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CONTROVERSIES IN MINORITY VOTING

The Voting Rights Act in Perspective

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Postscript: What is the Best Route to a Color-Blind Society?

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WE BELIEVE THAT MANY of the controversies over minority voting rights are exaggerated and that the positions of disputants are considerably closer than some of them might be prepared to admit. For example, most of the current disputants share certain basic premises, such as the goal of a color-blind society. While there may be some advocates of minority empowerment who desire a world where fixed racially defined groups are awarded a share of the pie (and the power) in proportion to their numbers, that is not, we believe, a widely held vision. It is certainly not our vision—nor the one responsible for the Voting Rights Act.

Like most advocates of minority voting rights, we remain committed integrationists. Like many critics of the act, we see race-conscious remedies as inherently undesirable. Where we differ with these critics is, first, in our view that ours is still a race-conscious world in which there remains a need for race-conscious remedies; second, in our recognition that the requirement of single-member districts as a remedy for vote dilution is in no way incompatible with the fundamentally majoritarian features of American politics; and third, in our belief that the election of minority officeholders from such districts ultimately fosters rather than frustrates minority political integration.

Starting from this premise of the desirability of a color-blind society—one, in Martin Luther King's words, where people, including political candidates, "will not be judged by the color of their skin but by the content of their character"—we do not believe that only blacks can represent blacks or that only whites can represent whites, and our hope is that one day race and ethnicity will not be important factors in electoral choices. Consequently, under normal circumstances the absence of racial bloc voting should be celebrated because it may signal change for the better that obviates the need for federal intervention. A world in which fixed and distinct racial and ethnic groups slice the political pie according to their numbers is as anathema to us as it is to certain critics who see the Voting Rights Act as encouraging such a world.

Thus at the heart of the current debate about voting rights is a disagree-

ment not about ends but about means. We would like to shift the debate away from its present mode of highly abstract normative or constitutional argument and away from polemics to a consideration of the empirical evidence of the actual consequences of the act.[1] If we want to understand whether it has outlived its usefulness and what American electoral and racial politics might have looked like if the act had not been renewed and amended in 1982, we need to know what it has accomplished and what remains to be done. To examine these questions, it is helpful to explain some of our disagreements with various of the act's critics.

Our differences generally have to do with how the Voting Rights Act has actually worked, and with how best to achieve integration in the racially divided world in which we live. There are three principal points of dispute, each of which is amenable to empirical analysis. First, does section 2 (and section 5, which now incorporates section 2 standards) actually require proportional racial representation? Second, are there significant changes in the extent to which politics is now driven by race-conscious voting, changes that indicate the Voting Rights Act has outlived its usefulness? Third, does the act reduce minorities' overall political influence by unduly concentrating them in districts where they are the majority? While these questions may not always have easy answers, focusing on them allows us to eschew rhetoric and look at evidence.

Does Section 2 Require Proportional Representation of Minorities?

The principal criticism of the Voting Rights Act comes from those who argue that it has been turned from its original appropriate aim of ending barriers to black enfranchisement and redirected to destroy barriers to minority officeholding.[2] Yet there is almost no one who disagrees that

1. This volume is part of a larger project funded by the Law and Social Sciences program of the National Science Foundation, SES 88-09392, to the editors. There will be another volume from the project with separate chapters that look at voting rights issues in each of the eight southern states covered by the act. These chapters will provide, in a historical context, a detailed empirical examination of minority representation brought about by the Voting Rights Act. Such analyses will permit an estimate of how much of the dramatic growth in minority representation in the South can be traced to the elimination of at-large election systems and multimember districts.

2. There is considerable disagreement in the scholarly literature about the intent of the framers of the 1965 act and the interpretation given to the amended 1982 language of section 2 by courts and by the Department of Justice. The decision in *Allen* v. *State Board of Elections*, 393 U.S. 544 (1969), in which a Mississippi law that converted the basis of

there are circumstances when vote dilution, as distinct from disfranchisement, is illegal.[3] The issue is how to define dilution.[4]

The 1982 amendments to section 2 include the following language: "The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided,* That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population." However, Justice Sandra Day O'Connor's concurring opinion in *Thornburg* v. *Gingles* asserts that the Court (speaking through Justice William Brennan) in fact makes "usual, roughly proportional success the sole focus of its vote dilution analysis." This charge, which seems to imply that section 2 has been converted into a requirement

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elections for county supervisor from ward to at-large was held to need preclearance under section 5, legitimated subsequent Justice Department review not just of at-large elections, but also of redistricting plans and annexations. It also touched off, in Timothy O'Rourke's words in this volume, "an ongoing debate on the questions of when and under what circumstances an otherwise legitimate election procedure might be discriminatory." That debate intensified after the 1982 extension of the act and the development of the new section 2 standard. O'Rourke and some of the other authors in this volume see the original act as intended to be limited to disfranchisement issues, with the broader concept of vote dilution a later graft-on. Others see the decision in *Allen* to include election systems under the act as a natural and inevitable consequence of the need to deal with southern attempts to prevent blacks from achieving an effective franchise.

