Chapter 10: Challenging the Majority: Minority Voters and Representation

What is Was Like

In 1955 in Mississippi a fourteen-year-old black boy from Chicago named Emmett Till was murdered (one eye was gorged out and his head was crushed-in; he was only recognizable by a ring he wore) because he spoke to a white woman.\(^1\) His murder, though it attracted attention outside the south, was part of a long history of white oppression of blacks in the south, which did not end with his death. While Till’s murderers’ identities were secret, for years blacks were publicly lynched for minor offenses and postcards and other memorabilia from these occasions were collected by whites. In 1934, the Council of Southern Women for the Prevention of Lynching estimated that 4,751 lives in southern states had been taken through the practice since 1882.\(^2\) Anti-lynching bills passed the U.S. House of Representatives, but these bills were filibustered in the U.S. Senate by southern Democratic Senators and never passed by Congress as a whole. Within the state of Mississippi, which had the highest percentage of blacks across states in 1950 (45.3% of the population), less than one percent of blacks were registered to vote. Since blacks had no voice in the ballot box, there was no way for them to force the Senators that supposedly represented them to outlaw the practice.

In 1978 Larry Ortega Lozano died in a Texas county jail. “The sheriff said Lozano committed suicide by banging his head against a cell door. A pathologist said it was homicide after finding 92 injuries to the body, some ‘in places where he would have

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\(^2\) “Lynchers in Congress,” *The Reflector (Charlottesville, Virginia)*, number 47, June 30, 1934.
had to be contorted’ to inflict injuries on himself. Six to eight lawmen were in the cell with Lozano for 45 minutes before his death.”3 Lozano’s death took place at a time when Mexican-Americans were citing complaints of discrimination and mistreatment across the country, particularly in Texas. The Texas Rangers who had hunted down the Killer D’s in Chapter 6, had a history of murder and oppression against Hispanics as well as blacks in the state. During World War I they murdered hundreds of Hispanics in the border areas. They harassed Hispanics in the 1960s when they tried to vote and achieve public office in rural towns where they were the majority, getting praise from then Texas governor, John Connolly for handling the situation.4 Vilma Martinez, the President of the Mexican-American Legal Defense and Education Fund (MALDEF) remarked in 1978: “We are very much an oppressed, discriminated-against group in this country . . . and Texas is our Mississippi.”5

Texas and Mississippi have changed. In Mississippi blacks vote more than whites and hold political offices at the local, state, and national level. Hispanics and blacks in Texas similarly vote and hold positions of power at all levels of government. While incidents like the notorious death of James Bryd in Jasper, Texas, are still possible and racial prejudices remain – divisions between racial and ethnic groups exist there as elsewhere in the nation – no longer is it a matter of course for elected officials who sometimes are minorities themselves (the mayor of Jasper was black at the time of the murder) to condone or ignore such actions.6

6 The continued racial divide is illustrated in the film The Two Towns of Jasper.
The South Today

Texas

In the 2003 Texas legislative session sixty-one year old Texas state representative Chuck Hopson from Jacksonville didn’t like the racial profiling he experienced. He recalled: “The young Republicans, a couple of them, have come up to me to tell me, ‘By the way, the Republican caucus has changed to 2 o’clock.’” But Hopson isn’t a Republican, he’s a Democrat and white, and in the Texas state legislature that’s a dying combination (Hopson was one of the Killer D’s discussed in Chapter 6). As reporter Ken Herman writes: “Once, not so long ago, they roamed in great herds. They controlled the landscape, and the alpha males among them ruled with certainty and swagger. But now, after generations of dominance, they’ve been reduced to endangered species, and their natural enemies have marked them for extinction.” Of the 127 white Texas state legislators, 22 or 17.32% are Democrats. Of the 54 minority members of the Texas state House and Senate, only 2 or 3.7% are Republicans. Twenty years ago, there were 106 white Democrats in the Texas state legislature and ten years ago, 60 (the numbers of Republican minority legislators hasn’t changed much). While minority Democratic legislators have increased from 33 in 1983 to 37 in 1993 to 43 in 2003, the rate of increase has not matched the decline in white Democrats. It turns out that the most underrepresented Texans in the state legislature are white female Democrats – for the first time since 1941 there are none in either the state House or Senate (the twenty-two white female state legislators are all Republicans). The Texas state legislature has

\[\text{\textsuperscript{7}Herman, Ken, “Vanishing at Capitol: The White Democrat; As GOP burgeons, opposition members tend to be minorities,” The Austin American-Statesman, Saturday, March 1, 2003.}\]
become divided not only partisan lines, but partisan lines heavily influenced by race and ethnicity.

**Changes in the South: Voting**

The change in Texas is ironic given that the last time Republicans held the majority in the state legislature and the governorship (1869), the Republican party was a biracial coalition (14 of the Republican legislators were black) and Democrats were “lily white.” What happened in the intervening 132 years is a tale not just of how the electoral process changed in Texas but also in the nation at large. In Chapter 9 we discussed how the Republican and Democratic parties switched their positions on civil rights in 1964, when southern Democrats began to take more liberal positions on civil rights and Republicans both north and south began to vote more conservatively. The Democratic party also dominated national government after the elections of 1964, winning majorities in both the House and the Senate and reelecting President Lyndon B. Johnson. The party did what it had promised black voters, it passed the Voting Rights Act of 1965, which eliminated many of the barriers that had prevented blacks from political participation in the south since the end of Reconstruction. Table 10-1 shows the effect of the Voting Rights Act on the registration of blacks in southern states (which had been increasing in the post World War II era). Note that some of the figures overstate black registration since they fail to account for black population growth (i.e. the denominator is black voting age population as of the last census). These figures also fail to account for

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8 The Mexican-American population was much smaller in the state in this period than it is currently.
growing black disfranchisement due to imprisonments as discussed in Chapter 2 which may overstate eligible black voters particularly in the 1994 and 2000 figures.\textsuperscript{9}

Table 10-1: Estimated Percentage of Blacks Registered in the South, source Alt (1994) supplemented from U.S. Census Bureau Figures, years starred are Presidential Election Years

<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>1.2</td>
<td>11.0</td>
<td>23.0</td>
<td>56.7</td>
<td>58.4</td>
<td>68.9</td>
<td>66.3</td>
<td>72.0</td>
</tr>
<tr>
<td>Arkansas</td>
<td>17.3</td>
<td>36.0</td>
<td>49.3</td>
<td>67.5</td>
<td>94.0</td>
<td>57.9</td>
<td>56.0</td>
<td>60.0</td>
</tr>
<tr>
<td>Florida</td>
<td>15.4</td>
<td>32.0</td>
<td>63.8</td>
<td>62.1</td>
<td>61.1</td>
<td>58.2</td>
<td>47.7</td>
<td>52.7</td>
</tr>
<tr>
<td>Georgia</td>
<td>18.8</td>
<td>27.0</td>
<td>44.0</td>
<td>56.1</td>
<td>74.8</td>
<td>52.8</td>
<td>57.6</td>
<td>66.3</td>
</tr>
<tr>
<td>Louisiana</td>
<td>2.6</td>
<td>31.0</td>
<td>32.0</td>
<td>59.3</td>
<td>63.0</td>
<td>60.6</td>
<td>65.7</td>
<td>73.5</td>
</tr>
<tr>
<td>Mississippi</td>
<td>0.9</td>
<td>5.0</td>
<td>6.7</td>
<td>59.4</td>
<td>60.7</td>
<td>70.8</td>
<td>59.1</td>
<td>73.7</td>
</tr>
<tr>
<td>North Carolina</td>
<td>15.2</td>
<td>24.0</td>
<td>46.8</td>
<td>55.3</td>
<td>54.8</td>
<td>58.4</td>
<td>53.1</td>
<td>62.9</td>
</tr>
<tr>
<td>South Carolina</td>
<td>13.0</td>
<td>27.0</td>
<td>38.7</td>
<td>50.8</td>
<td>56.5</td>
<td>52.5</td>
<td>59.0</td>
<td>68.6</td>
</tr>
<tr>
<td>Tennessee</td>
<td>25.8</td>
<td>29.0</td>
<td>69.4</td>
<td>72.8</td>
<td>66.4</td>
<td>65.3</td>
<td>70.0</td>
<td>64.9</td>
</tr>
<tr>
<td>Texas</td>
<td>18.5</td>
<td>37.0</td>
<td>45.7</td>
<td>58.4</td>
<td>54.7</td>
<td>56.2</td>
<td>58.5</td>
<td>69.5</td>
</tr>
<tr>
<td>Virginia</td>
<td>13.2</td>
<td>19.0</td>
<td>45.7</td>
<td>58.4</td>
<td>54.7</td>
<td>56.2</td>
<td>51.1</td>
<td>58.0</td>
</tr>
<tr>
<td>National Average</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>66.2</td>
<td>58.5</td>
<td>64.0</td>
<td>58.5</td>
<td>63.6</td>
</tr>
</tbody>
</table>

Changes in the South: Office-holding

Not only did the passage of the Voting Rights Act and the civil rights movement lead to an increase in blacks registered to vote, but also in their representation in elected offices in the south. Table 10-2 shows the increase over time in the percentages of Black members of the U.S. House and state legislators in the south from 1970 to 2003. As blacks (and in Texas, Latinos) began to register and vote in greater numbers they were more likely to join the Democratic party in the south both for its positions on civil rights and economics. Conservative white southerners began to support Republican candidates for offices instead of Democrats who were now seen as too liberal. Before this switch,\textsuperscript{9} See Alt (1994) for detail on the sources of the figures from 1947-1986.
Republicans were a rarity in political office in the south, but in the intervening years, Republicans began to succeed in southern elections as they attracted white voters disaffected from the Democratic party and the percentage of Republicans in southern elected positions increased. The south went from a largely one-party region to a region with viable two-party competition. Table 10-3 presents a summary of the growth in Republican office holding in southern states from 1960-2000.


