Vote Dilution and Voter Disenfranchisement in United States History

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There is a long history of voter suppression, including vote dilution and voter disenfranchisement, in the history of the U.S.[1] At times, there were specific groups that were the targets of these efforts, including immigrants, African Americans, Latinos, Asian Americans, Native Americans, other language minorities, and women. Other times such targeting occurred through the required payment of property taxes or poll taxes in order to vote, mandated literacy tests for potential voters, or prohibitions on voting for those convicted of a felony. What is significant about these restrictions is they have, in almost every instance, been enacted to maintain power by a dominant group—most often white males—by excluding others.

It is important to understand that when successful attempts to fully enfranchise a previously excluded group have been attempted, those in power—whether perceived or in reality—have often worked to reverse that enfranchisement. Success, in other words, has rarely been maintained. Retrenchment and reaction have often led to backsliding that required even greater efforts to overcome the policies and practices of dilution and disenfranchisement.

In this report, I discuss the history of efforts at voter suppression in the United States, with a special emphasis on vote dilution and disenfranchisement. This is to provide analytical background to more comprehensively understand the continuing need for governments—national, state, and local—to actively work to overcome laws, policies, and practices that

[1] See Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (NY, NY: Basic Books, 2000).

suppress voters' ability to cast a meaningful vote, or to cast a vote at all. This history can also be used to understand that current efforts that lead to voter suppression build upon, and often replicate, what has been done in the nation's past. One can say that historical legacy may, in fact, not be a legacy of the past but rather a current manifestation of that past legacy.

Voter Disenfranchisement from the Founding through the Antebellum Period

The origins of disenfranchisement date back to the founding of the U.S.[2] Although those who could participate in the selection of government officials expanded significantly in the new national government of the U.S., especially after the adoption of the Constitution of 1787, voting regulations were established on a state-by-state basis, and voting was uniformly restricted to white males who owned property. Property was understood as land and buildings. The justification for this restriction was that only such individuals purportedly had a stake in society, which generally meant that they had reason to closely follow governmental decisions, especially those associated with taxation.

It is well known that this requirement excluded almost half of the population through the omission of women. What is less well known is that it also excluded "[f]reedman of African and Amerindian descent."[3] It is estimated that such restrictions likely limited voting to about 60-70 percent of the adult white males at the time of the American Revolution,[4] a pattern that was maintained after the war.

What is important to note about this early history of the U.S. is how restricting the franchise was reconciled with the spoken ideal of democracy under the Constitution of 1787,

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[2] This section is largely taken from Alexander Keyssar, 2000, Chapter 1, "In the Beginning," pp. 1-25.
[3] Keyssar, 2000, p. 6.
[4] Keyssar, 2000, p. 24.

especially given that the spirit of that constitution gave such credence to the ideal of governments being established as a result of the consent of the governed. At issue, of course, was who was included and who was excluded from that consent. Stated differently, the reconciliation of democracy with the exclusion of segments of the population from voting was among the founding principles of the new national government, a principle that would be maintained, and at times reinforced, as the nation proceeded to develop.

To be sure, there were instances in the relative early history of the republic where the right to vote was expanded. By the 1850s, the property requirement had been eliminated in most states, at a time when many states were writing new state constitutions.[5] Additionally, most states eliminated the requirement that voters pay taxes, especially property-related taxes, during this period as well.[6] Moreover, most states established that rules regarding voting applied to municipalities and their elections as well as statewide elections.[7]

It is also the case that during this period, the franchise was often extended to declarant noncitizens, that is, immigrants who intended to become American citizens.[8] It was during this period when immigrants from Europe, especially Germany and Ireland, added significantly to the populations of many cities and helped populate many rural areas of the Midwest.

Historian Alex Keyssar notes that lawmakers had three motivations when expanding the franchise during this time: 1) giving immigrants an incentive to defend the republic if another war was necessary to defend the U.S. against foreign aggressors, 2) enfranchising all white males in the South to help secure militias to guard against rebellions of enslaved people, and 3) the

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[5] Keyssar, 2000, pp. 26-29.
[6] Keyssar, 2000, p. 29.
[7] Keyssar, 2000, p. 31.
[8] Keyssar, 2000, p. 33.

expansion of political party competition and attempts to bring new voters into the electorate.[9] The third reason was a particular goal of the Democratic Party under the leadership of individuals such as Andrew Jackson.[10] This has been referred to as one of the tenets of Jacksonian Democracy, and through the related growth in the electorate Jackson was able to win the White House. The power of political parties was, for the first time in the history of the country, directly related to the mass participation of partisan supporters.

While the franchise for white male voters was expanded, the restrictions on women's voting remained, and there was a simultaneous restriction on the franchise for free Blacks. One historical report indicates that by 1855 only the states of Massachusetts, Vermont, New Hampshire, Maine, and Rhode Island did *not* prohibit free Blacks from voting; all other states did.[11] Moreover, the debate concerning free Blacks voting included an explicitly racist dimension wherein opponents argued that allowing free Blacks to vote would encourage the migration of more free Blacks and would result in '"amalgamation.'"[12] In Texas, opponents of the franchise for free Blacks argued to Texans that if free Blacks were allowed to vote, large numbers of Mexican Indians '"will be moving in…and vanquish you at the ballot box though you

[9] Keyssar, 2000, pp. 37-39.
[10] Clearly the parties have shifted in the South where the more conservative party is now the Republican Party. See Earl Black and Merle Black, *The Rise of Southern Republicans* (Cambridge, MA: Harvard University Press, 2002).
[11] Keyssar, 2000, p. 55.
[12] Keyssar, p. 59.

are invincible in arms."[13] Similar concerns were expressed regarding native peoples in California.[14] In fact, from 1790 to 1850, voting rights for Native Americans were narrowed.[15]

It was also during this time that voter registration systems began. New York was among the first states to adopt voter registration, and specifically sought to limit the political influence of immigrants, many of whom were Irish Catholics who had become an important source of the growth of the Democratic Party in the North.[16] Some of the first examples in the U.S. of debates considering English language literacy tests to limit voting among immigrants occurred during constitutional conventions in Northeastern states during the 1840s. Further, there were debates in some states, such as New York, as to whether immigrants who had been naturalized should be restricted from voting for a period, ranging from one to twenty-five years.[17]

This allows us to conclude that even when the franchise was expanding for some, particularly white males who did not own property, there coexisted efforts to restrict voting for women, free Blacks, Mexican Americans, and Native Americans. Expansion of the franchise was never intended to include everyone. The overall principle of exclusion remained in place despite some gains of inclusion for some limited segments of the population.

The principle of exclusion became especially apparent with the rise of the Know Nothing Party, which was prevalent in regions of the country that had received significant numbers of immigrants from Europe. The party operated from 1850 to 1858, and its primary goal was limiting the political influence of immigrant voters, especially Roman Catholics. Among the

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[13] Montejano, David, *Anglos and Mexicans in the Making of Texas* (Austin: University of Texas Press, 1987), as quoted in Keyssar, 2000, p. 59.
[14] Keyssar, 2000, p. 59.
[15] Keyssar, 2000, p. 60.
[16] Keyssar, 2000, p. 65.
[17] Keyssar, p. 66.

party's positions was that that in order to protect the nation from the subversion of "American values and institutions,"[18] Congress should adopt national laws to 1) require that immigrants wait twenty-one years to be eligible for naturalization rather than the then existing five-year period, 2) permanently disallow citizenship for those not born in the U.S., white at the state level they advocated that states adopt, 3) voter registration systems, and 4) voter literacy tests.[19] Although their popularity was uneven across the country, they succeeded in getting laws enacted in New York that established a registration system that would serve to '"purify'" the ballot box.[20] Notably this law only applied to New York City and, at that time, where very large numbers of immigrants lived. In Oregon, laws limited the franchise to whites in order to prevent Chinese immigrants from voting.[21] Leaders of the Know Nothing Party were also successful in getting state-level laws enacted that severely limited the franchise for Irish immigrants, largely working class men, in Massachusetts and Connecticut. These were states that had also experienced high levels of immigration, particularly from Ireland.[22] In 1857, Massachusetts law required that voters be able to read a section of the United States Constitution and that they be able to write their names. Connecticut passed a similar law.[23] These laws established the use of, in effect, a *literacy test*.

