. 220, n. 2.

In 1970 only two blacks had been elected to the State legislature, with none from Alabama's three largest cities.[133] In 1974, under the new single-member plan, 15 blacks won legislative seats. Birmingham, the State's largest city, which is 42 percent black, now has two black senators and six black representatives. Mobile, which is 36 percent black, now has one black representative, and Montgomery, 34 percent black, has two.[134]

VIRGINIA

In 1971 the Attorney General objected to the use of multi-member districts in the Virginia house in Hampton, Newport News, Norfolk, Portsmouth, and Richmond.[135] With respect to the senate plan, which used single-member districts, the Attorney General objected to two districts in the Norfolk area that divided a concentration of black population.[136]

These objections did not lead to districting more satisfactory to blacks.[137] The assembly objection was withdrawn after a Supreme Court decision that the Attorney General interpreted as removing the

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133. 1973 Roster, p. 1.

134. Office of Speaker of the Alabama House of Representatives, telephone interview, Nov. 22, 1974; David Aiken, Joint Center for Political Studies, Washington, D.C., telephone interview, Nov. 25, 1974.

135. Objection letter, May 7, 1971.

136. Ibid.

137. John N. Mitchell, Attorney General, telegram to Hon. Linwood Holton, Governor of Virginia, June 10, 1971, quoted in section 5 summary.

legal justification for the objection.[138] Court review of the plan[139] did not lead to more favorable districting for blacks. Although the legislature remedied the boundary which the Attorney General had found objectionable,[140] in court review of the senate plan the legislative remedy was nullified. The court combined the two districts in controversy with another district to form a majority white, three-member district. This was necessary, according to the court, because of the distortion caused by counting "home ported" sailors in one of the districts.[141]

Partly as a result of these districting plans there are only two blacks in the State legislature, one in each house.[142]

ARIZONA

In 1970 the Federal court in Arizona allowed the State of Arizona to hold its election for members of the State legislature using a plan

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138. Whitcomb v. Chavis, 403 U.S. 124 (1971).

139. Howell v. Mahan, 330 F. Supp. 1138 (E.D. Va. 1971). Probable jurisdiction was noted by the Supreme Court in the appeal of the black plaintiff-intervenors against the use of multi-member districts. Thornton v. Prichard, 405 U.S. 1063 (1972). On appellant's motion this appeal was dismissed. 409 U.S. 802 (1972).

140. Ch. 246 [1971] Acts of Va. Assembly 499-506. The Attorney General did not object to this revision, nonobjection letter, Aug. 13, 1971.

141. Howell v. Mahan, p. 1146-47, affirmed with respect to senate districts, 410 U.S. 315, 331 (1973).

142. 1974 Roster, p. 223.

which it found to be constitutionally deficient.[143] (See map no. 6.) It expected the legislature, however, to prepare a new plan for use in 1972 when 1970 census data became available.[144] The Supreme Court upheld this arrangement.[145]

The 1970 plan--besides failing to meet one person, one vote standards--discriminated against minorities in two ways. First, the plan used a discriminatory method of determining population.[146] Because no population data were available for local voting precincts--the building block of the plan--it was assumed that each precinct had the same percentage of a county's population as it did of the county's registered voters.[147] In a concurring opinion Justice Douglas observed that blacks, Mexican Americans, and Native Americans are less likely to be registered than whites. Furthermore, the Arizona literacy test weighed more heavily on these groups. As a result, "one district in the Phoenix ghetto had approximately 70,000 residents while an affluent all-white district in another area of Phoenix had only 27,000 residents."[148] Thus, there were fewer districts that had a predominantly minority population than the requirement of equal population size dictated.

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143. Klahr v. Williams, 313 F. Supp. 148 (D. Ariz. 1970).

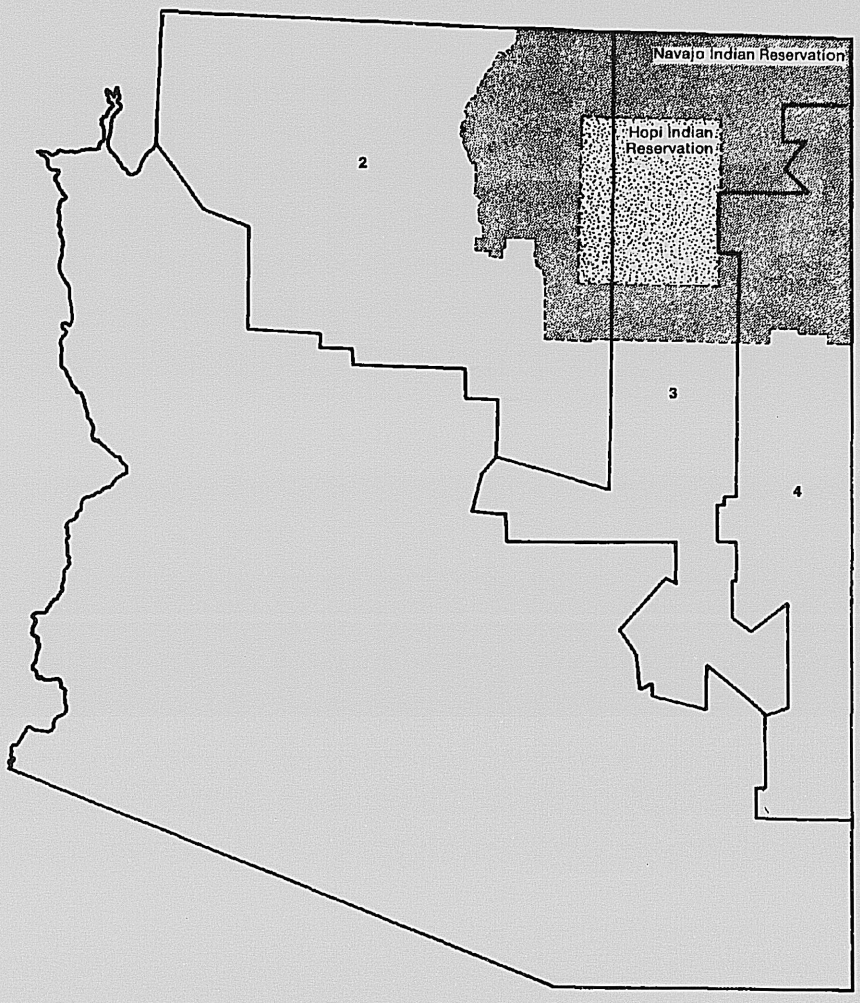
144. Klahr v. Williams, p. 154.