<table>
<thead>
<tr>
<th>Year</th>
<th>% Black Population</th>
<th>State Senate</th>
<th>State House</th>
<th>U.S. House</th>
</tr>
</thead>
<tbody>
<tr>
<td>1970</td>
<td>20.4%</td>
<td>1.3%</td>
<td>1.9%</td>
<td>0%</td>
</tr>
<tr>
<td>1975</td>
<td>20.4%</td>
<td>2.4%</td>
<td>6.2%</td>
<td>2.8%</td>
</tr>
<tr>
<td>1980</td>
<td>19.6%</td>
<td>3.1%</td>
<td>8.3%</td>
<td>1.8%</td>
</tr>
<tr>
<td>1985</td>
<td>19.6%</td>
<td>7.2%</td>
<td>10.8%</td>
<td>1.7%</td>
</tr>
<tr>
<td>1992</td>
<td>18.8%</td>
<td>13.5%</td>
<td>14.8%</td>
<td>13.6%</td>
</tr>
<tr>
<td>2003</td>
<td>19.4%</td>
<td>15.3%</td>
<td>17.2%</td>
<td>13%</td>
</tr>
</tbody>
</table>

Table 10-3: Republican Elected Officials in the South (1960-1999) with figures for 2003 added, source Jewell and Morehouse 2001

<table>
<thead>
<tr>
<th>State</th>
<th>Party of Gov. 2003</th>
<th>% of Leg. Seats Repub. 2003</th>
<th>Percentage of Years with Republican Governors</th>
<th>Average Percentage of Legislative Seats Held by Republicans</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>R</td>
<td>36%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Arkansas</td>
<td>R</td>
<td>28%</td>
<td>40%</td>
<td>0%</td>
</tr>
<tr>
<td>Florida</td>
<td>R</td>
<td>67%</td>
<td>40%</td>
<td>0%</td>
</tr>
<tr>
<td>Georgia</td>
<td>R</td>
<td>44%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Louisiana</td>
<td>R</td>
<td>33%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Mississippi</td>
<td>D</td>
<td>30%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>North Carolina</td>
<td>D</td>
<td>49%</td>
<td>0%</td>
<td>40%</td>
</tr>
<tr>
<td>South Carolina</td>
<td>R</td>
<td>58%</td>
<td>0%</td>
<td>40%</td>
</tr>
<tr>
<td>Tennessee</td>
<td>D</td>
<td>45%</td>
<td>0%</td>
<td>60%</td>
</tr>
<tr>
<td>Texas</td>
<td>R</td>
<td>59%</td>
<td>0%</td>
<td>20%</td>
</tr>
<tr>
<td>Virginia</td>
<td>D</td>
<td>62%</td>
<td>20%</td>
<td>100%</td>
</tr>
</tbody>
</table>
The rise in black office holding (mostly Democrats) coupled with an increase in Republican office holding, is associated with a decline of white Democratic elected officials in the south. In Texas, Latinos comprise a larger percentage of the population than blacks, and they too have expanded their voting participation and office holding since the passage of the Voting Rights Act. Longer term data on office holding by Hispanics in Texas is not available, but Table 10-4 compares data from 1990 to 2003 in Texas for Blacks and Hispanics, showing how both have generally increased in the thirteen years. Note that the percent Hispanic population has risen as well, while the percent black in Texas has stayed constant.

Table 10-4: Texas Percent Black and Hispanic Elected Legislators in 1990, 2003; source Handley and Grofman, 1998 and Center for Voting and Democracy

<table>
<thead>
<tr>
<th></th>
<th>1990</th>
<th>2003</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Percent Hispanic</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Population</td>
<td>25.5</td>
<td>32</td>
</tr>
<tr>
<td>State House Members</td>
<td>13.3</td>
<td>20</td>
</tr>
<tr>
<td>State Senate Members</td>
<td>16.1</td>
<td>23</td>
</tr>
<tr>
<td>U.S. House Members</td>
<td>14.8</td>
<td>18.8</td>
</tr>
<tr>
<td><strong>Percent Black</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Population</td>
<td>11.9</td>
<td>11.5</td>
</tr>
<tr>
<td>State House Members</td>
<td>8.7</td>
<td>9.3</td>
</tr>
<tr>
<td>State Senate Members</td>
<td>6.5</td>
<td>6</td>
</tr>
<tr>
<td>U.S. House Members</td>
<td>3.7</td>
<td>6.3</td>
</tr>
</tbody>
</table>

The change that has taken place in the south since 1960 is remarkable – called by some a “quiet revolution.”10 It is a horrendous story of minority disfranchisement and discrimination as well as an uplifting one of overcoming adversity and heroic choices. Understanding what happened and how is fundamental to comprehending much about the current electoral system in American politics today and current issues concerning the

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American electoral process. In particular, the rise in the Hispanic population in Texas and elsewhere nationally is part of a growing diversity in ethnic and racial composition in the country, which makes the issues of how minorities are incorporated into the electoral process important both historically and now. In this Chapter we examine this history and the current issues. But we begin with a discussion of the growing diversity and the questions of defining representation.

The Current Rise in Diversity within the United States

The Census Bureau estimates that in 1990 the non-Hispanic white population of the United States was 75.7% dropping to 71.3% in 2000. The Census Bureau projects that by 2060, the non-Hispanic white population will be less than 50% of the United States population. Most of the recent increase and the expected increase in 2060 is an increase in population with a Hispanic ancestry. The Hispanic population is estimated to reach 26.6% of the population in 2060, non-Hispanic black population is expected to reach 13.3%, American Indian 0.8% and Asian and Pacific Islander 9.8%.

While the rise in the Hispanic population is a big factor in the decreasing dominance of the non-Hispanic white population, it is significant that other minority groups have not decreased nor are expected to and the wide variety of ethnic backgrounds in American communities have increased making the country more diverse as a whole. Using the 2000 census data, the newspaper USA Today estimates that the chance of two randomly chosen U.S. residents being different is 49 out of 100, or almost 1 out of 2 and that this index was 40 in 1990. But this diversity has not just increased over all, but has increased across states such that many states, formerly homogenous, have increased in diversity. In Kansas, for example, the diversity index increased from 21 to 31 and in
Texas from 55 to 62 in the last ten years. Even in Iowa, one of the most homogenous states, the diversity index rose from 8 to 14. Figure 10-1 shows how the percent minority has increased by region in the U.S. from 1980 to 2000. All regions have shown an increase. What this means is issues of minority representation, which used to mainly concern urban areas and the south are now relevant across the nation.

**Figure 10-1: Percent Minority by Region, 1980-2000, source U.S. Census**

![Bar chart showing percent minority by region from 1980 to 2000.](chart.png)

**Defining Minority Representation**

A chief question in evaluating the extent that racial and ethnic minorities are incorporated in American politics is the extent to which elected officials represent these groups once in office. But what is meant by representation? Is minority representation when elected officials have the same social demographic characteristics as the groups they represent (*descriptive representation*) or is it when elected officials make policy choices that minority groups prefer (*substantive representation*)? It is important to recognize that the two are not always the same. That is, elected officials from racial or ethnic minorities may represent positions that are not mainstream within these groups.

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For example, Supreme Court Justice Clarence Thomas has taken positions on issues that are often at variance with the opinions expressed by the majority of African-Americans in public opinion polls on issues like affirmative action. In this case we say African-Americans are descriptively represented by Thomas, but not necessarily substantively represented by him. Moreover, elected officials from the majority or other groups may take policy positions that are reflective of a racial or ethnic minority, giving the minority group substantive representation but not descriptive representation. Many blacks stated publicly that President Bill Clinton was the first “black” president.