There are four primary conclusions that I draw from this brief historical accounting. First, until the Civil War, the U.S. has a long history of restricting the vote to specific segments of the population. Working class immigrants, especially Irish, women, free Blacks, Mexican

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[18] Keyssar, p. 84.
[19] Ibid.
[20] Keyssar, 2000, p. 85.
[21] Keyssar, 2000, p. 86.
[22] Ibid.
[23] Ibid.

Americans, and Chinese Americans, to the extent that they were allowed to naturalize, all were specific targets of exclusion. Second, this occurred even at times when there was a significant expansion of who could vote through the elimination of the property requirement for white males. That is, expansion of the franchise to broader segments of the population occurred simultaneously with both the maintenance of past restrictions for other segments of the population and new restrictions for growing segments of the population. Third, these efforts to restrict the franchise were argued, enacted, and implemented both in Northern and Southern states. In fact, the restrictions on immigrants, a pattern that I will also discuss further in a later section of this report, came predominantly from Northern states. The perceived and most often real political advantages gained by some voters was always coexistent with a drive to exclude other segments of the electorate. This was not just political conflict; the rules of citizenship acquisition and voting were crafted with a desire by those in power to gain political advantage through the effective elimination of potential opponents Four, the targets of exclusion were often identified as a group based on race, ethnicity, national origin, and gender. These dimensions of exclusion would become the precedent for subsequent acts of voter disenfranchisement during the most contentious period in the history of the U.S.: the Civil War, Reconstruction, and Post-Reconstruction/Jim Crow.

Voting during Reconstruction and Post-Reconstruction Jim Crow

The nation's greatest challenge to democracy occurred during the Civil War. It was a time when traditional institutions of governance, including the presidency, Senate, House, and Supreme Court, were unable to resolve the perennial challenge to the ideal of American democracy: slavery. With the country's origins grounded in the enslavement of African human beings on American soil, the nation tried to balance the interests of states that promoted abolition

and states whose political, economic, and cultural interests demanded the maintenance of slavery. At the conclusion of the Civil War, both Northern and Southern states struggled with the realities of integrating the formerly enslaved into an often hostile American society. In fact, racial prejudices and related cultural predispositions both in the North and in the South would soon center voting as an essential question to be addressed during the period of Reconstruction after the Civil War.

The 13th, 14th, and 15th Amendments to the Constitution lead both to a tremendous expansion in voting rights and a directly related reactive effort to restrict those rights, all within a few decades. The 13th Amendment to the Constitution eliminated race-based slavery in the nation.[24] Because, however, the nation was unsure as to how former slaves would be treated in American society—especially in former slave states—the 14th Amendment attempted to clarify the meaning of American citizenship and limited the capacity of states to restrict the rights of former slaves.[25] Given the history of voter disenfranchisement, as explained in the previous

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[24] The 13th Amendment states:
"Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. Section 2. Congress shall have the power to enforce this article by appropriate legislation."

[25] The 14th Amendment states:
"Section 1: All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein

section, it was very unclear whether states could still restrict the franchise from former slaves. It was the explicit purpose, therefore, of the 15th Amendment to specify that voting could not be "denied or abridged" to anyone on the basis of "race, color, or previous condition of servitude."[26] Although the enactment of this amendment was contentious in Congress, it expressed as much clear support for guaranteeing the right to vote for African Americans as was politically possible at that time.[27]

In a relatively short time, hundreds of thousands of former slaves voted. One estimate put the number of newly freed former slaves who voted at around 500,000 across the South, where most African Americans lived.[28] Not surprisingly, they worked with some white coalition partners to elect African American and sympathetic white Republicans to local, state,

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shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one year years of age in such state. Section 3. No person shall be a Senator or Representative in ?Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may be a vote of two-thirds of each House, remove such disability. Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States or any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void. Section 5. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article."

[26] The 15th Amendment states:
"Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude. Section 2. The Congress shall have power to enforce this article by appropriate legislation.

[27] Eric Foner, *The Second Founding: How the Civil War and Reconstruction Remade the Constitution* (NY, NY: W.W. Norton and Company, Inc., 2019), especially Ch. 3, "The Right to Vote: The Fifteenth Amendment," pp. 93-123.

[28] https://www.crf-usa.org/black-history-month/race-and-voting-in-the-segregated-south. Accessed July 7, 2021.

and national offices, especially in the South, where most African Americans lived. At least 300 African Americans were elected to state and national offices soon after Reconstruction began.[29] Another historical estimate indicates that sixteen African Americans served in Congress, and perhaps as many as 600 in state and local governments.[30] In Mississippi, where over half of the population was African American, two African American U.S. senators were elected, as was an African American lieutenant governor.[31] How then was it possible for Southern states to ultimately undermine the 15th Amendment, leading to the almost complete disenfranchisement of these newly enfranchised African American voters?

J. Morgan Kousser, the preeminent historian of voting rights during this period, provides an extremely effective explanation to understand how this developed.[32] When freed Blacks became eligible to vote and run for office, they were initially deterred by "violence, intimidation, and fraud"[33] on the part of whites. These activities were pursued by organized white vigilante groups, especially the Ku Klux Klan, that was originally organized in Tennessee.[34] The targets of "assault, arson, and murder" included newly enfranchised Blacks as well as sympathetic whites, especially Republicans, school teachers, and interracial couples.[35] The violence was very

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[29] J. Morgan Kousser, *Colorblind Injustice: Minority Voting Rights and the Undoing of the Second Reconstruction* (The University of North Carolina Press, 1999), p. 19.
[30] https://www.yourvoteyourvoicemn.org/past/communities/african-americans-past/reconstruction-era-1865-1877. Accessed July 7, 2021.
[31] https://www.crf-usa.org/black-history-month/race-and-voting-in-the-segregated-south. Accessed July 7, 2021.
[32] J. Morgan Kousser, "The Undermining of the First Reconstruction: Lessons for the Second," in Chandler Davidson, ed., *Minority Vote Dilution* (Washington, DC: Howard University Press, 1984), pp. 27-46. Also see J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880-1910* (New Haven, CT: Yale University Press, 1974).
[33] Kousser, 1984, p. 30.
[34] Eric Foner, 2019, p. 116.
[35] Ibid.

apparent in Southern counties where Blacks and whites were more or less equal in population and the "balance of power [was] uncertain."[36] Historian Eric Foner characterized these actions as being motivated by a desire on the part of whites to maintain "white supremacy."[37]