Our own views are like those of Days in this volume. Rebutting the claim that Congress was simply seeking in 1965 to ensure that blacks had, in the words of Thernstrom 1987, 5, "the right to enter a polling booth and pull the lever," Days asserts that, "on the contrary, the history of racial discrimination in voting had made clear that Congress could not anticipate the variety of stratagems that officials in covered jurisdictions might resort to in order to maintain the status quo." Days considers section 5 to be a "testament to Congress's view that flexibility should characterize the government's enforcement efforts. . . . The Supreme Court's *Allen* decision correctly captures the spirit of that congressional objective."

3. Even Thernstrom 1987, 238–39, one of the act's severest critics, concedes that "there is no doubt that where 'racial politics . . . dominates the electoral process' and public office is largely reserved for whites, the method of voting should be restructured to promote minority officeholding. Safe black or Hispanic single-member districts hold white racism in check, limiting its influence."

4. Should any deviation from proportional ethnic representation be sufficient to establish a claim of dilution? Should dilution be measured with respect to a single-member-district baseline? Should dilution require proof of racial bloc voting? Should it require proof of intentional discrimination or racial animus on the part of either voters or those who adopted the plan under challenge? Should dilution be found only if there is retrogression, that is, only if the proposed change leaves minority voters with less chance to elect their preferred candidates after the change than they did before (as Thernstrom 1987, 236, argues should be the proper standard for section 5 preclearance)?

of proportional representation for minorities, has been repeated by many authors. We believe it is misleading. To understand why, it is necessary to explicate various meanings of proportional representation.

The first of these meanings refers to a formal set of election rules, called a proportional representation system, to ensure proportionality between each political party's percentage of candidates elected and its percentage of voter support. Such a system, used in many European countries, is familiar to students of comparative election laws.[5] But obviously this is not what O'Connor means. The baseline used in *Thornburg* and subsequent cases to judge vote dilution is that of a single-member-district plan. By definition, such a plan, with winner-take-all plurality-based elections in each district, does not make use of proportional representation of the sort referred to above—one that provides representation to each party according to the number of votes cast for that party.[6]

Nonetheless, one might reply that the single-member-district remedy has the same results as proportional representation. But even this is not really true. As Timothy O'Rourke points out in this volume: "It would be more accurate to say that the operative standard is a qualified proportional representation. . . . It may be impossible, given a fixed number of districts [and a given distribution of minority voters] to draw a proportional number of single-member districts with a majority black or Hispanic electorate. Moreover, minority districts, once drawn, do not guarantee that a minority candidate will win."

One might, however, argue that the distinction is academic. Whatever the remedy mandated by *Gingles* is called, when it is applied it might still accomplish roughly the same end as a system of formal proportional representation. It might seem that amended section 2 pretty much guarantees minority candidates a percentage of seats roughly proportional to minority population. Is this true? We do not think so, for two reasons.

First, we cannot emphasize too strongly the contingent nature of the minority voting rights specified in *Gingles*. Without a showing that white officials established or maintained certain election rules to prevent the election of minority voters' candidates of choice, courts require that all three prongs of the *Gingles* test be met before there can be a finding of vote dilution: residential segregation of the minority group sufficient to

5. See, for example, Lijphart and Grofman 1984.

6. In actuality, even proportional representation systems may not be perfectly proportional in their allocations of seats since there may be thresholds designed to discourage minor parties, such as a 5 percent share of the national vote, below which a party is entitled to no representation.

create a district in which the minority is in the majority; cohesion among that group's voters; and bloc voting by the white majority sufficient usually to defeat the minority group's candidates. There is no presumption that any group that is underrepresented automatically qualifies for protection under section 2.

Second, those who argue that proportional representation is mandated by section 2 often seem to imply that a right is being granted for the election of candidates of a certain race or ethnicity. On this interpretation, the right belongs to the ethnic candidates themselves, once their ethnic group is regarded as having protection derived from the Fourteenth Amendment. The law would say, in effect, to minority candidates: "While you are not protected from competition with other candidates of your own color, you are protected from competition with whites. One of you, by virtue of your color, is entitled to win." Such a candidate-related right would seem to entail a genuine quota system, where a necessary condition for running is that the candidates belong to a particular ethnic group. Of course, they must still get the highest number of votes to win a seat. But they must also belong to a specified ethnic group.