Which is more important? It seems fairly obvious that substantive representation is the ultimate goal of voters – to have representatives who reflect the voters’ preferences regardless of their social and demographic characteristics. However, there are two reasons why descriptive representation is likely to lead to greater substantive representation. First, if a minority group is prevented from achieving descriptive representation then majority groups have less incentive to provide these voters with substantive representation. That is, if individuals are prevented legally or financially from competing for office based on social demographic characteristics, then a representative from the majority does not need to worry about possible competition from members of that group and can more safely ignore that group’s preferences over issues. Second, to the extent that a representative has discretion once in office (recall the discussion in Chapter 5 of the adverse selection problem in elections), then if a representative has particular preferences that are influenced by his or her racial or ethnic identity, the representative may be able to shape policy in directions that he or she prefers. In other words, the extent to which an elected officials can shape policy to please
his or her own preferences may lead to greater substantive representation for the racial or ethnic group that the elected official identifies with. Thomas (1994), Case (1998), Besley and Case (2000, 2003) report that, even controlling for ideological preferences of voters, more women in state legislatures results in greater family assistance and stronger child support laws. Identity of representatives does appear to affect policy choices. Thus having an elected official who is descriptively representative of a racial or ethnic minority group is more likely to lead to policy preferred by that group than if the group has a representative from the majority even if the positions both advocate are largely similar.

**Vote Denial**

Whether the goal is substantive or descriptive representation, there are two ways for minority groups to achieve representation in the U.S. political process – via elections or appointment to non-elected office. Minorities have achieved appointment to the highest levels of such offices, especially in recent years, – from Supreme Court Justice to Secretary of State, and have achieved electoral offices such as Senator, Governor, and Mayor of large urban communities. However, minorities have yet to compete successfully for the highest electoral office, President, and have had only achieved limited success in achieving positions of Senator and Governor, unlike their success in achieving high appointive office. One reason is the purposive prevention by the majority of minority voters from participating in the electoral process for much of the nation’s history. The electoral process in the United States has two stages at which minorities have been prevented from participation. The first stage is simply denial of the right to vote and the second stage involves structural aspects of the electoral system designed to
dilute the strength of minority voters. Restricting minority participation in the United States has occurred at both stages. These two stages are illustrated in Figure 10-2 below:
Figure 10-2: Vote Denial, Vote Dilution, and the Representation Link
Direct Vote Denial

Vote denial can be of two types: 1) explicit restrictions on voting defined by race, ethnicity, or gender; or 2) implicit restrictions, which disproportionately limit voting by race, ethnicity, or gender. Explicit restrictions have been used to prevent voting by various groups in American history. We have already discussed how women did not receive the right to vote until 1919 in Chapter 2. When the country was founded, many African-Americans were slaves and had no political rights. While some free blacks were able to vote in the north and even some southern states prior to the Civil War, that right actually eroded before the Civil War (by the beginning of the Civil War, free blacks could only vote in New York and New England states except for Connecticut). The Reconstruction Act of 1867 required the former Confederate states to call state constitutional conventions to draw up new constitutions guaranteeing voting rights to black men and the 15th Amendment, ratified in 1870, prohibited vote discrimination on racial grounds (rescinding restrictions in northern states).

As a result of the Reconstruction Act of 1867, African-Americans voted in large numbers – by the end of 1867 more than 700,000 southern blacks were registered and in some southern states were majority of the electorate. Blacks were elected as Senators, Representatives, state executive offices. Table 10-5 summarizes the numbers of blacks elected to Congress as a function of black population in the Reconstruction period.
American Indians were also directly denied voting rights. While some American Indians were allowed to vote if Congress deemed they were sufficiently “assimilated,” full citizenship and voting rights to all American Indians was not given until 1924 when Congress passed the Indian Citizenship Act. Asian immigrants were similarly explicitly denied the right to vote because the Naturalization Act of 1790 restricted citizenships to “whites” (although some Asian-Americans were naturalized by friendly officials). Not until 1952 did Congress pass the McCarran-Walter Act, which rescinded the racial restrictions in the 1790 Naturalization Act and allowed for Asian American and other previously deemed “non white” immigrants to be naturalized, permitting them citizenship and the right to vote.\textsuperscript{12, 13}

\textsuperscript{12} To some extent denying Asian Americans and those deemed “non white” citizenship was an indirect method of vote denial rather than the explicit laws against black voting prior to the Civil War.

\textsuperscript{13} Non-citizens were allowed to vote in a few jurisdictions during the 19th century.
Indirect Vote Denial

The African-American Experience after the Civil War

In 1939, a contractor approached Charles Gomillion offering to build him a house. While Gomillion could afford a new house, and wanted one, he wanted something more fundamental than a house. He had lived in Tuskegee, Alabama since 1934, and had been born a citizen of the United States, yet he had been unable to register to vote. As a black professor at the Tuskegee Institute, he could afford to pay the poll tax, which kept most blacks from voting in Alabama. But the Macon County Board of Registrars, who would have to approve his application, required two white registered voters vouch for a potential voter’s suitability. And even then, the Registrars had a great deal of discretion in determining whether a potential voter met the literacy and property requirements. Gomillion had only one voucher, a dry goods merchant. So, Gomillion agreed to the contract for the house if the contractor, who was white, appeared before the Board of Registrars and the Registrars approved his voter registration application. Gomillion’s application was approved.14

Gomillion’s experience was unusual, not because it was so difficult for him to be able to vote, but that as a black man in Alabama in 1939 he was able to vote at all. After Reconstruction ended in 1876 with the election of Rutherford B. Hayes to the presidency, southern states wrote laws making voting difficult for blacks and re-wrote their constitutions instituting various measures which indirectly denied the right to vote to blacks. Southern states instituted long residency requirements and short registration periods as well as the requirement that new registrants must be “vouched for” by two white businessmen as Gomillion needed. In Texas voter registration was limited to 4

months, nine months in advance of elections. Secret ballots and complicated voting procedures were instituted to make it difficult for illiterate voters to cast a ballot.\textsuperscript{15} For example, in 1882 South Carolina passed an “Eight Box Law” which established eight categories of elections with separate ballot boxes for each category. Ballots placed in the wrong box would not be counted. States passed laws and constitutional amendments calling for literacy tests and poll taxes. In the south, these tests were subjective and allowed for elected officials to disfranchise blacks while allowing illiterate whites to vote. Moreover, in the south segregated schools meant lower levels of education for blacks as the spending on African-American schools was only a small percentage of the spending per pupil in white schools, which made the effects of these requirements particularly onerous. Finally, southern states enacted the so-called “grandfather clause” as in Louisiana’s 1898 constitution, which exempted any male or son or grandson of such male who had been entitled to vote on January 1, 1867 from denial of the right to vote. The grandfather clause was such blatant indirect vote denial that it was declared unconstitutional in Guinn versus United States, 1915 while other measures like poll taxes and literacy tests were allowed to continue. Table 10-6 presents a summary of the various measures used to deny blacks voting by southern state as of 1960.

\textsuperscript{15} Secret ballots were introduced nationwide at this time. While some scholars contend that the motive for using the secret ballot in the north was to reduce election fraud and bribery (secret ballots made it difficult for a voter to prove to someone who paid for his or her vote that he or she had fulfilled the bargain), others argue that the motives of both northern and southern states were similar and that northern leaders desired to disfranchise illiterate or non-English speaking immigrants, see Kousser 1992.
### Table 10-6: Methods of Vote Denial in Southern States as of 1960, source Alt (1994)

<table>
<thead>
<tr>
<th>State</th>
<th>Literacy Test (Date established)</th>
<th>Poll Tax in 1960</th>
<th>Residence Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>Yes (1901)</td>
<td>Yes</td>
<td>12 months</td>
</tr>
<tr>
<td>Arkansas</td>
<td>No</td>
<td>Yes</td>
<td>6 months</td>
</tr>
<tr>
<td>Florida</td>
<td>No</td>
<td>Abolished before 1948</td>
<td>6 months</td>
</tr>
<tr>
<td>Georgia</td>
<td>Yes (1908)</td>
<td>Abolished before 1948</td>
<td>6 months</td>
</tr>
<tr>
<td>Louisiana</td>
<td>Yes (1898)</td>
<td>Abolished before 1948</td>
<td>12 months</td>
</tr>
<tr>
<td>Mississippi</td>
<td>Yes (1890)</td>
<td>Yes</td>
<td>12 months</td>
</tr>
<tr>
<td>North Carolina</td>
<td>Yes (1900)</td>
<td>Abolished before 1948</td>
<td>1 month</td>
</tr>
<tr>
<td>South Carolina</td>
<td>Yes (1895)</td>
<td>Abolished after 1948</td>
<td>12 months</td>
</tr>
<tr>
<td>Tennessee</td>
<td>No</td>
<td>Abolished after 1948</td>
<td>3 months</td>
</tr>
<tr>
<td>Texas</td>
<td>No</td>
<td>Yes</td>
<td>6 months</td>
</tr>
<tr>
<td>Virginia</td>
<td>Yes (1902)</td>
<td>Yes</td>
<td>6 months</td>
</tr>
</tbody>
</table>

**The White Primary**

A special type of indirect vote denial instituted in the south during the post-Reconstruction period was the “white primary.” As noted previously, during the latter half of the 19th century a number of states and jurisdictions both in the north and south began to use direct primaries for parties to nominate candidates for office. We have already discussed how the rules on participation in primaries (i.e. whether they are closed to party members only or open to new voters, independents, and/or members of other parties) can affect which type of candidate is elected and the ability of the party to incorporate and respond to changes in policy preferences within the electorate. In the south, post Reconstruction, the Democratic party used primaries as an indirect method of denying blacks the right to vote. They declared the party a “private club” and restricted participation to whites. In this way, they attempted to open the party to poor whites (who could potentially form a coalition with poor blacks in the Republican party), and then instill the norm of coordinating on party lines in the general election where party
divisions were largely racial. Every state in the south adopted white primaries with the exception of Tennessee and selected counties in North Carolina. As other measures of vote denial further reduced black voting, the white primary became the “real” general election in these southern states, further reducing black voting. The south became virtually a one party state.