The violence of the Ku Klux Klan led Congress to pass three Enforcement Acts.[38] These Acts demonstrated the willingness of Congress to use federal power and authority to protect African American voters and would be voters. As Foner states, "[Congress] prescribed penalties for state officials who discriminated against voters on the basis of race; for 'any reason 'who used force or intimidation to prevent an individual from voting; and for two or more persons going about in disguise (as Klansmen often did) to prevent the 'free exercise 'of any right 'granted and secured 'by the Constitution.'"[39] The second Enforcement Act was intended to prevent voting irregularities by the Democratic Party in the North, especially in large cities.[40] The third Act was entitled an Act to Enforce the Fourteenth Amendment and was focused on preventing conspiracies such as those pursued by the Ku Klux Klan to "deprive citizens of the right to vote, serve on juries, or enjoy equal protection of the laws, and classified such efforts as federal crimes, which could be prosecuted in federal courts, and authorized the president temporarily to suspend the writ of habeas corpus and use the armed forces to suppress such conspiracies."[41] Foner estimates that about 2,500 cases related to the Enforcement Acts were argued in federal

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[36] Ibid.
[37] Ibid.
[38] Foner, 2019, pp. 117-118.
[39] Foner, 2019, p. 118.
[40] Ibid.
[41] Ibid.

courts by the newly established Justice Department in the early 1870s.[42] Overall, Kousser refers to this as the "Klan Stage," the first stage in the attack on African American voting rights in the immediate post-Civil War period.[43]

The second stage in the effort by whites in the South to regain power in the Reconstruction period is termed the "dilution stage" by Kousser.[44] There were at least sixteen different methods used by Southern Democrats to dilute the influence of enfranchised African American voters. Dilution, in the context of voting, refers to acts that significantly limit the influence of a group's vote on the outcome of the election, and especially that limit the chances that a group's voters can elect candidates of choice. These dilutionary practices did not mention race specifically and in that way were not on their face racially discriminatory, although that was clearly their intent. Faced with the sizeable numbers of Black voters and the election of significant numbers of black elected officials, these practices were a way to further limit the political influence of this newly enfranchised segment of the electorate.

The first technique that was used were discriminatory redistricting practices, also known as *race-based gerrymandering*.[45] Race-based gerrymandering in this context refers to the drawing of district lines in order to limit the influence of Black voters or to limit the number of elected officials whom they could choose if they voted as a block. This practice was most often used when Black or white office-holders who received overwhelming support from Black voters were elected to office, or when Black voters were geographically concentrated and represented a

[42] Foner, 2019, p. 121.
[43] Kousser, 1984, 30.
[44] Ibid.
[45] Kousser, 1984, p. 31.

substantial, and at times a majority, share of the voters in a specific jurisdiction.[46] There are two primary methods of discriminatory redistricting practices that were race-based: packing and cracking. Cracking refers to subdividing racial or language minority voters across a number of different districts so that they would not constitute a majority in any one district. Packing refers to placing as many racial or language minority voters as possible within as few districts as possible to limit the number of officials who would achieve their victory because of the minority vote.

The second mechanism that was used to dilute the votes of African Americans was the implementation of *at-large elections*.[47] At-large elections were highly effective in limiting the likelihood that African Americans could elect candidates of choice when they were a minority of the electorate. In at-large elections, if whites vote as a block against the preferences of African American voters, that white block would, in effect, prevent Blacks from electing any of its first choice candidates to office. The use of at-large elections was most often used in the election of county and city officials. This was an extremely effective method of diluting the vote of African Americans. They could still vote, but that vote did not result in any success when opposed by a consistent majority of white voters.

A third mechanism that was used was the *white primary*.[48] In this type of election, voting was restricted to whites only in the Democratic Party primary, but African Americans could vote in the general election. However, if Blacks were again a minority of the voters in the general election, the candidate chosen in the white primary was guaranteed to be the winner in the

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[46] Ibid.
[47] Ibid.
[48] Kousser, 1984, pp. 31-32.

general election and, again, if the preferences of white and Black voters were distinct, the candidate preferred by whites would be the winner.

Where African Americans had clear, but not overwhelming majorities, mechanisms such as *registration acts*, *poll taxes*, *secret ballots*, *multiple box laws*, and *petty crimes laws*[49] were used to lower the likelihood that African Americans could register to vote, and thus limit the extent to which they could vote. Registration acts were designed to require that potential voters register with a local official, usually a county registrar of voters, to be able to vote. Deadlines for such registration were often well before the actual election was to occur. Poll taxes required that a potential voter pay a tax to vote and that tax payment was often due well before an election. If the poll taxes were not paid, then a person could not register to vote. Secret ballots were often used to change the votes of African American voters or to not count their ballots at all. Multiple box laws were designed to make it difficult for Black voters to know where to vote. The specific location of the voting place was often not stated and even moved at the last minute. Petty crime laws were used to prevent individuals from voting. If a person had been arrested for a petty crime—and certainly if they had been convicted of such a crime—that person was not allowed to register and therefore could not vote. All of these procedures and practices were, on their face, not targeting voters on the basis of race. However, their application and impact was designed to limit the voting of enough African Americans such that they could not be, even with white coalition partners, numerous enough to determine the outcome of elections.

Yet another way to limit the influence of African American voters and their white coalition partners was through *annexation* and *deannexation*.[50] In these circumstances a city, for

[49] Kousser, 1984, p. 32.
[50] Ibid.

example would expand its current jurisdictional boundaries in a way that included predominantly white voters. This practice was especially effective in cities where African Americans were a majority or near majority of voters. An annexation would make African American voters a numerical minority and, in combination with the above described gerrymandered or at-large elections, could make African American voters a permanent minority who would not be able to elect their first-choice candidates to public office if their choices were opposed by a block of white voters.

The consolidation of *polling places* or last minute *failure to open polls*[51] were yet two other mechanisms that were used to limit the capacity of African American voters to cast a vote. African Americans could technically still vote, they just either had to wait in line longer than whites. If it was only the polling places for African American voters that were consolidated, or if the polls were not opened at all, the African American voters were less likely to be able to cast a vote. Again, they could vote, but they had more difficulty getting that vote counted.

Some Southern jurisdictions during this time also increased the *bonds* that candidates had to pay to run for office or, when they were able to pay such bonds, *refused to accept the bonds as valid*.[52] This type of candidate diminution made it less likely that African American voters would have a candidate whom they might prefer in an election. African Americans could still vote; however, the candidates on the ballot were unlikely to be their candidates of first choice.

Lastly, two final techniques that were used to dilute African American votes were *impeaching elected officials preferred by African American voters and their allies* or *changing positions from being elected to being appointed*.[53] In these circumstances, as previously

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[51] Ibid.
[52] Ibid.
[53] Ibid.

discussed, African Americans could formally vote, however the candidates and even successfully elected officials that reflected Black voters' preferences were either removed from office or could no longer attain that office through election.

The Application of Dilutionary and Disenfranchising Policies and Practices

Historians have noted how a number of these techniques were used in the Reconstruction and post-Reconstruction South. Kousser describes how in South Carolina in the 1880s, where sixty percent of the population was Black, only one of seven Congressional districts elected an African American to office. This was due to gerrymandering through packing. The Black congressman's district was unusually shaped to include as many Black voters as possible and it contained almost a third more residents than any other congressional district in the state.[54] The drawing of unusually shaped congressional districts during this time to pack as many Black voters as possible also occurred in North Carolina, Alabama, Mississippi, and Texas.[55] This also occurred at the city level during this time in Richmond, Virginia; Nashville, Tennessee; Montgomery, Alabama; Raleigh, North Carolina; Chattanooga, Tennessee; and Jackson, Mississippi.[56]

Historian Howard N. Rabinowitz states that "[d]espite white opposition, however, blacks won the right to vote and hold office in 1867; and throughout the remainder of the period, white Southerners struggled with the reality of the Negro voter. Once again their aim was to develop a system that would minimize the effects of the Negroes 'new freedom."[57]

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[54] Ibid.
[55] Ibid.
[56] Kousser, 1984, p. 32, and Howard N. Rabinowitz (NY, NY: Oxford University Press, 1978), esp. pp. 266-281.
[57] Rabinowitz, 1978, p. 257.