We would respond that while the typical outcome of a single-member-district remedy might give the impression that a quota rule is being applied, this is not in fact the case. The right in question is conferred on an identifiable group of voters, not on candidates. This group of voters has been unable to elect its preferred candidates because of white bloc voting. Section 2 gives the group the right to elect candidates of its choice. Those elected candidates, once a single-member-district remedy has been imposed in a highly race-conscious setting (it is race-conscious because whites will not vote for minority candidates) typically are members of the covered group in question, although not always. So the result may be similar to the result of a quota rule, where rights belong to the candidates. But a different principle is at work, and principle, in matters of fairness, is crucial. This principle says to the voters: "You have previously been prevented by white voters from electing candidates of your choice. We will draw districts so that you, like the white majority, will have that opportunity. *But we do not care what the ethnicity of your preferred candidates is.*"

If critics of this arrangement protest that this is just a subterfuge for requiring minority proportional representation or racial quotas, they are caught in a contradiction.[7] For on that logic, the alternative—an at-large

7. For example, Thernstrom 1987, 237–38, argues that, lacking clear guidelines, the

system in which a white majority bloc usually overrides the minority voters' preferences—can also be described as *requiring* the election of a certain percentage of white candidates (in this case, the overwhelming majority of all winners), and thus is also a subterfuge, but for a white rather than minority quota.[8]

The reader might object that our argument about proportionality so far has been entirely theoretical. But the empirical evidence is consistent with our theoretical assertions. The claim that the Voting Rights Act is tantamount to a general requirement of proportional representation for the protected minority groups falls on its face when confronted with the reality of how few minority officials there actually are, even in states where there has been extensive voting rights litigation and repeated denials of preclearance. It may well be true that in particular challenged jurisdictions a single-member-district remedy will provide something very close to proportional representation, but given the nature of minority residential dispersion, such jurisdictions are the exception. To be sure, the number of black and Hispanic officials has increased sharply since passage of the act. Hispanics in 1990, however, still made up less than 1 percent of all elected officials, although they make up more than 7 percent of the voting-age population. Blacks made up only 1.5 percent, while constituting more than 11 percent of the voting-age population.[9]

Thus we believe the answer to the question of whether section 2 of the act mandates "proportional racial representation" is clear, if by that is meant a racial quota among officeholders. And that answer is no. In a limited number of jurisdictions across the nation, it allows minority voters to elect at least some candidates of their choice, even if white voters seek to prevent it. But requiring fairly drawn single-member-district plans is something very different from a quota system for ethnic groups in America.

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courts' tendency in adjudicating section 2 claims is to drift toward a standard of proportional representation that "can only lead to a covert system of reserved seats [in legislative bodies] such as those India provides for its 'scheduled castes.'"

8. Of course, as courts have recognized in numerous cases, such as *Citizens for a Better Gretna* v. *City of Gretna*, 834 F.2d 496 (1987) and *City of Lockhart* v. *United States*, 103 S.Ct. 998, U.S. (1983), when other fairer districting alternatives are available, there cannot be an equal opportunity to elect candidates of choice if the election system and the voting patterns are such that minorities are given only the opportunity to elect the *white* candidate of their choice.

9. National Association of Latin Elected Officials 1990, vi; Joint Center for Political Studies 1991, 11. Moreover, the growth rate in the number of black elected officials has decreased in recent years—contrary to what critics of the 1982 section 2 language might have led one to expect.

Has the Voting Rights Act Outlived Its Usefulness?

Some authors have claimed that section 5 of the act—the preclearance requirement—is no longer necessary because the racial climate in covered jurisdictions has radically improved in the past quarter century. It is therefore unfair to require these jurisdictions to show that electoral changes do not have the purpose or effect of harming minority voting rights. Some critics of the act believe that in most situations, even in the South, appreciable numbers of whites are willing to join with the black minority to elect qualified black candidates. Timothy O'Rourke in this volume, for example, emphasizes the number of successful black candidacies in majority-white districts in Virginia. Similarly, Carol Swain emphasizes what she regards as a large number of successful black congressional candidacies in districts that are not majority-black.

We agree that progress is evident, but we are far more skeptical that racially polarized voting is as infrequent as these authors believe, or that southern white resistance to black officeholding has largely vanished.[10] We also do not believe, as other critics maintain, that white Anglo bloc voting against Hispanic candidates is so much less severe than that directed against blacks that Hispanics ought not to be covered by the Voting Rights Act. The empirical evidence showing where minority representation has increased and what the causes of this growth are bear directly on these points of dispute.

