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Quiet Revolution in the South

THE IMPACT OF THE
VOTING RIGHTS ACT, 1965-1990

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CHAPTER THIRTEEN

The Voting Rights Act and the Second Reconstruction

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THE VOTING RIGHTS ACT is deeply rooted in American history. It was the last major piece of legislation passed during the southern civil rights movement. That movement, in turn, was but a phase of the battle for black citizenship rights growing out of the Civil War and Reconstruction. And, of course, the war itself was fought over the slavery question and was a milestone in the African-American quest for racial equality. A broad historical perspective is therefore essential to an understanding of the act's significance.

THE FIRST AND SECOND RECONSTRUCTIONS

It is our thesis that the Voting Rights Act must be seen as a mechanism to insure that the Second Reconstruction of the 1960s did not meet the same fate as that of the First Reconstruction of the 1860s and 1870s.¹ In that era, the basic rights of citizenship ostensibly guaranteed African Americans by the Fourteenth and Fifteenth amendments enacted following the war were stripped away with astonishing speed, largely as a result of a ferocious white southern backlash. Table 9 in the state chapters of this volume chronicles in detail the ingenious devices adopted in the southern states from the 1860s forward to prevent blacks from registering and voting. The southern "redeemers" could not have succeeded, however, without the indifference of most northern politicians to the plight of the newly freed slaves, and without the complicity of the federal courts. In the absence of broad support for the Negroes' cause, the forces of reaction effectively gutted the Civil War amendments of their intended powers to secure black people's newly gained rights.

Almost a century later, as the civil rights movement gathered momentum, it was clear to historically informed observers that the white South would not surrender easily as blacks tried once more to obtain rights they had acquired during Reconstruction. Writing in the spring of 1965 before passage of the Voting Rights Act that August, Woodward observed that "the South since 1954 has been more deeply alienated and thoroughly defiant than it has been at any time since 1877."² Continued white resistance in the 1960s to school desegregation, the widespread violence against blacks who attempted to desegregate public accommodations, the ominous election of racist demagogues calling for an end to federal pressure for change, and the failure of the Civil Rights acts of 1957, 1960, and 1964 to end systematic

exclusion of blacks from the voter rolls in the Deep South convinced civil rights leaders, Congress, and President Lyndon B. Johnson that only extraordinary measures would guarantee black southerners the rights they had long been denied.

Voting rights was a case in point. During and after the First Reconstruction, southern white officials were quick to employ devices that denied newly enfranchised blacks their political rights without blatantly violating the Fifteenth Amendment but that violated it nonetheless. Then, a half century after disfranchisement, when the Supreme Court in 1944 declared white primaries unconstitutional, many southern officials, anticipating a concerted push for black suffrage, once again took steps to prevent it. Simultaneously, as chapters in this book reveal, they began amending electoral laws to prevent black officeholding in the event that substantial numbers of blacks entered the electorate. So strong was white resistance that efforts to minimize the influence of black votes continued and sometimes intensified after passage of the act in 1965.³

The failure of the white South to submit voluntarily to the growing demand in the nation at large for abolishing its Jim Crow system was the backdrop for the debate over the Voting Rights Act in the spring and summer of 1965. The framers of the act, which was designed to enforce the Fifteenth Amendment, were well aware of that amendment's failure to effectively protect black voting rights almost from the time it was ratified in 1870. The Justice Department under President Johnson, as well as congressional leaders—pushed hard by civil rights forces—were determined that the Second Reconstruction should not fall victim once more to the same reactionary impulse that had emasculated the First Reconstruction.

The provisions of the act with the most immediate impact were those which temporarily abolished the literacy test in most areas of the southern states still using it and authorized the executive branch to send federal examiners to register black voters in those same jurisdictions—ones that had shown the greatest resistance to granting African Americans their constitutional rights. Also of major importance were the preclearance provisions of section 5, requiring covered jurisdictions to submit proposed changes in voting practices to the Justice Department. Before the department would approve changes in electoral practices, it had to be convinced that the changes had neither the effect nor the purpose, in the language of the act, of “denying or abridging the right to vote on account of race or color.”

Two features of section 5 are particularly noteworthy and explain the intense resistance of many white southerners. First, the only appeal of the department's preclearance denial was to the Federal District Court for the District of Columbia, a court then presided over by cosmopolitan and progressive judges.⁴ This meant that southern district judges could no longer hamstring private plaintiffs or Justice Department lawyers, as they had done under the Civil Rights Act of 1957 and its successors. Second, because no change in voting practices could legally be implemented without preclearance, southern jurisdictions whose election schemes had been struck down by a federal judge could not immediately implement a different form of voting discrimination and apply it while it was being litigated, as they had been able to do before passage of the act.