145. Ely v. Klahr, 403 U. S. 108 (1971).

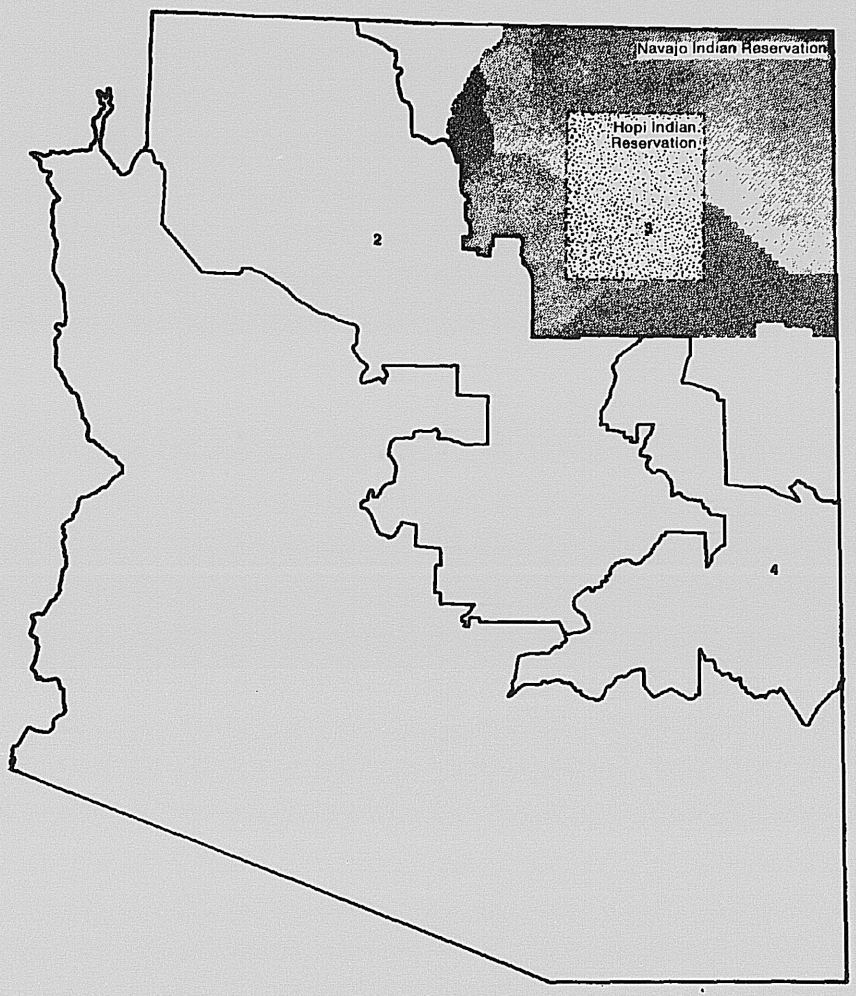
146. Ibid., pp. 118-19.

147. Ibid.

148. Ibid.



Map No. 6. Both the 1970 plan for Arizona legislative districts and the 1971 plan (shown above) divide the Navajo Reservation among three different districts.



Map No. 7. The plan ordered by the court in 1972 for Arizona legislative districts places the Navajo Reservation within one district.

Second, the computer used in fashioning the plan was instructed to preserve the seats of incumbent legislators and to make districts politically homogeneous.[149] When these factors are combined, Justice Douglas observed, "an incumbent had not only the natural benefits of incumbency, but also the benefits (where possible) of a one-party district, his own fiefdom."[150] The effect of this is shown in the treatment of the Navajo Reservation in Northeastern Arizona.

> While it had sufficient numbers of Indians to justify a separate district which could undoubtedly elect Indian representatives in the State legislature, the Indians were done in. At the time of this suit there were no Indians elected to either the State House or Senate. But just to the south of the area two State senators lived 10 miles apart. Hence, the incumbency rule was invoked to split the Indian area so as to accommodate the two white senators.[151]

In the plan adopted by the legislature in 1971 using 1970 census data the Navajos were "done in" again.[152] The 1971 plan created 30 single-member senate districts, each of which served as a two-member house district.[153] As originally introduced in the legislature the plan placed the Reservation entirely within a single legislative district.

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149. Ibid.

150. Ibid.

151. Ibid.

152. Klahr v. Williams, 339 F. Supp. 922, 927 (D. Ariz. 1972). No appeal was taken to the Supreme Court.

153. Ibid., p. 924.

"Thereafter, and at the insistance of an incumbent House member who resides in the district as proposed, the bill was so amended that the reservation was divided among three legislative districts."[154]

The court found that the division of the Reservation "was made in order to destroy the possibility that the Navajos, if kept within a single legislative district, might be successful in electing one or more of their own choice to the legislature."[155] The court adopted a revision of the plan which restored the Reservation to a single district.[156] (See map no. 7.)

In 1972, the State senator and one of the two State representatives elected from this district were Navajos.[157] In 1974, Navajos were elected to all three offices.[158]

NORTH CAROLINA

North Carolina uses a combination of single- and multi-member districts in its senate and house.[159] In many of the multi-member

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154. Ibid., p. 927.

155. Ibid.

156. Ibid., p. 928.

157. Benjamin Hanley, Member of the Arizona House of Representatives for District 3, Window Rock, Ariz., interview, July 19, 1974.

158. Robert Miller, attorney, Dinebeiina Nahiilna Be Agaditahe (DNA), Tuba City, Ariz., telephone interview, Nov. 13, 1974.

