NOTICE - Warning Concerning Copyright Restrictions.

The copyright law of the United States **(Title 17, United States Code)** governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of Copyright Law.

JK
1929
A2
Q54
1994

Quiet Revolution in the South

THE IMPACT OF THE VOTING RIGHTS ACT, 1965–1990

CHANDLER DAVIDSON AND
BERNARD GROFMAN, EDITORS

PRINCETON UNIVERSITY PRESS

PRINCETON, NEW JERSEY

CHAPTER EIGHT

Texas

ROBERT BRISCHETTO, DAVID R. RICHARDS, CHANDLER DAVIDSON, AND BERNARD GROFMAN

TEXAS is not one of the seven states originally covered by the special provisions of the Voting Rights Act,[1] but it has been a major battleground on which the struggle over minority voting rights has occurred. While the African-American population in Texas is proportionally smaller than that in any of the other seven states, in absolute numbers it is larger. In fact, Texas blacks and Hispanics[2] together—6.3 million strong in 1990—slightly outnumbered the black population of the entire Deep South region composed of Mississippi, Alabama, Louisiana, Georgia, and South Carolina.

The proportion of Texas blacks and Hispanics combined is as great as the black proportion in Mississippi, which has the largest black ratio of any state. In 1990 blacks and Hispanics made up 11.9 and 25.6 percent of the state's population, respectively, for a total of almost 37 percent. Over 96 percent of the remaining inhabitants were Anglos, that is, white non-Hispanics.[3]

A review of the history of minority voting rights in Texas provides a short course in the evolution of the federal government's role in protecting the franchise. At the turn of the century the state established by statute and practice formidable barriers to voting.[4] Today, almost entirely as a result of federal litigation, only vestiges remain to remind us of the lengthy struggle by the state's two largest minority groups for access to the ballot. But voting rights encompass more than the right to cast a ballot and have it fairly counted. They include the right of previously excluded minority groups to have an equal chance to elect their candidates to office. The attack on the infringement of this right is of more recent vintage, and it is far from completion. The present chapter tells the story of minority efforts both to vote without hindrance and to overcome barriers to fair representation.

AFRICAN AMERICANS

The emancipation of slaves in Texas began with the arrival of federal troops in Galveston on 19 June 1865, although some slaveholders refused to free blacks until the fall.[5] An all-white constitutional convention met the following year. The new constitution it produced did not extend the suffrage even to literate blacks; and

the first legislature thereafter prohibited "intermarriage, voting, officeholding, and jury service by freedmen."[6] Only with congressional passage of the Reconstruction acts in 1867 were the state's African Americans enfranchised.[7] Thus was established a century-long pattern following emancipation in which Texas officialdom denied the political rights of blacks, whose only recourse was to the federal government.

Congressional Reconstruction, as a precondition for Texas's reentry into the Union, required the enfranchisement of blacks and the convening of a new constitutional convention, which was held in 1868–69. It was dominated by Radical Republicans as a result of widespread refusal by white voters to participate, in protest of federal military rule.[8] Although two-thirds of the votes polled on the convention question were cast by African Americans, who were voting in their first election in Texas, only ten of the ninety-three delegates were black. All but one of the black delegates were from heavily black counties.[9]

Edmund J. Davis, a Republican, became Texas's Reconstruction governor in 1870, and over the next three years black participation in state and local politics was greater than at any time until quite recently.[10] Several black political organizations quickly flourished, and two black senators and twelve representatives were elected to the Twelfth Legislature, the first to be convened under the new constitution. They, too, were mostly elected from heavily black counties.[11] Radical Republicans dominated the legislature for a brief period, and among the most important policies they enacted were ones creating a state police and militia, both of which blacks could join. These organizations helped deal with the violence—much of it racial—that was rampant in the state during that era. Many whites resented them for actions they took against the Ku Klux Klan and for guarding the polls during elections.[12]

The heavy influx of white settlers in the early 1870s enabled the Democrats to recapture both houses of the legislature in the elections of 1872, and the number of black lawmakers was reduced to seven. Governor Davis was defeated by a vote of two to one in 1873. A former Texas governor called the Democrats' victory "the restoration of white supremacy and Democratic rule."[13] Reconstruction in Texas was over.

Another constitutional convention was held in 1875, this one, as in 1866, controlled by white Democrats. The six black delegates, however, were among a bloc that prevented establishment of a poll tax as a voting requirement. But they were unable to derail a bill mandating segregated schools. The gerrymandering of predominantly black counties diminished black and Republican candidates' opportunities for judicial and legislative seats.[14] An Austin newspaper, speaking of the black-belt counties, said "districts were 'Gerrymandered,' the purpose being, in these elections, and properly enough, to disfranchise the blacks by indirection."[15]

From the end of Reconstruction to the turn of the century, the political situation of Texas blacks declined, slowly at first and then, in the 1890s, with increasing momentum. The result, as in the other southern states, was disfranchisement.[16] In the 1870s, associations of whites had sprung up in the black-belt counties, the

purpose of which was to prevent the election of blacks to office. When this failed, "local whites, as in other parts of the South, resorted to extra-legal devices such as fraud, intimidation, intrigue, and murder."[17] Pitre gives a chilling and detailed account of this terror in the Texas black belt following Reconstruction—a terror that differed little, according to Smallwood, from that in the Deep South states during the same period.[18]

White conservative opposition to black political participation increased with the growth of third parties, in which blacks played a significant though not a leading role. The most famous of these was the Populist party, which developed rapidly as an expression of agrarian discontent and peaked in 1896. As a result of the intimidation and violence that white Democrats directed at the Populists—basically a biracial coalition of impoverished farmers—the extremely high voting rates in gubernatorial races of the 1880s and 1890s dropped sharply from over 80 percent of adult males, black and white combined, to about 50 percent in 1902.[19]

In 1901 the legislature voted to submit a constitutional amendment to the electorate requiring payment of a poll tax as a voting requirement. Ratified the following year, it went into effect in 1904, by which point the turnout rate of adult males had dropped still further to 37 percent.[20] The legislature in 1903 and 1905 enacted laws that codified the poll tax, encouraged use of the exclusive white primary by the major parties, and established an annual four-month registration period that ended nine months before the general election. The effect of these developments, along with the discouragement of black participation by the "lily white" faction of the Republicans, was to depress black voter participation from 100,000 in the 1890s to about 5,000 by 1906.[21] Exclusion of African Americans from the two major parties was virtually complete, and inasmuch as nomination in the Democratic primary was tantamount to election, black disfranchisement was a fait accompli.

The banning of Texas blacks from the political system a generation after emancipation was a terrible blow to them, for they had not only enjoyed the freedom to vote but had elected several of their number to state and local office. Between 1871 and 1895 at least forty-one served in the legislature—thirty-seven in the house and four in the senate.[22] Many more were elected to city and county office during this period, largely from counties that were majority black or contained a significant black minority.[23]

Mexican Americans

Mexican Americans also were gradually disfranchised in Texas in the late-nineteenth and early twentieth centuries, although never to the extent as were blacks. From one perspective, they did not represent as great a threat to local Anglo domination as did blacks at the time because, except in a few counties between the Mexican border and the Nueces River, they made up only a small percentage of the population. In 1887, when blacks comprised 20 percent of the state's population, Tejanos made up 4 percent.[24] Only in the late 1940s did Tejanos

numerically surpass blacks, as the black ratio continued to decline. By 1960 "Spanish-heritage" people—to use the census term—constituted 15 percent of the Texas population, while blacks comprised 12 percent.[25] The 15 percent figure, however—the highest up to that point in the twentieth century—overstates the size of the potential Hispanic electorate; throughout the century, many Tejanos were not citizens and could not vote.[26]

Even so, from the state's earliest days Mexicans in South Texas counties were a matter of political concern to the Anglos, some of whom tried during the 1845 Texas constitutional convention to exclude them as voters. While these efforts failed, Tejanos were nonetheless subsequently denied the vote in certain districts. Even where they had voting rights, "protests and threats from Anglo-Americans were constant reminders of a fragile franchise."[27] Their ability to influence election results was greatest in the urban areas along the border, where they were concentrated. In the rural areas they were powerless. Here, it was only as Anglo *patrones* (bosses), typically large landholders whose relation to the *peones* was almost feudal, began to organize the Mexican vote around the time of the Civil War did their vote become relatively secure. But under these circumstances, it was a manipulated vote.

