# NOTE

## THE EFFECTS OF THE VOTING RIGHTS ACT: A CASE STUDY

"WHATEVER POSITION YOU HAVE ACHIEVED, SOMEBODY PAID A PRICE TO OPEN THE DOOR FOR YOU."[1]

### I. INTRODUCTION

Congress enacted the Voting Rights Act of 1965 (the Act) in order to end a century of transgressions against minority voting rights.[2] The first goal of the Act—to eradicate the use of "tests or devices" that hinder registration of minority voters—has, for the most part, been met.[3] However, the Act's second goal—to empower minority voters—is only beginning to be fulfilled in some areas of the country.[4]

This Note analyzes the Voting Rights Act, concluding that its effectiveness is limited and demonstrating this conclusion with a case study. Part II of this Note demonstrates that Congress took a piecemeal approach to correcting racial negatives in voting systems that only became truly effective in the 1980s. Part III illustrates the positive effects of the 1982 amendments to section 2 of the Act. This Part focuses on the cases brought under that section in one parish[5] in Louisiana. Finally, using that parish and recent cases in the United States Supreme Court, Part IV suggests that because the Act has achieved its potential and because of complications with broader implementation of the Act, the day is near that

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1. Reverend Al Sharpton, *quoted in* Jim Sleepo, *A Man of Too Many Parts*, THE NEW YORKER, Jan. 25, 1993, at 65.

2. Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (codified as amended at 42 U.S.C. §§ 1971, 1973 to 1973bb-1 (1988)).

3. S. REP. NO. 417, 97th Cong., 2d Sess. 6 (1982), *reprinted in* 1982 U.S.C.C.A.N. 177, 183. Some commentators state that the only goal of the Act was the registration of blacks and that any other "goals" of the Act developed after the Act's implementation. *See, e.g.*, ABIGAIL M. THERNSTROM, WHOSE VOTES COUNT? 3-4 (1987).

4. S. REP. NO. 417, *supra* note 3, at 9-15, *reprinted in* 1982 U.S.C.C.A.N. at 180-92. Some say that the strength of the black vote rests in the ability of blacks to influence the outcome of elections. Others believe that strength rests in the ability to elect black candidates. This Note contends that there remains room under either definition for improving the equality of black suffrage. The Act, however, has not been wholly ineffective. *See infra* part III.

5. A parish in Louisiana is equivalent to a county in other states. WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 856 (1985). *See also* 1 U.S.C. § 2 (1988).

the Act will have outlived its utility.[6] Further empowerment of the black community will only come with improved education and increased political awareness.

## II. CONGRESSIONAL PROTECTION OF MINORITY VOTING RIGHTS

### *A. 1870 - 1965*

The main purpose of the Civil War Amendments[7] was to ensure that states would not infringe upon the civil rights of blacks following emancipation.[8] Congress enacted the Enforcement Act of 1870[9] in order to compel states to comply with the newly adopted amendments.[10] For a time, black suffrage influenced politics in all states.[11] Nevertheless, by the early 1890s, some states began to ignore the law, and a new era of discrimination arose.[12]

In particular, some southern states began to implement prerequisites to registration and voting, such as tests and other devices,[13] explicitly

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6. For a discussion of alternative views on the success of the Voting Rights Act and the future of voting rights in America, see Lani Guinier, *Keeping the Faith: Black Voters in the Post-Reagan Era*, 24 HARV. C.R.-C.L. L. REV. 393 (1989); Lani Guinier, *No Two Seats: The Elusive Quest for Political Equality*, 77 VA. L. REV. 1413 (1991); Lani Guinier, *The Triumph of Tokenism: The Voting Rights Act and the Theory of Black Electoral Success*, 89 MICH. L. REV. 1077 (1991); Edward Still, *Voluntary Constituencies: Modified At-Large Voting as a Remedy for Minority Vote Dilution in Judicial Elections*, 9 YALE L. & POL'Y REV. 354 (1991); Dana R. Castarphen, Current Topic in Law and Policy, *The Single Transferable Vote: Achieving the Goals of Section 2 Without Sacrificing the Integration Ideal*, 9 YALE L. & POL'Y REV. 405 (1991).

7. The Thirteenth, Fourteenth, and Fifteenth Amendments to the United States Constitution are commonly referred to as the Civil War Amendments. Sections 1 and 5 of the Fourteenth Amendment and the entire Fifteenth Amendment are important to voting rights.

8. *See* Whitcomb v. Chavis, 403 U.S. 124, 149 (1971).

9. The Enforcement Act of 1870, 16 Stat. 140 (1870).

10. *See* S. REP. NO. 162, 89th Cong., 1st Sess. 34 (1965), *reprinted in* 1965 U.S.C.C.A.N. 2508, 2541. Within one year, Congress enacted a second statute, 16 Stat. 4313 (1871), which provided for the appointment of federal election supervisors.

11. *See, e.g.*, PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF SOUTH CAROLINA, Second Day, at 4-5 (1868), *reprinted in* THE AMERICAN NEGRO—HIS HISTORY AND LITERATURE: PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF SOUTH CAROLINA 13, 16-17 (William L. Katz ed., 1968).

12. *See* S. REP. NO. 162, *supra* note 10, at 35, *reprinted in* 1965 U.S.C.C.A.N. at 2541-42. By 1894, Congress had repealed the bulk of the statute. *Id.*

13. These states included Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia. *Id.* The devices used included reading or writing tests, an application form, oral constitutional interpretation tests, understanding the duties of citizenship, and good morals requirements. *Id.* Election officials could grade most tests subjectively. United States v. Louisiana, 380 U.S. 145, 150 (1965).

designed to hinder or prevent black suffrage.[14] During this time, literacy tests were especially effective because considerably more blacks than whites were illiterate.[15] Exacerbating the problem, steps were taken to exempt illiterate whites from these disqualifications.[16]

The Supreme Court quickly began to address the constitutionality of these tests and practices and consistently struck down one discriminatory device after another.[17] Each time the Court invalidated a discriminatory law, the states developed new devices to continue to suppress the rights of blacks to register and vote.[18]

By the 1950s, Congress realized that measures had to be taken to stem the open prejudice.[19] Congress hoped to end the woes when it enacted the Civil Rights Act of 1957 (1957 Act).[20] The 1957 Act sought to prevent any interference, including intimidation, with blacks' right to vote[21] by granting the Attorney General the power to bring suits to enjoin state laws[22] that promoted discriminatory rules regarding voting practices.[23]

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14. S. REP. NO. 162, *supra* note 10, at 34 n.1, *reprinted in* 1965 U.S.C.C.A.N. at 2541-42.

15. *Id.* (citing census of 1890) ("[I]n 1890, 69 percent or more of the adult Negroes in seven Southern States which adopted these tests were illiterate . . . ."). *See also* Brown v. Board of Education, 347 U.S. 483, 490 (1954) ("Education of Negroes was almost non-existent, and practically all of the race were illiterate. In fact, any education of Negroes was forbidden by law in some states.").

16. S. REP. NO. 162, *supra* note 10, at 35, *reprinted in* 1965 U.S.C.C.A.N. at 2542. The means included grandfather clauses, property qualifications, morals tests, and the ability to comprehend certain constitutional provisions. *Id.* If white voters did not meet the first two criteria, election officials could nevertheless judge the remaining criteria subjectively to prevent the disqualification of white voters. *Id.* at 35-36.

17. *Id.* at 35 (citing Gomillion v. Lightfoot, 364 U.S. 339 (1960) (invalidating racial gerrymandering); United States v. Thomas, 362 U.S. 58 (1960) (invalidating discriminatory challenges); Schnell v. Davis, 336 U.S. 933 (1949) (invalidating discriminatory application of voting tests); Smith v. Allwright, 321 U.S. 649 (1944) (invalidating solely white primaries); Lane v. Wilson, 307 U.S. 268 (1939) (invalidating "onerous procedural requirements"); and Guinn v. United States, 238 U.S. 347 (1915) (invalidating grandfather clauses)).

18. S. REP. NO. 417, *supra* note 3, at 6, *reprinted in* U.S.C.C.A.N. at 183 (quoting South Carolina v. Katzenbach, 383 U.S. 301, 335 (1966)).

19. H.R. REP. NO. 291, 85th Cong., 1st Sess. 5 (1957), *reprinted in* 1957 U.S.C.C.A.N. 1966, 1970. Congress realized the need for "a more effective enforcement" of constitutional rights, especially the right to vote. *Id.*

20. Civil Rights Act of 1957, Pub. L. No. 85-315, 71 Stat. 634 (codified as amended at 42 U.S.C. § 1971 (1988)).

21. *Id.* § 131 (codified at 42 U.S.C. § 1971(b) (1988)).

22. *Id.* (codified as amended at 42 U.S.C. § 1971(c) (1988)). The Attorney General could also bring suits against private individuals. *Id.*

23. *Id.* The 1957 Act also created the Civil Rights Commission, whose duty, among others, was to investigate civil rights violations involving the right to vote. *Id.* §§ 101-106, *expired by operation of law* (1983) (see explanatory note preceding 42 U.S.C. § 1975 (1988)).

However, within three years, Congress realized that the 1957 Act was ineffective.[24] Thus, Congress enacted the Civil Rights Act of 1960 (1960 Act) to improve on the 1957 Act.[25] The 1960 Act provided additional enforcement mechanisms and added punitive provisions[26] in an attempt to give the Attorney General a practical tool to defeat the continuing egregious practices employed in some states.[27]

Once again, in 1964, problems enforcing the 1960 Act forced Congress to reassess the civil rights situation.[28] The 1964 Civil Rights Act[29] endeavored to remedy the lengthy delays plaintiffs experienced in suits brought under the previous acts by mandating that the district courts give priority to voting rights cases.[30] The 1964 Act also sought to eliminate the discriminatory application of literacy tests by requiring the states to apply uniform standards to all applicants.[31]

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24. S. REP. NO. 1205, 86th Cong., 2d Sess. 2 (1960), *reprinted in* 1960 U.S.C.C.A.N. 1925, 1926.

25. Civil Rights Act of 1960, Pub. L. No. 86-449, 74 Stat. 86 (codified as amended in scattered sections of 42 U.S.C., 18 U.S.C., and 20 U.S.C.).

26. *Id.* Title III provided that state election officials must keep records of all prerequisites to voting. Title III also required the official to turn over the records to the Attorney General upon his or her request. A failure to do so could result in a fine or imprisonment. *Id.* §§ 301-03 (codified at 42 U.S.C. § 1974 (1988)).

Title VI provided that if a court found that a person had brought a successful suit under § 131 of the 1957 Act, then the Attorney General could institute a hearing to determine whether the particular case was part of a pattern of discrimination or merely an aberration. In the event that the Attorney General proved a pattern of discrimination in the jurisdiction, the court could appoint voting referees to overlook the registration of applicants. *Id.* § 601 (codified as amended at 42 U.S.C. § 1971(c) (1988)).