In sum, the new Voting Rights Act would shortly bring the force of the federal government to bear directly on what have been called first-generation problems—white southerners' efforts to prevent blacks from registering and voting—and it would provide a powerful tool that could be used to abolish second-generation devices such as vote dilution, a barrier to black officeholding. The act did this primarily by giving the executive branch extraordinary monitoring and enforcement powers in that region of the country where adamant opposition to black voting rights was still widespread.

Once the battle was lost to defeat the act or, barring that, to scuttle key provisions, various southern officials challenged the act's constitutionality, refused to submit changes in election practices for preclearance, tried to retain the poll tax in states where it was still used, and sought to have the act's provisions construed narrowly so as, for example, to permit devices like at-large elections to replace single-member districts without the need for Justice Department approval.

Most of their stratagems failed. South Carolina's challenge to the act's constitutionality was rejected by the Supreme Court in 1966.⁵ That same year, in cases growing out of Justice Department challenges to the poll tax in state and local elections—challenges section 10 instructed the Attorney General to file—the Court ruled that the tax was unconstitutional.⁶ Then, in a case that was to prove critical for the subsequent evolution of voting rights law, the Court in 1969 rejected Mississippi's claim that the state's massive changes from district to at-large elections did not need to be precleared under the act.⁷ Reviewing the act's legislative history, the Court held that such changes fell under the act's definition of voting practice and as such might abridge protected voting rights.

THE IMPACT OF SECTIONS 4, 6, AND 7

In very general terms, the act's overall enfranchising effect has been known for some time. By abolishing the literacy test in covered jurisdictions, section 4 of the new law accomplished what none of the earlier laws or judicial decisions during the post-World War II period had achieved: a dramatic growth in black registration in the Deep South, and a significant though smaller growth in the Outer South, where blacks had already begun to register in appreciable numbers. As Alt demonstrates in table 12.1, which presents registration trends by race in each southern state, a striking shift occurred shortly after the act was passed.

Alt's chapter should prove to be a definitive study of southern black and white registration in the decades immediately before and after passage of the act. It integrates sociological and demographic factors, data on white and black political organizations, information on institutional practices having a racially exclusionary impact, and events and actions tied to passage of the act—all within the framework of a statistically sophisticated longitudinal research design.

Alt gives precise estimates of the effects formal barriers such as the literacy test had in depressing black registration. Applying econometric techniques to insights

Key had achieved some forty years earlier, he presents a unified model of southern political participation in the decade before 1965, focusing on counties' black population percentage as the major variable, both in isolation from and interaction with other factors. He shows how barriers to voting were most pernicious in locales with the heaviest black concentration—areas in which Key had predicted whites would perceive the greatest threat of black voting because it could result in black electoral control.

Alt's analysis reveals how the act's passage led to a complete breakdown of the old patterns of minority exclusion in which black registration was lowest relative to that of whites in the areas of the South with the greatest black population concentrations. Alt also analyzes the critical role played by federal registrars authorized under sections 6 and 7. Of particular interest is his finding that the registrars' intervention quickly succeeded in achieving increased black registration rates in the majority-black counties where they were sent. A comparable registration level took another ten years to achieve in heavily black counties elsewhere in the South.

THE IMPACT OF SECTION 5

The act's preclearance provisions have had a tremendous impact on southern legislatures during reapportionment because the Department of Justice has not only rejected plans for multimember districts that would submerge substantial black voting strength but plans for single-member districts that would either fragment or pack minority population concentrations. Table 10 in the state chapters demonstrates the extent of growth in black legislators.

Handley and Grofman in chapter 11 show the almost perfect correlation between majority-black districts and black officeholding in state legislative and congressional districts. This correlation also exists in cities and counties with districted plans, as shown in table 7 of the state chapters and in table 10.5. Handley and Grofman further demonstrate that the creation of these majority-black legislative districts is largely the result of Justice Department preclearance denial or southern legislators' expectation of it. In the eight states on which we focus in this volume, the number of black state legislators and U.S. representatives increased from 2 in 1964 to 160 in 1990. Had it not been for section 5, this increase would have been very much smaller, our findings strongly suggest.

Even so, black officeholding in the South by the end of the 1980s was still sharply lower than it would have been were race not a factor in elections. Table 10 in the state chapters demonstrates this clearly. Black elected officials in Texas, for example, made up only 1.2 percent of the state's officeholders in 1989, although the average black population over the past thirty years was 12.3. In Mississippi, with the largest black population proportion of any state in the union—a 37.4 percent thirty-year average—blacks in 1989 made up only 12.2 percent of the officeholders. Georgia was among the states with the highest proportion of blacks

in its house of representatives and senate—17 and 14.3 percent, respectively—at the end of the 1980s. And yet the black population in Georgia between 1960 and 1990 averaged 27 percent.