159. House plan: Ch. 483 [1971] Session Laws of N.C. 412-414.
Senate plan: Ch. 1177 [1971] Session Laws of N.C. 1743-1744.

districts it has used either numbered posts or an anti-single-shot law.[160] In 1971 the Attorney General objected to the use of numbered posts in North Carolina counties covered by the Voting Rights Act.[161] In 1972, a Federal court struck down the use of numbered posts in the remaining counties and struck down the anti-single-shot law throughout the State.[162] Although these practices had been challenged as racially discriminatory, the court was able to dispose of them without dealing with the issue of race.[163]

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The final section of Chapter 6, "Minimizing the Impact of Minority Success," described various methods used by politically dominant whites to frustrate minority aspirations when success at the polls appeared imminent or had been achieved. The barriers described in this chapter and in the final chapter are similar in their effect. The difference is that the barriers described here are generally not the result of an ad hoc attempt to deal with a particular situation. Here the concern is with the general rules of the political process. The U.S. Department of Justice, and increasingly the courts, look not only at the purpose of these rules but also their effect. For example, the use of numbered

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160. Dunston v. Scott, 336 F. Supp. 206, 208-10 (E.D.N.C. 1972).

161. Objection letters of July 30 and Sept. 27, 1971.

162. Dunston v. Scott, pp. 211-13.

163. Ibid. For further discussion see Shameful Blight, pp. 128-29.

posts can disadvantage minorities whether this implements a discriminatory purpose or not. The effect is no less discriminatory even if numbered posts are used solely to make a complex ballot easier for the voter.

The trend in the States that have been considered has been away from the use of multi-member legislative districts--with the accompanying use of numbered posts and related voting rules--to the use of single-member districts. This trend has not been the result of voluntary action by the States but has been imposed upon the States by the Federal courts and by the Attorney General. The result has been a substantial increase in the number of black legislators in these States. There were in 1968, in the Alabama, Georgia, and Louisiana legislators and the South Carolina house, a total of only 12 blacks. Following the 1974 general elections there were 59 blacks in these same bodies.

On the other hand, all attempts to require the State of Mississippi to use single-member districts for the election of its legislators have been unsuccessful. As a result the Mississippi legislature has only one black member. Likewise, senators in South Carolina are not yet required to be elected from single-member districts. There are no blacks in the South Carolina senate.

9. FAIR REPRESENTATION IN LOCAL GOVERNMENTS

The boundary formation and voting rule problems that were described in Chapter 8 are as relevant for local governments as they are for State legislative and congressional districts. In many instances these changes in voting district boundaries or voting rules have been objected to by the Attorney General under section 5 of the Voting Rights Act or attacked as discriminatory in court. Use of at-large elections and multi-member districts and of voting rules that can have a discriminatory effect such as numbered posts or candidate residence requirements, majority vote requirements, anti-single shot requirements, and staggered terms, in particular, have been the subject of many section 5 objections or court cases.[1]

Other boundary problems are described in this chapter that did not arise in Chapter 8. Suppose that a town has a population of 1000 and is 60 percent black and 40 percent white, and that the rest of the county in which the town is located has a population of 1,000 and is all white. The town might decide to annex some of the surrounding white area, giving the town a white majority. The town might consolidate with the county, giving the white voters a dominant

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1. See chapter 8, pp. 206ff. for a detailed description of the various arrangements or procedures mentioned here.

position in the new jurisdiction. The white part of the town might secede, creating a new, white-dominated town. Or the town might constrict its boundaries, thereby reducing the number of black voters. Changes such as annexation or incorporation can have a discriminatory effect and have been scrutinized by the Department of Justice and the courts.

Section 5 objections have been numerous in Georgia, Louisiana, Mississippi, South Carolina, and Alabama. In these five States and in Arizona also, there have been important court cases on practices that dilute the vote of minorities at the local level. In Virginia section 5 objections have been made to annexations by two cities. Practices exist in some North Carolina counties that apparently have the effect of diluting the vote of minorities.

APACHE COUNTY, ARIZONA

Apache County, Arizona, is governed by three supervisors, each elected from a single-member district.[2] Although approximately three quarters of the county population is Native American residing on the Navajo Reservation, the district the Reservation is in, the third, elects only one of the three supervisors.[3] This districting plan was adopted by

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2. A.R.S. §§ 11-211 to 11-213 (1974).

3. Pretrial Order, p. 3, Goodluck v. Apache County, Civil No. 73-626-Pct-WEC, (D. Ariz., filed Oct. 15, 1973).

the county board of supervisors in April 1972 for use in the 1972 election, when a Navajo was elected from district 3.[4] (See map no. 8.) The plan was not submitted to the District Court for the District of Columbia or to the Attorney General before implementation as required by section 5 of the Voting Rights Act.[5] The county's population is distributed among the districts as follows:

Table 11. POPULATION OF SUPERVISORS' DISTRICTS IN APACHE COUNTY, ARIZONA

District 1	1,700
District 2	3,900
District 3	26,700
TOTAL	32,300

Source: Pretrial Order, p. 3, Goodluck v. Apache County, Civil No. 73-626-Pct-WEC, (D. Ariz., filed Oct. 15, 1973)

If all districts were approximately equal, as required by the 14th amendment,[6] each would have about 10,767 people. The explanation for this disparity, which could not be the result of ignorance of the constitutional standard and is probably the greatest for any districting plan adopted since the Supreme Court of the United States began

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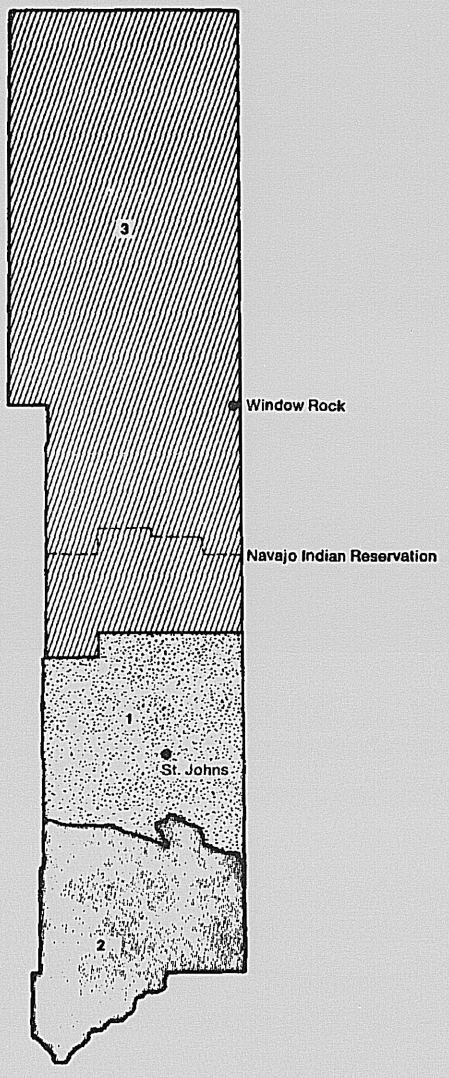
4. Ibid. See Shirley v. Superior Court in and for County of Apache, 109 Ariz. 510, 513 P.2d 939 (1973).