Changing from single-member district to at-large elections was used in a number of cities right after Blacks gained the vote and were registered in substantial numbers. Atlanta successfully lobbied the state legislature to allow it to use at-large elections in 1868. Although districts were again used to elect city council members when Republicans regained a majority of the legislature, when Democrats were back in control in 1871, at-large elections were reimposed and they remained this way until 1953.[58] At-large elections for city government and school board were mandated by a "rabidly racist" legislature in 1874 and 1876 in Alabama.[59]

The white primary was used in Texas in 1874, in two South Carolina counties, Edgefield and Charleston, in 1878, in Birmingham, Alabama, in 1888, and in Atlanta in 1895. This practice did not end until 1944 when the Supreme Court decided *Smith v. Allright*.[60]

Alabama and Mississippi imposed strict registration laws in 1875. In 1874 the Texas legislature gave cities the power to delete "ineligibles'" from registration rolls and this was primarily targeted at newly enfranchised Black voters. South Carolina enacted a strict registration law that required individual to sign their names, effectively serving as a literacy test. In 1857, Massachusetts required this of all new voters but did not require this of those who were already registered. These are examples of disingenuous methods to limit African American registration and allow for some whites to continue to vote whether they were literate or not.[61]

All eleven states of the former Confederacy had adopted a poll tax by 1908. It is acknowledged that this was targeted at trying to limit African Americans' ability to register and

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[58] Kousser, 1984, p. 32.
[59] Kousser, 1984, p. 33.
[60] 321 U.S. 649.
[61] Kousser, 1984, p. 34.

vote.[62] Similarly, petty crimes provisions were designed to reduce Black registration and voting. Among the crimes that were included in these provisions were theft of cattle or swine. In Mississippi, the 1875 petty crimes law was referred to as the '"pig law."'[63] Sections of Montgomery, Alabama were deannexed in 1877. These areas were predominantly African American. For similar reasons, the size of Selma, Alabama was reduced as well.[64] Bonds to run for office in Huntsville, Texas were raised to $20,000 in the 1880s. In Vance County, North Carolina, the bond to run for sheriff was set at $53,000 in 1887. In Warren County, North Carolina, county commissioners did not allow a successful candidate to be seated because he was a '"colored man."'[65] His white opponent was given the office despite being rejected by the voters.[66]

The movement and closing of polling places was common as well. In 1876, in Alabama's Black Belt region, polls closed and opened, and others moved, at "the whim" of local elected officials. Polls were also never opened in some places in Hale, Perry, Marengo, Bullock, Barbour, Greene, Pickens, Wilcox, and Sumter counties that were strongholds of Republican voters.[67] In 1870, North Carolina Governor William W. Holden was impeached for trying to "put down the Ku Klux Klan."[68] He was a Republican. In 1869, the Democratic dominated state legislature in Tennessee removed Republican elected city officials and replaced them with Democrats. In a similar fashion the state legislature of Virginia in 1870 removed Republican

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[62] Ibid.
[63] Kousser, 1984, p. 35.
[64] Ibid.
[65] Ibid.
[66] Ibid.
[67] Ibid.
[68] Kousser, 1984, p. 36.

city officials in Richmond, the state capital, and replaced them with Democrats.[69] In Alabama, the state legislature abolished the Dallas County criminal court when the one African American judge refused to resign. The legislature also dissolved all the county governments in five Black Belt counties in the 1870s. As quoted by Kousser, the motivation for this action was later stated by a state legislator who said:

> 'Montgomery county came before us and asked us to give them protection of life, liberty and property by abolishing the offices that the electors in that county had elected. Dallas asked us to strike down the officials they had elected in that county, one of them a Negro that had the right to try a white man for his life, liberty and property. Mr. Chairman, that was a grave question to the Democrats who had always believed in the right of people to select their own officers, but when we saw the life, liberty and property of the Caucasians were at stake, we struck down in Dallas county the Negro and his cohorts. We put men of the Caucasian race there to try them.[70]'

In a similar fashion the state legislature of North Carolina altered the method of selection of county commissioners and justices of the peace, from election to being appointed. Justices of the peace were appointed by the state legislature and these justices then appointed the county commissioners.[71]

I reach three conclusions from this review of the history of the implementation of dilutionary policies and practices. First, Southern whites pursued these dilutionary mechanisms because of the substantial increase in the voting and election of African Americans that resulted from the 13th, 14th, and 15th Amendments. The only way that white Democrats could regain or further consolidate their power in many areas of state and county government was to reduce the power of Black voters and in this way reduce the number of African American elected officials. Once these dilutionary practices were effective, white Democrats were in positions to enact even

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[69] Ibid.
[70] Ibid.
[71] Ibid.

more draconian disenfranchisement laws that would limit African American voting for a long period of time. Second, many of these dilutionary practices did not include race-specific language, although they included race-specific motivations. In not including race-specific language, these laws and practices were, to a degree protected—depending on judicial interpretation—as not being in violation of the 14th and especially 15th Amendments. Three, the historical evidence demonstrates that these dilutionary and at times disenfranchising mechanisms had as their primary target newly enfranchised African American voters. The racial context of the time, the desire on the part of Southern whites to reimpose white supremacy in light of losing the Civil War, and what would turn out to be the very uneven enforcement of the 14th and 15th Amendments to protect the newly gained voting rights of African Americans by the national government and especially the courts, led to the rebirth of white control of almost all the levers of governmental authority and power.[72] This racial targeting and resultant marginalization of the African American community would soon be codified in the writing of new state constitutions that occurred in many Southern states in the early 1900s. Permanent disenfranchisement and permanent disempowerment, by law, resulted from the successful implementation of these dilutionary mechanisms. Rabinowitz states:

> As the Southern press stressed on numerous occasions, blacks should never be able to exercise a pivotal role in politics. Hence at the core was not the issue of how the Negroes voted but the fact they could vote; it was Negro suffrage per se that was the problem. As a disquieting force in Southern politics, whites believed blacks had to be disciplined. Through the use of legal and illegal techniques, this job had largely been accomplished in the Southern cities by 1890.[73]

It is important to note how a number of these policies and practices have continued for decades. The use of discriminatory redistricting practices that are race-based, changing single-

[72] See Foner, 2019, Ch. 4, pp. 125-167.
[73] Rabinowitz, 1978, p. 328.

member district election to at-large, race-targeted registration practices, annexations and deannexations, and polling place openings and location changes have remained as fundamental strategies to limit the voting influence of racial and ethnic minorities.