Congress rejected an alternate Title VI which would have allowed the President to appoint a federal enrollment officer for those districts where either (1) a successful suit under the 1957 Act had been brought or (2) the Civil Rights Commission determined that persons had been denied the right to register and vote in a particular district. The proposed bill would have allowed the states to challenge the qualifications of a voter but only after the elections had been held. *See* S. REP. NO. 1205, *supra* note 24, at 1-6, *reprinted in* 1960 U.S.C.C.A.N. at 1925-30.

27. *See* H.R. REP. NO. 956, 86th Cong., 2d Sess. 6-7 (1960), *reprinted in* 1960 U.S.C.C.A.N. 1939, 1944-45. Without access to the election records and without a suitable punitive provision to help enforce the provision, the Attorney General often had no case. *Id.*

28. H.R. REP. NO. 914, 88th Cong., 2d Sess. 4 (1964), *reprinted in* 1964 U.S.C.C.A.N. 2391, 2394.

29. Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (1964) (codified as amended at scattered sections of 42 U.S.C., 5 U.S.C., and 28 U.S.C.).

30. *Id.* § 101(d) (codified as amended at 42 U.S.C. § 1971(a) (1988)). Section 101(d) provided that the Attorney General could request and have the circuit judge "immediately" appoint a three-judge panel to hear any voting rights case in which the United States was a plaintiff.

31. Civil Rights Act of 1964, Pub. L. No. 88-352, § 101 (codified as amended at 42 U.S.C. § 1971(a) (1988)). Section 101(a) provided that literacy tests be standardized, administered in written form, and that the applicant be given a copy of the test if he requested. Section 101(b) created a

By the following year, Congress recognized that the "case-by-case" approach opted for in the Civil Rights Acts was inept. It simply could not assure blacks any meaningful progress with respect to the right to vote.[32] First, voting rights litigation was lengthy and remedies slow in coming.[33] Staunch local opposition often greeted successful suits.[34] Local election officials either purged or froze registration rolls in order to circumvent remedies awarded by the courts.[35] Furthermore, the net result in the increase of black voters was negligible, especially in the South where the most grievous cases of discrimination endured.[36]

### *B. The Voting Rights Act of 1965*

Congress designed the Voting Rights Act of 1965 (the Act) to correct the deficiencies inherent in the civil rights acts[37] and attack the problem of low black voter registration.[38] In order to accomplish its goals, Congress aimed the Act's remedies at registration for all elections, not merely federal elections,[39] in those states[40] that had a history of employing discriminatory voter registration practices.[41] Section 6 of the Act set out provisions

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rebuttable presumption that any applicant who had completed the sixth grade was literate for purposes of voting in a federal election. *Id.*

32. H.R. REP. NO. 439, 89th Cong., 1st Sess. 5 (1965), *reprinted in* 1965 U.S.C.C.A.N. 2437, 2441.

33. *Id.* Success in the courts came only after years of expense and effort. *Id.*

34. For example, Louisiana switched to the constitutional interpretation test when the Supreme Court declared all-white primaries illegal. *See infra* text accompanying notes 131-34.

35. H.R. REP. NO. 439, *supra* note 32, at 5, *reprinted in* 1965 U.S.C.C.A.N. at 2441 (citing United States v. McElveen, 180 F. Supp. 10 (E.D. La.), *aff'd sub nom.* United States v. Thomas, 362 U.S. 58 (1960) (illustrating that Louisiana parish purged 91% of black voters from the rolls for spelling or grammatical errors on application, but did not remove whites who made similar mistakes on their applications). *See also* United States v. Palmer, 356 F.2d 951 (5th Cir. 1966) (detailing that Louisiana parish closed its registration offices on the day a federal court struck down Louisiana's constitutional interpretation test).

36. H.R. REP. NO. 439, *supra* note 32, at 5, *reprinted in* 1965 U.S.C.C.A.N. at 2441. In Alabama, the number of black registered voters increased 5.2% between 1958 and 1964; in Mississippi, there was a two percentage point increase in the ten years preceding 1965; and in Louisiana, there was a 0.1 percentage point increase in the nine years preceding 1965.

37. S. REP. NO. 162, *supra* note 10, at 37, *reprinted in* 1965 U.S.C.C.A.N. at 2544.

38. *See* S. REP. NO. 417, *supra* note 3, at 7, *reprinted in* 1982 U.S.C.C.A.N. at 183.

39. Voting Rights Act of 1965, Pub. L. No. 89-110, § 14(c), 79 Stat. 437 (codified as amended at 42 U.S.C. § 1973*l* (1988)).

40. The Voting Rights Act also covered some counties even though the states in which they were located were not fully covered. *See infra* note 43.

41. Voting Rights Act of 1965, Pub. L. No. 89-110, § 4, 79 Stat. 437 (codified as amended at 42 U.S.C. §§ 1971, 1973 to 1973bb-1 (1988)). The Act designated a state as a "target state" if two factors were present: (1) prior use of a voting test or practice utilized as a precondition to voting registration

to expedite the registration process[42] in these "target states."[43] Section 4 suspended the use of all tests these states employed as preconditions to registering black voters.[44] Perhaps more importantly, section 5 sought to alleviate the lengthy delays of case-by-case litigation by providing a mechanism to screen changes in state voting laws and procedures before a target state enacted them as law.[45] Lastly, section 2 outlawed the use of any scheme designed to deny, on a racial basis, the right to vote.[46] Finally, Congress had developed a weapon to combat voter discrimination in those states that had persistently silenced the voice of blacks in the electoral process.[47]

Furthermore, section 6[48] authorized the Civil Service Commission to appoint and send federal examiners to inspect registrants and prepare lists of people eligible to vote.[49] Section 6 proved to be a successful mechanism in avoiding the problems of reluctant registrars.

Congress also determined that certain tests and devices, such as literacy tests, were not genuine preconditions to voting. Rather, due to inequitable administration in the past, they were tools of discrimination.[50] Section 4 banned the use of *all* tests and other prerequisites to voting in "target states" for five years.[51]

In an attempt to combat the shortcomings of the previous civil rights

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and (2) less than 50% of the voting age population was registered to vote on November 1, 1964, or less than 50% of the voting age population voted in the 1964 presidential election. *Id.*

42. Voting Rights Act of 1965, Pub. L. No. 89-110, § 6, 79 Stat. 437 (codified as amended at 42 U.S.C. § 1971e (1988)).

43. The "target states" at the time of the enactment of the bill were Alabama, Alaska, Georgia, Louisiana, Mississippi, South Carolina, and Virginia. One county each in Arizona, Idaho, and Maine were covered as well as 34 counties in North Carolina. H.R. REP. NO. 439, *supra* note 32, at 9, *reprinted in* 1965 U.S.C.C.A.N. at 2445. On November 19, 1965, two more counties in Arizona, one county in Idaho, and one county in Hawaii were added. *See* South Carolina v. Katzenbach, 383 U.S. 301, 318 (1966).

44. Voting Rights Act of 1965, Pub. L. No. 89-110, § 4(a), 79 Stat. 437 (codified as amended at 42 U.S.C. 1973b (1988)).

45. *Id.* § 5 (codified as amended at 42 U.S.C. § 1973c (1988)).

46. Voting Rights Act of 1965, Pub. L. No. 89-110, § 2, 79 Stat. 437 (codified as amended at 42 U.S.C. § 1973 (1988)).

47. *See* S. REP. NO. 162, *supra* note 10, at 48, *reprinted in* 1965 U.S.C.C.A.N. at 2556.

48. Voting Rights Act of 1965, Pub. L. No. 89-110, § 6, 79 Stat. 437 (codified as amended at 42 U.S.C. § 1973d (1988)).

49. *Id.*

50. S. REP. NO. 162, *supra* note 10, at 43, *reprinted in* 1965 U.S.C.C.A.N. at 2551.

51. Voting Rights Act of 1965, Pub. L. No. 89-110, § 4, 79 Stat. 437 (codified as amended at 42 U.S.C. § 1973b (1988)). Congress extended the ban on tests and devices in 1970, 1975, and 1982. *See* notes following text at 42 U.S.C. § 1973b (1988).

acts, section 5 provided a screening mechanism for any proposed voting procedure changes. The greatest failure of the former acts had been that the Attorney General bore the burden of proving that specific practices were indeed discriminatory in effect.[52] Accordingly, by the time that the government had proved its case, states would have already held elections or would have changed the allegedly discriminatory devices.[53] Section 5, however, mandated that target states preclear with the Attorney General or the United States District Court for the District of Columbia all proposed changes in their voting laws and procedures before enacting them as law.[54] This afforded the federal government the opportunity to reject discriminatory practices, designed to dilute the black vote, before a state could impose them, effectively forcing states to seek declaratory judgments.[55] Furthermore, the burden was on the state to prove that the changes were not discriminatory.[56]

Most of the vote dilution claims not covered by section 5 were brought under the Equal Protection Clause of the Fourteenth Amendment rather than under the more specific section 2 of the Act.[57] Plaintiffs turned to the Constitution because the scope of section 2 was not clear. It was viewed as an innocuous provision[58] that merely restated the terms of the Fifteenth Amendment.[59]

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52. *See* H.R. REP. NO. 439, *supra* note 32, at 6, *reprinted in* 1965 U.S.C.C.A.N. at 2442.

53. *Id.* at 5-6, *reprinted in* 1965 U.S.C.C.A.N. at 2441-42.

54. Voting Rights Act of 1965, Pub. L. No. 89-110, § 5, 79 Stat. 437 (codified at 42 U.S.C. § 1973c (1988)).

55. *Id.*

56. *See* Georgia v. United States, 411 U.S. 526 (1973); *see also* Procedures for the Administration of § 5, 28 C.F.R. § 51.52 (1992) (submitting party has the burden of showing change has neither a discriminatory purpose nor effect).

57. Frank R. Parker, *The "Results" Test of Section 2 of the Voting Rights Act: Abandoning the Intent Standard*, 69 VA. L. REV. 715, 727-28 (1983).

58. *Id.*

59. The original section 2 read: "No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color." Voting Rights Act of 1965, Pub. L. No. 89-110, § 2, 79 Stat. 437 (codified as amended at 42 U.S.C. § 1973 (1988)).

### C. *Judicial Interpretation of the Voting Rights Act*[60]

To a great extent, the Act accomplished its goal of registering black voters in a short amount of time.[61] Sections 4 and 6 were successful in clearing the way for black voters to register.[62] Because blacks were beginning to register to vote in large numbers, southern states developed new schemes to dilute the strength of the black vote.

As noted above,[63] section 5 of the Act prevented target states from enacting legislation that attempted to dilute or resulted in diluted black voting strength without gaining preclearance from the federal government.[64] Thus, the strength of section 5 depended upon a court's analysis of a state's "standard, practice or procedure."