The possibilities for political access that an urban setting offered were demonstrated in San Antonio, which had a large Mexican population when Texas became part of the United States.[28] In the decade between 1837 and 1847, fifty-seven of the city's eighty-eight aldermen were Spanish-surnamed. As the Mexican proportion of the population dropped, however—which it did throughout the century—so did the number of Mexican officials. In the decade between 1875 and 1884, for example, only two of the sixty-nine aldermen had Spanish surnames.[29]

The rise of boss rule along the Rio Grande in the latter half of the nineteenth century led to sharp and sometimes bitter disputes in the early twentieth century between "reformers" and the machines.[30] The conflict was typical of Progressive Era battles over control of the electoral structure in that the challengers, some of whom organized into Good Government Leagues, used the rhetoric of "good government" and "honest elections" to justify their politics of self-interest. Often the reformers were small Anglo farmers newly arrived in the fertile Rio Grande Valley and resentful of the large landholders—also usually Anglos—and their control of the Mexican-American vote. A particularly bitter conflict of this kind in Dimmit County led the reformers to create a White Man's Primary in 1914. The local newspaper announced that the organization "absolutely eliminates the Mexican vote as a factor in nominating county candidates, though we graciously grant the Mexican the privilege of voting for them afterwards."[31] The conflicts between South Texas reformers and machine bosses, therefore, offered Tejanos a choice between disfranchisement and a manipulated vote.

Some of the machines continued into the post–World War II era. Duval County, whose stuffed ballot boxes were crucial for Lyndon B. Johnson's razor-thin senatorial victory in 1948, remained under the control of the notorious Parr machine until 1975.[32] Key found in the late 1940s that several South Texas counties exhib-

ited the tell-tale signs of machine control in their voting returns: many victories of landslide proportions and voters' "remarkable fickleness in attachment to particular candidates." When LBJ defeated former governor Coke Stevenson in the 1948 senatorial election thanks to the lopsided Duval County vote, the loser complained about the landslides there and in surrounding counties. Boss George Parr pointed out that Stevenson had solicited his support in four previous elections and won by similar margins. "And I never heard a complaint from him then about the bloc vote in Duval County," Parr remarked.[33]

The disfranchisement of Tejanos through exclusive primaries was not unique to Dimmit County. Democrats in Gonzales County had barred both blacks and Tejanos from their primaries in 1902.[34] "White men's primaries" at the local level were frequently mentioned in the literature on Tejano politics. M. C. González, for example, a founder of the League of United Latin American Citizens (LULAC) in 1929, listed among the conditions facing Mexican Americans in Texas during the 1920s "the establishment of 'white man's' primaries to prevent blacks and Mexican Americans from exercising their right of suffrage."[35] Kibbe, writing in the 1940s, mentions the existence of a local white primary, called the White Man's Union, in four South Texas counties.[36] De Leon mentions a White Man's party in Duval County existing in 1892.[37] Shelton quotes the constitution of the White Man's Union Assocation in Wharton County as excluding "any Mexican, who is not a full Spanish blood."[38]

Restrictive registration rules, too, were directed at Mexicans. Laws making it difficult for Mexican citizens to vote in Texas were opposed at the time of passage by Jim Wells, a conservative Democrat who was one of the most powerful South Texas bosses.[39] (A county was later named for him.) In 1918 the legislature passed a bill prohibiting interpreters at the polls. This law was clearly aimed at voters who had difficulty with English—a lack of proficiency that was undoubtedly encouraged by discrimination in the schools, including the widespread segregation of Tejanos.[40] Thus, like blacks, Texas Mexicans were not only victims of an oppressive social and economic system that in many respects resembled a classic caste society; by law and custom they were deprived of the means to change their situation through effective political participation.

The Battle to Abolish the White Primary

Soon after turn-of-the-century disfranchising laws were passed, Texas blacks, supported by the newly formed National Association for the Advancement of Colored People (NAACP), began to challenge the system of political discrimination. They focused their first major efforts on the white primary. In varying numbers, blacks actually had continued to vote in some Texas nonpartisan municipal elections after 1905. Through litigation, blacks in Waco successfully challenged a nonpartisan white primary in 1918. This and some notable manifestations of black voter influence in San Antonio were apparently behind the legislature's 1923 law

providing that "in no event shall a negro be eligible to participate in a Democratic primary election held in the State of Texas."[41] While county Democratic parties across the state had already pretty thoroughly prohibited black participation by that time, the new law gave explicit state sanction to the practice.

Dr. Lawrence A. Nixon, a black El Paso physician, was quick to challenge this law, and the Supreme Court in *Nixon v. Herndon* (1927)[42] concluded that it violated the Fourteenth Amendment's equal protection clause, holding that "color cannot be made the basis of a statutory classification affecting the right set up in this case."[43] To circumvent the ruling, the legislature soon enacted a replacement statute designed to shift the burden of disfranchisement from the state to political parties. The new law authorized "every political party in the State through its State Executive Committee . . . to prescribe the qualifications of its own members."[44] The State Democratic Executive Committee (SDEC) took this cue and adopted a resolution limiting participation to "white Democrats . . . and none other."[45] Dr. Nixon, with NAACP counsel, sued again, and the Supreme Court in *Nixon v. Condon* (1932)[46] also invalidated that scheme as simply an extension of the earlier unconstitutional exclusion. The Court reasoned that the SDEC did not have the authority to act for the party; consequently, it was simply acting for the state and, in so doing, violated once again the equal protection clause. But the party's state convention, said the Court, had such authority. Within a month after the opinion, to no one's surprise, the convention adopted a resolution prohibiting African Americans from participation in the Democratic primary.

Richard Randolph Grovey, a black Houstonian, attacked the new rule in yet another suit. At issue was whether the party was a private, voluntary organization or an instrument of the state. Plaintiffs argued that the primary was conducted under state authority and thus was protected by the Fifteenth Amendment. The unanimous Court, in *Grovey v. Townsend* (1935)[47] held otherwise, invoking an earlier Texas supreme court decision which declared that political parties were voluntary associations, not creatures of the state.[48]

The single most important organization concerned with African American voting rights in Texas or elsewhere at this time was the NAACP. Urbanization and the growth of a black middle class in Texas cities provided the basis for a black leadership class that was somewhat freer to participate in civil rights activities than was possible in small towns. Beginning in the late 1930s, a new generation of leaders, typified by Dallas businessman A. Maceo Smith, revived existing local chapters, created new ones, and developed a dynamic statewide conference. Working with such figures in the national office as Walter White and Thurgood Marshall, the new black Texas leadership—including Juanita Craft in Dallas; and Lulu White, Carter Wesley, and Hobart Taylor, Sr., in Houston—coordinated and funded a number of major legal efforts.[49]

Largely as a result of this group's work, in collaboration with Thurgood Marshall, general counsel of the newly formed NAACP Legal Defense Fund, the Supreme Court again addressed the constitutionality of the white primary in 1944. The Court's membership was changing. In an earlier case involving New Orleans

voting fraud, *United States v. Classic* (1941),[50] it had held that "where the state law has made the primary election an integral part of the procedure" of choice, "or where in fact the primary effectively controls the choice, the right of the qualified elector to vote and have his ballot counted at the primary, is part of the right" protected by article 1 of the Constitution.[51] This led Dr. Lonnie Smith, a Houston dentist, to challenge the Texas white primary using the same logic as the Court espoused in *Classic*. Capping twenty years of litigation on the issue, the Court, in *Smith v. Allwright* (1944),[52] overrode its prior reasoning in *Grovey* that the Texas Democratic primary was distinct from the state electoral apparatus. On the contrary, the Court now said, because state law regulated the Democratic primary, which selected nominees to be included on the general election ballot, the primary was an agency of the state. The exclusion of blacks from the party's nominating process thus violated the Fifteenth Amendment, which forbids denial of the franchise on the basis of race.