The Dilutionary Motivations and Consequences of the Municipal Reform Movement of the Progressive Era

Among the most significant historical examples of the use of dilutionary practices outside of the South was the use of at-large elections to ostensibly overcome neighborhood-based public policy decision-making and government by "ethnic" politicians. As stated above, the use of at-large elections to dilute the votes of African Americans was well developed both as a motivation and as a practice. It is also the case, however, that at-large elections were proposed as a solution to diminish the power of the white ethnic, immigrant origin voters, and at times African American voters, when the support of these groups was critical to the success of urban political machines in large American cities such as New York, Chicago, and Boston, among others. At-large elections were part of a series of structural reforms proposed by leaders of the Municipal Reform Movement of the Progressive Era who wanted to regain control of city government from white ethnic politicians.

Urban political machines were quasi-formal organizations that developed in a number of major cities in the U.S. where the growth in the white immigrant ethnic population was so substantial that machine leaders could consistently win elections by receiving the support of these ethnic voters. In cities such as New York, Chicago, Boston, Detroit, Milwaukee, Minneapolis, Newark, New Haven, and San Francisco, the percentage of the population that was

either foreign-born or who had one foreign-born parent was well over 50% in 1910.[74] In these cities, the sheer size of the ethnic population was enough, if properly organized and especially mobilized on election day, to dominate the election of many city officials. The ways that leaders of machines were able to secure and rely upon this support was by catering to these voters based on social service provision, patronage (including the offer of jobs in local government), and even the opportunity for certain members of the community to become important leaders within the machine.

The primary key to the development of these relationships was the effective establishment of single-member districts by ethnic neighborhood. With such a strong focus on largely white ethnic identity in elections, the policy consequences were predictable . The propensity of cities to develop along ethnically and racially segregated residential lines—for example, predominantly Irish neighborhoods, Italian neighborhoods, Polish neighborhoods, and even some African American neighborhoods, largely comprised of people who had migrated to the North in search of better economic opportunities and less overt racial discrimination—was well established. What the machines did was built upon this existing white ethnic and racial identity when drawing single-member districts, ensuring that groups were represented in the city council. Stated differently, it allowed for properly mobilized voters to elect one of their own and allow city services to be brought to these neighborhoods.

This coalition of interests that focused on ethnic and racial identity led to several major problems according to critics of the machine, especially municipal structural reformers. Primarily, structural reformers argued that city government decision-making was corrupt, driven

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[74] Kenneth D. Wald, "The Electoral Base of Political Machines: A Deviant Case Analysis," *Urban Affairs Quarterly*, 16 (1), 1980, p. 5.

by the short-term interests of elected officials, and often led to local taxes that were higher than they needed to be. Among the early critics was Andrew D. White, a scholar at Cornell University, who wrote:

> Without the slightest exaggeration we may assert that with very few exceptions, the city governments of the United States are the worst in Christendom—the most expensive, the most inefficient, and the most corrupt. No one who has any considerable knowledge of our own country and of other countries can deny this.[75]

These critics believed that among the primary reasons that cities were allegedly badly governed was that, within the machine, cities elected individuals with strong ethnic identities who brought these identities into the public policy-making process. As another structural reformer, Harry A. Toulmin stated:

> The spirit of sectionalism had dominated the political life of every city. Ward pitted against ward, alderman against alderman, and legislation only effected by 'log-rolling 'put extravagant measures into operation, mulcting the city, but gratifying the greed of constituents, has too long stung the conscience of decent citizenship. This constant treaty-making of factionalism has been no less than a curse.[76]

The concern of reformers with the electoral influence of immigrant voters and their ethnic representatives is captured in the comments of many delegates to the first three annual Conferences of Good City Government of the National Municipal League. A representative from New Orleans spoke of the "thousands of immigrants from the slums and prisons of Italy and Southern Europe who added to the corruptible vote of the city."[77] A representative from Chicago

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[75] Andrew D. White, "Municipal Affairs Are Not Political," in Banfield (ed.), *Urban Government: A Reader in Administration and Politics* (NY: The Free Press, 1969), p. 271. White first published this article in 1890.
[76] As quoted in Samuel P. Hays, "The Politics of Reform in Municipal Government in the Progressive Era," *Pacific Northwest Quarterly*, 55(4), October 1964, p. 164, p. 164.
[77] As quoted in Melvin G. Holli, "Urban Reform in the Progressive Era," in *The Progressive Era*, Lewis L. Gould (ed.), (Syracuse, NY: Syracuse University Press, 1974), p. 137.

stated that "newcomers from the bogs of Ireland, the mines of Poland, and brigand-caves of Italy, and from the slave camps of the South but one removed from the jungles of Africa, made poor grist for milling civic patriots."[78] A representative from Baltimore characterized machine politics there as where "the saloons and gambling houses and brothers are…nurseries for [urban] statesmen."[79] Another conferee stated that "vice regions should have no representation. Such sections are to be governed and not to govern."[80]

Reformers argued that among the major structural reforms that should be implemented in cities were commission government and later city-manager government. The key to both of these forms of government operating effectively was the elimination of single-member districts to elect commissioners, aldermen, and council members, and instead employ the use of an exclusive system of at-large elections. They argued that the city, after all, was a corporation, and as such, should be run like a business. The commission plan attempted to approximate decision-making in many larger corporations by a board of directors. Legislative and executive powers were combined in the office of a commissioner. Generally, five commissioners were elected at-large and each was responsible for a major administrative subdivision of the city government. A typical commission system had commissioners who served as Mayor, Public Safety, Streets and Sewers, Finance, and Buildings. Sitting together they constituted the city legislative body. Richard S. Childs succinctly summarized the primary advantages of the Commission Plan as perceived by its proponents. He stated,

> A single vote [of the commission] stopped talk and let action begin. The spirit of a board of directors replaced the heavy procedures of a legislative machinery [as

[78] Ibid.
[79] Ibid.
[80] Ibid.

> under a typical mayoral plan] which was right, for modern city governments are 90-odd percent administrative rather than ordinance making.[81]

This plan was adopted by many communities after 1901. But by 1916 the Commission Plan was recognized by reformers as no longer being the panacea to the ills of municipal government which it had previously been considered.[82] In many cities individual commissioners established machine-type organization centered around the favors and patronage which their administrative position offered. Decision-making within the commission was characterized by substantial log-rolling and conflicts between individual commissioners often stifled much city government action.[83]

The reformers' proposed solution to these problems was a city manager plan. The city manager was to be a competent, professional administrator, appointed by the at-large elected council to serve as the primary administrator in city government, with the authority to appoint department heads, propose the budget, and direct all aspects of city government administration. Through such administrative centralization, it was agued, the problems caused by a fragmented administration would be eliminated. The city manager was appointed by, and could be removed by, the city council.