In *Allen v. State Board of Elections*,[65] the Supreme Court held that a Mississippi law, which sought to change from district to at-large elections the manner of electing county supervisors, came under the purview of section 5.[66] Clearly, this signified a victory for blacks in vote dilution cases because it illustrated the Court's willingness to allow the Attorney

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60. Several southern states attacked the constitutionality of certain sections (sections 4(a)-(d), 5, 6(b), 7, 9, 13(a), and 14) of the Act in South Carolina v. Katzenbach, 383 U.S. 301 (1966). The Supreme Court upheld the sections of the Act on the basis that "Congress may use any rational means to effectuate the constitutional prohibition of racial discrimination in voting." *Id.* at 324 (citing Heart of Atlanta Motel v. United States, 379 U.S. 241 (1964); Katzenbach v. McClung, 379 U.S. 294 (1964)). The Court recognized that section 2 of the Fifteenth Amendment authorized Congress to enforce the article with "appropriate legislation." The Court acknowledged that the legislation had tackled the problem of minority voting rights in an "inventive manner" but that Congress' actions were a legitimate response to the inadequacy of the case-by-case approach. *Id.* at 325-27.

61. *See* S. REP. NO. 417, *supra* note 3, at 6, *reprinted in* 1982 U.S.C.C.A.N. at 183.

62. *See supra* notes 48-51 and accompanying text.

63. *See supra* notes 52-56 and accompanying text.

64. Section 5 read, in relevant part:

> Whenever a [target area] shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964 . . . such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color . . . .

42 U.S.C. § 1973c (1988).

65. 393 U.S. 544 (1969). Mississippi plaintiffs sought to revoke changes in the laws that would allow for certain elective positions to become appointed positions. Also, a second group of Mississippi plaintiffs sought to prevent the State from changing the requirements independent candidates must meet to run in an election. Virginia plaintiffs sought a declaratory judgment that a law allowing handwritten ballots violated the Equal Protection Clause. *Id.*

66. *Id.* at 569 (concluding that the purposes of the statute and the volumes of legislative history clearly indicated that § 5 would apply to the changes in question).

General to flush out discriminatory practices otherwise disguised as legitimate state or local concerns.[67]

Although the Court had sharpened section 5's teeth, the question remained whether the Act would afford blacks the same protection when particular voting schemes were already in place or in areas of the country not covered by section 4. Initially, attempts to challenge already-existing practices were brought under the Fifteenth Amendment. The Supreme Court first required only proof of discriminatory *effect* to find a violation under the Fifteenth Amendment,[68] but ultimately the Court required proof of discriminatory *intent* to find a constitutional violation.[69] As a result, Congress amended section 2 in 1982 to require only a showing of discriminatory *effects* to prove a statutory violation.

In *Reynolds v. Sims,*[70] blacks scored a partial victory when the Supreme Court mandated that states should apportion legislative districts with equal population.[71] This ensured that each person's vote was no stronger nor weaker than the next person's.[72] The "one man, one vote" principle laid down in *Reynolds* set the stage for equal representation. However, with the advent of the Voting Rights Act, it became increasingly evident that equal representation should also encompass the principle that state legislatures should draw districts so as to assure that each voter secured adequate

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67. The Court decided several cases in *Allen*. The Court held that § 5 also reaches reapportionment and attempts to alter the number of seats composing a government body. *Id.*

68. *See infra* notes 79-84 and accompanying text.

69. *See infra* notes 85-87 and accompanying text.

70. 377 U.S. 533 (1964). The plaintiffs alleged that the disparity in population among the legislative districts deprived them of "equal suffrage in free and equal elections" contrary to the Equal Protection Clause. *Id.* at 540. Counties with a small population were able to elect roughly the same number of representatives as the most populous counties. For example, a county with a population of 16,000 and a county with a population of over 600,000 both could elect one state senator. Similarly, a county with a population of less than 14,000 could elect two representatives to the state house of representatives while a county with a population of over 300,000 was only entitled to three representatives. *Id.* at 545-56.

71. *Id.* at 575-76. The Court held that the federal Constitution demanded that "both houses of the legislature be apportioned on a population basis." *Id.* at 576. The Court clarified that "equal" population should not be taken literally, but that the population differences among the districts should be kept at a minimal deviation. *Id.* at 577. The Court also concluded that a case-by-case approach would determine what deviation was minimal. *Id.* at 578.

72. The Court's holding assured that people living in urban areas with a higher concentration of blacks would be represented by a number of legislators proportional to those living in rural, predominantly white, areas. Therefore, the rural areas could no longer control the legislatures. *See Reynolds*, 377 U.S. at 568-71.

representation.[73]

A line of cases following *Reynolds* focused on the use of electoral mechanisms which "submerged" the strength of minority voters. Plaintiffs in *Fortson v. Dorsey*[74] and *Whitcomb v. Chavis*[75] each brought similar challenges against multimember, at-large districts under the Equal Protection Clause. Minority plaintiffs argued that the boundaries of these districts resulted in the submergence of the minority vote. The Supreme Court was unwilling to accept that the multimember districts were per se violations of the Equal Protection Clause.[76] Moreover, the Court concluded that the plaintiffs failed to prove in these particular cases that the multimember districts "operate[d] to minimize or cancel out the voting strength" of the minority voters.[77] However, the Court did not foreclose a situation in which the effects of a particular electoral scheme could indeed prove a violation of the Equal Protection Clause.[78] Within two years of *Chavis*, the Court did come across just such a case.

In *White v. Regester*,[79] the Supreme Court heard a Texas legislative reapportionment case in which the plaintiffs, blacks and hispanics in urban counties, challenged the use of multimember, at-large legislative districts.[80] The Court held that under the "totality of the circumstances,"[81]

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73. Note, Chavis v. Whitcomb: *Apportionment, Gerrymandering, and Black Voting Rights*, 24 RUTGERS L. REV. 521, 550 (1970). There were many ways for the black vote to be canceled even though there were more blacks registered to vote than at any time in American history. For example, a large concentration of black voters in an area could be diffused by splitting the area among several districts thus creating several areas of black minority votes. Or, an at-large system could be created where before there had been a district voting system. In that case, though blacks may be 45% of the total population and able to control several districts, the at-large system would enable the white vote to elect all of the representatives though they were only a narrow majority.

74. 379 U.S. 433 (1965). Plaintiffs in Georgia argued that multimember districts permitted voters in the district at-large to defeat candidates that a particular subdistrict could have elected if it were a single-member district.

75. 403 U.S. 124 (1971). Black plaintiffs in Indiana complained that multimember districts prevented the proportional election of candidates who lived in the ghetto.

76. *Fortson*, 379 U.S. at 438-39; *Chavis*, 403 U.S. at 147.

77. *Fortson*, 379 U.S. at 439. The Court noted that the plaintiffs had not offered any evidence that the electoral mechanism suppressed their vote. *Id.*; *see also Chavis*, 403 U.S. at 149. The Court stated that the plaintiffs had not produced any evidence that the districts were "conceived or operated as purposeful devices to further racial discrimination." 403 U.S. at 149. The Court concluded that the reason that blacks had not been elected was political defeat and not "bias against poor Negroes." *Id.* at 153.

78. *Fortson*, 379 U.S. at 439; *Chavis*, 403 U.S. at 159-60.

79. 412 U.S. 755 (1973).

80. *Id.* The Court still refused to hold that multimember districts were per se unconstitutional. *Id.* at 765. The Court also rejected the notion that disproportionate representation by itself was evidence of a discriminatory device. *Id.* at 765-66.

the multimember districts operated to preclude the effective participation of blacks and hispanics in the political process.[82] The Court did not look to the intent of the Texas legislature; instead, it focused on the "intensely local appraisal" of the relationship between the multimember districts and the history of racial discrimination and their persistent effects on "education, employment, economics, health and politics" within the communities.[83]

For several years, lower courts used the criteria established in *White*, and later modified by the Fifth Circuit in *Zimmer v. McKeithen*,[84] in order to determine whether certain electoral mechanisms resulted in the discrimination against blacks and other minorities at the polls. However, in *Mobile v. Bolden*[85] the Court seemingly shifted the focus of its analysis to concentrate on the presence of discriminatory *intent* behind an electoral mechanism rather than its *effects*.[86] A plurality of the Court found that the plaintiffs had not provided evidence that the Alabama legislature "conceived or operated" the at-large electoral system in Mobile to advance

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81. The "totality of circumstances" included the following factors: (1) that the minority group constituted an "identifiable class for Fourteenth Amendment purposes"; (2) that a "history of racial discrimination" in the state and in the counties existed; (3) that the state used a majority vote requirement in the primary election; (4) that the past success of black candidates with the slating process was low; and (5) that candidates had resorted to "racial campaign tactics." *Id.* at 766-67.

The Court looked toward the cultural and economic realities of Bexar, the San Antonio county at issue in *White*, for guidance. Most hispanics in the county were poor, and language and cultural barriers separated them from the mainstream. Additionally, there was evidence of discrimination with respect to education, employment, health, and politics. *Id.* at 767-69.

The Fifth Circuit later refined the totality of the circumstances test in Zimmer v. McKeithen, 485 F.2d 1297 (5th Cir. 1973) (en banc), *aff'd sub nom.* East Carroll Parish Sch. Bd. v. Marshall, 424 U.S. 636 (1976).

82. *White*, 412 U.S. at 765. The Court stated that:

> The plaintiffs' burden is to produce evidence to support findings that the political processes leading to nomination and election were not equally open to participation by the group in question—that its members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice.

*Id.* at 766 (citing *Chavis*, 403 U.S. at 149-50).

83. *Id.* at 767-69.

84. 485 F.2d 1297 (5th Cir. 1973) (en banc), *aff'd sub nom.* East Carroll Parish Sch. Bd. v. Marshall, 424 U.S. 636 (1976).

85. 446 U.S. 55 (1980).

86. The plurality criticized the district court's reliance on *Zimmer*. The opinion stated that *Zimmer* was "quite evidently decided upon the misunderstanding that it is not necessary to show a discriminatory purpose in order to prove a violation of the Equal Protection Clause—that proof of a discriminatory effect is sufficient." *Id.* at 71 (citing Washington v. Davis, 426 U.S. 229 (1976)).

discrimination.[87]

Civil rights advocates viewed the *Bolden* decision as a stunning defeat.[88] The black citizens of Mobile had successfully alleged in the district court that the at-large system for electing the three-person city commission prevented them from electing a candidate of their choice.[89] The district court premised its finding for the plaintiffs on the *Zimmer* criteria.[90] First, although blacks comprised approximately thirty-five percent of the population, no black candidate had ever won an election to the commission.[91] The white voting bloc could consistently defeat any black candidate.[92] Second, the court stated that the commission discriminated against blacks in job opportunities and community services.[93] Third, the court found no preference for at-large districts in the state.[94] Finally, the district court examined the history of "official discrimination in Alabama."[95]

Nevertheless, the Supreme Court rejected the district court's conclu-

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87. *Id.* at 66 (citing Washington v. Davis, 426 U.S. 229 (1976)). In *Washington*, the Court rejected a claim by black plaintiffs that the Washington D.C. Police Department's use of a qualifying test was discriminatory solely on evidence that a disproportionate number of black applicants had failed. *Washington*, 426 U.S. at 233. The Court held that proof of discriminatory purpose was essential to make out a violation of the Equal Protection Clause. *Id.* at 239. The Court did not discard disproportionate impact as a relevant factor, but it made it clear that it was only one factor that might tend to prove discriminatory purpose. *Id.* at 241-42. *See also* Arlington Heights v. Metropolitan Hous. Dev. Corp., 429 U.S. 252, 265 (1977), *quoted in Mobile*, 446 U.S. at 67 ("Proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause.").