At the local as distinct from the state level the principal impact of section 5 arguably has been more limited. By the time the Voting Rights Act was passed, a clear majority of southern localities already employed at-large elections. Thus section 5—limited to enforcing the retrogression standard in cases where jurisdictions planned to change election type—could not serve as the primary mechanism to attack the discriminatory effects of at-large elections in the South.⁸ Instead, challenges initially were mounted in terms of the constitutional standard for equal protection and, after 1982, the revised standard of section 2. During the period before 1982, the act functioned largely at the local level to deter majority-white jurisdictions from imposing changes in election practices, other than the already existing at-large elections, that would dilute minority voting strength.

THE IMPACT OF THE CONSTITUTIONAL EQUAL PROTECTION STANDARD

After holding in *Fortson v. Dorsey* (1965)⁹ that multimember district plans might under certain circumstances restrict constitutionally protected rights, the Supreme Court in *White v. Regester* (1973)¹⁰ upheld a lower court's decision striking down multimember legislative districts in Texas that were found to dilute black and Mexican-American voting strength. Building on *White*, minority plaintiffs later in that decade filed constitutional challenges to local at-large elections and often prevailed, although the number of municipal jurisdictions affected was not that large.¹¹ Even so, *Stewart v. Waller* (1975)¹² caused over thirty Mississippi cities to revert to single-member districts.¹³

In *City of Mobile v. Bolden* (1980)¹⁴ the Supreme Court held that plaintiffs must show a discriminatory purpose in creating or maintaining a challenged election practice in Fourteenth Amendment minority vote-dilution cases, effectively rejecting the results standard that lower courts had fashioned from the language of *White*. Because the evidentiary standard laid down in *Bolden* was seen as virtually impossible to satisfy without “smoking gun” evidence of intentional discrimination, constitutional challenges to at-large elections virtually came to a halt after the *Bolden* decision.¹⁵ When the act was renewed in 1982, section 2 in an amended form became a vehicle to restore a results-based test to the arsenal of voting rights plaintiffs. In *Thornburg v. Gingles* (1986)¹⁶ the Supreme Court upheld congressional authority to impose such a test by statute and provided a simplified standard that has come to be known as the *three-pronged test*.

As chapter 1 makes clear, it would be a mistake to describe the demise of local at-large systems resulting from Fourteenth Amendment litigation such as *White* and its progeny as having no connection with the Voting Rights Act. The essential idea of minority vote dilution implicit in *White* was introduced in the Court's earlier *Allen* decision, which interpreted the act's section 5 preclearance provision

as covering changes from district to at-large elections. Had there been no act and consequently no *Allen* decision, it is highly questionable whether the concept of minority vote dilution that underlay the constitutional challenges to at-large systems throughout the South in the 1970s would have been accepted. It therefore makes sense, we believe, to think of these Fourteenth Amendment cases, which had a significant impact on minority officeholding, as progeny of the Voting Rights Act.

THE IMPACT OF SECTION 2

In addition to sketching the history of the struggle to achieve minority voting rights, a central concern of the state chapters is to measure the impact of changes in local election practices on minority representation and to determine the role of voting rights litigation in causing changes. These changes have been profound. Hundreds of southern cities, counties, and other kinds of jurisdictions shifted from at-large elections in the 1980s. In Alabama, where perhaps the most extensive changes have occurred, there has been a virtual elimination of at-large cities of 6,000 or more with black populations above 10 percent. Throughout the eight-state South covered by section 5, most majority-white cities of 10,000 or larger have changed from at-large to district or mixed plans since the early 1970s. In Texas, numerous jurisdictions with significant Mexican-American populations also have switched from at-large systems. What has been the result of the changes, and how has the Voting Rights Act, particularly section 2, figured in this development?

The Effects of Change in Local Election Systems

The individual state chapters as well as chapter 10 show that at the local level, replacement of at-large elections led to remarkable gains in black officeholding that far outstripped gains in the jurisdictions that remained at large. For example, over a period of roughly fifteen years equity scores for black representation in cities that changed from at-large to district systems went from 0.04 to 1.14 in cities that were 10–29.9 percent black, and from 0.07 to 0.92 in cities that were 30–49.9 percent black. By contrast, in the cities that retained the at-large system throughout the period, comparable scores went from 0.18 to 0.53 and from 0.17 to 0.56, respectively.