Again, the key to either of these two plans being successful was to move from ward or single-member district election of council members to their election at-large. Under a single-member district system, it was argued, councilmembers attempted to maximize the expenditure of public revenues for their individual districts. As a result, many decisions made by the city

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[81] Richard S. Childs, *Civic Victories: The Story of an Unfinished Revolution*, (NY,NY: Harper Brothers, 1952), p. 138.
[82] Bradley Robert Rice, *Progressive Cities: The Commission Government Movement in America, 1901-1920* (Austin: University of Texas Press, 1977), p. 106.
[83] Rice, 1977, pp. 91-91 and 97-99.

council were not based on the interests of the city as a whole, but rather upon the effect a particular policy would have on their neighborhoods or districts. Historian Bradley Robert Rice notes that in the early 1900s, reform Mayor Mathis of Des Moines, Iowa, "argued that it was possible for the five best candidates to reside in the same precinct."[84] John Judson Hamilton in *The Dethronement of the City Boss* wrote in 1910 that election at-large would guarantee "the elimination of the merely neighborhood candidate from public consideration."[85] Andrew D. White, writing in 1890, argued that at-large election of councilmembers was necessary if narrow decision-making was to be overcome in local governments. He wrote:

> I would elect the common council by a majority of all the votes of all the citizens; but instead of electing its members from wards (single-member districts) as at present—so that wards largely controlled by thieves and robbers can send thieves and robbers, and so that men who can carry their ward can control the city—I would elect the board of aldermen (city council) on a general ticket (at-large) just as the mayor is elected now, thus requiring candidates for the board to have a city reputation. [86]

Historian James Weinstein argues that the adoption of at-large elections, together with other reforms such as commission and council-manager government and nonpartisan elections in cities, increased campaign costs for individual candidates and political, racial, and national minorities whose voting strength tended to be concentrated in specific wards that subsequently lost formal representation.[87] Historian Samuel P. Hays argues that geographical considerations in Pittsburgh underlay business interests in promoting at-large elections. One the one hand, the business class in the city wanted to protect its economic base, consisting of plants and factories, which were often outside its residential neighborhoods and in working class parts of town. At-

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[84] As quoted in Rice 1977, p. 77.
[85] Ibid.
[86] White, 1969, pp. 272-273.
[87] James Weinstein, "Organized Business and the City Commission and Manager Movements," *The Journal of Southern History*, 28 (2), May 1962, pp. 176-178.

large elections overcame this problem by ensuring that industrial properties remained within the electoral districts of property owners. Moreover, when Pittsburgh had ward representation, the backgrounds of aldermen generally reflected the social characteristics of the wards they represented. Councilmembers representing working class areas generally were "workingmen, labor leaders, saloonkeepers, or grocers."[88] Middle class areas tended to be represented by small business men such as "druggists, undertakers, community real estate dealers, banker, and contractors."[89] Upper class areas tended to have "central city bankers, lawyers, doctors, and manufacturers"[90] as councilmembers.

A number of scholars of city politics have noted that at-large elections provided mechanisms of selective exclusion which served the purposes of those who were particularly concerned with minimizing the political strength of Blacks and Mexican Americans in the South and Southwest. Chandler Davidson and George Korbel note that the commission and city manager plans originated in the South and that "Southern progressivism coincided with the peak of racial reaction."[91] Their essay reviewed fourteen studies published between 1961 and 1981 that addressed the effects of at-large elections on the representation of African Americans and Latinos. The authors of eleven of these studies concluded that the use of at-large elections led to the lower descriptive representation of African Americans and Latinos as compared to the use of single-member districts.

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[88] Samuel P. Hays, "Political Parties and the Community-Society Continuum," in *The American Party System: Stages of Political Development*, Second Edition, William Nesbitt Chambers and Walter Dean Burnham, eds. (London: Oxford University Press, 1975), p. 164
[89] Ibid.
[90] Hays, 1975, p. 165.
[91] Chandler Davidson and George Korbel, "At-large Elections and Minority Representation: A Re-Examination of Historical and Contemporary Evidence," *The Journal of Politics*, 43(1), November 1981, pp. 986-988.

Political scientists Wolfinger and Field offer racial explanations for the adoption of reform structures, where at-large elections were a key component, in the South. They state,

> [In the South]…most municipal institutions seem to be corollaries of the region's traditional preoccupation with excluding Negroes from political power…At-large elections minimize Negro voting strength…This southern concern with unity may also explain why Mexican-Americans in Texas have been so apolitical, in contrast to the political environment of immigrants in the North…if immigrants come into a political system where the elites shun conflict with each other….they are likely to find that the interest of those elites is to exclude them from politics rather than appeal for their support.[92]

What the above discussion makes clear is that the purpose of at-large elections outside of South was to minimize, if not eliminate, the ability of white immigrant ethnic, working-class voters, and sometimes African Americans, to elect candidates of choice. It is also the case that in the South, such efforts were linked to new structures of urban governance that developed in the early 20th century when most African Americans were already disenfranchised. These new structures included at-large elections and were adopted by many Southern and Southwestern municipalities across the early 20th century. The exclusionary consequences are clear. African Americans and Mexican Americans in the Southwest had great challenges in electing their candidates of choice in at-large systems.

Voting Rights, the Judiciary, and the 1965 Voting Rights Act

Much federal judicial decision-making did not find the dilutionary and even disenfranchising mechanisms used in the South and other regions of the country to violate either the 14th or the 15th Amendments. There were, however, some notable exceptions that occurred

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[92] Raymond E. Wolfinger and John Osgood Field, "Political Ethos and the Structure of City Government," *American Political Science Review*, 60 (2), p. 325.

prior the passage of the Voting Rights Act in 1965 (the VRA) and two specific decisions of the Supreme Court, soon after the enactment of the VRA.

In *Smith v. Allright*[93] the Supreme Court revisited the use of the white primary in Texas. In 1927 in the case of *Nixon v. Herndon*,[94] the Supreme Court ruled that a Texas state law that restricted voting in the Democratic primary violated the 14th Amendment. Texas's attempt to circumvent this decision by giving the state Executive Committee of the Democratic Party the authority to determine participation in that party's primary the action was again found to violate the 14th Amendment in the case of *Nixon v. Condon*[95]in 1932. However, when the state made no law regarding participation in the Democratic primary the Court upheld the use of the white primary because the Democratic Party was a private organization, and not formally a governmental entity, that could determine its own membership. This was decided in the case of *Grovey v. Townsend*[96] in 1932.

The all-white primary was again the issue in *Smith v. Allright*, which was first argued before the Supreme Court in 1943 and reargued in 1944. The Supreme Court ruled that because "[p]rimary elections are conducted by the party under state authority…We think that this statutory system for the selection of party nominees for inclusion on the general election ballot makes the party which is required to follow these legislative directions an agency of the state in so far as it determines the participants in a primary election."[97] The Court concluded that "…we are applying, contrary to the recent decision in *Grovey v. Townsend*, the well-established

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[93] 321 U.S. 649.
[94] 273 U.S. 536.
[95] 286 U.S. 73.
[96] 295 U.S. 45.
[97] 321 U.S. 649.

principle of the Fifteenth Amendment, forbidding the abridgement by a state of a citizen's right to vote. *Grovey v. Townsend* is overruled."[98] Although Blacks might still be able to participate in the general election, because white primaries that excluded Black voters effectively decided the election in a one-party state, the white primary was unconstitutional.

The issue of deannexation was directly addressed by the Supreme Court in the case of *Gomillion v. Lightfoot*[99] in 1960. This case emanated from a decision by the Alabama legislature in 1957 to alter the boundaries of the city of Tuskegee such that city boundaries that had been a square now resulted in a 28-sided figure that removed all but four or five of its four hundred African American voters.[100] In this case the Court ruled that although the Alabama legislature claimed that its motivation for the deannexation was the "realignment of political subdivisions,"[101]" [w]hen a legislature thus singles out a readily isolated segment of a racial minority for special discriminatory treatment, it violates the Fifteenth Amendment."[102] The Court continued "[w]hen a state exercises power wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right."[103] The significance of this case was that it found an action that was explicitly designed to harm a racial minority to be a violation of the 15th Amendment.

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[98] Ibid.
[99] 364 U.S. 339.
[100] Ibid.
[101] Ibid.
[102] Ibid.
[103] Ibid.