88. Rochelle L. Stanfield, *Black Complaints Haven't Translated Into Political Organization and Power*, 12 NAT'L J. at 967 (June 14, 1980). *See also* S. REP. NO. 417, *supra* note 3, at 26, *reprinted in* 1982 U.S.C.C.A.N. at 203 (recognizing that the number of new vote dilution cases had curtailed sharply).

89. Bolden v. Mobile, 423 F. Supp. 384, 399 (S.D. Ala. 1976), *aff'd*, 571 F.2d 238 (5th Cir. 1978), *rev'd*, 446 U.S. 55 (1980).

90. The court analyzed each of the *Zimmer* factors in turn. *Id.* at 399-402. See *infra* text accompanying notes 91-94 for a discussion of these criteria.

91. *Bolden*, 423 F. Supp. at 399. The court concluded that although the parties did not have a slating scheme in Mobile County, the system nevertheless discouraged blacks from running in the at-large district. *Id.*

92. *Id.* The court held that polarized voting closed the electoral system to blacks and was an example of the "barrier to effective participation" of which *White* and *Zimmer* warned. *Id.* at 399-400.

93. *Id.* at 400. The court noted that Mobile reluctantly desegregated public facilities and even then only upon the orders of the court. *Id.* It also recognized that the city commissioners had failed to appoint blacks to municipal committees, integral divisions of the city government. *Id.*

94. *Id.* at 400-01.

95. *Id.* at 401. The court also relied on the "enhancing factors" laid out in *Zimmer*. *Id.*

sions[96] and insisted that the plaintiffs had not provided evidence that would prove the state had adopted or maintained the plan for discriminatory reasons.[97] The Court thus brought the future of minority voting rights into question by requiring the nearly impossible proof of discriminatory intent.[98]

Congress reacted sharply to the *Bolden* decision and amended section 2 of the Voting Rights Act,[99] which previously had been considered "so perilous."[100] The new section 2[101] codified the results test established in *White* and refined in *Zimmer*.[102] After this amendment, plaintiffs

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96. 446 U.S. at 72-74. The Court acknowledged the history of discrimination in Alabama, but did not accept that the district court's evaluation proved discriminatory intent. *Id.* at 74. The Court reasoned that blacks had not won elections because only three inexperienced black candidates had ever run, and the black community did not support them with any amount of zeal. *Id.* at 73 n.19. The Court also believed that evidence of discrimination by the commission against blacks was circumstantial at best. *Id.* Furthermore, the Court thought that the proper focus should have been directed to whether the state legislature, rather than the commissioners, purposely discriminated against blacks. *Id.* at 74 n.20.

97. Indeed, the plaintiffs' burden was difficult. The Mobile City commission originated in 1911. *Id.* at 59.

98. Commentators believed that it would be nearly impossible for plaintiffs to prove discriminatory intent. First, a plaintiff would have to prove the intent of a group of legislators, not just one lawmaker. Second, many systems in question had been developed decades before. For example, the at-large districts in Alabama were a result of a 1911 law. Third, legislators would be reluctant to divulge their reasons for enacting "discriminatory" laws, especially if they had acted with discriminatory intent. Finally, many courts had adopted rules that forbade legislators from being cross-examined to discover their motivations. Parker, *supra* note 57, at 740-41. *See also* Palmer v. Thompson, 403 U.S. 217, 225 (1971) (noting the difficulty in discerning a group's motivation).

99. S. REP. NO. 417, *supra* note 3, at 27, *reprinted in* 1982 U.S.C.C.A.N. at 205.

100. *See* Parker, *supra* note 57, at 727-28.

101. The amended section 2 reads:

> (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any state or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.
>
> (b) A violation of subsection (a) of this section is established if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

42 U.S.C. § 1973 (1988). See *supra* note 59 for text of original § 2.

102. The Senate Judiciary Committee set out circumstances which could be probative of a violation of the section. The circumstances to be considered were a history of official discrimination by the state or local government, existing racial polarization of elections, suspect voting procedures and districting

would only have to prove that the current electoral mechanism in their political subdivision, accompanied by historic social inequities in that subdivision, hindered blacks from participating on equal ground with whites in the political process.[103] The amendment made it clear that it was no longer necessary for plaintiffs in vote dilution cases to prove discriminatory intent.[104] However, the so-called "Dole Compromise" made it equally clear that section 2 was not to be interpreted to give any class of voters an entitlement to proportional representation.[105]

The amendment of section 2 meant that subsequent vote dilution cases would be statutory rather than constitutional claims.[106] *Thornburg v. Gingles*[107] afforded the Supreme Court its first chance to interpret the scope of the new section 2.

In *Gingles*, a group of black citizens challenged the redistricting plan for North Carolina's state legislature.[108] The district court analyzed the evidence presented under the *Zimmer* factors and determined that portions of the plan did in fact violate section 2.[109] While the Supreme Court

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schemes, a denial of minority access to a candidate slating process, the effects of discrimination on the lives of minorities, racial overtures in political campaigns, and the number of minorities elected to office in the jurisdiction. S. REP. NO. 417, *supra* note 3, at 28-29, *reprinted in* 1982 U.S.C.C.A.N. at 206-07.

103. *Id.*

104. *Id.* at 2, 15-16, 27, *reprinted in* 1982 U.S.C.C.A.N. at 179, 192-93, 205. The *Senate Report* gave three reasons why the intent test was inappropriate. First, the relevance of the perhaps 100-year old motives behind a law is minimal if the goal is to include minorities in the political process today. *Id.* at 36, *reprinted in* 1982 U.S.C.C.A.N. at 214. Second, the intent test is divisive because minority plaintiffs must rely on a charge of racism against local officials and the community as a whole. Yet, these charges of racism certainly cannot promote racial harmony, an equally important goal. *Id.* Finally, the burden of proof would be nearly impossible to meet. *Id. See also supra* note 98.

105. 42 U.S.C. § 1973. The "Dole Compromise," named for its primary sponsor, Kansas Senator Robert Dole, was the last clause of § 1973. See *supra* note 101 for text of this section. For judicial support of the same principle, see *White*, 412 U.S. at 766 and *Chavis*, 403 U.S. at 149.

Furthermore, the *Senate Report* acknowledged that at-large electoral schemes were not per se violative of § 2. S. REP. NO. 417, *supra* note 3, at 16, *reprinted in* 1982 U.S.C.C.A.N. at 193. The *Senate Report* also clarified that § 2 did not assume racially polarized voting existed in any political subdivision. Section 2 required that the plaintiffs prove such a pattern in vote dilution cases. *Id.* at 29, *reprinted in* 1982 U.S.C.C.A.N. at 206.

106. For example, in Thornburgh v. Gingles, 478 U.S. 30 (1986), the Supreme Court noted that the district court had only addressed the plaintiffs' § 2 claim and had not reached their Fourteenth and Fifteenth Amendment claims. *Id.* at 38.

107. 478 U.S. 30 (1986).

108. *Id.* at 35. The suit challenged "one single member and six multi-member districts" created by the 1982 North Carolina General Assembly. *Id.*

109. *Id.* at 37-38. First, the district court found that black citizens comprised a recognizable class of minority voters in the districts and that the State of North Carolina had a history of discrimination against blacks with the right to vote. *Id.* at 38-39. It also found that, historically, blacks had inferior

recognized the relevance of the *Zimmer* factors,[110] it devised three necessary preconditions that plaintiffs had to establish in order for courts to hold that an electoral mechanism violates section 2:[111] 1) the minority group must be sufficiently large and geographically isolated to create a majority in a single-member district;[112] 2) the minority group must consistently vote as one;[113] and 3) a majority voting bloc must consistently defeat the preferred candidates of the minority group.[114] With this formulation the Court basically established a permissive standard for vote dilution cases—if a minority group can bring a viable remedy to court, prove that it has been unable to elect its candidates, and prove that voters vote along racial lines, then the group has made a claim.[115]

*Gingles*, furthermore, showcased a split in the Supreme Court. Justice O'Connor, speaking for four members of the Court, expressed her concerns that the majority test significantly altered the "totality of the circumstances test"[116] and, thereby, broadened the scope of section 2 well beyond

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"education, housing, employment and health services" which contributed to their inability "to participate effectively in the political process and to elect representatives of their choice." *Id.* at 39. The court found that existing mechanisms still prevented black candidates from being elected. *Id.* at 39-40. It found that whites voted in a bloc and that candidates appealed to racial prejudices. *Id.* at 40. Furthermore, black candidates had not enjoyed any consistent success in past elections. Finally, the court noted that there was racially polarized voting in the districts. *Id.* at 40-41.

110. *Id.* at 48.

111. In a footnote, the Court noted that some of the *Zimmer* factors were more dispositive than others. For example, the Court concluded that the extent to which minority candidates were successful and the extent to which voters split along racial lines were the most important factors. The remaining factors were "supportive of, but *not essential to*, a minority voter's claim." *Gingles*, 478 U.S. at 48 n.15.

112. *Id.* at 50. The Court reasoned that if the group was not large enough in a relatively small area, then the multimember district was not the culprit that disabled the group's effective participation in the political process. *Id.* (relying on James V. Blacksher & Larry T. Menefee, *From* Reynolds v. Sims *to* City of Mobile v. Bolden*: Have the White Suburbs Commandeered the Fifteenth Amendment?*, 34 HASTINGS L.J. 1 (1982)).

113. *Gingles*, 478 U.S. at 51. If the minority group could not unite to support a candidate, then the creation of a single-member district would not likely remedy the situation. *Id.*

114. *Id.* Again, the minority group must prove that the majority votes in a bloc to defeat the minority's preferred candidate. However, if blacks could occasionally elect black candidates, it would not necessarily mean that a potential vote dilution case was dead before it reached the courthouse door. *Id.*

115. Bloc voting is doubly important. It proves political cohesiveness in the minority group, and it illuminates the obstacle of the majority vote. *Id.* at 85 (O'Connor, J., concurring).

116. By defining racial bloc voting and minority voting strength in set terms and using electoral results, Justice O'Connor believed that the Court directed lower courts to find a claim of vote dilution established when a plaintiff proved that the three elements existed, rather than having courts examine the totality of the circumstances as defined in *White* and *Zimmer*. *Id.* (O'Connor, J., concurring). See *supra* note 81 and accompanying text for a discussion of the "totality of the circumstances" test.

congressional intent.[117] She believed that the majority's test was rigid[118] and would result in proportional representation[119]—precisely what section 2 declared was not to occur.[120]

Since the *Gingles* decision, commentators have stated that vote dilution cases are much easier for minority voters to win.[121] State and county governments often do not contest these cases because of the likelihood of failure and high costs.[122] With the operative interpretation in the *Gingles* case, the piecemeal approach to solving vote dilution had finally produced a tool effective enough to make real strides.