After a long series of court challenges led by the National Association of Colored People (NAACP), the white primary was declared unconstitutional under the 15th Amendment in Smith v. Allwright, 1944. The demise of the white primary had an important effect on black voting in the south. In 1940 black voters in the south were estimated to be about 151,000 (about 3% of the voting age black population), but by 1947 black voting had increased to 595,000 (25%) and to 1,238,038 voters by 1956. By November 1964 black registration in the south had doubled since 1952.

**The Voting Rights Act**

While the white primary was declared unconstitutional in 1944, other indirect vote denial measures continued to be used (particularly in the lower south, Alabama, Mississippi, Georgia, and Louisiana, where black voting was much below white voting) until after the passage of the Voting Rights Act of 1965. The purpose of the Voting Rights Act was to enforce the 15th Amendment. Some sections permanently applied to the entire country, such as Section 2, which echoed the amendment’s language. The Act set out procedures for the Attorney General to use to file suit to enforce the voting guarantees of the 15th Amendment in all states and authorized the use of federal examiners and observers during voting. The Special Provisions were applicable for the

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16 The Civil Rights Acts of 1957, 1960, and 1964 also attempted to increase black voting in the south, but they were largely ineffectual as they relied on court based prosecution and were easily circumvented by southern judges and election officials.
next five years and applied only to jurisdictions (which could be counties if a state as a whole did not qualify), which had maintained a test or device as a precondition for registration or voting and had less than 50% of the voting age population registered or voting. 17 In these “covered jurisdictions” literacy tests or devices used as preconditions for voting were suspended. Most importantly these jurisdictions had their voting laws frozen pending federal approval of the proposed changes. Specifically, the covered jurisdictions were required to submit to the Attorney General or the District Court for the District of Columbia all planned changes in any “voting qualification or prerequisite to voting, or standard, practice or procedures with respect to voting” that had not been in force before the Act was passed. The proposed changes would be cleared after federal scrutiny of the particular facts only if the changes did “not have the purpose and . . . not have the effect of denying or abridging the right to vote on account of race or color.”

In 1970 when the Act was amended and extended for another five years literacy tests were suspended in all 50 states (which was held constitutional by the Supreme Court), residency requirements for federal elections were limited to a 30 day maximum, and the voting age was lowered to 18. The poll tax was outlawed in federal elections by

17 Initially covered were Alabama, Alaska, Georgia, Louisiana, Mississippi, South Carolina, Virginia, 26 counties of North Carolina, and one Arizona county. In 1965 and 1966, other North Carolina and Arizona counties were added as well as one each in Hawaii and Idaho. Alaska and some other counties were able to exempt themselves during the 1960s by showing that no test or device had been used to deny or abridge the right to vote on account of race during the 5 years before. When the Act was amended in 1970 to extend for another five years, the trigger formula for voting was changed to the 1968 presidential election and extended for five years, three boroughs of New York City – Manhattan, Brooklyn, and the Bronx – were added as well as one county in Wyoming, two in California, five in Arizona, and a number of political subdivisions in Connecticut, New Hampshire, Maine, and Massachusetts. Some counties that had been exempted after 1965 were re-covered in 1970: four election districts in Alaska, a county in Idaho, and several counties in Arizona. In 1975 the Act was further extended for seven more years and the coverage formula was amended to include those states and counties with a substantial language minority population and English only materials. This captured the entire states of Arizona, Alaska, and Texas, jurisdiction sin Colorado, South Dakota, California, Florida, and North and South Carolina. In 1982 the Act was extended for 25 years.
the 24th Amendment to the Constitution and in 1966 in Harper v. Virginia State Board of Elections the Supreme Court ruled that poll taxes in other elections were unconstitutional. Table 10-1 above shows the effects of Smith v. Alwright and the Voting Rights Act and the elimination of the poll tax on black voter registration in the south.

**The Experiences of Other Minority Groups**

Literacy tests and restrictions on registration have also been used to indirectly deny the vote to other minority groups, particularly non-English speaking or illiterate immigrants. Connecticut was the first state to adopt a literacy test in 1855, with Massachusetts following suit in 1857, and Wyoming in 1889. These were designed to reduce the voting of immigrants and non-English speakers who were immigrating to these communities at that time.

States with large American Indian populations used five different types of arguments to justify denying American Indians the right to vote after the Indian Citizenship Act extended citizenship and by implication the franchise to all Indians. First, some states (e.g. Minnesota and South Dakota) required that Indians prove that they had assumed a “civilized” way of life by severing their relations with their tribe before being allowed to participate in the electoral process. A second argument used to prevent American Indians from voting was the contention that residents of reservations who did not pay property taxes should not be able to vote in local and state elections. A third justification for vote denial was that the size of the American Indian community in some jurisdictions would allow American Indians a majority of the vote, and thus political control. A fourth method was to argue that as legally American Indians were “wards” of the Federal government (early rulings of Supreme Court Chief Justice John Marshall’s
established that American Indian tribes were not independent political entities but had a guardian/ward relationship to the United States government), and since individuals under legal guardianship were generally not allowed to vote (presumption that wards were mentally handicapped or too young), then American Indians should not be allowed to vote as well. Finally, it was argued that American Indians were not really ‘residents’ of the state since they lived on separate reservations. By the late 1950s, court rulings and pressure at the federal level discredited these arguments and American Indians were allowed to vote; Utah was the last state to permit American Indians to vote.

In contrast to African-Americans, American Indians, and Asian Americans, few Latino-Americans were directly denied the right to vote. After the Mexican-American War, a number of settlers from Mexico in Texas and the western states acquired by the US were granted American citizenship and voting rights in the Treaty of Guadalupe Hidalgo in 1848. Similarly other Latinos have found naturalization and acquiring citizenship easier than the problems faced by Asian-Americans. Puerto Ricans, as citizens of a US territory, have full voting rights if living in the mainland.

However, at the end of the 19th century and early 20th century efforts began in Texas to deny Mexican-Americans the right to vote. In Texas, Anglo partones (bosses), typically large landowners who ran ranches along the Rio Grande in a feudal fashion, had mobilized Mexican-American voters to choose as the bosses wanted. The Texas Rangers were notorious as enforcement troops for these bosses. The partones use of Mexican-American votes angered smaller Anglo landowners who wished to dethrone the large bosses. One method was to attempt to deny Mexican-Americans the right to vote through indirect methods. Most of these indirect measures involved restrictions on registration
like those faced by blacks, but some were obviously directed toward Latino voters. In 1918 the Texas state legislature passed a bill prohibiting interpreters at polls. Similarly, election and ballot materials were required to be printed in English. As with blacks in the south, Latinos were in segregated schools and such measures, even for long-term residents, made voting difficult.

The Mexican American Legal Defense and Educational Fund (MALDEF) successfully challenged Texas laws that enabled voting officials to assist physically handicapped voters but did not permit assistance to voters who were not proficient in English in the Supreme Court case, Garza v. Smith, 1970. In 1975 the Voting Rights Act was amended to extend for seven years and extended to language minorities, requiring that bilingual election materials and assistance be available to voters if 5% or more of area’s voting age citizens are of a single language minority and the literacy rate in English of that language minority was less than the national literacy rate. This extension also benefited American Indians, Alaskan Natives, and Asian-Americans, who were indirectly denied the right to vote through the use of English only election materials and a lack of interpreters.