In 1966, after the 1965 Voting Rights Act was enacted, the state of South Carolina sued the Attorney General challenging the constitutionality of Section 5 of the VRA in *South Carolina v. Katzenbach*.[104] Section 5 is that provision that requires covered jurisdictions to submit any changes in voting practices or procedures to the Attorney General or to a specially empaneled group of three judges in the United States District Court for the District of Columbia, for approval. In an 8-1 decision, the Court was unconvinced by South Carolina that Section 5 of the VRA "violates the principle of the equality of the states,"[105] citing the long history of voting rights discrimination against African Americans in the state. The Court concluded that

> "[w]e here hold that the portions of the Voting Rights Act Properly before us are a valid means for carrying out the commands of Fifteenth Amendment. Hopefully, millions of non-white Americans will now be able to participate for the first time on an equal basis in the government under which they live. We may finally look forward to the day when truly 'the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.[106]

In *Katzenbach*, the Supreme Court made very clear that Section 5 of the VRA was an extension of Section 2 of the 15th Amendment.

Three years later, in 1969, the Supreme Court considered whether actions taken by certain states in the South were in violation of the Voting Rights Act in *Allen v. State Board of Elections.*[107] The relevant policies and practices in Mississippi and Virginia did not lead to the strict disenfranchisement of African American voters. In Mississippi the state legislature required that county supervisors be elected at-large rather than from single-member districts. In another act, the legislature eliminated the option of electing or appointing superintendents of

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[104] 383 U.S. 301.
[105] Ibid.
[106] Ibid.
[107] 393 U.S. 544.

education and that all had to be appointed. Additionally, independent candidates had to meet certain requirements to run in general elections. In Virginia, the disputed policy pertained to whether the state would accept labels on write-in ballots. Virginia's argument was that its policy did not violate the Voting Rights Act because it did not deny African Americans the right to vote. What was at issue was whether state actions that led to the vote dilution of African Americans were covered under the Voting Rights Act.

The Court was very clear in addressing each of these concerns. It stated,

> The Voting Rights Act was aimed at the subtle, as well as the obvious, state regulations which have the effect of denying citizens their right to vote because of their race. Moreover, compatible with the decisions of this Court, the Act gives a broad interpretation of the right to vote, recognizing that voting includes 'allocation necessary to make a vote effective.' We are convinced that in passing the Voting Rights Act, Congress intended that state enactments such as those involved in the instant cases be subject to the Sec. 5 approval requirements.[108]

What the Supreme Court did in this decision was to determine that dilutionary policies and practices were also included under the Voting Rights Act.

Three conclusions can be reached from these Court decisions. First, the Supreme Court was providing guidance that instances of voter disenfranchisement were unconstitutional because they violated the 15th Amendment to the Constitution. Second, after the enactment of the Voting Rights Act in 1965, Southern states were trying to bypass the provisions of Section 5 which they believed inhibited their ability to promulgate policies that limited the political participation of African Americans. Third, dilutionary policies and practices, such as those discussed throughout this report, were prevented by the Voting Rights Act. The Supreme Court determined that voting

[108] Ibid.

and casting an effective vote were basic rights under both the 15th Amendment and the 1965 Voting Rights Act.

Language Minorities and the 1975 Expansion and Renewal of the Voting Rights Act

Section 5 of the VRA required congressional renewal in 1975. There was agreement between major civil rights organizations and Justice Department of the Ford Administration that it should be renewed for another five years. However, a new effort, led by the Mexican American Legal Defense and Educational Fund (MALDEF), sought to expand the VRA to protect a wider group of people. A notable exception to the Southern states covered under Section 5 of the Act was Texas. As discussed previously, Texas had a long history of using a variety of vote dilution mechanisms against both its African American and Latino, largely Mexican American, populations. Nonetheless, it did not qualify for coverage under the trigger formula of Section 4 because its voter participation rates were not as low as the formula required. However, the expansion of the Act to include groups that would be termed "language minorities," led to many Latinos, Asian Americans, American Indians, Alaska Natives, and Pacific Islanders to also be protected in 1975. As a result, the entire State of Texas was now covered under Section 5 and protected the voting rights of both Mexican Americans and African Americans.[109]

Although the goal of the expansion of Section 5 was to include language minorities across the Southwest and other regions of the country, most of the evidence presented to Congress justifying this action came from Texas[110] and built upon the decision of the Supreme

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[109] See Luis Ricardo Fraga, "The Origins of the 1975 Expansion of the Voting Rights Act: Linking Language, Race, and Political Influence," *US Latina & Latino Oral History Journal* (1), 2017, pp. 7-28.
[110] Fraga, 2017, p. 13.

Court in *White v. Regester*[111] where the Supreme Court found that the use of multi-member districts to elect state legislators in Dallas and Bexar counties violated the voting rights of African Americans and Mexican Americans due to effective at-large vote dilution. Although individuals in the Washington, D.C., office of MALDEF began efforts to find evidence of vote dilution and disenfranchisement of Mexican Americans, it was the regional office of MALDEF in San Antonio, Texas, that provided the key evidence that was brought to Congress justifying the expansion.[112] Organizations such as the League of United Latin American Citizens (LULAC), the American GI Forum, and the Southwest Council of La Raza (which evolved into the National Council of La Raza and is now known as UnidosUS) were solicited, as well as individual testimony from persons who were involved in trying to mobilize Mexican Americans to register and vote.[113]

What is clear from the evidence presented to Congress was that there was always a blurring of the line between specific language-based discrimination and voting rights violations generally. Stated differently, Mexican Americans experienced the same type of voting rights challenges—such as at-large elections and exclusionary slating—experienced by African Americans, in addition to challenges such as the fact that all registration and voting materials were only available in English and the lack of availability of any assistance for citizens for whom English was not their first language.[114] Testimony was presented that Mexican American communities experienced,

> economic reprisals against Mexican Americans who participated in politics, the use of multimember elections for state legislative offices in Bexar and Dallas

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[111] 412 U.S. 755.
[112] Fraga, 2017, p. 15.
[113] Ibid.
[114] Ibid.

> counties to dilute the votes of Mexican Americans, the use of the majority runoff system in counties with large minority populations, the presence of polarized voting, the very low representation of Mexican Americans in elective office across many cities in Texas, and the limited access of Mexican Americans to elective office across many cities in Texas, and the limited access of Mexican Americans to the slating process.[115]

Among the most powerful testimony was provided by Modesto Rodriguez, who stated that he had experienced instances of economic intimidation, hostility from law enforcement officers, the placement of polling places that made it very difficult for Mexican Americans to gain access, annexation of majority Anglo areas to dilute the votes of Mexican Americans, and clear evidence of gerrymandering.[116] Additionally he stated that all voter registration and election materials were in English, there were no translators, and individuals had to sign their ballot stubs in order to have their votes counted.[117] Other witnesses testified that in addition to voting materials being available only in English, Mexican Americans had to confront paying a poll tax and that Mexican American poll watchers were often intimidated.[118]

Testimony from witnesses in California noted that the Mexican American communities often had few registration personnel who spoke Spanish, and there were no bilingual registration materials. This was especially detrimental to Mexican American voter participation in rural areas where large numbers of Mexican Americans were predominantly Spanish speaking. It was also stated that in areas of high Mexican American population concentration, gerrymandering was common and polling booths were moved frequently in certain jurisdictions.[119] Congressman Edward Roybal from California testified that in his state there was very little bilingual