## III. THE EFFECTS OF THE VOTING RIGHTS ACT ON JEFFERSON PARISH, LOUISIANA

Louisiana has been covered by section 5 since the enactment of the Voting Rights Act in 1965.[123] Jefferson Parish is also particularly worthy of its section 5 coverage. Jefferson Parish garnered national attention in recent years when David Duke was elected to the state legislature from a district within the parish[124] and when the local sheriff issued a short-lived directive to his officers to pull over black people driving dilapidated cars in wealthy neighborhoods.[125] Jefferson Parish is still struggling to cope with more than 150 years of racial segregation and discrimination. Only recently has the climate begun to change.[126]

Because plaintiffs in vote dilution cases still must offer a history of the political subdivision in terms of the *Zimmer* factors,[127] this Note will introduce Jefferson Parish, and to some extent Louisiana, in terms of two

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117. However, Justice O'Connor noted that the legislation was a self-contradictory compromise in that it explicitly denied a right to proportional representation but envisioned a solution for vote dilution that necessarily contemplated "the proportion between the minority group and the electorate at large." *Gingles*, 478 U.S. at 84 (O'Connor, J., concurring).

118. *Id.* at 90 (O'Connor, J., concurring) (characterizing the Court's test as "simple and invariable").

119. *Id.* at 85 (O'Connor, J., concurring).

120. 42 U.S.C. § 1973(b). See *supra* note 101 for text of § 1973(b).

121. *See* THERNSTROM, *supra* note 3, at 193.

122. *Id.*

123. *See supra* notes 41-43 and accompanying text.

124. *Louisiana's Blow-dried Grand Wizard*, NEWSWEEK, Jan. 23, 1989, at 27; *The GOP's Cross to Bear*, U.S. NEWS & WORLD REP., March 6, 1989, at 14.

125. Terry E. Johnson, *Mean Streets in Howard Beach*, NEWSWEEK, Jan. 5, 1987, at 24.

126. *See infra* notes 225-28.

127. The *Zimmer* factors, adopted by Congress as indicated in the legislative history of the 1982 amendment to the Voting Rights Act, are set out at *supra* notes 91-94.

of those factors:[128] the history of official discrimination and the negative effects of discrimination on the black community. However, notwithstanding these disadvantages, Jefferson Parish's black community has benefitted considerably from the Voting Rights Act. Two recent high-profile cases have paved the way for improved minority involvement in politics.

### *A. History of Official Discrimination and Discriminatory Voting Practices*

Louisiana has long subjected its black population to official discrimination. Immediately following emancipation, blacks were successful in both registering to vote and in electing black candidates to office in Louisiana.[129] However, racial violence and intimidation characterized much of the post-Reconstruction era.[130]

Beginning in the 1890s with the fall of the Enforcement Act of 1870,[131] Louisiana began to enact laws that effectively stole from black citizens the right to vote. The 1898 Louisiana Constitution attached literacy and property qualifications to voter eligibility and registration.[132] These qualifications caused all but a handful of blacks to be purged from the rolls.[133] At the same time, the constitution's "grandfather clause" exempted the poor and illiterate whites from these requirements.[134]

The Supreme Court of the United States declared the grandfather clause unconstitutional in 1914.[135] But at the beginning of the century, the

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128. *See* Dr. Lawrence Powell, A History of Efforts by the Black Citizens of Jefferson Parish to Implement the Voting Rights Act of 1965, 10 (unpublished). Dr. Powell chose to address the history of Jefferson Parish in this manner. Dr. Powell's history was prepared for trial in Fifth Ward Coalition v. Jefferson Parish Sch. Bd., C.A. No. 86-2963 (E.D. La. 1989).

129. Powell, *supra* note 128, at 2-3. More than 90% of blacks in Louisiana registered to vote after the Emancipation Act. Blacks elected black candidates to parish, state, and federal offices. In Jefferson Parish, voters elected a black man, T. B. Stamps, to the state legislature during the Reconstruction. *Id.* (citing CHARLES VINCENT, BLACK LEGISLATORS IN LOUISIANA DURING RECONSTRUCTION (1976)).

130. *Id.* at 3. Reconstruction in Louisiana saw "fraud, chicanery, and dirty tricks; political assassinations and coup d'etats, armed uprisings, race riots, economic coercion, sullen noncompliance, and a climate of generalized violence." *Id.* (citing JOE GRAY TAYLOR, LOUISIANA RECONSTRUCTED 1863-1877 (1974)).

131. *See supra* notes 9-12 and accompanying text.

132. LA. CONST. of 1898, art. 197, §§ 3-4.

133. Powell, *supra* note 128, at 3. Nearly 135,000 blacks registered to vote by 1890. Only 750 remained on the rolls by 1910. *Id.*

134. *Id.* at 3-4. The constitution exempted anyone whose grandfather was registered before 1867. LA. CONST. of 1898, art. 197, § 5. Because blacks could not register before 1867, the law only applied to whites.

135. *See* Guinn v. United States, 238 U.S. 347 (1915); *see also supra* note 17.

white primary[136] was the practice most widely used to keep blacks from the polls.[137] Louisiana was a one-party state, so the primary usually controlled the outcome of the elections.[138] When the Supreme Court struck down white primaries in 1943,[139] Louisiana resorted to the "understanding clause" that had been developed but unused since the 1921 constitution.[140] To implement the understanding clause, the state had utilized an interpretation test, which was especially effective because the registrar decided whether the applicant had passed the oral test.[141] During the life of the understanding clause and interpretation tests, blacks in Jefferson Parish had to state their age, to the day, or recite parts of the Constitution or both in order to register.[142] The Supreme Court did not invalidate these tests until 1965,[143] the year Congress enacted the Voting Rights Act.

Blacks in Jefferson Parish also suffered other forms of discrimination in their daily lives. Blacks rode in the back of the bus and ate in black-only restaurants.[144] They did not dare step in public parks or enter public swimming pools designated "white only."[145] Whites did not tolerate blacks in their neighborhoods. Until 1971, Jefferson Parish even maintained segregated public schools, a practice facilitated by segregated neighborhoods.[146] Prior to integration, black schools were inferior to their white counterparts.[147] Separate but equal was not even the rule in Jefferson Parish, rather, equality was the exception.

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136. The Louisiana Constitution allowed political parties to set forth the rules governing their primaries. LA. CONST. of 1921, art. VIII, § 4. Subsequently, the political parties only allowed whites to vote in their primaries. Powell, *supra* note 128, at 4.

137. Powell, *supra* note 128, at 4.

138. *Id.*

139. *See* Smith v. Allwright, 321 U.S. 649 (1944); *see also supra* note 17.

140. LA. CONST. of 1921, art. VIII, § 1(d). *See also* Powell, *supra* note 128, at 4-5.

141. Powell, *supra* note 128, at 4-5. The understanding clause came to be known as the interpretation test. *Id.* at 4. *See also* Louisiana v. United States, 380 U.S. 145, 148-51 (1965).

142. Powell, *supra* note 128, at 5.

143. *See* Louisiana v. United States, 380 U.S. 145 (1965), *aff'g* 225 F. Supp. 353 (E.D. La. 1963).

144. Powell, *supra* note 128, at 5.

145. *Id.* at 6.

146. The courts forced integration after prolonged litigation. *See* Dandridge v. Jefferson Parish Sch. Bd., 332 F. Supp. 590 (E.D. La. 1971), *aff'd*, 456 F.2d 552 (5th Cir. 1972), *cert. denied*, 409 U.S. 978 (1972).

147. Citizens for a Better Gretna v. City of Gretna, 636 F. Supp. 113, 1118 (E.D. La. 1986) ("[F]acilities and instruction provided to black children were qualitatively inferior to those provided to whites.").

### *B. The Effects of Discrimination on the Black Community*

Discrimination has taken its toll on blacks in Jefferson Parish. Racial discrimination has risen to a level that "hinder[s] their ability to participate effectively in the political process."[148] In nearly all socio-economic areas, blacks suffer disadvantages compared with whites. According to the 1980 census,[149] less than 50% of blacks over the age of twenty-five in Jefferson parish held high school degrees, compared with a greater than 70% figure for whites.[150] More than 25% of blacks in the parish had not completed the eighth grade. Only 16% of whites were so unfortunate.[151]

These social disadvantages mean that blacks do not get the best jobs,[152] and in many cases, blacks do not get jobs at all in Jefferson Parish.[153] On the whole, black people have lower incomes than whites.[154] In fact, 25% of black families in Jefferson lived near the poverty line in 1980.[155] At the same time, only 5% of white families in the parish were similarly situated.[156]

The educational deficiencies and the economic disadvantages produced by the decades of discrimination have combined to prevent blacks from effectively participating in the political process.[157] Blacks do not believe that they can influence the system,[158] and they often do not have the

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148. See *supra* note 109 for discussion of the ability "to participate effectively in the political process."

149. The 1980 Census is relevant because many of the cases involving Jefferson Parish originated in the 1980s. *See infra* part III.C.

150. Powell, *supra* note 128, at 9 (citing 1980 Census of Population and Housing, Publication PHC80-2-259).

151. *Id.*

152. *Id.* at 7-8. Slightly more than 10% of blacks in Jefferson Parish were professionals in 1980 while 25% of whites in the parish enjoyed professional careers. The statistics reverse when speaking of "blue collar" jobs, with 29% of the black population holding such employment but only 12% of white Jeffersonians performing blue collar work. *Id.*

153. *Id.* at 8.

154. *Id.* Per capita income for whites was $8,302 and $4,279 for blacks. *Id.* at 9 (citing 1980 Census of Population and Housing, Publication PHC80-2-259).

155. *Id.*

156. Powell, *supra* note 128, at 9.

157. *See id.* at 8. *See generally* S. VERBA & N. NIE, PARTICIPATION IN AMERICA (1972).

158. *Citizens for a Better Gretna*, 636 F. Supp. at 1119 ("[I]t is axiomatic 'when minorities are faced with almost total exclusion from the ordinary channels of political participation and deprived of any alternative means of exerting influence, their voter turnout and candidacy rates tend to drop.'") (quoting MINORITY VOTE DILUTION (C. Davidson ed., 1984)).

resources to support their candidates.[159]

### C. *Two Influential Vote Dilution Cases in Jefferson Parish*

#### *1.* Citizens for a Better Gretna v. City of Gretna[160]

Plaintiffs challenged an at-large electoral system in Gretna, a municipality of Jefferson Parish.[161] At the time of the suit, Gretna was the largest incorporated municipality in Louisiana that used an at-large electoral system.[162] Plaintiffs brought a class action suit and alleged that the at-large system, coupled with a majority vote requirement,[163] denied them the opportunity to participate in the electoral process and elect their preferred candidates to the city's board of aldermen.[164] Even though blacks comprised twenty-eight percent of the city's population, the system, as operated, effectively assured that the white majority could defeat all

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159. *Gingles*, 478 U.S. at 70.