The focus of our research at the local level was on cities, but the authors of the chapters on Georgia, North Carolina, and South Carolina also examined the impact of the abolition of at-large plans on county officeholding in those counties with a population of 10 percent or more black. The findings for counties in the three states were quite similar to those for cities: sharp increases in black officeholding in single-member-district plans, and relatively small increases in the plans that retained the at-large system. Moreover, as with the cities, many of the

changes in county election structures can be attributed directly to the Voting Rights Act or to Fourteenth Amendment litigation. Evidence reported elsewhere indicates that the same pattern of increased black (and, in many locales, Hispanic) officeholding following the adoption of district systems is true for other types of southern governmental units, such as school boards.¹⁷

In Texas, Hispanic representation also showed noteworthy gains in districted cities. Between 1974 and 1989, in cities that switched to districts the Hispanic equity score increased slightly in cities that were 10–29.9 percent black plus Hispanic from 0.18 to 0.35, while in cities that were 30–49.9 percent black plus Hispanic, the score jumped dramatically from 0.15 to 0.95. The change in comparable at-large cities that did not switch was from 0.37 to 0.21 and from 0.24 to 0.50, respectively. Moreover, evidence indicates that some of the gains in minority officeholding that occurred in unchanged at-large jurisdictions resulted from a conscious effort by local elites to prevent successful voting rights litigation.

Why do minorities fare better in district cities than in at-large ones? The answer, almost certainly, is that racially polarized voting is still widespread, and when whites, or Anglos in the Southwest, are in the majority, minority candidates have difficulty winning. On the other hand, as suggested by Handley and Grofman's findings on southern state legislative districts and by the state chapters' corroborating findings on city council and county commissioner districts, when minorities are in the majority, their candidates are far more likely to win. Without the close federal supervision of boundary drawing in districted cities as a result of the act, it is quite probable that far fewer majority-black districts (and majority-Hispanic districts in Texas) would have been drawn in them.¹⁸

Moreover, as we argue in chapter 10, drawing in part from data presented in tables 2.5 and 2.5A, it is quite likely that a selection bias causes recent cross-sectional data on black municipal representation to overstate the ability of black candidates to win in typical at-large settings. In a number of states and on average across all eight states, jurisdictions that retained at-large plans at the end of the 1980s originally had higher black representation than those adopting districts. In other words, the "worst case" cities, in terms of black officeholding, were most likely to become districted during the period under investigation, and the "best case" cities were most likely to retain at-large systems.

The Role of Voting Rights Litigation in Provoking Change in Local Election Systems

Contrary to some recent claims, the evidence we have presented provides no reason to believe that the act's prohibition of minority vote dilution was unnecessary or that it has outlived its usefulness.¹⁹ The data presented by Handley and Grofman demonstrate the importance of the section 5 preclearance provision in enabling black candidates to win legislative races. The data in the state chapters enable us to grasp the critical importance of amended section 2 for the success of minority candidates at the local level. The state chapters also underscore the role of

the Justice Department, the federal courts, civil rights organizations, and private litigators in guaranteeing enforcement of the act's provisions.²⁰

As we have seen, the impact on black representation of replacing at-large with district and mixed systems in the eight southern states was extraordinary. Why did this widespread shift in local election structures take place? By and large the answer is quite simple: the changes stemmed from the Voting Rights Act, especially section 2.

After the amendment of section 2, numerous suits attacking local at-large elections were filed.²¹ The number of section 2 cases between 1982 and 1989 dwarfed the number of constitutional challenges brought during the 1970s in the pre-*Bolden* period. Indeed, from 1982 through 1989 (1990 in Georgia) we found over 150 section 2 challenges to municipal elections in the eight states of our study.²² Nearly 65 percent of all changes from at-large elections in our full eight-state municipal data set can be attributed to litigation or to settlements resulting from litigation,²³ and an additional 6 percent, roughly speaking, to actions related to section 5.²⁴ Moreover, about 10 percent of the changes in election type not tied to actual litigation are attributed by the city sources consulted by our state authors to threat of litigation.²⁵ Thus over 80 percent of all changes in election type in our eight-state data set can be attributed to voting rights activity, and this is almost certainly a conservative figure, since some of the unexplained changes and even some of the changes reported to us by city clerks and other city officials as voluntary would not have taken place except for the climate of enhanced concern for voting rights and officials' fear of litigation.

Once the *Gingles* standard was announced, our data show that well over 90 percent of the section 2 challenges to municipal at-large elections in the eight states were successful, either as a result of a trial or of a settlement that implemented a single-member-district or mixed plan.²⁶ The vast bulk of section 2 actions were brought by minority plaintiffs, often acting through civil rights or civil liberties organizations. Within the eight states covered by our study, section 2 litigation brought solely by the Department of Justice played only a minor role in effecting changes in local election systems.²⁷ One of the most remarkable results of amended section 2, therefore, is its encouragement of the private bar to take a major role in enforcing public voting rights law. This fact cannot be emphasized too strongly.