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[115] Fraga, 2017, p. 16.
[116] Fraga, 2017, pp. 16-17.
[117] Fraga, 2017, p. 16.
[118] Fraga, 2017, p. 17.
[119] Ibid.

registration assistance, there was a widespread use of at-large elections to choose school board members, and a widespread use of discriminatory redistricting practices that were race-based.[120]

Although several witnesses had given testimony of the way that English-only elections served as a type of literacy test that was used against Mexican Americans in the Southwest, it perhaps was the testimony of two leading African American members of Congress that convinced members of the Congressional Black Caucus that it was appropriate to pursue expanding the VRA even though it risked the non-renewal of areas, largely in the South, that protected large numbers of African American voters. Congressman Andrew Young (D-GA), a leader with impeccable credentials working to expand the civil rights of African Americans, stated on the House floor that,

> I could not go on without saying that the same kind of things that happened to us in 1965 and still happening in some places, are happening to people of Spanish origin, and I would strongly support the inclusion of some of the new sections in that bill, such as the bills offered by my colleagues Mr. Badillo, Mr. Roybal, and Congresswoman Jordan.[121]

Perhaps the most convincing testimony provided by a member of Congress was that given by Congresswoman Barbara Jordan who represented a district in Houston that included substantial numbers of both African Americans and Mexican Americans. She stated,

> To provide a remedy for these discriminatory voting practices perpetrated upon blacks and Mexican Americans I have introduced H.R. 3247, which is before this subcommittee. My bill would extend the provisions of the Voting Rights Act to Texas, New Mexico, Arizona, and parts of California. H.R. 3247 would guarantee to Mexican-Americans and blacks residing in these jurisdictions the same special protection to their voting rights now afforded to blacks in the South…I believe the Fifteenth Amendment contemplates voting protection of all races including Mexican-Americans. The constitutional question is one which is resolved in my mind, but the members of the subcommittee should confront the issue directly…[I]s language the primary voting problem among Mexican-

[120] Fraga, 2017, p. 19.
[121] As quoted in Fraga, 2017, p. 21.

> Americans? Probably not, but it is characteristic of the myriad of problems Mexican Americans face. Just as the Congress seized upon literacy tests as characteristic of the voting problems facing blacks in the South, so too are English-only ballots among a substantial Spanish-speaking population.[122]

The focus on language was also covered by another provision of the 1975 expansion, Section 203, that required the translation of registration, ballots, and all other voting related materials in areas that met certain population and related language use requirements. The citizen groups covered were "Asian Americans, American Indians, Alaska natives, or persons of Spanish heritage. Asian American is further defined, in the legislative history, to mean Chinese, Japanese, Korean, and Filipino American."[123] Additionally, three criteria had to be met: "(1) more than five percent of the citizens of voting age of the jurisdiction are members of a single language minority group, (2) fewer than 50 percent of the voting age citizens of the jurisdiction voted in the 1972 presidential elections, and (3) that election was conducted only in English."[124] These provisions covered the entire state of Texas, but other areas as well, and resulted in a broader coverage of areas of California under the VRA.[125]

Senator Orrin Hatch (R-UT) succinctly characterized the need for the Section 203. He stated

> The right to vote is one of the most fundamental of human rights. Unless government assures access to the ballot box, citizenship is just an empty promise. Section 203 of the Voting Rights Act, containing bilingual requirements is an integral part of our government's assurance that American do have such access.[126]

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[122] As quoted in Fraga, 2017, p. 22.
[123] David H. Hunter, "The 1975 Voting rights Act and Language Minorities," *Catholic University Law Review* 25 (2), 1976, p. 262.
[124] Hunter, p. 256.
[125] Fraga, 2017, pp. 22-23. For a comprehensive discussion of Section 203 see James Thomas Tucker, "Enfranchising Language Minority Citizens: The Bilingual Elections Provisions of the Voting Rights Act," *Legislation and Public Policy* 10 (195), 2006-2007, pp. 195-260.
[126] As quoted in Tucker, 2006-2007, p. 196.

The final legislation extended Section 5 for seven years, expanded the trigger formula to include language minorities, and added Section 203. The bill attracted substantial bipartisan support. The House approved the renewal and expansion by a vote of 341-70 and the Senate approved it by a vote of 77-12. President Ford signed the bill on July 25, 1975.[127]

Two lessons are learned from the above discussion of the 1975 expansion and renewal of the Voting Rights Act. First, it is clear that the types of dilutionary tactics used against African Americans in the South were also used against Mexican Americans and likely used against other language minorities. Dilution and effective disenfranchisement were imposed upon other groups who represented substantial segments of the population and of the potential electorate. Second, it was necessary to mobilize the authority of the federal government to limit the extent to which these dilutionary and disenfranchising policies and practices prevented language minorities from having a chance to elect their first choice candidates to public office. Without federal intervention, state and local practices in many parts of the country would lead to discrimination in ways similar to the discrimination experienced by African Americans in the South.

Limiting Who Can Vote and Who Can Cast a Meaningful Vote in the History of the U.S.

Limiting who can vote and who can cast a meaningful vote has a long history in the U.S. For most of the nation's history, not all segments of the citizen population have been able to vote. Initially, only white male property owners could vote. When property ownership and the paying of property-related taxes was largely removed as a bar to voting in the mid-1800s, women and free Blacks were still largely excluded. When formerly enslaved people were granted the right vote with the adoption of the 15th Amendment, a tremendous expansion in the electorate

[127] Ibid.

occurred in the South, especially in areas where African Americans were a sizeable segment of the population. As a result, intimidation and violence were initially used by whites to inhibit Black citizens from exercising the franchise. Later, a variety of dilutionary mechanisms—especially at-large elections, annexations and de-annexations, gerrymandering, manipulation of polling places, voter registration requirements, and poll taxes—were used to limit African American voting and virtually eliminate the chances of Black voters electing candidates of their choosing. The disempowerment of African Americans culminated in the almost complete disenfranchisement of the Black community in the South through mechanisms such as literacy tests that in most cases were codified in new state constitutions adopted in the early 1900s.

Outside of the South, a variety of reform structures of local government, including commission and council-manager structures, were grounded in the use of at-large elections, and had the goal of minimizing, if not eliminating, the political influence of voters from working class (largely ethnic and sometimes racial) areas of cities. The goals and effects of these efforts were the same—to make sure that the influence of certain segments of the electorate was minimized and that the influence of other segments of the electorate were enhanced. As implemented in the South and Southwest, these reform structures had the effect of further limiting the political influence of African Americans, especially in the South, and of Mexican Americans in the Southwest. With a few exceptions, the political influence of these groups was minimized until the enactment of the 1965 Voting Rights Act and its renewals and expansions, including its subsequent judicial endorsement. Although that judicial endorsement has not been long lasting, see *Shaw v. Reno* (1993),[128] and *Shelby County v. Holder* (2013),[129] what is clear

[128] 92 U.S. 357.
[129] 570 U.S. 529.

from the history of the U.S. is that without a strong commitment on the part of the federal government, voters cannot depend on state and local jurisdictions to protect the voting rights of racial, ethnic, language minority, and other historically marginalized groups. This history must be remembered as Congress considers amending Section 4 of the Voting Rights Act to account for practices that lead to disenfranchisement and vote dilution throughout the country. Such practices can be overt and they can be subtle. Whatever clarity can be provided by the rewriting of Section 4 will work to enhance the likelihood that all voters will have an equal chance to cast a meaningful vote. Only then will one of the most fundamental ideals of American democracy have the chance to be realized.