> If, because of inferior education and poor employment opportunities, blacks earn less than whites, they will not be able to provide the candidates of their choice with the same level of financial support that whites can provide theirs. Thus, electoral losses by candidates preferred by the black community may well be attributable in part to the fact that their white opponents outspent them.

*Id.*

160. 636 F. Supp. 1113 (E.D. La. 1986), *aff'd*, 834 F.2d 496 (5th Cir. 1987), *cert. denied*, 492 U.S. 905 (1989).

161. A similar case was brought in Westwego, another municipality in Jefferson Parish, but the two cases parallel each other, and the information is duplicative. Blacks comprised only 11% of the population in Westwego when the suit was brought. Nevertheless, the plaintiffs were successful after a six year struggle in the courts. Westwego Citizens for Better Gov't v. City of Westwego, 872 F.2d 1201 (5th Cir. 1989). The Fifth Circuit explicitly rejected the district court's contention that the Voting Rights Act did not intend to reach small city governments. *Id.* at 1207. Perhaps more importantly for the future of vote dilution cases, the Fifth Circuit stated that the three criteria given in *Gingles* were merely threshold issues, and if they were met, then courts should use the totality of the circumstances test to determine whether the plaintiffs had demonstrated a violation of § 2. Westwego Citizens for Better Gov't v. City of Westwego, 946 F.2d 1109, 1116 (5th Cir. 1991).

162. 636 F. Supp. at 1124. Gretna was incorporated under the Lawson Act, LA. REV. STAT. ANN. § 33.1 (West 1988)). The population at the time of the suit was 20,615. 636 F. Supp. at 1124.

163. LA. REV. STAT. §§ 18.511-.512 (West 1988). Sections 18.511 and 18.512 are the relevant statutes governing the number of votes required to elect a candidate in an at-large election. Under these statutes, voters may vote for as many candidates as there are vacancies to be filled. In the primary, all candidates who receive a majority of the votes are elected unless there are more candidates who receive a majority than there are positions. In that case, the candidates gaining the most votes fill the seats. If fewer candidates than the number of positions receive a majority, then a run-off is held to fill the remaining seats. It is conceivable that a candidate will not receive a majority of the votes and still be elected in the run-off. Experts refer to this system as a "sliding minimum vote requirement." 636 F. Supp. at 1124.

164. 636 F. Supp. at 1115.

black candidates.[165]

The district court analyzed the evidence pursuant to the *Zimmer* factors recognized in the legislative history to the 1982 amendment of section 2.[166] It concluded that black citizens of Gretna had historically been the victims of official discrimination[167] and, therefore, were not able to stand on equal footing with whites in the electoral process.[168] The judge stated that discrimination had led to a "lower socio-economic status" for blacks and furthered their inability to participate effectively in the political process.[169]

Next, the district court examined the extent of black candidates' success in Gretna and discovered that no black candidate had ever been elected in the seventy-five year history of the city. In fact, only two candidates had ever run for alderman.[170]

The City argued, however, that blacks *had* elected candidates of their choice because the white aldermen had consistently received support from the black community.[171] Furthermore, the City argued that in fact one of the black candidates had not received the support of the black community.[172] Ultimately, the court rejected both arguments.[173]

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165. If whites voted along racial lines, then the most support that a black candidate could receive was 28%—100% of the black vote. *Id.* at 1118.

166. *See supra* note 102. The district court heard the case before the decision in *Gingles*. *See supra* notes 107-20 and accompanying text.

167. *Citizens for a Better Gretna*, 636 F. Supp. at 1116-18. Black Gretna residents either attended the uncertified high school, Rosenwald, or commuted to Orleans Parish. *Id.* at 1118 n.9. Only 40% of blacks in Gretna over the age of twenty-five had graduated high school. *Id.* at 1118. Consequently, blacks held lower paying jobs and were more likely to be unemployed than whites in Gretna. *Id. See also supra* text accompanying notes 144-54.

168. *Citizens for a Better Gretna*, 636 F. Supp. at 1131. The court concluded that when minorities are not included in the process, they believe that they cannot exert any influence and, therefore, do not vote. *Id.* at 1119.

169. *Id. See also* S. REP. NO. 417, *supra* note 3, at 29 n.114, *reprinted in* 1982 U.S.C.C.A.N. at 207. The court also concluded that these factors led to special interests and gave rise to the need for candidates who would be sympathetic to these interests. *Citizens for a Better Gretna*, 636 F. Supp. at 1119-20.

170. *Citizens for a Better Gretna*, 636 F. Supp. at 1120. Edward Romain ran in 1973, and Leo Jones ran in 1977 and 1979.

171. *Id.* at 1121.

172. *Id.* The City argued that Leo Jones had not received the support of either the Westside Citizens Committee or the Black Caucus in either of his bids for election.

173. *Id.* at 1121. The court derisively dispelled the first argument. Judge Collins analogized the argument to Henry Ford's quip, "Any customer can have a car painted any color he wants so long as it is black." *Id.* (quoting JAMES P. BARRY, HENRY FORD AND MASS PRODUCTION 55 (1973)).

The court also found that Leo Jones was not a token candidate. It concluded that Mr. Jones had respectably finished ninth out of twelve candidates and fourth out of seven candidates in the elections.

Finally, the court considered the impact of racially polarized voting. The problem presented was that under the totality of the circumstances test, plaintiffs had to prove vote dilution based upon a "particularized local appraisal." However, the citizens of Gretna had only three occasions to vote for black candidates,[174] and two of those elections had been held before the City had begun keeping records enabling them to determine polarization.[175] The issue before the court, then, was whether a limited opportunity to vote for black candidates exhibited sufficient proof of polarization.[176] After examining statistical data,[177] the court held that there was substantial evidence of racial bloc voting within the City.[178] Finally, the court found that every relevant factor[179] pointed to the conclusion that the at-large system used in Gretna prevented black voters from participating equally with white voters in the electoral process.[180]

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The court also noted that Mr. Jones had spent an amount of money equivalent to the amount spent by other candidates in the elections. *Id.* Finally, the court determined that Mr. Jones had campaigned heavily and that he was a viable leader as a former police deputy. *Id.* at 1121-22.

174. *Citizens for a Better Gretna*, 636 F. Supp. at 1120.

175. *Id.* at 1125.

176. *Id.* at 1124-25, 1133.

177. The court heard the testimony of Dr. Richard Engstrom and Professor Michael McDonald, both of whom had studied elections in Gretna. They studied two elections for alderman and two exogenous elections: Jesse Jackson in the 1984 Democratic primary and Ben Jeffers' campaign for Louisiana Secretary of State in 1979. *Id.* at 1125-29. They based their studies on "two complimentary methods of analysis": (1) correlation and regression analysis and (2) homogenous precinct analysis. *Id.* The studies showed that blacks voted for black candidates between 60% and 67% of the time in the aldermanic elections. For the same elections, whites voted between .9% and 12% for black candidates. *Id.* at 1126. In the exogenous elections, blacks in Gretna voted for the two black candidates at a rate of 70% to 95%. Less than 8% of whites voted for the two candidates. *Id.*

178. *Id.* at 1131. The court extracted one piece of evidence that pointed directly to racial bloc voting that even a layman can understand. In the 1973 election, Edward Romain ran for alderman against nonincumbents. He is a light-skinned black. He campaigned heavily in white neighborhoods with his light-skinned daughters and deliberately did not campaign with his darker-skinned sons. The whites did not realize that he was black, and he qualified for the run-off. Between the elections, the local newspaper printed that Mr. Romain would have a chance to be the first black alderman in Gretna. He finished last in every white precinct where he had shown so favorably just weeks before. *Id.* at 1130.

179. *Id.* at 1122-24. The court held that a nonpartisan slating group controlled the candidacies for political offices in Gretna. *Id.* at 1122. The court also found that the slating group was not open to blacks. *Id.* The court concluded that Gretna was an unusually large district, that a majority vote requirement existed, and that there was no provision that candidates had to run from a particular subdistrict. *Id.* at 1124. The court recognized that the Fifth Circuit had characterized these provisions as "enhancing factors" in vote dilution cases. *Id.*

180. *Citizens for a Better Gretna*, 636 F. Supp. at 1131. The court stated that the totality of the circumstances resulted in the "submergence of black registered voters in the City of Gretna as a voting minority with substantially less opportunity than other members of the electorate to participate in the

On appeal, the Fifth Circuit upheld the district court decision.[181] The court clarified one point in the district court's opinion. As noted, the City had argued that in one election blacks had given a higher percentage of their votes to two white candidates than the single black candidate, and therefore, that the black candidate was not the preferred candidate of the black community.[182] The court concluded that such a result was inevitable because each voter could cast five votes in the at-large election.[183] Furthermore the court held that that fact, in and of itself, did not mean that blacks did not vote for black candidates as a bloc.[184]

*2.* East Jefferson Coalition v. Parish of Jefferson[185]

A seven-seat parish council governs Jefferson Parish.[186] Prior to this suit, voters elected council members from four single-member districts,[187] two floterial districts (combined single-member districts),[188] and one from

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political process, thereby depriving the black voters of their lawful right to elect representatives of their choice." *Id.*

181. 834 F.2d 496 (5th Cir. 1987), *cert. denied*, 492 U.S. 905 (1989). The Supreme Court had issued the *Gingles* decision in the meantime. However, the Fifth Circuit held that the *Gingles* decision did not render the district court's analysis and holding obsolete. *Id.* at 497.

182. *Id.* at 502.

183. *Id.*

184. *Id.* The Court noted that it would be "unavoidable " for certain white candidates to receive a large portion of black votes because there was only one black candidate and a person could vote for five individuals. *Id.*

185. 691 F. Supp. 991 (E.D. La. 1988), *aff'd*, 926 F.2d 487 (5th Cir. 1991). This case was preceded by a suit challenging the parish council's districting plan as violative of the one man, one vote principle. Cedric Floyd v. Parish of Jefferson, C.A. No. 86-0625 (E.D. La. 1986). The plaintiffs and the parish agreed to reapportion the districts in order to remedy the violation. The plaintiffs hoped that the Department of Justice would then invalidate the parish's scheme as violative of § 5 of the Voting Rights Act. However, the Department of Justice validated the new districts over the plaintiffs' objection. The plaintiffs then filed this suit under § 2 of the Act. 691 F. Supp. at 994.

186. In 1958, Jefferson Parish residents voted to change the form of local government from a 17-member police jury to the 7-seat council. At the time, the change of form of government was predicated on a change in power structure. The change took place because of concern that the police jurors' efforts were limited to their respective wards and not the parish as a whole. Donald N. Kearns, The Politics of Change: A Case Study of Jefferson Parish 20 (1968) (on file with the *Washington University Law Quarterly*). Purposeful discrimination against blacks in Jefferson Parish was not the motive for change because few blacks lived in the parish at the time. *Citizens for a Better Gretna*, 636 F. Supp. at 1117.

187. 691 F. Supp. at 994. Districts were divided so that two, 1 and 2, were on the west bank of the Mississippi River and two, 3 and 4, were on the east bank of the river. Interview with Jack Grant, Counsel, Jefferson Parish School Board, in Kenner, La. (Dec. 22, 1992).