10. For example, had Congress done no more than outlaw literacy tests in the South for five years, and had it let section 5 expire in 1970, 1975, or even 1982, it would have encouraged renewed white resistance in the 1970s and 1980s against full and effective black and Hispanic political participation. Arguing for the act's 1982 extension in the hearings before the House Judiciary Committee was the southern historian, C. Vann Woodward, who in the 1960s had given currency to the term *second Reconstruction* as it applied to that era. Woodward is himself a southerner and a close student of American race relations. While not expecting anything so drastic as the disfranchisement that followed the first Reconstruction, he averred in his testimony: "I do think it reasonable to warn that a weakening of this act, especially the preclearance clause, will open the door to a rush of measures to abridge, diminish, dilute, if not emasculate the power of black votes in Southern states" (House of Representatives 1981a, 2001). Woodward was joined in his opinion by many scholars, the voting rights bar, and, perhaps most eloquently and insistently, minority activists themselves, including grass-roots leaders from southern and southwestern communities. If not the pessimists in this national debate, they were at least the skeptics, people whose reading of history or whose personal experience had convinced them that the path of progress in American racial and ethnic relations is often tortuous and sometimes retrograde. They considered the renewal of section 5 and the amendment of section 2 essential for maintaining the tenuous but hopeful position minorities had secured in the less than two decades since the act's passage.

Susan Welch's study of minority representation in 1988 examined all U.S. cities of at least 50,000 people with a population of at least 5 percent but less than 50 percent black or Hispanic. She found it is still true that, in cities electing their councils at large, blacks are underrepresented as compared to blacks in cities with single-member-district systems. Indeed, "all cities with district elections and more than a 10% black population have at least some black representation, while a sizable minority of at-large and mixed cities do not yet have this representation."[11] Even so, the gap in black officeholding between these two types of election plans in the nation as a whole has narrowed appreciably since the 1970s.

In southern cities, too, Welch found that the gap has narrowed. But there was still in 1988 a significant contrast between black representation in at-large and district cities. The mean black "equitability score" (the ratio of blacks on council to blacks in city population) in cities that were at least 5 percent black but less than 50 percent black was 0.71 in at-large cities and 0.95 in district cities—the latter figure indicating almost complete proportional representation. And in those twenty-seven southern at-large cities, 22 percent had no blacks on council, while in the fourteen district ones, none was without black representation.[12] Even so, the equity ratio of 0.71 for at-large southern cities represents a significant increase in black representation since the 1970s.

We suspect, however, that one reason equity may have risen in southern at-large cities is that there are now fewer of these cities than previously as a result of voting rights litigation, and some of the remaining ones are likely to be those where the racial climate was more moderate and black electoral success was sufficient to avoid voting rights litigation. The possibility of such a selection effect must be considered before drawing conclusions about white tolerance from Welch's findings.[13] We also have no way of knowing how many of the blacks elected at large in the South owed their seat to a white-dominated slating group whose interests differed

11. Welch 1990b, 1057. There are many thousands of political entities in the United States today, electing about half a million officeholders: 60.4 percent of the almost 4,000 cities of 2,500 residents or more surveyed in 1986 for the International City Management Association employed at-large elections, as compared to 12.8 percent that used the pure district system (Renner 1988, 15).

12. Welch 1990b, 1059. Welch takes eleven states as her definition of the South.

13. We are coordinating a project funded by the National Science Foundation that uses a longitudinal design to study cities that changed election systems and those that did not in each of eight states. The design permits an evaluation of the magnitude of selection and other effects that may contaminate the usual cross-sectional analyses.

significantly from those of the black community, a phenomenon that is relatively common in at-large systems.[14]

There is a further finding in Welch's study that casts serious doubt on the view that minority candidates running for at-large posts are no longer greatly disadvantaged. In addition to examining at-large and single-member-district cities, Welch examined those employing a mixed plan: some council members elected from districts and some at large. She then compared black success in winning district seats and at-large seats, a comparison, she stressed, that is important for two reasons: first, because mixed systems "have become the modal structure" in the type of cities she examines in her study, and second, because the data from these "self-paired" systems allowed a number of relevant variables to be controlled. Her finding was that although blacks were almost as equitably represented in district seats as their numbers in the city's population would predict, in at-large seats they were dramatically underrepresented. In southern mixed cities, the black equity ratio in district seats was 0.95; in at-large seats, it was 0.20.[15] In other words, blacks in the district seats were very nearly equitably represented; in at-large seats they were underrepresented by a factor of five.