5. Section 5 Printout, as of May 8, 1974. The district boundaries have not changed since 1952. Brief for Plaintiffs Goodluck et al., p. 2, Goodluck v. Apache County.

6. See Reynolds v. Sims, 377 U.S. 533 (1964) and Abate v. Mundt, 403 U.S. 182 (1971).



Map No. 8. Apache County, Arizona, is divided into three supervisors' districts. District 3 contains all of the Navajo Reservation located within the county and 83 percent of the county's population. The broken line indicates the southern boundary of the reservation.

enforcing standards for district equalization in 1964, is that the county did not count Native Americans. Of the population of district 3, 23,600 are Native Americans.[7] The county's justification for not counting Native Americans in drawing the plan is that Native Americans residing on a reservation are not United States citizens, should not be allowed to vote, and should not be counted for the purpose of political apportionment. This, according to the county, is because Native Americans are immune from certain kinds of taxation and, to some extent, immune from judicial process.[8] The legality of the Apache County districting plan was, as of December 2, 1974, before a Federal district court.[9]

GEORGIA

Few blacks serve on county commissions or city councils in Georgia. One reason for this is the use of methods of election which dilute black voting strength. Although there have been more objections under section 5 to election methods in Georgia counties and cities than to those of the units of local government of any other State, practices remain which dilute the vote of blacks.

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7. Pretrial Order, p. 4, Goodluck v. Apache County.

8. Brief for Defendants, Goodluck v. Apache County.

9. Goodluck v. Apache County; United States v. Arizona, Civil No. 74-50 Pct WEC (D. Ariz., filed Jan. 23, 1974). The two cases have been consolidated. The defendants (the county and various county officials) have counterclaimed against the plaintiffs and other county, State, and Federal officials, asking that Navajos residing on the Reservation no longer be allowed to vote or be counted for apportionment. See Pretrial Order, p. 2, Goodluck v. Apache County.

Counties

Of Georgia's 159 counties, 23 have a black majority. (See map no. 9.) As of January 1975 five blacks served as county commissioners in these counties.[10] Only in Hancock County, which is 74 percent black, were a majority of the commissioners black.[11] In the nine black majority counties in which school boards are elected[12] there were only six black members.[13] Of these, four are in Hancock County.[14]

Twenty-two other Georgia counties are between 40 and 50 percent black.[15] In these counties there are no black commissioners.

There are a number of structural reasons for the lack of black commissioners and school board members. First is the small size of commissions and--but to a lesser extent--school boards in Georgia counties. Of the 23 black majority counties, 10 have five commissioners each; 10 have three commissioners; and 3 have only one commissioner apiece.[16] Clearly it will be harder for a black to be

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10. Stanley Alexander, research director, Voter Education Project, Atlanta, Ga., telephone interview, Dec. 5, 1974.

11. Ibid.

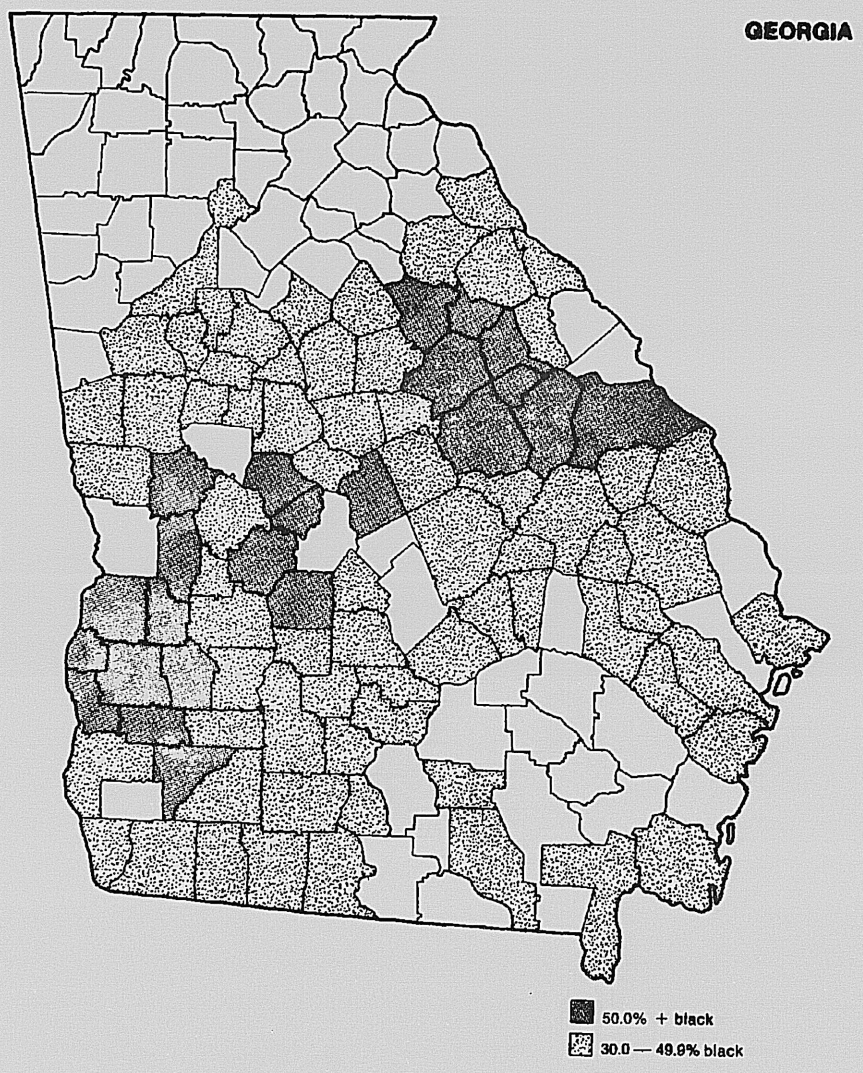
12. These counties are Baker, Calhoun, Dooly, Greene, Hancock, Macon, Marion, Stewart, and Terrell. Information provided by officials in the 23 counties.