The Smith decision was announced in April, and significant numbers of Texas blacks voted in the July 1944 Democratic primary. In 1946 their turnout in the primary was estimated at 75,000–100,000, in about the numbers at which they had voted during the high point of black participation in the 1890s.[53] Yet the raw figures are deceiving. Whereas a turnout of 100,000 in 1896 represented perhaps as much as 90 percent of the black potential (male) electorate of the day, in 1946 it constituted only about 20 percent of the (male and female) black electorate.

Litigation over racially exclusive primaries concluded with *Terry v. Adams* (1953).[54] The Supreme Court there condemned the "Jaybird primary" that had arisen in Fort Bend County in the nineteenth century to exclude African Americans from meaningful electoral participation. Strictly speaking, this device was not a primary but an exclusively white pre-primary conducted by the local Jaybird party to determine the preferred candidate of white voters, thereby avoiding the risk of dividing their vote in the Democrat primary. Defendants, who described their whites-only group in court as a "good government" measure,[55] argued that the Jaybirds, unlike the Democratic party, were not part of the state's official election machinery and, hence, were constitutional. The Court held otherwise.

Barriers to Registration

Texas, unlike most other southern states, never had a literacy test. However, the poll tax in Texas operated as a limitation upon the right to vote in federal elections until 1964 and in state elections until 1966. Statewide constitutional referendums to abolish the tax had failed, although evidence indicated that it still had an impact on turnout in the 1960s, especially among low-income voters. Simmons reported in the early 1950s that the tax, "although a small sum ($1.75), costs the [South Texas Mexican] laborer most of a day's wage."[56] The same was true of many blacks in rural East Texas, and of poor whites generally.

The Twenty-fourth Amendment, prohibiting the tax as a voting requirement in

federal elections, was ratified by the required thirty-eight states in 1964. Texas was one of five at that time which still maintained the tax.[57] The Voting Rights Act of 1965 instructed the U.S. Attorney General "forthwith" to challenge in court the enforcement of any poll tax used as a voting requirement. He quickly brought suit against Texas, and a federal court in *United States v. State of Texas* (1966)[58] found that the state's poll tax was unconstitutional, having originally been imposed for the purpose of disfranchising black voters. The legislature, dominated by the conservative Democratic wing led by Governor John Connally, promptly replaced the tax with an almost equally onerous annual voter registration system. The new law, which, like the recently invalidated one, required the voter to register in a four-month period ending 31 January in order to vote in November elections, was ruled unconstitutional by a federal court in *Beare v. Smith* (1971).[59] The court concluded that "it is beyond doubt that the present Texas voter registration procedures tend to disenfranchise multitudes of Texas citizens otherwise qualified to vote."[60]

Texas did not surrender gracefully. In 1975 the legislature enacted a new voter registration statute that would effectively have purged the state's entire election rolls and required reregistration of the state's voters. As Congress the same year had extended coverage of section 5 of the Voting Rights Act to Texas, the new voter registration system became the first Texas statute challenged under it.

The state, in *Briscoe v. Levi* (1976),[61] failed in its attempt to block extension. At about the same time, a federal court enjoined the implementation of the proposed statutory purge of the voter rolls in *Flowers v. Wiley* (1975).[62] Since then Texas has had a registration statute that permits enrollment up to thirty days before any election. The system seems to have operated without objection for a number of years.

An impediment that disproportionately burdened minority candidates for office was removed by elimination of the excessive candidate filing fees required by Texas law. The Supreme Court in *Bullock v. Carter* (1972)[63] concluded that "the very size of the fees imposed under the Texas system gives it a patently exclusionary character . . . [and] there is the obvious likelihood that this limitation would fall more heavily on the less affluent segment of the community."[64] That segment was disproportionately made up of minority persons.

No story of minority registration efforts in Texas would be complete without mention of the prolonged struggle of students at Prairie View A. & M. to register to vote. Prairie View is a predominantly black university located in rural Waller County near Houston, the only Texas county in 1970 with a majority-black population. Texas by statute attempted to prevent students from registering to vote in the communities where they attended college, a limitation declared unconstitutional in *Whatley v. Clark* (1973).[65] Nonetheless, the local tax assessor steadfastly frustrated attempts of Prairie View students to register in Waller County.[66] The extension of section 5 to Texas finally enabled a successful attack upon this exclusion of African American voters in *Symm v. United States* (1979).[67] Immediately thereafter a successful attack was made on the apportionment of the Waller County commissioners court for its failure to include students in determining county

population. The resulting reapportionment produced the county's first black county commissioner.[68]

Minority Groups in the Voting Rights Movement

Most of the voting rights litigation in Texas until the 1970s focused on the unconstitutional barriers to participation faced by blacks rather than Mexican Americans, for various reasons: the degree of black exclusion was more extreme; blacks had historically been a larger group in the state; and, perhaps for the first two reasons, blacks were more inclined toward litigation. It was only in the 1960s that Tejanos began to come into their own as a statewide political force, although they had been emerging as an important part of the Texas liberal coalition at least since the 1950s.[69]

The decade of the 1960s witnessed the rise of the Chicano movement, a surge of militant activity among the younger generation of Mexican Americans that quickly spread throughout the Southwest. In Texas, the decade began with the involvement of old-line Tejano organizations in the 1960 presidential campaign. The Viva Kennedy clubs played an important role in carrying Texas by a narrow margin for the Democratic ticket, and gave impetus to a broad-based coalition formed in 1962, the Political Association of Spanish-Speaking Organizations (PASO). In 1963 the teamsters union, PASO, and a number of independent militants joined in a historic uprising in which the city council of a small South Texas town, Crystal City, was entirely filled by an all-Tejano slate. This victory, while short-lived, received nationwide coverage in the news media and presaged a new day for Mexican Americans in Texas politics. A farmworkers movement, along the lines of the one led by Cesar Chavez in California, was also partly inspired by PASO, and confrontations between strikers and the Texas Rangers, long considered by growers and the local Anglo establishments of South Texas as their personal police force, fanned a wave of militance that surged across Texas college campuses, leading to such Chicano groups as the Mexican American Youth Organization (MAYO) that established La Raza Unida party. High school students in South and West Texas towns in the late 1960s boycotted classes in support of fair treatment and greater prominence for the teaching of Mexican culture.