The Voting Rights Act, subsequent litigation, and court rulings have virtually eliminated the use of these indirect methods of vote denial. Most instances of claimed minority vote denial are isolated cases and in clear violation of federal and state laws. However there is one last remaining significant way in which minority voters are indirectly denied the right to vote – state laws which prevent prisoners and convicted offenders from political participation. Only Maine and Vermont allow prisoners to vote. Thirty-two states deny further the vote to convicted offenders on parole, twenty-nine also
disfranchise offenders on probation and fourteen states simply bar offenders from voting for life. These laws have disproportionate effects on African-Americans (it is estimated that 1.4 million black males are disfranchised through these laws) and, to a lesser extent, Latinos, who make up a disproportionate share of the prison population. Republican governor Bob Riley (whose tax plan was discussed in Chapter 5), vetoed a measure passed by the Alabama legislature in June 2003 to allow ex-felons to vote in the state angering black legislators in the state. Riley argued that the restriction on voting was not racially disproportionate since 45% of the convicted felons were white.

**Vote Dilution**

**Vote Dilution versus Vote Denial**

Vote dilution is when the way in which votes are counted is used to dilute or marginalize the votes of minorities. That is, vote dilution methods are techniques by which minority groups are prevented from combining their votes in an effectual manner. In some ways, the white primary was both vote denial (denying African-Americans the right to vote in the primary) and vote dilution by attempting to keep African-Americans and poor whites in the south from forming a coalition on common policy preferences. After Reconstruction southern states used a number of other methods to explicitly dilute African-American votes. These measures were used before blacks were effectively disfranchised through the grandfather clause, the poll tax, the literacy test, and registration limitations, that is, when blacks were still voting in large numbers although northern involvement in reconstruction of the south had ended with Hayes’ election in 1876. Some of these vote dilution methods were abandoned after vote denial virtually eliminated black voting in the early 20th century. However, a number of southern states
like Alabama in reaction to the growth in voter registration among voters like Gomillion in Tuskegee returned to their use, and created new measures to dilute minority votes, after the white primary was declared unconstitutional and in some cases after the Voting Rights Act was passed.

**Methods of Vote Dilution**

What are the methods of vote dilution that southerners used and how do they work to dilute minority votes? Specifically, southerners used six different measures of vote dilution: racial gerrymandering, annexations, majority requirements, substitution of at-large for single-member district election, full-slate laws and numbered place systems, and substitution of appointed offices for elected ones. Below we discuss each method.

**Racial Gerrymandering and Annexations**

Recall that during the post Reconstruction period and until the 1970s and 1980s, as a consequence of the Republican party’s position on slavery and black political rights in the south, the Republican party in the south was friendly to blacks and white Republicans were supportive of blacks (almost all blacks in the south were Republicans), while southern Democrats desired to reduce the influence of both blacks and white Republicans. To reduce the influence of blacks and white Republicans southern states in the latter half of the 19th century created Congressional and legislative districts, which packed minority voters and Republicans into concentrated enclaves. While this may have ensured the election of some blacks or white Republicans in effect it reduced the total number of blacks and white Republicans elected by changing a district formerly with a

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18 It is noteworthy that this was not necessarily true nationally. Some northern Democrats, while supporting suppression of black political rights in the south, supported integration and black civil rights in their northern states and that some northern Republicans supported suppression of black civil rights in their states opposed such suppression in the south, see Kousser 1992.
majority of black voters to an insufficient number of black voters. For example, South Carolina created a Congressional district, which contained two Republican incumbents and went across county lines to pack in black voters. Similarly Mississippi created a district along the Mississippi River for the length of the state that contained much of the black population in the state. The consequence of these gerrymanders was to reduce the number of black and/or Republican representatives.

States also tried to use racial gerrymandering in response to the Smith v. Alwright ruling and the Voting Rights Act of 1965, which increased black voting. One such blatant move by Alabama post Smith v. Alwright and the resulting increased voter registration in Tuskegee was to re-draw the boundaries of the city of Tuskegee to reduce the black voting population from 400 to 5. Charles Gomillion with the help of civil rights groups challenged the new lines and the Supreme Court, in a noteworthy case declared Tuskegee’s new boundaries unconstitutional by the 15th Amendment in Gomillion v. Lightfoot, 1960. In 1966 the Texas’ legislature gerrymandered multimember districts to dilute black votes in the state’s most populous county and Mississippi also engaged in racial gerrymandering the same year. In a noteworthy case, Allen v. State Board of Elections, 1969, the court ruled that efforts like these to dilute black votes, like efforts to deny black votes, had to be precleared under the Voting Rights Act of 1965. In one of his last opinions, Chief Justice Earl Warren stated that the Voting Rights Act “gives a broad interpretation to the right to vote recognizing that voting includes ‘all action necessary to make a vote effective.’”

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19 Post the passage of the Voting Rights Act the racial and ethnic effects of gerrymandering became an important political issue. In this case the debate has centered over whether it is appropriate to racially gerrymander districts in order to increase minority representation rather than dilute minority votes. We will discuss this recent issue later in this chapter.
Annexation and redrawing city and local government boundaries had a similar effect on black voter ability to elect candidates of their choice, by combining black local governments into bigger white dominated urban areas decreasing the size of black voting strength relative to white. Annexations to dilute black voting strength occurred both after Reconstruction and post Smith v. Alwright and the Voting Rights Act. However, the Supreme Court has on occasion supported annexations even if they decrease black voting strength. For example, in City of Richmond v. United States, 1975, the Supreme Court allowed the City of Richmond to annex a white suburb that would change the percentage black in the city from 52% to 42% because the city created an electoral system that afforded blacks “representation reasonably equivalent to their political strength in the enlarged community.”

While the historical experience is that racial gerrymandering has been used to hurt the prospects of minorities in elections, more recently in response to the Voting Rights Act, the Justice Department has been accused of excessive racial gerrymandering to benefit minority voters by white voters and plans approved by the Justice Department have been challenged as discriminatory against whites. We deal with the gerrymandering debates in the 1990s later in this chapter.

At-large Elections

When the Good Government League in San Antonio, Texas, changed the city’s form of government (discussed in Chapter 9), they also chose to have at-large elections for members of the city council. Although the Hispanic population in the city was sizeable, by commanding a majority citywide and annexing a white suburban area, Hispanic representation on the city council was largely limited to a small percentage and
those who worked with the Good Government League. At large districts were also a
popular method used by southern states to dilute black votes. After Reconstruction
southern states switched local governments from single-member district electoral systems
to at-large districts and after Smith v. Alwright and the Voting Rights Act. For instance,
numerous counties in Alabama switched from at-large to single member district elections
after blacks were effectively disfranchised at the turn of the century. But after Smith v.
Alwright, these counties began to change back. Between 1947 and 1971, 25 of the
state’s 67 counties switched from single-member districts to at-large elections. In 1966
North Carolina’s general assembly authorized in a special session that 49 boards of
county commissioners adopt at-large election systems and required all school boards to
use at-large elections. Mississippi, in the same year, also switched district elections to at-
large elections. One state senator stated that the change to countywide elections would
safeguard “a white board [of education] and preserve our way of doing business.”
However, in Allen v. State Board of Elections, 1969, the Supreme Court declared that
these efforts to dilute black votes, as in racial gerrymandering discussed above, must be
pre-cleared.

To understand how replacing single member districts with at-large districts works
to dilute minority votes, consider a simple model of the electoral process. Assume that
there are two districts with equal populations (50 voters) and each selects a representative
to a state legislature (or city council, etc.). District A has 30 black voters and 20 white
voters; district B has 10 black voters and 40 white voters. Suppose that all voters vote by
racial lines and in each district a white candidate faces a black candidate. District A
elects a black candidate and district B elects a white candidate.
Now suppose that the two districts are combined into one and voters select two representatives. Voters will have two votes, which they can either cast for one candidate or two or abstain. Now the voters in the new at large district, when voting over the four candidates, will elect only the two white candidates and neither black candidate will be elected. While this is a stylized example and voters do not necessarily choose purely on racial lines, it shows how creating at-large districts during the late 19th century and in the mid 20th diluted black votes.

Yet the empirical evidence on the effect on black office holding of changing from at-large to district elections in municipalities in the south is striking. Grofman and Davidson (1994) compare the percentage of blacks in city councils under at-large systems that were changed to single-member districts in eight southern states from the mid 1970s to 1990. While they find an increase in black office holding in councils at-large during the period, reflecting the increased ability of blacks to register and vote after the passage of the Voting Rights Act, a much sharper increase occurs in municipalities that switch to single-member district elections. In cities and towns with a majority white population and at-large elections were still used at the end of the period, the ratio between black population and black office holding was approximately 1/2, meaning that if the black population was 30% of the town, 15% of the council was likely to be black. In contrast, the ratio for those cities and towns with a majority white population and single-member district elections was 1, meaning that if the black population was 30% of the town, 30% of the council was likely to be black. It is important to note that those cities and towns which did not change their council electoral process were likely to be the ones which
were not challenged by blacks as vote diluting and thus areas where whites were less likely to engage in bloc voting.\textsuperscript{20}

*Full Slate Laws and Numbered Place Systems*

In San Antonio the city council was not just selected at large, but the council positions were given “numbers” or “places” which made them separate elections. This meant that minority voters could not use single shot voting to elect a representative. How did this work? Suppose that we have three candidates in an at-large election two select two members of a city council, Mary, Rita, and David. Mary is the minority candidate, and Rita and David are supported by white voters. We have three groups of voters, M, D, and R. Voter preferences and numbers of each voter type are given in Table 10-7.