Welch's findings on Hispanics, reported in the same study, provide further grounds for concern about the disadvantaging effects of at-large systems. Hispanics in cities of 50,000 or more with a Hispanic population between 5 and 50 percent were sharply underrepresented in at-large cities—their equity ratio was 0.40. There were no Hispanic council members in 71 percent of such cities.[16] Hispanics were, however, underrepresented in all types of systems. Welch speculated that their low equity ratio in district cities was the result of residential dispersion. This seems logical, because compactness is essential for the creation of majority-minority districts (which is the main reason single-member districts could not be a remedy for the underrepresentation of women); it suggests that section 2 remedies of the sort suggested by Lani Guinier, Edward Still, and others might be more appropriate for Hispanics.[17]

Unfortunately, in Texas, where there has been much voting rights litigation by Hispanic plaintiffs and, in many instances, where Hispanic residential compactness is fairly high, Welch found no district cities that met the demographic criteria for her sample. Thus she could not compare

14. Davidson and Fraga 1988.
15. Welch 1990b, 1059.
16. Welch 1990a, 1066.
17. Guinier 1991b; Still 1984; Still 1992.

representation in the two types of systems in a state where court-ordered district remedies would be most likely to demonstrate a difference between at-large systems and those with fairly drawn districts. What Welch did find in Texas, however, was "negligible" Hispanic representation in at-large cities but "quite high" representation in mixed systems, an equity ratio of 0.83.[18] Moreover, when she compared Hispanic representation in the at-large seats of these mixed cities with their representation in the district seats, the results were equitability ratios of 0.67 in district seats but only 0.07 in the at-large ones, a result that strikingly paralleled her finding for blacks when the same comparison was made.[19] Both blacks and Hispanics in mixed cities are severely handicapped when running at large. Of course, why both groups are less handicapped, relatively speaking, when running in at-large cities than when running for at-large seats in mixed cities remains an important puzzle to be solved.

To summarize, we believe that, generally speaking, both blacks and Hispanics not only have traditionally been more disadvantaged in at-large cities than in district ones but that they continue to be disadvantaged by at-large arrangements.[20] This is particularly so in the South. Districts, while often helpful to Hispanics, particularly in mixed cities, generally help them less than they do blacks because Hispanics are more residentially dispersed.[21]

Bernard Grofman and Lisa Handley approached the question of how minorities fare in predominantly white settings from another perspective, looking at the relationship between voting rights litigation and its concomitant creation of black-majority seats and black electoral success. Their results directly bear on the question of whites' willingness to vote for blacks. Examining southern legislatures, they found that in 1989, only 2 percent of the 1,534 state legislators elected from majority-white districts were black. By contrast, 60 percent of the legislators elected from the 233 majority-black districts were black. In another study, these authors found that among southern members of Congress in 1985, no black was elected from a majority-white Anglo district. Indeed, only 2 southern

18. Welch 1990a, 14.

19. In California, where relatively little voting rights litigation under either the Constitution or the Voting Rights Act has been carried out, Welch's data set on large cities shows that Hispanics were *better* represented in at-large cities than district ones, but analysis of a larger sample of cities for which data has been gathered by the Bureau of the Census finds Hispanics considerably better represented in district and mixed systems than in at-large cities, even in California. The authors are currently analyzing this data base.

20. Davidson and Korbel 1981; Engstrom and McDonald 1981.

21. Zax 1990, 353.

blacks were in Congress at that time.[22] This number has since increased to 4 out of 116 southern representatives, or 3.4 percent, in a region whose voting age population is about 17 percent black. The authors concluded that "the congressional data fit the racial polarization model almost perfectly."[23]

Despite these findings, however, we agree fully with Carol Swain's reminder in this volume that, at least at the congressional level and in most state legislatures, blacks are not concentrated enough geographically to create a very large number of new majority-black political units.[24] This is so even in jurisdictions where the other two *Gingles* standards can be met.

Does the Voting Rights Act Harm Minorities?

Questions of law aside, scholars such as Abigail Thernstrom, Katherine Butler, and Timothy O'Rourke have argued that, as it is currently being interpreted by courts, the Voting Rights Act now actually harms minority interests rather than aids them because it helps keep race a divisive political force and "segregates" minorities into preponderantly minority districts.[25] These critics assert that creating majority-minority districts weakens the prospects for coalitions between minorities and whites, making it harder for minorities to achieve major policy goals.