These developments had their roots in self-help groups that Mexican-American veterans founded soon after World War I, such as Sons of Texas, Sons of America, and Knights of America, all of which were united into LULAC in 1929. This organization would play a significant role in politicizing Tejanos locally and fighting discrimination through legal means. Recent scholarship, moreover, has revised the notion that these early organizations, as well as the G.I. Forum, founded by World War II veterans, were primarily concerned with assimilation into Anglo culture and politically ineffective.[70] Considering the racist Texas milieu of the period, the accomplishments of LULAC, the G.I. Forum, and leaders of those groups, such as Professor George I. Sanchez and Dr. Hector Garcia, were in the long term quite effective.

Grass-roots organizations, for example, played a significant role in the 1948 election of Gustavo Garcia to the San Antonio school board, a watershed event in Texas electoral politics. LULAC was active in the 1957 election in El Paso of Raymond Telles, a moderate reformer and the first Hispanic mayor of a major southwestern city in the twentieth century.[71] Such groups were involved in Henry B. Gonzalez's election to the San Antonio city council in 1953 and to the Texas senate in 1956, where he immediately became an eloquent opponent of discrimination against not only Tejanos, but blacks and poor whites.[72]

Yet not until the Mexican-American statewide political mobilization during the 1960s did voting rights litigation begin to shift its focus of concern toward Mexican Americans.[73] This was due largely to the establishment of two organizations. Modeled on the NAACP Legal Defense Fund, the Mexican American Legal Defense and Educational Fund (MALDEF) was created in 1968 with financial support from the Ford Foundation, and the lawsuits brought by its attorneys focused increasingly on the special electoral problems confronting Tejano voters. The Southwest Voter Registration Education Project (SVREP) was founded by San Antonio activist Willie Velásquez in 1974. One of its primary purposes was to register Tejanos, and it appears to have made great strides on that score. When the project began its work in 1976, 488,000 Mexican Americans were registered in Texas. Ten years later, approximately 1 million were, even though their registration rates remained much lower than those of blacks or Anglos.[74] But in addition to its registration drives, SVREP's legal staff also became involved in voting litigation. Between 1974 and 1984 SVREP and MALDEF filed eighty-eight suits in widely scattered Texas jurisdictions.[75]

One of the first successful voting cases brought by MALDEF was *Garza v. Smith* (1970).[76] This action challenged Texas election laws that enabled voting officials to assist physically handicapped voters but did not permit assistance to voters who were not proficient in English. The argument in *Garza* foreshadowed the broadening of section 5 coverage to Texas five years later. In its 1975 extension of the act, Congress concluded that "where State and local officials conduct elections only in English, language minority citizens are excluded from participating in the electoral process."[77] Congress therefore brought under section 5 coverage some of those states and counties that had historically failed to provide multilingual election materials.[78]

Various private attorneys and legal aid lawyers, including liberal Anglos, were also active in voting rights litigation during this period. Litigation by attorneys with the federal Legal Services Corporation was partly responsible for efforts by conservative Republicans during the Reagan and Bush administrations to abolish the organization, or, failing that, to at least prohibit it from filing voting suits.

Minority Vote Dilution

The elimination of barriers to registration and voting in Texas often did not result in the election of minority candidates, even in jurisdictions with significant numbers

of minority voters. Several structural roadblocks remained, the most noteworthy of which were multimember districts (including at-large elections), racial gerrymandering, and malapportionment. Such barriers diluted minority voting strength when bloc voting among Anglos combined with certain election rules to prevent a cohesive bloc of minority voters from electing candidates of their choice. Largely for this reason it was not until 1966 that the first African Americans in this century became nominees of the Democratic party for any elective public office in Texas above the level of voting precinct official, even though black candidates had run for office at least as far back as 1920.[79]

Mexican Americans, too, faced numerous barriers to political office, although by 1967 there were ten Tejano state legislators—nine in the house and one in the senate—compared to only three blacks.[80] While Mexican-American voters as early as the 1940s were described as tending to prefer candidates of their own ethnicity "on the rare occasions when they appear on the ballot," the same electoral mechanisms that prevented blacks from winning office operated against their candidates, too. "Anglo American politicians have always recognized this tendency," wrote Simmons in 1952, "and have tried to cope with it, when no other means were available, by putting up a second Mexican candidate of their own choosing in order to split the Mexican vote."[81]

Simmons also pointed to the well-known phenomenon of a nonpartisan slating group operating through at-large elections. He quoted a county commissioner: "Candidates are usually nominated on a ticket which is made up by a private group that invites the candidate to run." While any candidate was free to oppose the ticket, "independent candidates seldom have a chance."[82] Several lawsuits in the 1970s and 1980s pointed to the existence of the standard electoral mechanisms of minority vote dilution operating against Tejano candidates: at-large elections, gerrymandered districts, the numbered-place system, and others.[83]

The first successful challenge to legislative malapportionment in Texas, at least in modern times, occurred after the 1960 census, when population disparities in legislative districts were huge. The boundaries had not changed significantly since 1921.[84] A state constitutional prohibition on the number of legislative seats per county had contributed to overrepresentation of the shrinking rural population at the expense of the rapidly expanding urban one, which contained great numbers of minority voters. The largest senatorial district, for example, contained 1,243,158 persons, while the smallest one had 147,454. A majority of the senators could be elected by as few as 30 percent of Texas voters.[85] *Kilgarlin v. Martin* (1966)[86] was a broad-based attack on the 1960 Texas legislative redistricting plans. In preliminary rulings, the senate and house apportionment was found to violate the one-person, one-vote principle recently established by the Supreme Court in *Reynolds v. Sims* (1964).[87] Texas constitutional provisions limiting the number of senators and legislators who could be elected from any given county were invalidated, and apportionment of the Texas senate was required on the basis of population equality.

The legislature responded with a new apportionment plan that, among other changes, increased the number of legislators in Harris County (Houston) from twelve to nineteen and in Dallas County from nine to fourteen. In the case of Harris

County, for the first time state representatives were to be elected in three county multimember subdistricts rather than countywide. Senate districts—which had been and remained single-member districts—were also carved into subdistricts of Dallas and Harris counties to meet one-person, one-vote criteria. In spite of clear instances of racial gerrymandering against blacks in the Harris County state representative districts under the new apportionment scheme,[88] the initial result of these changes in 1966 was the election of the first three black Texas legislators to serve since 1895.

Barbara Jordan, who had twice failed to win election to the state house of representatives when she ran at large in Harris County, was elected from one of the new Houston senate districts (one, significantly, that contained a black and Mexican-American majority), becoming the first black Texas senator to hold office since 1883. Curtis Graves won a house seat from a multimember Harris County subdistrict. In addition to these two victories resulting from boundary changes, Joe Lockridge, also black, was elected at large to the state house from Dallas County after being slated by the Dallas Committee for Responsible Government (DCRG), a powerful white-dominated slating group that would soon receive federal court scrutiny.[89]

A major breakthrough in minority legislative representation came after the 1970 census. Blacks and Tejanos—aided by a group of minority and Anglo lawyers and political scientists—jointly attacked the system of multimember countywide legislative districts in Dallas and Bexar counties, arguing that, in conjunction with other discriminatory actions, the arrangement diluted minority votes in violation of the Fourteenth Amendment. In *Graves v. Barnes* (1972)[90] the three-judge federal court agreed, mandating single-member legislative districts for both counties. This decision was unanimously affirmed by the Supreme Court in *White v. Regester* (1973),[91] the first case in which it sustained claims of at-large vote dilution.