**Table 10-7: Voter Preferences in Single-shot Voting Example**

<table>
<thead>
<tr>
<th></th>
<th>1\textsuperscript{st} Preference</th>
<th>2\textsuperscript{nd} Preference</th>
<th>3\textsuperscript{rd} Preference</th>
<th>Number of Voters</th>
</tr>
</thead>
<tbody>
<tr>
<td>M voters</td>
<td>Mary</td>
<td>David or Rita</td>
<td>David or Rita</td>
<td>54</td>
</tr>
<tr>
<td>D voters</td>
<td>David</td>
<td>Rita</td>
<td>Mary</td>
<td>23</td>
</tr>
<tr>
<td>R voters</td>
<td>Rita</td>
<td>David</td>
<td>Mary</td>
<td>23</td>
</tr>
</tbody>
</table>

Each voter has two votes and can vote for two candidates for the two offices. If each voter does so, then D and R voters will vote for both David and Rita, who will each receive 46 votes from them and M voters will vote for Mary (who will receive 54 votes) and split their votes between David and Rita, who will get approximately 27 more votes a

\textsuperscript{20}Handley and Grofman (1994) compare the percentage of blacks elected to state legislatures based on whether the state legislature used multimember districts in the period from 1975-1985. Again they find a higher percentage of blacks elected in state legislatures, which used single-member districts than those which used multimember districts, controlling for other factors that affected black representation during the period.
piece. David and Rita are elected even though Mary’s supporters outnumber both David and Rita’s supporters combined. However, suppose now that voters recognize they don’t need to vote for both candidates, i.e. they can vote for just one candidate (or even abstain). M voters will vote only for Mary, decreasing the vote share for David and Rita to 46 each and Mary will definitely be elected.

In full slate laws, votes are not counted unless a voter votes for a “full slate” or the same number of candidates as there are positions. Mary’s supporters are forced to vote for David and Rita, and Mary is not elected. However, if there were two minority candidates, which M voters preferred to David and Rita, then it would be possible even with the full slate law for the minority voters to achieve representation. Yet, restrictions on ballot access for candidates (which we have previously discussed), made this unlikely in the south. Southern states clearly used full slate laws as a strategy to dilute black votes. North Carolina’s legislature passed full-slate laws in 1950s that applied to 14 counties located primarily in the state’s black belt. In 1952 Alabama enacted a full slate law, which applied to every public election whether statewide or local. The legislator who sponsored the bill said the law was necessary because ‘there are some who fear that the colored voters might be able to elect one of their own race to the [Tuskegee] city council by ‘single shot’ voting.”

Numbered place systems as used in San Antonio similarly forced minority voters to support white candidates when minority candidates were limited in availability and

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21 While we assume that M voters split their votes between David and Rita equally, it is possible for M voters to coordinate on either Rita or David as their second choice, allowing Mary to come in second. For example, if they all decide that Rita is their second choice, Mary would get 54 votes, Rita would receive 77, and David only 46. But a failure of coordination of just 9 voters (who might prefer David), then Mary will still come in last.
voters were forced to vote a candidate for each “place” or city council position or their votes would not be counted.

*Appointed Officials*

Even more effective as a method of diluting minority voting strength was replacing a locally elected official in a district dominated by minority voters with a state appointed official (at a time when the state was dominated by Democratic white voters), which many southern states did with formerly elected offices such as sheriff, justice of the peace, etc. after Reconstruction and again after Smith v. Alwright and the Voting Rights Act. Significantly for the indirect vote denial methods which southern states also used, local election officials and boards were appointed at the state level.

*The Effects of Vote Dilution in the late 19th Century*

While anecdotal evidence suggests that vote dilution was used to decrease the ability of African-Americans to elect representatives of their choice, what is the empirical evidence that these procedures have the effects predicted? Kousser 1992 examines the period post Reconstruction when African Americans were still voting in large numbers. He reports that in 1880 presidential election (Reconstruction ended in 1876), 2/3 adult black males voted, that during the 1880s 60% of blacks voted in gubernatorial elections in the eleven southern states, and even in the 1890s black voter turnout remained high (1/2 to 1/3). Yet, during this period the numbers of black elected officials noticeably dropped as shown in Figure 10-3. This suggests that vote dilution did work to decrease the influence of black voters, marginalize them, so that the methods of vote denial, which were instituted in the late 1890s and early 1900s. After which black voter turnout plunged,
Figure 10-3: African Americans Elected to State Legislatures and Congress in Eleven Former Confederate States, 1868-1900
**Majority Requirements and Vote Dilution**

The last black member of Congress to serve from the south from the Reconstruction era was George White from North Carolina, who resigned in 1901 rather than seek reelection, knowing he would be defeated. For 28 years, no African-Americans served in the U.S. Congress. For 72 years, no African-Americans from the south served in Congress. North Carolina had not gained or lost a district in reapportioning, but the population had shifted in the state. In 1968, over 20% of the state’s population was black, yet no black served in Congress and the state elected its first African-American to the state assembly in the 20th century. The state refused to eliminate multimember districts and instituted a numbered-place system. Eva Clayton chose this year to be the first black to run from Congress since White and challenged incumbent L. H. Fountain whose district was 40% black, in the Democratic primary. She lost with only 30% of the vote (only 26% of blacks in the district were registered).

In 1980, as North Carolina redistricted, blacks anticipated that maybe this time one of the districts might give them a chance at winning one of the 11 seats allocated to the state in Congress for the first time since White. Although the state had not gained or lost a Congressional district in the annual reapportionment across states, population changes within the state meant that districts needed to be redesigned in order to maintain the one-man-one vote balance required by the Constitution. One of the principal issues was what to do with Durham, an urban area with a sizeable black population. Should it

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22 In 1928 Oscar DePriest was elected from Illinois (Chicago district).
23 In 1972 Andrew Young was elected from Georgia (Atlanta district) and Barbara Jordan was elected from Texas (Houston district). She became the first African-American woman in Congress from the south.
24 See Kousser 1999 for a review of the North Carolina experience.
go into Fountain’s rural district, which it was close to, to make up for the population that he had lost? To so would probably mean that the percentage black might be high enough to challenge him more successfully than Clayton had. The solution was to draw a new district for Fountain that looked like a “fish hook”, a semi-circle around Durham. The Justice Department, however, challenged the new district and the legislature was forced to put Durham into Fountain’s district (but removed another area that would have made the district majority black, keeping the black population high but less than a majority). Fountain decided to retire rather than face a challenge from Mickey Michaux in the primary, a black civil rights leader from Durham.

Two white candidates with significant state legislative and party experience also decided to run in the Democratic primary, James Ramsey and Tim Valentine. Although blacks were not a majority in the district, it was clear that Michaux would be able to win a plurality of the vote and Ramsey and Valentine would split the remainder. But North Carolina had a majority requirement of 50%. As Kousser (1999) quotes one of the candidates, the race was a contest to determine who would face Michaux in the run-off, which “had been the name of the game from day one.” Voters whose last preference was Michaux did not need to coordinate on a candidate (see Chapter 9), they could let the majority requirement do it for them. As predicted Michaux won a plurality of the vote, 44.1% and would face Valentine in a run-off. In the general election, voting was largely divided by race, with 91.5% of blacks and 13.1% of whites supporting Michaux. Michaux lost with 46.2% of the vote (See Kousser 1999). North Carolina did not elect a black member of Congress until 1992 when Eva Clayton and Mel Watt won seats. Their stories are part of the redistricting battles of the 90s, which we will discuss shortly.
Michaux’s case seems to be obvious example of how majority requirements can prevent a black candidate from winning when a district is less than a majority black and voting is largely along racial lines. The only states in the nation who use majority vote requirements statewide are southern states and their institution was part of the efforts of these states to dilute black voting strength. As such, majority requirements have been attacked and North Carolina lowered its majority requirement to 40% as a consequence of these concerns. However, statistical analyses of the use of majority requirements in the south have not found a significant negative effect of majority requirements on minority representation.25 Blacks have been elected in the south in the face of majority requirements and from districts or areas that are not majority black (for example, Andrew Young was elected to Congress in 1972 from a majority white district despite Georgia’s majority requirement, J.C. Watts was similarly elected from Oklahoma to represent a majority white district with a majority requirement). For this reason, the courts have ruled that majority requirements are constitutional. Many non-southern local governments also have majority requirements (like New York City, Los Angeles, Chicago recently), and while some minority advocates have argued that these laws hurt the ability of minority groups to achieve office, the evidence is mixed.