188. 691 F. Supp. at 994. Districts 1 and 2 elected one councilman at-large, and districts 3 and 4 elected a separate councilman at-large.

the parish at-large.[189] The plaintiffs brought the suit under the Voting Rights Act[190] and alleged that the three-tiered electoral system coupled with a majority vote requirement deprived black citizens of their right to elect the candidates of their choice.[191]

The district court focused on the three threshold conditions necessary for a vote dilution suit: the cohesiveness of the black community, the existence of a white voting bloc, and the geographical concentration of black citizens in the parish.[192] The district court held that significant evidence existed to prove that the black people in Jefferson Parish voted as a unified group and that the white community voted in a bloc to defeat the black community's preferred candidates.[193] Because only four black candidates had run for council seats,[194] the court considered extraneous elections, and not just parish council elections, in order to understand the voting patterns within the parish more clearly.[195] With few exceptions, black

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189. *Id.* This final seat was for the council chairman.

190. *Id.* at 993-94. The plaintiffs also alleged that the system violated the Fourteenth and Fifteenth Amendments and 42 U.S.C. § 1983. *Id.*

191. *East Jefferson Coalition*, 691 F. Supp. at 993. The 1980 Census showed that the voting age population was 314,323. Whites comprised 268,878 (85.5%) of that figure and blacks 37,039 (11.8%). Sixty-four percent of whites were registered to vote compared to 63% of blacks. *Id.* at 995 (citing 1980 Census).

192. *Id.* at 997. *See also supra* notes 112-14. The court heard this case after the *Gingles* decision and, therefore, followed the three-part test set forth in that opinion. *East Jefferson Coalition*, 691 F. Supp. at 997. See *supra* notes 107-21 and accompanying text for a discussion of *Gingles*.

193. 691 F. Supp. at 1004. The court studied recent elections in Jefferson Parish in order to decide whether the vote was split along racial lines. *Id.* at 1000. The experts relied on two complementary methods to determine polarization.

194. Eugene Fitchue ran for the council from district 2 in 1975. *Id.* at 1002. Herbert Wallace ran for the same seat in 1979. *Id.* at 1003. In 1983, two black candidates ran for the council: Leon Williams ran for the district 3-4 at-large seat, and Robert Hamilton ran for the district 2 seat. *Id.*

195. Generally, polarization is characterized by a strong white bloc vote that defeats a minority bloc vote plus any white crossover vote. *See Gingles*, 478 U.S. at 56.

In the 1975 election, candidate Fitchue received 6.5% of the total vote—approximately 46% of the black vote and less than 2% of the white vote. He did not qualify for the general election but would have qualified had the election been among black voters only. *East Jefferson Coalition*, 691 F. Supp. at 1002-03.

In the 1979 election candidate Wallace received 5.9% of the total vote—between 36 and 40% of the black vote and less than 2% of the white vote. Wallace was not the clear choice of the black voters. A white candidate, James Lawson, the incumbent, received between 33 and 35% of the black vote. He too would have made the general election if the vote had been limited to the black community. *Id.* at 1003.

In 1983, neither black candidate garnered the support of the black voters. Instead, the black vote was concentrated behind two other candidates, Willie Hof and Jimmy Lawson. *Id.* Both were incumbents.

An expert for the plaintiffs analyzed twenty other elections involving black candidates since 1980.

voters supported black candidates and white voters supported white candidates.[196]

The defense argued that the court should not consider the race of the candidate in determining whether blacks had elected the candidate of their choice.[197] However, the court recognized the importance of the candidate's race as well as the race of the voter in its analysis.[198] This holding was significant to the plaintiffs' claim of political cohesiveness. The defense argued that blacks did not consistently vote as a unified group because blacks did not always support the same candidate in an all-white race.[199] However, the court determined that the race of the candidates was important[200] and that it was clear that the black community voted as a group when black candidates ran for office.[201] In contrast, it was equally clear to the court that white voters, as a whole, never supported black candidates.[202]

To this point, the plaintiffs had proved two of the three issues—a cohesive black vote and a white bloc that consistently defeated their vote. However, the plaintiffs could not meet all three of the *Gingles* criteria. The court held that the black population was widely dispersed throughout the parish.[203] Therefore, the plaintiffs had not proved that the community was compact enough to be a majority in a single-member district.[204]

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He found that fifteen of those elections exhibited polarization. Only two of the black candidates were elected, and they were elected in majority black districts. Wilma Irvin was elected to the Kenner City Council, and Herbert Wallace was elected as constable in the 7th District Justice Court. *Id.* at 1004.

196. 691 F. Supp. at 1004.

197. *Id.* at 1001. The City relied on the plurality in *Gingles* which concluded that the race of the candidate is irrelevant in the determination of the preferred candidate. *Gingles*, 478 U.S. at 67. The City contended that this evidence proved (1) that the white candidate was the preferred candidate of the black community and (2) that blacks did not vote cohesively. *East Jefferson Coalition*, 691 F. Supp. at 1001. The court pointed out that such an argument doubled back on itself: "The apparent double meaning of defendants' argument is that the race of the candidate is unimportant when considering bloc voting, but important in determining political cohesiveness." *Id.*

198. The court's holding followed the Fifth Circuit's lead in *Citizens for a Better Gretna. East Jefferson Coalition*, 691 F. Supp. at 1001. However, the Fifth Circuit is at odds with the Eleventh Circuit. In Carrollton Branch of NAACP v. Stallings, 829 F.2d 1547, 1557 (11th Cir. 1987), *cert. denied sub nom.* Duncan v. Carrollton, 485 U.S. 936 (1988), the Eleventh Circuit chose to follow Justice Brennan's plurality opinion in *Gingles*. *See supra* notes 107-15.

199. *East Jefferson Coalition*, 691 F. Supp. at 1001.

200. *Id.*

201. *Id.* at 1002-04.

202. *Id.*

203. *Id.* at 1006.

204. *See Gingles*, 478 U.S. at 48 n.15, 46 n.12 (stating that the Court had no occasion to consider what relief should be given to a minority group that cannot comprise a majority in a single-member

Accordingly, there was no remedy.[205]

Nevertheless, the court held that the three-tiered system[206] violated section 2,[207] and although the black community might not have been able to elect a candidate of its own, it was capable of influencing elections.[208] The court ordered the council to reapportion its districts.[209] The groundbreaking nature of the district court's decision—that an influence district was an appropriate remedy in a section 2 suit—was lost, however, because the court subsequently amended its finding that the black community was widely dispersed in the parish.[210]

### *D. Jefferson Parish After the Voting Rights Act*

The citizens of Jefferson Parish have benefitted from the Voting Rights Act. With the help of section 6, 63% of blacks were registered to vote in

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district).

205. The plaintiffs did bring a reapportionment plan to court with a 56% black majority district. However, the plaintiffs' plan envisioned seven single-member districts, and the majority district was a 35-sided district which crossed the Mississippi River and divided cities in order to include pockets of black population. The court rejected the plaintiffs' plan because it was a "manipulation of district lines" and because a court must follow guidelines and "fix boundaries that are compact, contiguous, and that preserve natural political and traditional representation." *East Jefferson Coalition*, 691 F. Supp. at 1007 (quoting Wyche v. Madison Parish Police Jury, 635 F.2d 1151, 1163 (5th Cir. Unit A Feb. 1981)).

206. The defense argued that the three-tiered system allowed each voter a chance to choose three representatives, but the court noted that this argument was meritless. The effect of the system was to block the vote of the black community. *Id.* at 1007-08.

207. *Id.* at 1006. The court reasoned that if it were to read *Gingles* to hold that plaintiffs did not have a vote dilution case unless they could constitute a majority in a single-member district, then it would necessarily be guaranteeing proportional representation. *Id.* at 1005.

208. *Id.* at 1006 ("Nor does that relief require a single-member district with a majority of black voters.").

209. *Id.* at 1008. The court deferred to the quasilegislative body to propose its own solution. The court could not force its views on the council. *See* East Jefferson Coalition v. Parish of Jefferson, 706 F. Supp. 470, 471 (E.D. La. 1989) (on remand), *aff'd*, 926 F.2d 487 (5th Cir. 1991).

210. *East Jefferson Coalition*, 926 F.2d at 492. In accordance with § 5 of the Voting Rights Act, the council submitted to the Department of Justice a plan with a 46% black district. The Department refused to accept the council's plan. Letter from James P. Turner, Acting Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, to Harry A. Rosenberg, Counsel for Parish of Jefferson, Phelps, Dunbar, Marks, Claverre & Sims (Nov. 17, 1989) (Exhibit 1 to Brief for the United States as Amicus Curiae, East Jefferson Coalition v. Parish of Jefferson, No. 86-3668 (E.D. La. 1990)). The Department noted that several alternative plans contained districts with a black majority district and that the council had given no valid reason for refusing those plans. *Id.* at 2. In an amicus brief to the district court, the Department urged the district judge to reevaluate his finding that the black population was "too widely dispersed" throughout Jefferson Parish for the reason that significant changes in the population had occurred since the 1980 Census. Brief for United States as Amicus Curiae at 2, East Jefferson Coalition v. Parish of Jefferson, No. 86-3668 (E.D. La. 1990).

Jefferson Parish in 1990.[211] That simply was not possible before 1965.[212] Section 5 also continues to have a significant impact in Jefferson Parish.[213] Because of section 5, Jefferson Parish must gain preapproval from the Department of Justice for all proposed changes in voting laws.[214] Examples of "changes in voting laws" include redistricting parish council, school board, and state legislative seats. It also includes the addition of judicial seats[215] and settlement agreements in section 2 litigation.[216] In this manner, section 5 has prevented Jefferson Parish from dodging the law as it did so successfully for almost 100 years.[217] Notwithstanding the impact these sections of the Voting Rights Act have had, section 2 has made the greatest impact on voting rights in the black community. Even though its effects were not felt until recently,[218] section 2 has provided the black community in Jefferson Parish with heroes, purpose, and hope: section 2 has empowered black voters.

These heroes may not be recognized by name by many, not even in Jefferson Parish. These heroes are Edward Romain and Leo Jones,[219] Eugene Fitchue, Herbert Wallace, Leon Williams, and Robert Hamilton.[220] These black men ran for office in the 1970s and early 1980s when black candidates had virtually no chance to win in Jefferson Parish. But they laid the foundation for the later successful vote dilution cases. In order to show under section 2 that the black community votes in unity and that whites vote in blocs and consistently defeat black candidates,[221] there

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211. 1990 Census of Population and Housing, File Tape 3A.

212. *See supra* note 36.

213. *See* THERNSTROM, *supra* note 3, at 237 ("Section 5, by all accounts, is a drastic provision. . . . The burden is on the jurisdiction to prove the racial neutrality of its action beyond any doubt."); *see also East Jefferson Coalition*, 926 F.2d at 490 (quoting the Department of Justice in its objection to a redistricting plan because the plan "may well have been motivated by an invidious purpose to minimize black voting strength").