The Court had earlier asserted in *Whitcomb v. Chavis* (1971) that multimember district systems "may be subject to challenge where the circumstances of a particular case may 'operate to minimize or cancel out the voting strength of racial or political elements of the voting population.'"[92] However, until *White* the Supreme Court had never been persuaded that such circumstances existed. In fact, in *Whitcomb* the Court had rejected a trial court finding that an at-large legislative districting scheme in Indiana operated unconstitutionally to cancel out minority voting strength. Similarly, the Supreme Court had upheld a Texas trial court conclusion in *Kilgarlin v. Hill* (1967)[93] that the state's at-large legislative districts did not unconstitutionally deprive African Americans of their voting rights. Against this discouraging backdrop, the plaintiffs' victory in *White* took on special significance.

The *Graves* decision had both immediate and long-term consequences. The immediate result was a significant increase in the number of blacks and Mexican Americans from Dallas and San Antonio, respectively, elected to the Texas legislature in November 1972. In the second round of *Graves v. Barnes* (1974),[94] the state's remaining multimember legislative districts were also found to dilute mi-

nority voting strength. Single-member legislative districts were created in the Texas counties of Tarrant (Fort Worth), El Paso, Travis (Austin), Nueces (Corpus Christi), Jefferson (Beaumont), McLennan (Waco), Lubbock, and Galveston. In most instances, this resulted in the election of the first minorities to the legislature from those counties.

An upsurge in voting litigation across Texas followed *White*. Applying the principles established in that case, minority plaintiffs made a number of Fourteenth Amendment attacks on at-large elections to city councils and school boards. Using one-person, one-vote arguments under *Avery v. Midland County* (1968)[95] and *White* minority vote-dilution principles, black and Tejano voters also attacked county government apportionment schemes throughout Texas, the 254 counties of which have long been governed by a commissioners court consisting of four commissioners elected from single-member districts and a county judge elected at large. The first city to change its at-large council elections as a result of vote-dilution litigation was Nacogdoches in deep East Texas; after black plaintiffs won at trial, the city in 1975 settled a lawsuit while the case was on appeal, and subsequent elections produced the city's first black council member. The first successful legal attack on at-large elections to a Texas city school board occurred in Waco. The trial court ordered the creation of single-member districts for both the city council and school board, and this arrangement was sustained in *Calderon v. McGee* (1978).[96]

After the extension of section 5 to Texas in 1975 as a result of the state's large Spanish-language population, attacks based on Fourteenth Amendment arguments developed in *White* and section 5 objections by the Justice Department produced some form of single-member-district elections in most major Texas cities, including Houston, San Antonio, and Dallas. These changes led to noteworthy increases in the number of elected minority officials, as will be shown below. Vote-dilution litigation, however, has affected not simply the large urban centers but cities as small as Jefferson, with a 1980 population of fewer than 3,000, where plaintiffs won at trial and a single-member-district plan was imposed.[97]

Similar breakthroughs occurred in county reapportionment litigation. For example, a federal court ruling in *Weaver v. Nacogdoches County* (1974)[98] produced a new reapportionment plan and the election of the first black Texas county commissioner in this century. Another East Texas reapportionment case resulted in the first federal court finding of a racial gerrymander in the drawing of district lines. In *Robinson v. Commissioners Court, Anderson County* (1974)[99] the court held that "the most crucial and precise instrument of the Commissioner's denial of the black minority's equal access to political participation, however, remains the gerrymander of precinct lines so as to fragment what could otherwise be a cohesive voting community. . . . This dismemberment of the black community . . . had the predictable effect of debilitating the organization and decreasing the participation of black voters in county government."[100]

The extension of section 5 to Texas was a major advance in securing minority voting rights. Justice Department intervention in Texas after 1975 either prevented

many potentially dilutionary measures or required them to be counterbalanced with additional election changes that restored or enhanced minority voting strength. Thus, when the city of Houston annexed territory, some of which included virtually all-white suburbs, and thus diminished the proportion of blacks and Mexican Americans in the city, the Justice Department entered an objection, based in part on evidence of racially polarized voting in Houston council elections presented by plaintiffs in *Greater Houston Civic Council v. Mann*,[101] an unsuccessful constitutional challenge to the city's electoral structure tried in 1975. The city's options were to contest the objection in federal court in Washington, D.C., deannex the territory, or change the council's at-large election system to include at least some single-member districts. The city took the latter course, following a citywide referendum, and adopted a mixed plan of nine single-member districts and five at-large posts, in addition to the mayor's at-large office.[102] Justice Department intervention under section 5 was also instrumental in San Antonio's change from an at-large to a pure single-member-district plan in 1977.

Between the time Texas was brought under section 5 coverage in 1975 and December 1990, the Justice Department interposed 131 objections to voting procedures in the state. Many of these objections were to multiple infractions of voting law within a single jurisdiction.[103] The infractions embraced the spectrum of illegal procedures: racial gerrymandering, discriminatory purges of registered voters, imposition of numbered posts and the majority runoff requirement, annexations that diluted minority votes, a faulty bilingual oral assistance program, reduction in the number of elected officials, transfer of duties from one official to another, and unfair changes in election dates. One can only speculate about the number of discriminatory changes that would have occurred but for the deterrent effect of section 5.

Reviewing the results in the forty-one instances in Texas where they could identify a change from at-large to mixed or district plans in the 1970s, Davidson and Korbel found the percentage of black and Mexican-American officeholders had increased from 11 to 29 percent of the total in those jurisdictions (6 to 17 percent for blacks, 5 to 12 percent for Mexican Americans). Put differently, before the change, minority officeholders were underrepresented by a factor of three; afterward, they were almost proportionally represented. City councils, school boards, junior college boards, and multimember legislative districts were included in the study; increases in minority representation occurred in every type of unit.[104] This was the only before-and-after study published in the 1970s or 1980s that examined the impact of at-large elections on Mexican Americans, and its findings contrasted sharply with most of the research on this issue that utilized cross-sectional data. The reason, we believe, is that cross-sectional studies seldom control for residential dispersion of Mexican Americans, which is greater than it is for blacks.[105] Our own data, reported below, corroborate Davidson and Korbel's findings.[106]

One of the most far-reaching results of Texas voting litigation is contained in the

1982 congressional amendments of section 2 of the Voting Rights Act, passed to overcome the effects of *City of Mobile v. Bolden* (1980),[107] in which a plurality of the Supreme Court held that at-large elections were not unconstitutional unless the they had been "conceived or operated" intentially to discriminate. In amending section 2 to allow a showing of discriminatory result as sufficient proof of dilution, Congress explicitly incorporated into the statute the vote-dilution principles first established in 1972 by the federal trial court in *Graves v. Barnes* and then adopted in the language of *White v. Regester*.[108]

The impact of amended section 2 was clearly seen in *Campos v. City of Baytown* (1988).[109] The appeals court affirmed a trial court finding that the at-large election system for Baytown's city council violated section 2. Despite the presence of sizable black and Mexican-American communities in the city at the time of trial, no minority member had ever been elected to the Baytown council. Yet the plaintiffs would have been hard put to show that the at-large system, which dated from 1947, was adopted to frustrate minority candidates. Under amended section 2, however, plaintiffs used voting statistics to prove the dilutionary effect of the at-large system.

The pace of section 2 voting rights litigation in Texas remained lively at the end of the 1980s. In 1989 courts first heard attacks on the at-large election of trial and appellate judges in Texas. In both cases the trial courts concluded that at-large electoral systems violated section 2, and required single-member districts as a remedy. In *Rangel v. Mattox* (1989),[110] the trial court found that the at-large electoral system of the Thirteenth Court of Appeals, situated in South Texas, discriminated against the Tejano voters of the Lower Rio Grande Valley. The court sanctioned a plan consisting of six single-member districts. In *LULAC v. Mattox* (1989),[111] the trial court concluded that at-large election of district judges in the state's urban counties similarly violated minority voting rights of blacks and Mexican Americans under section 2.