**Vote Dilution and Other Minority Groups**

The methods of vote dilution have also been applied to other minority racial and ethnic groups. For example, when Texas re-drew its state legislative boundaries after the 1970 census, it divided the 150-member body among 79 single member districts and 11 multimember districts in urban areas where the Hispanic and black population was highest. We have already discussed how San Antonio used at large districts to dilute

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Hispanic votes. In South Dakota an attempt was made to dilute the votes of American Indians by attaching three “unorganized” counties lying entirely within Indian reservations to adjacent counties. The Indians, who were the majority in the unorganized counties, were unable to vote in the adjacent counties, which were controlled by whites. In Little Thunder v. South Dakota, 1975, the Eight Circuit Federal Court ruled that Indians must be able to vote in the adjacent counties.

**Vote Dilution, the 15th Amendment, and the Voting Rights Act**

One of the big debates about the Voting Rights Act and the 15th Amendment has been the extent that the Act and the Amendment outlaw or require pre-clearance for methods of vote dilution discussed above. We have already noted that Chief Justice Warren ruled in Allen v. Board of Elections, 1969, that measures that diluted black votes were subject to the Voting Rights Act. However, a number of noted scholars have contended that the purpose of both the Act and the 15th Amendment should be simply to reduce barriers to the act of voting (vote denial). Moreover, some contend that since vote denial is almost eliminated, there is no further need for the Voting Rights Act. Others have argued that if votes are diluted, then minority and ethnic voters are effectively disfranchised, and thus the Voting Rights Act and the 15th Amendment requires that voting systems be designed to minimize vote dilution.

Those that argue that the 15th Amendment and the Voting Rights Act apply to vote dilution face a number of difficult questions:

- What is evidence of minority vote dilution? Is proportional representation a requirement to prevent vote dilution?
What is evidence of racial discrimination? Do we need to prove intent to discriminate or just results? And if so, what do we mean by results?

Early court cases addressing the Act and the Amendment in the 1960s and 1970s and the debates over renewal of the temporary provisions in 1965 (for five years), 1970 (for five more years), and 1975 (for seven years), showed much confusion over these issues. The City of Richmond v. United States case of 1975 is an example of the problem facing the court. Clearly the annexation changed the city from a black majority population to a white one, which diluted black votes. However, the Court ruled that if the electoral system provided blacks with representation (i.e. with single member districts), the dilution was not a problem. While the courts were in general willing to consider cases of vote dilution, and in some cases declared electoral laws where vote dilution was argued to occur a violation of either the Act or the constitution, the rulings of the courts and the Congressional debate did not give clear guidelines on how vote dilution was to be addressed and what types of electoral systems were acceptable. It seemed that each case had unique features that would have to be addressed individually.

The problem reached a crisis in the early 1980s when a sharply divided Supreme Court ruled in City of Mobile v. Bolden 1980 that the 15th Amendment only applied to access to the ballot (vote denial) and that proof of intent to discriminate was necessary to show that racial discrimination in voting had occurred. This ruling was a reversal from earlier decisions (Allen v. Board of Elections, 1969, White v. Regester 1973, Zimmer v. McKeithen 1973), which had not required such proof and held that the 15th Amendment and Act applied to vote dilution cases. The crisis caused by the ruling was amplified by the election of Ronald Reagan to the presidency in 1980 (who was anticipated to appoint
conservative federal judges and Justice Department officials who might be less committed to fighting voting rights cases) and the fact that the temporary provisions of the Voting Rights Act would expire in 1982.

Voting rights advocates formed a large coalition across racial and ethnic lines (in 1975 the Act had been extended to language minorities) and Congress passed an amended version of the Act in 1982 with veto proof majorities, which extended the temporary provisions for 25 years. The amended Act explicitly states that proof of discriminatory results, rather than intent, was sufficient to substantiate a claim of minority vote dilution and that electoral systems that could be shown to dilute minority votes were unconstitutional. However, the Act also clearly stopped short of requiring proportional representation by stating: “Nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.” Interestingly, just two days after the amended Act was passed, the Supreme Court ruled in Roger v. Lodge, 1982, that circumstantial evidence could be indicative of intent to discriminate under the 15th Amendment (a reversal of Bolden). Why did this happen? Chief Justice Warren Burger changed sides and Justice Potter Stewart, who had written the plurality opinion in Bolden, had been replaced by Justice Sandra Day O’Connor, who voted to reverse Bolden.

In 1986 the Court addressed the 1982 Amended in Thornburg v. Gingles 1986 (a case challenging North Carolina’s plans after 1980’s census), which established a three-part test for determining when at-large voting in multimember districts showed discriminatory results:
There must be a sufficiently large and geographically compact set of minority voters to constitute a majority in one or more single-member districts.

These minority voters must be politically cohesive or tend to vote as a bloc.

Majority voters must vote sufficiently as a bloc “usually to defeat the minority’s candidate.”

Other factors such as the lingering effects of discrimination, racially directed campaign appeals and the use of electoral devices to deny voting were considered supportive of the case, but not essential to the case. The court also made proof of racial bloc voting simple, i.e. plaintiffs did not have to prove that voters were voting for reasons of race rather than some other reason such as religion, party affiliation, age, or candidate name identification. All that needed to be shown was that black and white voters voted differently. Gingles simplified the decision making in voting rights cases and added predictability. The effects were an increase in voting rights cases as well as settlements in advance and a substantial reduction in the use of at-large districts.

**Majority Minority Districts and the Redistricting Debate of the 1990s**

**The New Majority Minority Districts**

In Chapter 6 we discussed how for many years little attention was paid to issues of equity in redistricting and that in a number of states, both north and south, Congressional and state legislative districts were often unequal in size, often not redrawning districts to equal sizes after each national census. A series of court cases in the 1960s established the principal of “one man one vote” and the requirement that after each census states must redraw district boundaries to best reflect this principal was instituted (Gary v. Sanders, 1963, Wesberry v. Sanders, 1964, Reynolds v. Sims, 1964). While
after Smith v. Alwright and the Voting Rights Act, a number of states attempted to engage in racial gerrymandering, these restrictions on district sizes limited the ability of states to dilute black votes in this manner.

As part of the Voting Rights Act, any redistricting plans by covered jurisdictions are subject to review by the Justice Department, as a change in these jurisdictions’ electoral systems. The Justice Department made the North Carolina legislature drop the fish hook design for Fountain’s Congressional district. After the 1990 census the Justice Department similarly gave the boundaries of the covered states special examination. The initial plans of several states including Georgia, Mississippi, and North Carolina, were rejected by the Justice Department and the federal courts as eroding minority gains. For example, in North Carolina the initial plan had only one majority African American district out of 12, or 8% while the state was 22% African American. The Justice Department called for these states to attempt to “maximize” the number of districts with a majority of minority voters (North Carolina was told to devise an additional majority black district for two out of 12 or 16%). The reasoning was that the main way to increase minority representation was to create districts that had a majority of minority voters. In order to do so, many states drew Congressional district boundaries that were clearly racial gerrymanderings. The new districts elected the first African-Americans to Congress from North Carolina since White retired Clayton and Watt, the first in over 90 years.

The most notorious of these were the districts in Georgia, Louisiana, and North Carolina. In Georgia the 11th Congressional district reached across the state to pick up African-American voters. In Louisiana the 4th Congressional district combined areas along the Arkansas border with regions in the southern delta area. In North Carolina the
1st and 12th Congressional districts cut across the state combining black voters. The 12th district (Mel Watt’s) was particularly obvious as a racial gerrymander, it followed I-85 for almost 160 miles linking together minority neighborhoods in different urban areas. For much of its length, the district was no wider than the highway and at some points even narrower than the highway. Figure 10-4 illustrates these Congressional districts. While the racial gerrymandering is obvious, less obvious is the fact the shape of these districts were not only constrained by the desire to maximize the number of majority minority districts, but to also maintain political partisan balance and to benefit incumbents. In fact the first suit against district 12 of North Carolina was filed by the Republican Party, which alleged that the district was an unconstitutional political gerrymander designed to benefit Democrats. Another significant factor was the availability of sophisticated computer technology (both software and hardware), which allowed for gerrymandering at a precise degree not previously available.
Figure 10-4: Majority African-American Districts created after 1990 census in Georgia, Louisiana, and North Carolina
Unconstitutional?

These new districts were promptly challenged by white voters as unconstitutional racial gerrymandering. For example, five white voters filed suit against District 12 in North Carolina, arguing that the racial gerrymander violated the Equal Protection Clause of the 14th Amendment. The case reached the Supreme Court in Shaw v. Reno, 1993, where the Supreme Court ruled that a racial gerrymander may, in some circumstances, be unconstitutional on these grounds and sent the case back to the district court to determine whether districts 1 and 12 had been drawn on the basis of race and, if so, whether the racial gerrymander that resulted was “narrowly tailored to further a compelling governmental interest.” Justice Sandra Day O’Connor wrote the majority opinion. As justification for the decision, she stated:

“A reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who may have little in common with one another but the color of their skin, bears an uncomfortable resemblance to political apartheid. It reinforces the perception that members of the same racial group—regardless of their age, education, economic status, or the community in which they live—think alike, share the same political interests, and will prefer the same candidates at the polls . . . . By perpetuating such notions, a racial gerrymander may exacerbate the very patterns of racial bloc voting that majority-minority districting is sometimes said to counteract.”