The inability of minorities to elect candidates of their choice because of white bloc voting under certain electoral arrangements (which is what the courts have usually construed minority vote dilution to mean) is one measure of the debasement of a group's voting strength.[26] A rather different measure, as suggested by Gregory Caldeira and also Lani Guinier in this volume, is based on inability to bring about preferred governmental policy.[27] Consider a situation in which blacks or Hispanics are a numeri-

22. Grofman and Handley 1991, 114.

23. Grofman and Handley, forthcoming.

24. Because Hispanics are more residentially dispersed than blacks, increases in the number of Hispanic legislators in the 1990s round of redistricting will also be limited, despite recent dramatic Hispanic population gains.

25. Thernstrom 1987; Butler 1982; O'Rourke 1980.

26. More specifically, minority vote dilution, as the courts have generally understood it, is the degrading of voting strength among a cohesively voting arithmetical minority through a combination of bloc voting by the white majority and the use of certain electoral rules, which together prevent blacks from electing candidates of their choice relative to what would be possible under a fairly drawn single-member-district plan.

27. This is not quite the same as the well-known distinction (see, for example, Caldeira

cal minority in a jurisdiction. Even if the minority's candidates of choice are elected, the majority on the city council may consistently outvote those candidates on certain issues and refuse to enact policies that benefit minority interests. Unlike vote dilution, there is no legal remedy for this situation.[28]

One can imagine situations in which minority voters' desire to elect their most preferred candidates to office (candidates who we may suppose will usually themselves be minority members) conflicts with their desire to see the enactment of policies beneficial to minorities. Suppose, for example, that black voters make up only one-fourth of the electorate in a city employing at-large elections, and they are willing to vote as a bloc for council candidates who seem genuinely willing to address the particular needs of the black population; the great majority of whites, by contrast, will not vote for a black candidate. The black voters' candidates cannot win.

Now imagine two options that blacks might choose between if they had a decisive voice in the matter. In one, option A, they can choose to have single-member districts in which black voters constitute a majority in one-fourth of the districts, with full knowledge that the other three-fourths of the districts will produce white council members opposed to the policy aims of the minority bloc of blacks on council. Black voters, in other words, can elect black candidates of choice, but once elected, the representatives are unable to bring about the policies favored by their constituents.

In option B, the same city elects its council at large. Most black voters forego nominating the black candidates they really prefer, and together with a minority of whites, are able to elect a liberal majority to the city council that is sympathetic to black needs, although it is a majority from which black council members are absent. Thus black voters can constitute

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in this volume) between policy-based representation and descriptive representation because we emphasize that what is at issue in voting rights lawsuits is not the opportunity of a group to elect persons of the same race or ethnicity as themselves, but rather the opportunity to elect candidates of choice. Admittedly, the results may often be the same; but the processes are not the same in either law or democratic theory.

Lack of policy responsiveness to minority concerns was once regarded as a supplementary factor that might be used to demonstrate vote dilution, but its importance was downplayed in the report of the Senate Committee on the Judiciary on the 1982 extension of the act (Senate 1982b) because proof of this factor was difficult.

28. For a discussion of this problem and an interesting and controversial suggestion for providing a legal remedy, see Guinier (in this volume and 1991a).

a swing vote without which the white liberal majority on council cannot get elected, and by providing the margin of victory for the white council majority, they can prevent an antiblack coalition from dominating the council and enacting measures that are not responsive to black interests. (Using the same logic, we could construct a similar model, option B_1, in which single-member districts replaced the at-large structure. If district lines are drawn so that blacks are distributed fairly evenly over a number of districts, and black voters, while unable to elect black candidates in such districts, have some degree of influence over the legislators elected from those districts, they can, in this option too, join with sympathetic whites in the city's districts, all of which are majority white, and elect a majority to council whom they can influence by virtue of their swing-vote status.)

Both options B and B_1 might seem preferable, from the standpoint of policy effectiveness, to option A, where black voters are concentrated in a handful of majority-black districts, with little or no influence in the remaining districts. In option A they can elect as their first preference up to one-fourth of the council members, but potential white allies, being walled off from black voters in their own predominantly white districts (each such district composed now of conservative white majorities), will no longer be able to join with the black voters and elect a liberal biracial majority that can control the council. In option A, a political ghettoization has occurred. In options B and B_1, a biracial coalition is possible.

This supposed conflicting set of options, then, is what some critics of the act appear to have in mind when they talk about the trade-off between a minority group's ability to elect candidates of its choice to a legislative body and its ability to get favorable policies enacted by that body. We believe this hypothetical conflict is overblown.