On appeal of the *LULAC* decision, the Fifth Circuit, sitting *en banc*, held that section 2 did not apply to judicial elections. This decision effectively blocked any immediate change in Texas judicial elections. The Supreme Court reversed in *Houston Lawyers Association v. Attorney General of Texas* (1991),[112] holding that judicial elections were indeed covered by section 2. As a result, the issues presented in *Rangel* and *LULAC* are now back before the Fifth Circuit. These cases would seem to portend significant changes in the method of selecting the Texas judiciary.

The extent and diversity of voting rights actions and Justice Department intervention in Texas is suggested by a list compiled by Korbel in connection with lawsuits challenging the method of electing judges. The list contains Justice Department objections or privately brought actions concerning vote dilution between 1972 and 1989 in a mere twenty-county area of South Texas. (The state contains 254 counties.) Targeted were voting procedures for school boards, city councils, county commissioners courts, the state legislature, and justice of the peace courts.

There were fourteen objection letters from the Justice Department in seven of the counties, and at least fourteen vote dilution cases won by plaintiffs or settled out of court in a manner favorable to plaintiffs.[113]

The Impact of Voting Rights Litigation in Texas Cities

We now systematically examine changes in voting structures in Texas cities. As part of a collaborative effort in several states, we measured the extent of change between 1974—the year before section 5 was extended to the state—and 1989 in all Texas municipalities of 10,000 or more persons that had a combined black and Hispanic population of at least 10 percent according to the 1980 census.[114] The purposes were, first, to learn how rapidly black and Tejano officeholding had progressed; second, to determine the extent to which such progress was linked to the existence of single-member-district and mixed plans (the latter composed of both district and at-large seats); and, third, in the event that there was a linkage, to find out whether the creation of districts was the result of litigation under the Fourteenth Amendment (as in *Graves* and its progeny), litigation or Justice Department objections under the Voting Rights Act, or voluntary action by city governments.

Methods

Our research design followed in broad detail the above-mentioned longitudinal study by Davidson and Korbel.[115] However, as Grofman pointed out soon after the research was reported, the design lacked a control group.[116] The design for the present study therefore includes not only cities that abandoned at-large elections for district or mixed plans but those comparable Texas municipalities which did not change their at-large council structure between 1974 and 1989.[117] During this period the number of African-American and Hispanic elected municipal officials in all Texas cities increased from 59 to 138 and from 251 to 463, respectively.[118]

Minority Representation in Texas Cities

Table 8.1 is a cross-sectional view of minority representation on city councils in 1989 by type of election plan and percentage of minority population within each type.[119] Because most studies examining the relation between election plans and minority representation have used a cross-sectional design, table 8.1 provides a point of comparison with them. It shows that in cities that were majority Anglo, combined minority representation in 1989 was greater in district than in at-large systems, when the effects of minority population size were controlled for. However, at-large cities had better minority representation than districted ones in cities where blacks and Hispanics were a majority, although this seemed to be at least partly the result of the at-large cities having, on average, a larger minority popula-

tion percentage than either mixed or district plans. (In other words, if the effects of minority population were controlled in the 50–100 percent category, as they are, in effect, in table 8.5, the at-large advantage in these cities would diminish.) But this latter finding should not be allowed to obscure the most important pattern in table 8.1: the advantage to minorities in district-based *majority-Anglo* cities—for it is in these cities where the at-large system is said to be particularly dilutive of minority votes.

As explained in the Editors' Introduction, cross-sectional studies typically do not control for a number of factors besides minority population that can affect minority representation. In addition, cross-sectional data collected from a sample of cities after many of them have changed their method of election may reflect a "selection bias" because the remaining at-large cities may not be typical of at-large cities in general—a possibility that is examined in chapter 10.

Table 8.2, utilizing a before-and-after design with a control group, measures minority percentages on all city councils at two points fifteen years apart: in changed cities before and after the shift from at-large elections occurred; and in unchanged cities at the same two points, 1974 and 1989.[120] Among majority-Anglo cities, those changing from at-large to single-member districts between 1974 and 1989 witnessed sharply increased minority (black plus Hispanic) percentages on council following the change. Large changes also occurred in the cities that adopted mixed plans. These positive changes occurred for both blacks and Tejanos separately, generally speaking. Among unchanged at-large cities, on the other hand, there was an actual decrease in minority representation in one population category, and only a modest rise in the other.

So far we have controlled only roughly for the effects of a city's minority population on minority representation, by categorizing the data according to three sets of minority population ranges. To refine this control, we employ the concept of representational equity, or proportionality, which is simply a comparison of cities' percentage of minority council members with their percentage of minority inhabitants. There are two standard measures of proportionality—differences and ratios—the strengths and limitations of which Grofman has discussed elsewhere.[121]

Table 8.4, presenting 1989 cross-sectional data, shows some of the same patterns in tables 8.1 and 8.2. Whether using the difference measure or the ratio measure of equity, we find in majority-Anglo cities that single-member-district and mixed cities were generally more representative than at-large ones, and usually they were strikingly so—at least where blacks were concerned. Tejanos did not follow this pattern so clearly. They were less well represented than blacks in every type of system, except in some minority-Anglo cities (where the majority of the population was overwhelmingly Hispanic, not black). Nonetheless, it was generally true that in majority-Anglo cities, Tejanos were more equitably represented in cities that had adopted at least some districts than in those that had not.

Table 8.5, comparing equity ratios in 1974 with those in 1989, gives an even clearer picture than does table 8.2 of the effects of the shift from at-large elections

in those cities of less than 50 percent minority population. It essentially corroborates the findings in tables 8.1, 8.2, and 8.4. The experimental cities underwent sharp increases in combined minority representational equity during the fifteen years, while the control cities made generally unremarkable gains when they made any gains at all.[122] The impact of the new election systems is best seen by focusing on equity ratios in the majority-Anglo cities that changed to pure single-member districts, and comparing them to ratios in the cities that remained at-large.

	1974		*1989*	
	Blacks	*Hispanics*	*Blacks*	*Hispanics*
		Changed to Districts		
10–29.9%	0.38	0.18	1.32	0.35
30–49.9%	0.13	0.15	1.12	0.95
		Remained at large		
10–29.9%	0.62	0.37	0.80	0.21
30–49.9%	0.58	0.24	0.75	0.50

Within each population category, mean minority equity scores in the control cities were better in the early year—1974—than in cities that later changed to districts, a fact that was true for both ethnic minorities. This was at a time, obviously, when all the cities in the table elected council at large. *By 1989, the situation was completely reversed*: the mean equity scores in all categories of the cities that switched to districts were greater than those, in the comparable population categories, in the cities that had kept their at-large systems. Again, this was true for both blacks and Mexican Americans. This consistent reversal was the result, in most cases, of hefty increases in minority equity scores as cities switched to district elections. Part of the reversal, on the other hand, was due to the fact that in the twenty-six cities of less than 30 percent minority population that kept at-large systems—representing one-fourth of the total number of cities analyzed—there was an actual drop in the mean equity score of Mexican Americans (0.37 to 0.21) and only a modest rise for blacks (0.62 to 0.80) over the fifteen-year period. This is an important finding, we believe, in light of the claim by some critics of the Voting Rights Act that Anglo Texas voters were much more likely to vote for minority candidates in at-large settings by the end of the 1980s than they were even a decade or two earlier.