13. Alexander Interview and Joint Center for Political Studies, National Roster of Black Elected Officials (Washington, D.C., 1974) pp. 57-58 (hereafter cited as 1974 Roster).

14. Ibid.

15. Alexander Interview and 1974 Roster, p. 52.

16. Information provided by officials in the 23 counties.



Map No. 9. Georgia racial composition.

elected to the governing body in Warren County, Georgia, which is 59 percent black and has a sole commissioner, than it will be in East Carroll Parish, Louisiana, which is also 59 percent black but which has nine police jurors.[17]

The extreme form of this problem lies in the Georgia counties where the school board is appointed: there no blacks can be elected. Appointment is made by the county grand jury.[18] It was frequently reported to Commission interviewers that the grand jury in counties with a high black percentage had very few black jurors and that few blacks were appointed to school boards. Those who were appointed are often, because of their advanced age or their economically dependent position, unable to represent adequately the interests of the black community.[19]

The second reason for the lack of black voting success is the use of at-large elections. In only two of the 20 majority black counties having more than one commissioner are commissioners elected from single-

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17. Theodore Lane, president, East Carroll Citizens for Progress, Lake Providence, La., interview, Sept. 4, 1974.

18. Ga. Const. Art. VIII § 2-6801 (1945). In Turner v. Fouche, 396 U.S. 346 (1970), the Supreme Court examined the system of grand jury selection and school board appointment in Taliaferro County. The Court found that the selection process has been used to discriminate against blacks and that the requirement that school board members own real property violated the equal protection clause of the 14th amendment.

19. Sarahjane Love, attorney, American Civil Liberties Union, Atlanta, Ga., interview, Aug. 12, 1974, and staff interviews, Monroe, Peach, Taliaferro, and Washington Counties, Ga., Aug.-Sept. 1974). Persons interviewed in Virginia, where school board members are also appointed, were concerned with similar problems. Staff interviews, Petersburg and Southampton and Surry Counties, Va., July 1974. See Va. Code Ann. §§ 22-57.1, 22-61, 22-79.1, 22-89 (1973).

member districts.[20] McIntosh County has five commissioners elected from five districts.[21] Although McIntosh has the lowest black percentage of any of Georgia's majority black counties, it has one black commissioner.[22] A second black reached the primary runoff in 1974 but was defeated.[23] In 1971 Twiggs County adopted at-large elections with residence requirements.[24] The Attorney General objected to this change under section 5 of the Voting Rights Act,[25] and private plaintiffs and the Department of Justice went to court to enforce the objection and require the use of single-member districts.[26] As a result of the court's favorable ruling, one of the five commissioners in the 60 percent black county is now black.[27] A second black candidate made the primary runoff in 1974.[28]

Only one of the nine elected school boards in the majority black counties is elected entirely from single-member districts.[29] One of the

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20. Information provided by officials in the 23 counties.

21. Judge of Ordinary, McIntosh Co., Ga., telephone interview, Aug. 15, 1974.

22. Alexander Interview.

23. Ibid.

24. Ga. 1971, p. 3564.

25. Objection letter, Aug. 7, 1972.

26. Bond v. White, 377 F. Supp. 514 (M.D. Ga. 1974).

27. Macon Telegraph, Aug. 15, 1974, p. 1A.

28. Macon Telegraph, Sept. 4, 1974, p. 6A.

29. Information provided by officials in the nine counties.

five members from that county--Stewart--is black.[30] Two other counties use a combination of at-large, multi-member, and single-member district election.[31] The others elect all board members at large.

The third reason for the lack of black success is the use of other structural devices along with at-large elections that prevent minority voting power from being used effectively. All 18 majority black counties that have more than one commissioner and that have at-large election of commissioners use either numbered posts or candidate residence requirements.[32] Both devices eliminate the effective use of single-shot voting by minorities and both lead, if there is a black candidate, to head-to-head contests between a black and a white.[33] In five of these counties the use of staggered terms[34] further highlights the candidacy of a black by limiting the number of positions available in any election year. Residence requirements or numbered posts and staggered terms are generally used for school board elections also.[35]

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30. 1974 Roster; Charles L. Rodgers, Richland, Ga., interview, Aug. 15, 1974.

31. Calhoun and Terrell Counties.

32. Information provided by officials in the 18 counties.

33. See pp. 206-09 above.

34. Dooly, Macon, Peach, Randolph, and Talbot. Information provided by the county officials. In Talbot County the three commissioners have three year terms, with the term of one expiring each year. Elections, however, are held bienially. The result was that in 1974 a commissioner was elected whose term does not begin for over a year from the time of the election. Joe S. Johnson, Judge of Ordinary, Talbot Co., Ga., interview, Aug. 13, 1974.

35. Information provided by officials in the eighteen counties.

In addition, majority requirements for election can prevent blacks from being elected by a plurality in a contest with more than two candidates.[36]

The Attorney General has objected to the introduction by Georgia counties of at-large elections and anti-minority representation devices in a number of instances.

Because its single-member districts were malapportioned, Sumter County, which is 46 percent black, adopted at-large elections for its school board starting with its June 5, 1973 election. This election was held despite the absence of section 5 clearance. The Department objected on July 13, 1973 to the use of at-large elections along with residence requirements and a majority requirement.[37]

On May 30, 1974, the Attorney General objected to the at-large election with numbered posts and a majority vote requirement of the school board in 20 percent black Clarke County.[38] The switch to at-large elections was in response to the 1971 section 5 objection to a single-member district plan that reduced the board's membership from what it had been with appointment of board members and resulted in

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36. See Ga. Code Ann. § 34-1513 (1970).