214. *See supra* notes 52-56 and accompanying text. *See also supra* notes 41-43 and accompanying text.

215. *See* Chisom v. Roemer, 111 S. Ct. 2354 (1991).

216. *See supra* note 210.

217. *See supra* part II.A.

218. *See supra* part II.C. *Citizens for a Better Gretna* was the first successful section 2 suit brought in Jefferson Parish, and it was not decided until 1989. *See supra* part III.C.1.

219. *See supra* note 170. Mr. Romain and Mr. Jones ran for alderman in Gretna in the 1970s.

220. *See supra* note 194. These men ran for the Jefferson Parish Council and lost in the late 1970s and early 1980s.

221. *See supra* notes 109-14 (discussing the *Gingles* three-part test).

must have been unsuccessful black candidates in the past.[222] These men entered races that they could not win, but the results in these elections allowed statisticians to gather evidence from the elections that would be used to prove in court that blacks voted together and that whites always voted against them.[223] Simply put, these men opened the door for plaintiffs to bring successful section 2 cases.

Section 2 has provided purpose to members of the black community who have banded together to form groups aimed at civic progress.[224] For years, these groups have pooled their resources and their time in order to bring successful cases under section 2. Each successful case, in turn, has empowered black voters in Jefferson Parish.

Section 2 has proved to be a catalyst, albeit twenty-five years after the enactment of the Voting Rights Act. Since 1990, the voters of Jefferson Parish have elected their first black member to the school board,[225] their first black member to the parish council,[226] their first black representative to the Louisiana House of Representatives since the Reconstruction,[227] and two black judges.[228] Unfortunately, however, the effects of discrimination still exist, and section 2 cannot provide blacks with a better education or employment or a higher income. Yet, thanks to those who struggled in the past, today blacks have a voice in the political process to help build the future. Section 2 has helped make this progress possible.

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222. *See* S. REP. NO. 417, *supra* note 3, at 28-39, *reprinted in* 1982 U.S.C.C.A.N. at 206-07. All of the factors enumerated in the *Senate Report* focus on the particular situations in the particular subdivision in which the litigation is based. See also *supra* note 102 for the text of the *Senate Report* factors.

223. *See supra* notes 176-77 and 193-95 and accompanying text

224. Citizens for a Better Gretna, the East Jefferson Coalition for Leadership and Development, and the Fifth Ward Association are a few of these civic groups.

225. Cedric Floyd won an election after the school board settled with the plaintiffs to create a black majority district in 1989 in Fifth Ward Precinct 1A. Coalition and Progressive Ass'n v. Jefferson Parish Sch. Bd., No. CIV. A. 86-2963, 1989 WL 3801 (E.D. La. Jan. 18, 1989). Interview with Cedric Floyd, in Kenner, La. (Dec. 22, 1992).

226. Donald Jones won an election in a black majority district created by the final settlement in East Jefferson Coalition v. Parish of Jefferson, 926 F.2d 487 (5th Cir. 1991). Interview with Cedric Floyd, *supra* note 225.

227. Kyle Mark Green won an election in 1991 after the reapportionment of the state legislature. Interview with Cedric Floyd, *supra* note 225.

228. Judges Melvin Zeno and Alan Green were elected in 1992 after the parish signed a consent decree in Clark v. Roemer, No. 86-3498 (E.D. La. 1991), consolidating two black-majority judicial districts out of sixteen districts. Interview with Judge Melvin Zeno, in Gretna, La. (Dec. 18, 1992).

## IV. THE FUTURE OF THE VOTING RIGHTS ACT

Jefferson Parish and its vote dilution cases have afforded considerable insight into the past and the potential future of the Voting Rights Act. However, the cases have revealed some inherent problems in the Act which in the end will cause it to become obsolete. Redistricting has become so problematic that remedies under section 2 will be impossible to establish. However, even if the Voting Rights Act loses remedial potential, unity and education will enable minorities to build on the foundation of the Act and achieve greater political involvement.

In *East Jefferson Coalition*, district court Judge Peter H. Beer recognized two redistricting problems, both of which recently came before the United States Supreme Court. First, Judge Beer was unwilling to allow plaintiffs to draw a 35-sided district in order to create a majority district.[229] He held that a redistricting plan must "fix boundaries that are compact[,] contiguous and that preserve natural, political and traditional representation."[230] In effect, he held that racial gerrymandering was not a permissible remedy. Second, he recognized an "influence district" as an appropriate alternative to racial gerrymandering.[231]

Recently, the Supreme Court has addressed both of these issues. In *Shaw v. Reno*,[232] the Court held that white plaintiffs did have a cause of action against the State of North Carolina for redistricting legislation that was a blatant effort to segregate the races for election purposes.[233] White plaintiffs had brought suit against the state alleging that a district that weaved through the state until it could capture enough black communities to create a black majority district violated the Equal Protection Clause.[234] The district court dismissed the suit.[235] The Supreme Court reversed, holding that although intentional creation of minority-majority districts is not a per se violation of the Constitution, it could be a violation if the state did not have "sufficient justification" for segregating persons into districts

229. *East Jefferson Coalition*, 691 F. Supp. at 1007.

230. *Id.* (quoting Wyche v. Madision Parish Police Jury, 635 F.2d 1151, 1163 (5th Cir. Unit A Feb. 1981)).

231. *East Jefferson Coalition*, 691 F. Supp. at 1006. *See supra* note 210 and accompanying text.

232. Shaw v. Reno, 113 S. Ct. 2816 (1993).

233. *Id.* at 2824 (stating that the scheme was "so extremely irregular on its face that it rationally [could] be viewed only as an effort to segregate the races for purposes of voting").

234. *Id.* at 2821.

235. Shaw v. Barr, 808 F. Supp. 461, 473 (E.D.N.C. 1992), *rev'd sub nom.* Shaw v. Reno, 113 S. Ct. 2816 (1993).

because of their race.[236]

In *Voinovich v. Quilter*,[237] the Supreme Court effectively rejected "influence" districts as remedies to section 2 violations. In 1990, the Ohio Legislature set out to reapportion the legislative districts. The Republican-dominated apportionment board adopted a scheme that "packed" blacks into districts in order to create black majority districts.[238] In the past, however, black voters had been successful in electing their candidates even in districts where they represented only 35% of the registered voters, so there was no need to create majority districts.[239] Democratic leaders brought suit alleging that the new scheme diluted the strength of the black vote and thus constituted illegal "packing."[240] The district court held that the apportionment board could not create black majority districts absent a violation of section 2.[241]

The Supreme Court reversed the district court.[242] It held that the state did not violate the Voting Rights Act by creating a black-majority district absent a section 2 violation.[243] Additionally, the Court held that the plaintiffs could not prove that the apportionment plan had diluted the black vote.[244] Citing *Gingles*, the Court reasoned that the plaintiffs could not have proved that the white vote consistently defeated the black vote—the third prong of the *Gingles* test—and consequently could not have met their burden of proof.[245]

The Court specifically stated that it did not decide whether influence-dilution claims were valid.[246] However, the Court appeared to reject these claims anyway. The Court stated that the plaintiffs could not have succeeded in bringing a section 2 suit because there was no proof of racially polarized voting. The Court's decision makes sense because blacks were fighting to maintain influence districts, indicating that there must have

236. *Shaw*, 113 S. Ct. at 2828.

237. 113 S. Ct. 1149 (1993).

238. Quilter v. Voinovich, 794 F. Supp. 695, 598 (N.D. Ohio 1992).

239. *Quilter*, 113 S. Ct. at 1154.

240. *Quilter*, 794 F. Supp. at 695-96.

241. *Id.* at 701.

242. *Shaw*, 113 S. Ct. at 2832.

243. *Quilter*, 113 S. Ct. at 1156. The Court indeed stated that federal courts could not order reapportionment without a showing of a § 2 violation, but the Court noted that the states are not prohibited from doing so. *Id.* However, the Court left open the issue whether the apportionment scheme violated the Equal Protection Clause. *Id.* at 1157.

244. *Id.*

245. *Id.*

246. *Id.* at 1155.

been a significant white crossover vote. The effectiveness of influence districts depends on the crossover vote. Clearly if there were no crossover vote, blacks would not have sued to have the district maintained. What the Court declares it will consider another day, it has already constructively condemned. The question then remains whether the Court effectively precluded influence districts as valid remedies.

Another problem with redistricting not addressed in the Jefferson Parish cases but which may nonetheless spell the end of the Voting Rights Act's effectiveness is the absence of an appropriate remedy for a situation in which it is necessary to take majority districts away from one minority group in order to give majority districts to a second minority group. The Supreme Court is currently addressing this issue.[247]

These three Supreme Court cases call attention to the difficulties that states, their subdivisions, and federal district courts encounter when attempting to redistrict. Many of the ingenious remedies were not contemplated by Congress in 1965 or 1982. The problems associated with redistricting, as well as the "boundaries" of section 2, may lead to the conclusion that the Voting Rights Act must be restructured, if not completely rewritten, in the near future.

### *B. The "Boundaries" of Section 2*

Section 2 has inherent boundaries which are generally not addressed in the Act. The best way to explain this phenomenon is to compare section 2 to the first hill of a rollercoaster. Once one boards a rollercoaster, she anticipates anxiously the slow, methodical trip to the summit of that first and largest hill of the ride. It seems to take forever, but as she reaches the top, she realizes that she will soon be flying toward the bottom of that hill with enough momentum to propel her up the next.

Black people in Jefferson Parish have been on a similar ride. For twenty-four years, the black community in Jefferson Parish anticipated the first successful black candidate. The heroes who ran in races they could not win[248] were laying the foundation for successful section 2 cases—helping the rollercoaster on its uphill journey. They were losing elections but accumulating the statistical evidence required for successful

247. Oral argument has been heard in DeGrandy v. Johnson, Nos. 92-593, 92-519, and 92-767. *Elections: Voting Rights Act*, 62 U.S.L.W. 3261 (Oct. 12, 1993). *See* DeGrandy v. Wetherell, 794 F. Supp. 1076 (N.D. Fla. 1992).

248. *See supra* notes 219-23 and accompanying text.

section 2 suits. In 1989, *Citizens for a Better Gretna* was decided,[249] and blacks had finally crested that first hill. Success in the courts and at the polls followed with amazing momentum.[250] Soon blacks may be able to claim that they are proportionally represented in every aspect of the parish government. But section 2 is only the first hill.

## V. CONCLUSION

Eventually, section 2 will enable the black community to reach proportional representation in Jefferson Parish. At this point section 2 will no longer be an effective tool. However, the black community can further empower itself by utilizing the momentum that section 2 has brought to Jefferson Parish.

The black community will have to unite, register its voters, vote, and feed on the hope that each new candidate brings. Community leaders must stress education, awareness, and confidence. They must not be complacent when section 2 has run its course. The leaders of the 1990s need only remind the community of the black candidates of the 1970s and 1980s and their bitter struggles so that the success may continue.

The door is open . . .

*Jeffrey D. McMillen*

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249. *See supra* part III.C.1.

250. *See supra* notes 225-28 and accompanying text.