In 1989 both Tejanos and blacks in the majority-Anglo unchanged cities were still underrepresented, although Tejanos were more so. Had the changed cities not adopted new election structures—so the data for the cities in the control group suggest—their minority voters would still be far less well represented than they were in 1989, and perhaps, in some cases, even less well represented than in 1974. In summary, table 8.5 presents strong evidence for a causal link between election

systems and proportionality of minority representation in majority-Anglo cities.[123] This link exists for both Tejanos and African Americans.

The findings in table 8.5 contrast to those of a recent cross-sectional study of American cities of at least 50,000 population with minority populations of less than 50 percent, which found a relatively small difference in 1988 black representational equity scores between at-large and districted cities.[124] This may well be the result, in part, of the studies' different population thresholds, assuming that racially polarized voting is greater in smaller cities.

There may be another reason for the different results as well. Table 8.5 shows clearly that the cities that changed election systems had, on average, significantly lower minority equity scores in 1974 than those which remained at-large. This suggests that any cross-sectional study today of Texas cities which attempts to measure the impact of election structures on minority representation may be subject to a bias resulting from the *selection effect*: Our sample of cities that in 1989 were districted contained a disproportionate number that in 1974 were among the "worst cases" of at-large cities, in terms of minority representation. Assuming that the worst cases were most liable to vote-dilution litigation and thus were most likely to change to districts, a cross-sectional study in 1989 would contain a sample of at-large cities from which the worst ones in 1974 were removed ("selected"), in which case the comparison of at-large and district cities would understate the difference in minority representation between at-large and districted cities, in contrast to what it would have been had the changes to district systems not occurred.

Yet another important fact emerges from table 8.5. Despite the frequently heard assertion that the evolving nature of voting rights law now requires at-large cities to adopt district systems, the Texas case shows otherwise. There are 83 cities in the table with a minority population between 10 and 50 percent, yet 38 (46 percent) still maintained at-large systems in 1989, in spite of two decades of aggressive legal challenges to such structures across the state and seven years of section 2 litigation—some of it in these very cities. Nor is it true that these at-large cities failed to change because minorities were proportionally represented on council. As the table shows, minority populations in the majority-Anglo unchanged cities were only about half as well represented as one would expect if ethnicity were not a factor. In 22 of the 38 unchanged cities, moreover, no blacks sat on council in 1989; in 30 of these cities, no Tejanos did; and in 19 cities—exactly half—neither a black nor a Tejano was a council member. The number of cities among the 38 that had neither blacks nor Tejanos on council actually increased slightly between 1974 and 1989: from 21 to 22.

The dynamics of change in the minority-Anglo cities are difficult to fathom, given only the data in table 8.5. Contrary to the facts in majority-Anglo cities, when predominantly minority cities (which in our sample are all predominantly Hispanic ones) switch to districts, there is either little increase in representational equity or an actual decrease. In fact, minority equity of representation increased

more sharply in the unchanged cities where, at 0.97, it was greater by 1989 than in either other type of changed cities (0.80 and 0.72, respectively).

What could account for this? The minority-Anglo unchanged cities had an average minority population of close to 80 percent. If voting were racially polarized, as in the case of many at-large majority-Anglo cities, then the Mexican-American population could easily have determined the makeup of city council. Why they were less equitably represented in changed cities—particularly pure district ones—is unclear. One possible answer is that because changes from at-large plans in minority-Anglo cities are less likely to be the result of litigation or Justice Department objections, the drawing of district boundaries may not be as closely supervised, and this might work to the disadvantage of minority voters. On the other hand, inasmuch as there was significant minority representation on these cities' councils even before the changes occurred, one would expect the boundaries not to be patently disadvantageous to minority voters.

Whatever the explanation of this anomaly in majority-minority cities, the focus of our inquiry must be kept on the Anglo-majority cities, because they are the ones that present the classic conditions for minority vote dilution. Our findings in table 8.5 demonstrate clearly that when such cities shifted to districts, minority representation increased sharply, in contrast with cities that retained at-large elections.

The Effects of Mixed Plans on Minority Representation

A significant proportion of cities shifting from at-large plans chose mixed systems. Past research indicates that they typically fall between single-member-district systems and at-large ones in the equity of black representation. The data on blacks in table 8.5 conform to that pattern. The most plausible reason is that a mixed system is made up of both the least and most representative election methods. It is useful to examine the results of these two methods separately in order to see how mixed systems work.

Table 8.3 compares minority representation in the at-large and district components of mixed cities in 1989. It shows that most of the black representation can be attributed to the district rather than to the at-large component of the majority-Anglo plans. For Hispanics, the pattern was less clear, primarily because they were sharply underrepresented in both components. It is noteworthy, in light of these findings on blacks, that a federal court in *Williams v. City of Dallas* (1990) held that the at-large seats in the Dallas city council's mixed system diluted the voting strength of blacks.[125]

The Link between Minority Population Percentage and Minority Representation in Single-Member Districts

Table 8.6 shows 1989 minority representation in single-member districts in cities with mixed or pure single-member-district plans. There were 57 cities with at least some districts, but we were unable to obtain 1980 population data for districts in

12. The data base consists of the 257 districts in the 45 cities for which we did obtain complete information. The rule of thumb often mentioned is that a district must have a population of about 65 percent of a particular minority group in order to provide that group with a realistic opportunity to elect a minority candidate.[126] Table 8.6 indicates that for blacks in Texas, majority-black districts somewhat below that level were usually sufficient. However, about 5 percent of the nonblack population in majority-black districts was Hispanic, and the presence of Hispanics in such districts, as we shall see, can provide an advantage to black candidates.

In contrast to blacks, Hispanic candidates at no level were assured of victory, although their chances increased sharply when districts became majority-Hispanic. Yet even here, Hispanic districts often had significant numbers of blacks in the population. For minorities in general—where African Americans and Hispanics are treated as one group—the finding is much the same as for Hispanics. At the 70 percent level and above, 91.7 percent of officials were minority members.

Tables 8.6 and 8.7 shed light on another question: How well were blacks and Hispanics represented in majority-Anglo districts? If race did not play a significant role in whites' voting behavior, we would expect the answer to be, very well. The most useful data in table 8.6 for addressing this issue is the third set, which allows us to determine how likely it was that either blacks or Hispanics were elected from districts that were less than 50 percent black and Hispanic combined. The answer is, relatively few. Only 2.5 percent of the council members in the 147 districts less than 30 percent black and Hispanic belonged to the two ethnic minorities. The figure increased to 16.7 percent in the 29 districts 30–49.9 percent black and Hispanic. But it is obvious that the overwhelming majority of black and Hispanic council members were elected from districts in which Anglos were a relatively small minority. Data in table 8.7 corroborate this. In the 176 districts that were majority-Anglo, only 4.5 percent of the council members from those districts were black or Hispanic. Anglos did not fare much better in the 32 majority-black and 31 majority-Hispanic districts: they comprised 6.2 and 12.9 percent of the council members, respectively. These findings are consistent with the assumption that racially polarized voting was strong in most Texas cities during this period.

Minority Representation in Multiethnic Districts

Blacks and Tejanos often reside in contiguous or overlapping neighborhoods. Census data indicate that in 1980 both groups' residences were still highly segregated from those of Anglos in most of the larger Texas cities.[127] Many districts contained large numbers of both ethnic groups, although not a majority of either. In this circumstance, did minority candidates have a reasonable chance of winning office? The answer is provided by table 8.7, which contains data on the 257 districts analyzed in table 8.3 above. By examining minority council representation in districts with different ethnic compositions, we are able to see the benefits accruing to minority candidates in situations where minority coalitions are possible.