37. Section 5 summary, July 13, 1973.

38. Section 5 summary, May 30, 1974.

underrepresentation for a majority black district.[39] Earlier in the same month the Attorney General objected to the use of numbered posts and a majority vote requirement for the three at-large seats of the Fulton County board of commissioners.[40] Four other commissioners under the new plan are elected from single-member districts in the 39 percent black county.[41] In 1971 the Attorney General had also objected to the at-large election of the Bibb County school board.[42]

A serious problem for black voters in Georgia is that changes made in the method of election of county commissions and school boards are frequently not submitted to the Attorney General or to the District Court for the District of Columbia as required by the Voting Rights Act. Between 1964 and 1973 four majority black counties--Calhoun, Dooly, Macon, and Peach--and one county that is over 40 percent black--Jenkins--made changes in the method of electing their commissioners which were not submitted.[43] In each case the new method has features

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39. Section 5 summary, Aug. 6, 1971, cited in Washington Research Project, The Shameful Blight: The Survival of Racial Discrimination in Voting in the South (Washington, D.C., 1972) pp. 108, 109 (hereafter cited as Shameful Blight).

40. Section 5 summary, May 22, 1974.

41. In Pitts v. Carter, 380 F. Supp. 8 (N.D. Ga. 1974), the Federal district court devised a plan for the 1974 election taking the May 22, 1974 objection into account.

42. Objection letter, Aug. 24, 1971.

43. Calhoun, Ga. L. 1967, p. 3068; Dooly, Ga. L. 1967, p. 2586; Macon, Ga. L. 1972, p. 2322; Peach, Ga. L. 1968, p. 2473; Jenkins, Ga. L. 1968, p. 2960. Submission information: Section 5 Printout, as of May 8, 1974.

that are often discriminatory. All combined the use of at-large elections with either residence requirements, numbered posts, staggered terms, or several of these.

During the same period four majority black counties--Greene, Marion, Stewart, and Terrell--and four 40 percent or more black counties--Jenkins, Mitchell, Pike, and Screven--changed from appointed school boards to elected boards.[44] Six of the counties--excluding Stewart and Screven--elect all their board members at large, with numbered posts, residence requirements, staggered terms, or a combination of these. In addition, Dooly County (50 percent black) added residence requirements to its at-large election system,[45] and Putnam County (49 percent black) added numbered posts to its.[46] None of these changes was submitted[47] to the U.S Department of Justice for section 5 preclearance.

Eighteen other Georgia counties that are less than 40 percent black have made changes between 1964 and 1973 in the method of selecting school board members, usually a change from appointment to election at large. None have attempted to obtain section 5 clearance

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44. Ga. Const. § 2-6801 (1945): Greene, Ga. L. 1964, p. 969 (ratified Nov. 3, 1964); Ga. L. 1973, p. 3853 (staggered terms introduced); Marion, Ga. L. 1965, p. 742; Stewart, Ga. L. 1969, p. 2264; Terrell, Ga. L. 1965, p. 746; Jenkins, Ga. L. 1968, p. 2965; Mitchell, Ga. L. 1970, p. 2239; Pike, Ga. L. 1967, p. 3152 (single-member districts), Ga. L. 1972, p. 3003 (change to at-large election); Screven, Ga. L. 1964, p. 400 (ratified Nov. 3, 1964).

44. Ga. L. 1967, p. 2922.

45. Ga. L. 1972, p. 2678.

47. Section 5 Printout, as of May 8, 1974.

for the new method.[48]

Cities

Black voters in municipal elections in Georgia have often faced or been threatened with the same kind of changes in method of election. During the three years from October 1971 through September 1974 the Attorney General objected to changes in the method of election in 14 different Georgia cities.[49] (See map no. 10.) Five of these cities resubmitted the same or a similar change and received a renewed section

48. Chattooga, Ga. L. 1968, p. 1764; Clinch, Ga. L. 1970, p. 1111; Colquitt, Ga. L. 1964, p. 893 (ratified Nov. 3, 1964); Cowetta, Ga. L. 1968, p. 1452; Fayette, Ga. L. 1970, p. 979; Floyd, Ga. L. 1968, p. 1798; Forsyth, Ga. L. 1964, p. 975 (ratified Nov. 3, 1964); Hall, Ga. L. 1964, p. 845 (ratified Nov. 3, 1964); Ga. L. 1972, p. 1379; Henry, Ga. L. 1966, p. 919; Madison, Ga. L. 1964, p. 885 (ratified Nov. 3, 1964); Oglethorpe, Ga. L. 1966, p. 764; Paulding, Ga. L. 1964, p. 832 (ratified Nov. 3, 1964); Polk, Ga. L. 1966, p. 1092; Rockdale, Ga. L. 1964, Extra Sess., p. 369 (ratified Nov. 3, 1964); Ware, Ga. L. 1964, Extra Sess., p. 335 (ratified Nov. 3, 1964); White, Ga. L. 1963, p. 670 (ratified Nov. 3, 1964); Whitefield, Ga. L. 1964, p. 978 (ratified Nov. 3, 1964); Wilkes, Ga. L. 1972, p. 1518. Submission information: Section 5 Printout, as of May 8, 1974.

49. Cochran, Jan. 29, 1973; Conyers, Dec. 2, 1971; Cuthbert, April 9, 1973; East Dublin, March 4, 1974, June 19, 1974; Fort Valley, May 13, 1974; Hinesville, Oct. 1, 1971, Jan. 11, 1974; Hogansville, Aug. 2, 1973; Jonesboro, Feb. 4, 1974; Louisville, June 4, 1974; Newnan, Oct. 13, 1971, July 31, 1972; Ocilla, June 22, 1973; Perry, Aug. 14, 1973, Oct. 18, 1973; Thomasville, Aug. 24, 1972, Aug. 27, 1973; Thomson, Sept. 3, 1974. Information from section 5 summaries and Section 5 Printout, as of May 8, 1974. In addition the Attorney General objected on Oct. 30, 1974 to the use of numbered post and majority requirements in Wadley.

Map No. 10. Since October 1971 there have been section 5 objections to the method of election in 14 Georgia cities. In several other cities the method of election has been attacked in court or criticized for being discriminatory.