In the at-large setting, the probability seems small that white voters, who according to option B are unwilling to vote for black candidates, would nonetheless sanction policy measures enacted by the coalition's winning slate that would significantly benefit blacks per se. Similarly, in the single-member-district context, the conflict between electing black candidates of choice (option A) and supposed enhanced policy influence if black voters are scattered across districts rather than concentrated (option B_1) rests on the notion that the black minority in those districts will be a swing vote *and* that the representatives who are elected with the aid of that swing vote will be highly responsive to black interests. In the South especially, only sometimes will these two conditions be satisfied.[29]

29. Exactly how often these conditions will be satisfied is an empirical problem to

Nonetheless, critics of the Voting Rights Act have claimed that the creation of black or Hispanic districts as a remedy for vote dilution has led to a deterioration of traditional interracial alliances. In two-party politics, they argue, this has led to a decline in Democratic strength and to Republican gains, thus making it harder for minorities to achieve policy goals, particularly at the state or national level. We believe that the Voting Rights Act gave added impetus to the southern partisan realignment, thus contributing to the new shape of the American political universe, in which "considerations of race are now deeply imbedded in . . . strategy and tactics . . . in competing concepts of the function and responsibility of government, and in each voter's conceptual structure of moral and partisan identity."[30] But it is one thing to recognize that southern white flight from the Democratic party was initially triggered by the Democratic stance on civil rights in the 1960s and quite another to say that creating more majority-black or majority-Hispanic legislative seats will, on balance, diminish the ability of blacks and Hispanics to enact public policy that would benefit them. This is a very complex question.

As minority officeholders grow in numbers, white flight from the Democratic party may continue, the seeming Republican lock on the

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which we do not have good answers. It is not sufficient to point to numerous instances where, say, blacks and whites vote together in an at-large minority-black jurisdiction to elect a majority to city council or some other governmental body; such coalitions have existed as long as blacks have been able to vote. It must also be shown that the majority slate has enacted policies of measurable benefit to blacks, including policies that address the special needs of blacks, insofar as these are expressed and known. A systematic study of this issue would require an analysis of winning coalitions in a sample of at-large jurisdictions where blacks (or Hispanics) were a minority, in order to determine if, normally, a) the coalitions succeeded in electing a majority to the governing body; b) they were genuinely biracial, in the sense that minorities played an active and important role in the coalition; and c) the victorious slates were willing and able to enact policies that provided measurable benefits to the minority community. Until evidence for a significant proportion of genuine biracial coalitions is presented, those who emphasize the continued reality of racially polarized voting and racist attitudes, especially in the Deep South, will be unlikely to change their minds. To emphasize a point that is often overlooked in discussing best-case scenarios, racial polarization and hostility may be intense even in many at-large cities where a tradition of black officeholding has been established. The evidence is simply not yet in on whether the typical jurisdiction is one in which there are sufficient white voters willing to form a multiracial coalition capable of winning control of a governmental body for purposes of enacting policies that are clearly beneficial to minorities, even when some minority interests differ significantly from those of whites, as they often do.

30. Edsall and Edsall 1991, 53. See also Grofman, Glazer, and Handley 1992.

White House may strengthen further, and there certainly will be some situations in which the creation of concentrated minority districts will lead to the election of a Republican in a neighboring district.[31] But the other side of the argument needs to be weighed against these possibilities. Quite simply, the presence of minority officeholders makes it harder for racism to persist inside a legislature. In addition, the more natural it becomes to see minorities hold office, the less likely their election will trigger white unhappiness with the Democratic party.

Furthermore, and perhaps most important, the hypothetical conflict between ability to elect candidates of choice and ability to influence policy neglects the role of minority officeholders in vigorously championing minority interests. There simply is no evidence that in the typical case, the addition of minority officeholders to a governmental body, even when they are not a majority on it, *decreases* policy benefits to minority voters.[32] Finally, even if there were some conflict between simple representation and policy influence, it is not clear just what the appropriate trade-off should be. Raymond Wolfinger demonstrated the long-term persistence of white ethnic voting in America.[33] This persistence suggests that the desire to be represented by someone of the same heritage is deeply felt by most ethnic minorities, in part because the simple presence of members of one's own group in government is an important symbol of equality and full citizenship.[34]

31. Thanks to the gerrymandering skills of Democratic cartographers, our preliminary analyses of the opening round of 1990s redistricting suggest that such situations are remarkably fewer than Republicans would like. See also Brace and others 1988.

32. Fraga 1991; Grofman, Glazer, and Handley 1992. One implication of the theory proposed by scholars such as Thernstrom 1987 is that biracial coalitions in jurisdictions with at-large elections would provide more policy benefits to minorities than would be provided in otherwise comparable jurisdictions electing by district where minorities had been "isolated" into majority-minority districts. We know of no evidence to support this view.