In summary, this volume has chronicled the evolution of the Voting Rights Act to the end of the 1980s, focusing primarily on black political participation in the South. The contributors have tried to understand the impact of the act by systematically analyzing, in chapters 2–9, the eight state-specific data sets described in the Editors' Introduction; in chapter 10, the pooled data for the states covered by section 5; and in chapters 11 and 12, data for the eleven-state South as a whole. While many questions remain unanswered, we have nonetheless resolved several issues about the act's accomplishments—in particular, certain controversies about how gains in minority voter registration and officeholding came about.²⁸

Our empirical approach throughout this volume stems from the premise that a

balanced assessment of the Voting Rights Act over a quarter century requires at the very least an investigation of the basic facts about black-white voter registration rates and black-white officeholding. We asked the authors to limit themselves to research using hard and convincing data that would answer first- and second-generation issues with respect to electoral participation and the effects of election systems on minority electoral success. By the same token, we asked them to resist speculation on third- and fourth-generation questions—how well minority officials have become incorporated into the political decision-making processes of the bodies to which they were elected, and what the social and economic policy consequences of increased minority representation have been. Neither of the latter types of questions could be readily answered with the resources at our disposal.²⁹ We nonetheless hope that our research has laid the groundwork for systematic investigations of such questions.

LOOKING AHEAD TO THE TWENTY-FIRST CENTURY

The decade of the 1990s will witness new litigation under section 2, particularly in Texas and California, where concentrated populations of Mexican Americans (and, to a lesser extent, Asian Americans) will challenge barriers to full participation. Litigation on behalf of Native Americans will almost certainly increase, as well. We anticipate new suits in the South challenging district boundaries in already districted units, and we expect to see additional litigation in the North as well. But we also expect to see it in the small-town South. This point bears elaborating.

When we began this research, we thought it would demonstrate the success of the Voting Rights Act in changing minority representation in the South. In particular, we anticipated that many southern jurisdictions with a substantial black population and a history of very limited black officeholding would have adopted district or mixed plans as a result of litigation, leading to large gains in minority representation. This is exactly what we found.

However, on closer analysis, we now recognize that in several southern states this success story applies primarily to the larger towns and cities. There are hundreds of smaller towns where the effects of the Voting Rights Act as a means to prevent minority vote dilution have not yet been felt. It will almost certainly be many years before these jurisdictions are as well represented by minority officeholders as are the more populous ones. While these cities may be small in total population, they are the areas of the South least affected by the civil rights revolution of the 1960s and most in need of minority officeholders to protect the interests of black citizens. Thus, while the research reported here shows that the Voting Rights Act has wrought a "quiet revolution" in southern politics and is perhaps the single most successful civil rights bill ever passed, the need for it is far from over. We believe it will be extensively used in coming years to break the barriers to black officeholding in these towns.

With this litigation as well as with that in the Southwest and the North will come new issues and controversies. How can the law accommodate the sometimes conflicting interests of different minority groups—blacks and Hispanics, for example—in the same jurisdiction? How far must political cartographers go in drawing districts for protected minority groups when these clash with other criteria for districting, such as the desire to honor the geographic integrity of various governmental units? How can courts rationally decide among competing districting plans when the computer revolution in political map drawing makes possible hundreds of unique plans, all of which have virtues and shortcomings? Should minority leaders with close ties to the Democrats aim for maximizing minority seats even at the expense of Democratic party strength in a legislature? Are single-member-district plans, as distinct, say, from limited voting or proportional representation schemes, necessarily the best remedy for at-large vote dilution? How much weight, if any, should a court give to claims by defendants in voting suits that minority candidates' party affiliation, as distinct from their ethnicity pure and simple, is the cause of their defeat at the polls? Does the Voting Rights Act require legislatures, where possible, to draw districts in which minority voters can exert maximum influence short of being able to elect candidates of their choice?

These are issues we cannot address here.³⁰ We mention them only to emphasize that controversies over minority voting rights are a long-standing feature of American politics; they did not begin in 1965, or even in 1865, nor will they soon disappear. They are conflicts woven into the tapestry of our nation of many peoples of diverse origins and interests. Fortunately, the Voting Rights Act is a dynamic statute. To the extent that it resolves these conflicts fairly and rationally—and, in doing so, leads to a more unified, democratic, and participatory society—it will have achieved its purpose.