5 objection.[50] The Justice Department went to court to enforce its objection against two of the cities.[51] Each of the 14 cities had previously elected their city councils at large. They added majority requirements, numbered posts, residence requirements, staggered terms, or a combination of these to the at-large system.[52]

The city of Thomson's first black candidate had come within 88 votes of winning a city council seat in 1970. Immediately after this the leaders of the 37 percent black city began planning the new election procedure, which was adopted within the year. The new procedure included staggered terms, a majority requirement, and numbered posts and changed the terms of councilmen from two to four years. The plan was not submitted to the Attorney General until July 5, 1974, at which time the Department found that these changes "appeared to be racially discriminatory in both purpose and effect."[53]

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50. East Dublin, Hinesville, Newnan, Perry, Thomasville.

51. Hinesville: United States v. Cohan, Civil No. 2882 (S.D. Ga., Oct. 29, 1971). (request for three-judge court denied); reversed and remanded, 470 F.2d 503 (5th Cir. 1972); 358 F. Supp. 1217 (S.D. Ga. 1973) (objection upheld, new election required). Jonesboro: United States v. Garner, 349 F. Supp. 1054 (N.D. Ga. 1972) (new election required).

52. See sources cited, note 49 above.

53. Section 5 summary, Sept. 3, 1974.

Like the 14 cities whose changes in the method of electing their city councils were objected to by the Attorney General, Dublin in 1968 adopted numbered posts and a majority requirement for election for its at-large elected council.[54] Dublin, however, did not submit this change to the Attorney General.[55] A week before the municipal election held on Monday, November 4, 1974, a suit was filed against the city to enjoin the use of the electoral system adopted in 1968.[56] The district court denied temporary relief because it saw no excuse for the plaintiffs' delay in filing the suit, but the court retained the case for further proceedings after the election.[57]

At-large elections have also led to the underrepresentation of blacks in several of Georgia's largest cities. Macon is 37 percent black and elects 15 city council members.[58] The 15 must reside in separate districts but are elected at large.[59] None is black.[60]

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54. Sheffield v. Cochran, Civil No. CV374-14 (S.D. Ga., Order of Nov. 4, 1974), slip opinion, p. 1.

55. Section 5 Printout, as of May 8, 1974, and Weekly Lists to Oct. 18, 1974.

56. Sheffield v. Cochran, slip opinion, p. 3.

57. Ibid., pp. 3-6.

58. Complaint, p. 4, Walton v. Thompson, Civil No. 74-77 (M.D. Ga., filed May 10, 1974).

59. Ibid.

60. 1974 Roster, pp. 53-56. No black has ever been on the Macon city council. Complaint, p. 4, Walton v. Thompson.

Macon elects to the State house from single-member districts three representatives by itself and shares in the selection of four others.[61] Since blacks have been elected to two of these seven seats,[62] one might expect blacks to be elected to some of the 15 positions on the city council. A suit has been filed challenging the Macon voting system.[63] In their complaint plaintiffs allege that "[r]ace is a constant and dominant factor in elections in Macon...that whites do not vote for black candidates and that where black candidates oppose white candidates, the whites consistently vote for the white candidates, irregardless [sic] of the relative qualifications" of the candidates.[64]

Albany, which is 39 percent black, has a seven-member, at-large elected city council, with council members required to reside in separate districts.[65] No blacks are on the council.[66]

Augusta elects 16 city council members.[67] Since 1948 their election has been at large, with two council members required to reside

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61. See chapter 8, p. 233, n.104.

62. Stanley Alexander, telephone interview, Nov. 22, 1974.

63. Walton v. Thompson.

64. Complaint, p. 5, Walton v. Thompson.

65. Alexander Interview.

66. Ibid. A suit challenging the method of election in Albany has been filed. David Walbert, attorney, Georgia Legal Services, Atlanta, Ga., telephone interview, Dec. 20, 1974.

67. Rachel Brewer, deputy city clerk, Augusta, Ga., telephone interview, Dec. 4, 1974.

in each of eight wards.[68] Although 50 percent of the city's population is black, only 4 of the 16 council members are black.[69] Savannah, which is 45 percent black, has one black on its seven member city council, which is elected at large.[70]

Although Marietta elects its seven member city council from single-member districts, a suit was brought by blacks in 1973 attacking the districting plan as discriminatory against blacks. They alleged that the February 1964 plan for the 14 percent black city divided a concentration of blacks previously in one ward among three wards, thus preventing the election of a black member to the council.[71] The attorney for plaintiffs expects a favorable settlement of the case.[72]

MISSISSIPPI

Each of Mississippi's 82 counties has five supervisors, traditionally one from each of five beats or districts.[73] Although the

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68. Ibid.

69. Ibid.

70. Clerk of city council, Savannah, Ga., telephone interview, Nov. 22, 1974.

71. Complaint, p. 4, Grogan v. Hunter, Civil No. 19587 (N.D. Ga., filed Dec. 20, 1973).

72. Elizabeth R. Rindskopf, attorney, Atlanta, Ga., telephone interview, Dec. 6, 1974.

73. Miss. Code § 19-3-1 (1972).

State as a whole is 37 percent black, and has 25 majority black counties (see map no. 11), there were in January 1975 only ten black supervisors from a total of nine counties.[74]

Many of the reasons for this lack of progress have been discussed in preceding chapters. Perhaps the most important reason, however, is the actions taken by the State of Mississippi and by many of its counties. These actions have had the effect--and often have been taken with the purpose--of diluting the voting strength of blacks.