33. Wolfinger 1965.

34. Hamilton 1981, 191, has written, "For any number of reasons, voters perceive that one of their own will be more responsive to their needs. They feel a closer tie—call it kinship if you will." In like manner, judging by their tendency to vote as a bloc against minority candidates in many elections, whites may use the ballot box to express feelings of solidarity against minority candidates (Glazer, Grofman, and Owen 1989). In contrast, as Caldeira notes in this volume, "organized labor, for example, has never made a particular point of electing unionists, although some have gone to Congress under the banner of labor. Instead it has cultivated the friendship of politicians from diverse backgrounds and both parties." Caldeira suggests that "perhaps by choice but more probably by lack thereof, blacks and other racial minorities traditionally pursued a legislative strategy along the same

Conclusions

Let us now summarize our stand on the several issues we have raised. First, we reject the claim that the Voting Rights Act is a quota system. Its remedies are contingent on proving case by case that voting is racially polarized and that minority candidates regularly lose, as well as that housing patterns are sufficiently segregated and the minority population is sufficiently large to permit a single-member-district remedy.[35] The process by which a remedy based on creating single-member districts is imposed, in other words, is not proportional representation. Moreover, the percentage of minority officeholders as compared with the percentage of the minority population in the United States today is so small—as is the percentage growth rate of minority officeholders—that accusations that the Voting Rights Act has been subverted into a tool of proportional representation are ludicrous. We would emphasize that the Voting Rights Act operates, in the interest of fairness, within the framework of the fundamentally majoritarian electoral rules of our society. It does not, as a remedy for wrongs, provide entitlements that can be justified only as compensatory redress for previous injustice to members of a given group. Rather, it merely seeks to provide an election system that permits all groups to be fairly represented. Thus it is not surprising to us that voting rights are not as controversial as other areas of affirmative action.[36]

Second, we see minority districts as staging grounds for minority entry into politics. From such districts minorities can build up the visibility and credibility to rise to higher office, sometimes in constituencies that are mostly white. Like Luis Fraga in this volume, we consider the presence of minority officeholders at all levels of government as fostering political accommodation between the minority and nonminority communities rather

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lines as organized labor and other interest groups. Few members of minorities could, until recently, hope to win a seat in Congress or even a state legislature."

35. As Cain (in this volume) reminds us, Latinos regularly move out of inner-city barrios.

36. We use the phrase *affirmative action* in the voting rights context quite guardedly. Unlike many civil rights activists and many critics of the Voting Rights Act, we do not believe that voting rights fits the usual model of affirmative action case law. See Turner in this volume.

than leading to so-called political ghettoization. We also share Fraga's belief that the incorporation of minorities can lead to a more democratic and inclusive concept of the polity and a shared vision of the public interest that is more than just "fair shares."

Similarly, we are skeptical about the claim made by some conservatives and some liberals that creating majority-minority districts is not in the interest of minorities. Conservatives assert that minority districts harm the prospects for interracial coalitions and lessen the likelihood of a color-blind society. But this argument is naive. It fails to take into account the extent to which patterns of polarized voting are the norm and is based on an unduly optimistic notion of what minority influence would be without the Voting Rights Act. On the other side, some liberals are worried that creating minority districts reduces the net number of liberals—black and white—who will be elected. This is a fundamentally paternalistic argument whose greatest appeal is to white liberal incumbents. Moreover, as Bruce Cain puts it in this volume, whatever may be the extent of this particular problem, it must be "weighed against the losses in system legitimacy and stability when minority voices are not well represented in American government."

Finally, we see the implementation of the Voting Rights Act as what Bernard Grofman in this volume has called the "realistic politics of the second best." We believe that the act has been and continues to be a major force in moving us toward that color-blind society envisioned by Martin Luther King and large numbers of blacks and whites who followed him in his quest. As committed integrationists we consider its recipes for color-conscious remedies necessary as long as there are jurisdictions where race is inextricably bound up in voting decisions and strongly linked to housing patterns.

In a world of race-conscious voting, race-conscious remedies are needed. But that does not mean we have to like the world in which such remedies are necessary or fail to appreciate the limitations of such remedies.[37] We wish to steer a course between a premature optimism, on the one hand, that will lead to the elimination of safeguards vital to the continuing integration of minorities into American electoral politics and, on the other hand, an unrealistic pessimism that insists we will never get beyond

37. See, for example, Bruce Cain's enjoinder in this volume that we need to look to tactics other than voting rights litigation—changes in naturalization policy, easing of registration requirements, campaign finance reform that may benefit minorities—to deal with fundamental issues of minority empowerment.

judging people by the color of their skin and so advocates replacing the quest for a common civic vision with a tribalistic notion of immutable group consciousness and concomitant group rights. We believe that the case-specific and fact-contingent approach embodied in voting rights enforcement steers just such a course.