As might be predicted on the basis of table 8.3, table 8.7 shows that minority candidates had a very good chance in districts with a sizable African-American or Tejano majority and a very poor chance in districts with a sizable Anglo majority. The average black-majority district was 66.5 percent black, and the average percentage of minority officeholders was 93.8 percent. The average Hispanic-majority district was 66.4 percent Hispanic, and the average percentage of minority officeholders was 87.1 percent. The average Anglo-majority district was 82.3 percent Anglo, and the average percentage of minority officeholders was 4.5 percent. The table also shows that minority-plurality districts elected a significant number of minority candidates, as did Anglo-plurality districts in which blacks and Hispanics combined made up a slight majority. This is consistent with the interpretation that the minority groups help each other's candidates in these circumstances.

The Causes of Structural Changes in Texas Cities

In a fifteen-year period, fifty-two cities in our sample changed to some form of district plan; this represents structural change of a magnitude not witnessed in Texas since the widespread adoption of at-large plans in connection with the commission form of government during the Progressive Era.[128] The foregoing evidence, moreover, points to a causal link between the adoption of district systems and greatly increased minority representation on city councils.

To determine the causes of the structural changes, we sent questionnaires to all city attorneys in municipalities in our sample that had shifted from at-large to district or mixed systems between 1974 and 1989. Follow-up questionnaires were sent to nonrespondents after three weeks, and then telephone calls were made to those cities still not responding. The reasons officials gave for the changes were tabulated, and then compared with a data set obtained from voting rights lawyers throughout the state, consisting of lawsuits challenging at-large elections in Texas municipalities going back to the late 1960s. The information from these two sources was then combined and presented in table 8.8.

The table shows that twenty-nine (56 percent) of the fifty-two cities of 10,000 people or more that adopted single-member-district or mixed plans did so after a lawsuit was filed. (An additional city changed solely as the result of a section 5 objection.) In some cases, the suit alleged unconstitutional vote dilution; in others, it alleged violation of sections 2 or 5 of the Voting Rights Act.

There is not always a direct relation between the filing of a lawsuit (several of which were settled out of court) and a change in election structure. In some instances, city councils had already begun to discuss changing the election structure when the suit was filed. On the other hand, it is clear that in numerous cities, suits were necessary to compel councils to create districts in which minority candidates could have a fair opportunity to win.

Even where no suit was filed, it is obvious from the replies of various city

attorneys that some of the changes had resulted from petitions by minority citizens for a change or from threats of a suit that the city could well have lost while incurring considerable costs. As one attorney put it who described his city's 1984 change as voluntary: "There was some perception among council members that districts were the wave of the future and would best be determined locally rather than by a lawsuit." Another attorney who described his city's change as voluntary said, "Because of recent changes in the law, [our city] felt a voluntary move to single member districts to be more efficient from an economic and political standpoint." Referring to changes that occurred shortly after the congressional amendment to section 2, these remarks demonstrate that the Voting Rights Act was very much on the minds of city council members in deciding to make the change. Earlier research on the causes of election law shifts in Texas corroborates this fact.[129]

Other city attorneys who described the process in their municipality as voluntary pointed out that there is no sharp distinction between voluntary and legally forced change. In reality, most cities changed because minority leaders or city officials were at least aware of the evolution in voting rights law, the effects of which they had heard about as other jurisdictions underwent legal challenges to their at-large elections. (One of the best-attended sessions of the annual meeting of the Texas Municipal League in the late 1970s was a workshop for city attorneys on voting rights litigation.) While some cities that changed voluntarily may have done so simply because they believed it was the right thing to do, legal developments in neighboring jurisdictions made the decision much easier.

CONCLUSION

A historical examination of minority voting rights in Texas from 1865 to the present reveals a continuing struggle by blacks and Mexican Americans to realize their voting rights in full measure. The very touchstone of democratic citizenship, these rights confer not only the ability to cast a vote without hindrance in every type of public election, but to have a reasonable chance to elect a candidate of one's choice. At the very least, this means an equal opportunity for a cohesive group of minority voters to elect their candidates when cohesive Anglo opposition systematically prevents them from doing so.

The struggle has been difficult and expensive, and at times has cost the lives of those who have taken part. White Texas officialdom, until the mid-1970s dominated by the conservative wing of the Democratic party, generally opposed the minority communities' quest for equal access to the ballot. The battles won by minority plaintiffs and their Anglo allies—most of whom belonged to the liberal wing of the Democrats—have taken place almost exclusively in federal courtrooms as a result of constitutional challenges, the extension of section 5 coverage to Texas in 1975, and the amendment of section 2 in 1982, which has eased burdens on plaintiffs in proving vote dilution.

Black Texans were actively involved as plaintiffs, lawyers, and fund-raisers in the series of white primary cases from the early 1920s until *Terry v. Adams* in 1953, which opened party activity once again to many southern blacks. Soon after the Voting Rights Act was signed, lawsuits began to challenge malapportioned districts and multimember election structures. The battle between racial liberals and conservatives over restrictive registration laws was fought until 1971, when, in *Beare v. Smith*, the liberals prevailed, even though rearguard efforts by white registrars in various counties to exclude blacks continued into the 1990s.[130]

Invoking the Fourteenth Amendment, MALDEF began its attack, in *Garza v. Smith* (1970), on the failure of registrars to allow assistance to voters not proficient in English. Also in the early 1970s minority plaintiffs and lawyers belonging to the three major ethnic groups, aided by academic experts, launched a series of constitutional challenges against dilutionary structures in municipalities, school districts, community college districts, the legislature, and Congress. These efforts played an important role in increasing the number of black and Tejano officeholders in these bodies. *White v. Regester* (1973), a Texas legislative redistricting case, was the first minority vote-dilution challenge in the United States to win in the Supreme Court.

In 1975, ten years after passage of the Voting Rights Act, its special provisions, including those in section 5, were extended to Texas. Bilingual ballots in Tejano areas became the norm. The Justice Department began to object to changes in election structures, and Texas jurisdictions were soon the target of the largest number of objections in any covered state. In just five years, between 1975 and 1980, the Attorney General objected to eighty-six proposed changes in Texas, significantly more than the fifty-three changes objected to in Mississippi in the fifteen-year period between 1965 and 1980.[131]

In the 110 Texas cities of 10,000 or more persons with a 1980 combined minority population of at least 10 percent, 52, including the state's 4 most populous, changed from at-large to single-member-district or mixed plans between 1974 and 1989. Of those, more than half—29—changed after a lawsuit was filed. Nineteen of the 29 suits were resolved after 1982, when section 2 was amended. This suggests that a decisive majority of the lawsuits that accompanied change were tried under the Voting Rights Act. In 3 of the 52 cities that changed—2 in which a lawsuit was filed, 1 in which it was not—section 5 objections also entered into the process, resulting in change. Finally, of the 22 changed cities in which neither a lawsuit nor an objection was instrumental in the switch, most of them adopted single-member districts after 1982, and city attorneys in some of them acknowledged frankly that the change came about as a result of amended section 2. Their cities decided to adopt districts before a lawsuit would have forced the issue. For this reason it seems probable that the great majority of the 52 cities adopted some form of districting plan as a direct or indirect result of the act.[132] And as we have demonstrated, the creation of districts has been responsible for much of the increase in minority officeholding.

This survey has shown how the evolution in constitutional and statutory law

from the 1940s to the 1990s has developed in response to the growing demand for equal participation of previously unrepresented blacks and Mexican Americans. In the course of this evolution, powerful tools have been fashioned that make manipulation of the election system by racial conservatives more difficult. While this achievement alone is not sufficient to enable racial and language minorities to achieve full integration into American society, it certainly represents necessary and important progress toward that goal.