Counties--At-large Election

In 1966 the legislature passed legislation allowing supervisors to be elected at large, with residence in the traditional beats still required.[75] Although passed to comply to the one person, one vote requirement there was evidence that the legislation was motivated by the desire to prevent black political success.[76] In any event, at-large elections threatened the political effectiveness of the newly enfranchised black voters. Because of this, civil rights lawyers filed

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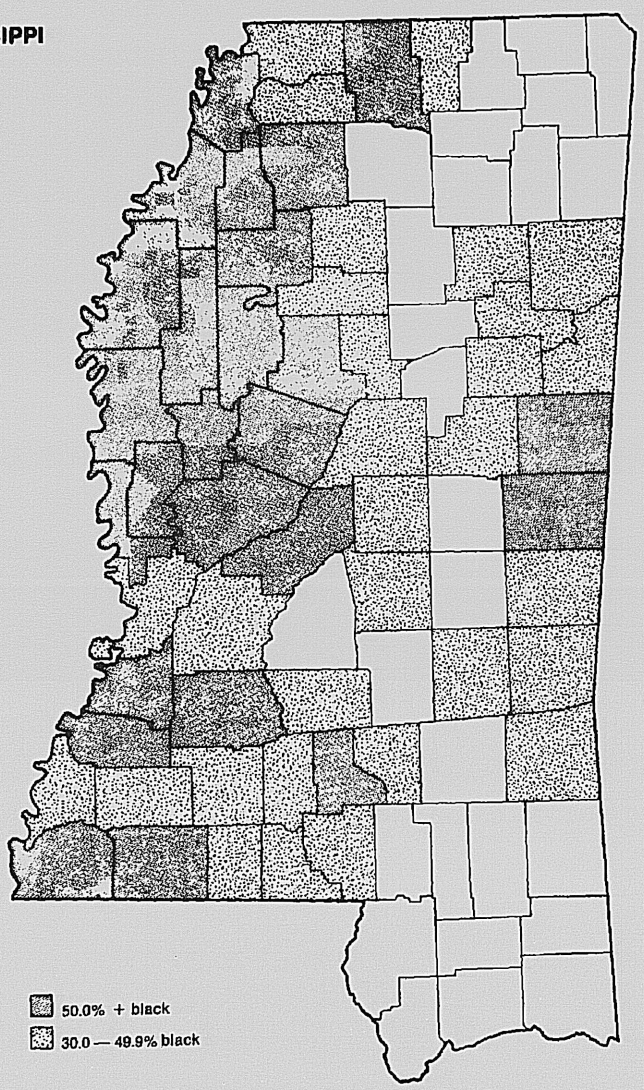
74. Adams, Bolivar, Claiborne, Coahoma, Issaquena, Jefferson (2), Marshall, Noxubee, and Wilkinson. 1974 Roster, p. 117, updated with results of special elections in 1974 in Adams and Marshall Counties.

75. House Bill 223, Miss. Laws, 1966, ch. 290, amending Miss. Code § 2870 (Recomp. 1956), approved, May 27, 1966, codified as Miss. Code § 19-3-7 (1972).

76. See U.S. Commission on Civil Rights, Political Participation (1968), pp. 21-23 (hereafter cited as Political Participation), and Frank R. Parker, "County Redistricting in Mississippi: Case Studies in Racial Gerrymandering," Mississippi Law Journal, vol. 44 (1973) pp. 393-401 (hereafter cited as Parker Article).

MISSISSIPPI



Map No. 11. Mississippi racial composition.

suit in July 1967 to enjoin use of this enabling legislation until it had received section 5 clearance.[77] The Supreme Court of the United States eventually held that legislation of this type was covered by section 5,[78] and the Attorney General objected to it because of its discriminatory potential.[79]

Nevertheless, 13 counties switched from beat to at-large elections. Through the efforts of the Department of Justice and of civil rights lawyers in Mississippi, all of these counties were eventually required to return to election by beat, although some

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77. Marsaw v. Patterson, Civil No. 1201W (S.D. Miss., filed July 14, 1967) and Fairley v. Patterson, 282 F. Supp. 164 (S.D. Miss. 1967). The two cases were consolidated and relief was denied by the district court. The Supreme Court reversed sub nom. Allen v. State Board of Elections, 393 U.S. 544 (1969).

78. Allen v. State Board of Elections.

79. Objection letter, May 21, 1969.

were allowed to hold elections at large in 1971.[80]

While 1971 was the last year of at-large election of county supervisors, on November 1, 1974, the Department of Justice filed suit to prevent Kemper County, which is 56 percent black, from conducting a school board election at large. The election was scheduled to be held at large with some board members required to reside in separate districts pursuant to 1968 Mississippi legislation which had not received section 5 clearance.[81]

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80. Adams, enjoined, April 23, 1969, Marsaw v. Patterson, note 77 above; Attala, section 5 objection, June 30, 1971; Carroll, submission under section 5, May 10, 1971, advised by the Department of Justice that at-large elections were unauthorized, June 7, 1971; Coahoma, allowed, Williams v. Hughes, Civil No. 7076-S (N.D. Miss. Supp. Judgment of March 1971), enjoined in Henry v. Coahoma County Bd. of Supervisors, Civil No. D.C. 71-50-S (N.D. Miss. July 7, 1971); Forrest, enjoined, April 23, 1969, Fairley v. Patterson, note 77 above (see Fairley v. Patterson, 493 F.2d 598 (5th Cir. 1974)); Grenada, objection, June 30, 1971; Hancock, court ordered for 1971 only (according to Section 5 Printout, as of May 8, 1974), no objection, July 29, 1971; Issaquena, approved, Hall v. Issaquena County Bd. of Supervisors, Civil No. 1357 (S.D. Miss. June 30, 1971), modified to allow use in 1971 only, 453 F.2d 404 (5th Cir. 1971); Itawamba, advised by the Department of Justice that at-large elections were unauthorized, April 16, 1970, enjoined, Sheffield v. Robinson, Civil No. EC6745-S (N.D. Miss. June 25, 1970), affirmed, Sheffield v. Itawamba Co. Bd. of Supervisors, 439 F.2d 35 (5th Cir. 1971); Leflore, allowed for 1971 only, Moore v. Leflore County Bd. of Election Commissioners, 351 F. Supp. 848 (N.D. Miss. 1971); Lowndes, allowed for 1971 only, Keller v. Gilliam, Civil Nos. E.C. 7185-S, 7195-S (N.D. Miss. April 7, 1971), modified to require new election after approval of new plan, 454 F.2d 55 (5th Cir. 1972); Tishomingo, section 5 submission, May 12, 1970, advised by Department of Justice that at-large elections were unauthorized, July 7, 1970; Washington, not allowed, Dyer v. Love, 307 F. Supp. 974 (N.D. Miss. 1969).

81. United States v. Kemper County, Civil No. E74-65C (S.D. Miss., filed Nov. 1, 1974). Summary judgment was granted to the Department of Justice on Nov. 20, 1974, with a new election scheduled for Dec. 17, 1974.