Eventually, after several more court hearings, the 12th district was redrawn as were a number of the other majority minority districts created after the 1990 census.
While the original 12th district was 54.7% African American, then new district was only 44.2% African American, no longer majority African American (although Latino voters were 6.8%). Other redrawn districts ceased to be majority African-American, although close to a majority. Through these court cases the following formula evolved for dealing with these cases: Specifically, plaintiffs alleging unconstitutional racial gerrymandering must first prove that “race was the predominant factor motivating the redistricting decision.” Then the application of strict scrutiny standard of judicial review is appropriate. Under strict scrutiny, the state is required to prove that the use of racial classifications was narrowly tailored to further a compelling state interest. If this is not the case, then the district boundaries are unconstitutional and should be re-drawn.

Although this criteria may seem clear, in actuality the waters on redistricting remain quite murky as it is difficult to determine first whether race is the predominant factor, since political gerrymandering can also lead to bizarrely shaped districts, as noted by Justice Stevens in one of the case of the 1990s.\textsuperscript{26} For example, the redrawn 12th district as well as the 1st district of North Carolina were further challenged by white voters. In Cromartie v. Hunt, 2000, the federal district court concluded that both districts had been drawn along racial lines for a predominantly racial motive. The court ruled that the first district was narrowly tailored to achieve the state’s compelling interest in complying with the Voting Rights Act and thus survived strict scrutiny, but that the 12th district was not. However, the Supreme Court in Hunt v. Cromartie 2001 reversed the district court. Justice Breyer writing for the five justice majority, stated that “The evidence . . . does not show that racial considerations predominated in the drawing of

\textsuperscript{26} In Hunt v. Cromartie, 1999, Justice Stevens in his concurrence wrote that a “bizarre configuration is the traditional hallmark of a political gerrymander.”
District 12’s boundaries. That is because race in this case correlates closely with political behavior.”

**Majority Minority Districts and Other Minorities**

Not all the new majority minority districts created after the 1990 census to satisfy the Voting Rights Act were in the south or involved African-Americans. For example, after the census, Illinois’ Latino population was shown to have increased by 42.3% and even though the state had lost two Congressional seats, Latino leaders felt that the increase in Latino population, particularly in the city of Chicago, justified a new majority Latino district in the state. There was much partisan wrangling over the issue with Republicans in favor of the new Latino district, seeing it as an opportunity to hurt Democratic incumbents, who feared that the new district would take away their needed support. After receiving support from the black community, a new Latino district was finally added. The new district (called the ear-muff district), see Figure 10-5, combined a Puerto Rican community in the northwest of the city with a Mexican-American community in the southwest by a thin loop through white ethnic neighborhoods so that an existing majority African American district was unaffected. Two Latinos ran for the Democratic nomination in the new district, Juan Soliz, a Mexican-American former Alderman and Luis Gutierrez a Pureto Rican alderman, reflecting the diversity within the Latino community in the district. Gutierrez, better financed and with support from Mayor Daley, won the nomination and defeated a Mexican-American Republican in the general election. The district was challenged in federal court and the Supreme Court declined to hear it in a 1998 appeal, upholding its constitutionality. The district is largely maintained in the 2001 redistricting plan.
Figure 10-5: Illinois’ Fourth Congressional District
A similar situation occurred in New York City when after the 1990 census it was revealed that the overall state population had stayed relatively constant but the Latino population had increased by 33.4%. Although New York lost three Congressional seats, Latino leaders lobbied for a new Latino majority district. As in Illinois, partisan concerns made the task for Latino leaders difficult, however, they were successful. The new plan had two Latino districts, one that was already represented by Jose Serrano, in the south Bronx, and the new 12th district, which, as in Illinois’ 4th district, combined several Latino communities in Williamsburg, Bushwick, Sunset Park, East New York, Corona, Elmhurst, and Jackson Heights to create a new majority Latino district, see Figure 10-6. The new district was 58% Latino.
Figure 10-6: The 12th District in New York in 1992
Five Latinos ran for the new seat as well as a white Democratic incumbent, Stephen J. Solarz, whose district had been carved up in the redistricting. Solarz, who had served 9 terms in Congress, argued that he could best give the district substantive representation since his seniority and experience would allow him to provide more for the district. He also had strong name recognition. However, Solarz had notoriously taken advantage of the House Bank and in the scandal that was revealed in the early 1990s voters learned that he had written 743 bad checks. Nevertheless the potential existed for Latino voters to split their support and for Solarz to be elected. However, in the Democratic primary, Nydia Velazquez, received endorsements from top Democratic leaders in the state and city and was able to build a coalition of Latino and African-American voters to win with 33% of the vote with Solarz receiving 27% and Colon 26%. She then defeated the Republican Latino candidate, Diaz handily. In 1996 plaintiffs challenged District 12 as having as primarily drawn for racial reasons and that as a result it was non-compact. The Federal District court ruled that the plaintiffs were correct and the district was redrawn, now only 48.6% Latino. Figure 10-7 shows the new district 12 (which was largely the same after the 2001 redistricting). The experiences in North Carolina, Illinois, and New York highlight the difficulty of determining both when gerrymandering is sufficiently racially motivated to require strict scrutiny and when a compelling state interest might exist.
Figure 10-7: 12th District New York redrawn in 1997
Are Majority Minority Districts Good for Minorities?

The Effect on State Legislatures

The Theory

The creation of majority minority districts, even though many were later revised did have the effect of increasing the descriptive representation of minority groups in Congress and in state legislatures which were also forced to draw boundaries to increase minority office holding. In Table 10-2 we saw that between 1985 and 1992 the percentage of black members of Congress from southern states rose from 1.7% to 13.6%. Most of this gain was due to the redistricting that took place after the 1990 census – in 1990 the percentage was only 4.3%. In 1990, 12.1% of state House members were black, in 1992, 14.8% were. In 1990, 9.4% of state Senate members were black, in 1992, 13.5% were. Remarkably, although some of the district lines were redrawn due to court challenges, as Table 10-2 reports, the percentages in 2003 are even higher for state legislators, and about the same for members of Congress.

As for particular cases, North Carolina’s two new African American majority districts resulted in the first black Congress members from the state since 1901. Significantly, as some district boundaries were re-drawn reducing the minority population to below a majority, many of the newly elected minority representatives were able to maintain their seats, such as Representative Mel Wat from the 12th District of North Carolina and Nydia Velazquez from the 12th District of New York. Others have not fared as well. For example, Cynthia McKinney of Georgia was defeated in the Democratic primary in 2002 after serving since the creation of a new minority district in 1992; however, her opponent was also African-American, showing that it is possible for a
minority challenger from a district without a majority minority to succeed to office in the south. It is not possible to accurately determine whether minority candidates would have succeeded as well without the creation of these majority minority districts, which increased descriptive representation initially.

However, many have expressed concerns that the creation of majority minority districts has hurt the Democratic party and resulted in a more conservative Congress. The intuition is that by taking away minority voters from other districts to create these new districts, the other districts have become more conservative and therefore Congress as a whole has become more conservative. Surprisingly, it turns out that this intuition is false for Congress, but true for state legislatures. To see why this is the case, consider a simple model of districting in a state with three legislative districts and minority voters are more liberal than white voters in the state. This example is drawn from Shotts 2002. Assume that each district’s representative will choose a policy position equal to the ideal point of the median voter in his or her district. Suppose that we can represent policy on a single line, from zero to 100. Voters in a state are distributed as shown in Figure 10-8. Minority voters are 1/3 of the population and white voters are 2/3. Minority voters have ideal points that range from 0 to 40, with the median minority voter’s ideal point at $M_M$ or 20. The triangle with its peak at 20 is the probability distribution of minority voter ideal points. White voters, in contrast, have ideal points that range from 40 to 100, with the median white voter’s ideal point at $M_W$ or 70. The triangle with its peak at 70 is the probability distribution of white voter ideal points. The ideal point of the median voter in the state is at $M_S$ or 61.2.
Figure 10-8: Voters’ Preferences in Redistricting Example

Minority Voters (1/3 of population)

White Voters (2/3 of population)

Liberal 0 20 40 61.2 70 100 Conservative

M_M  M_S  M_W
Consider two possible districting plans. In the first, non-gerrymandered redistricting plan, minority voters are spread evenly among the three districts, such that each one has 1/3 minority voters and 2/3 white voters. In the second plan the districts are racially gerrymandered where all minority voters are packed into a single district and the two remaining districts are 100% white. In the first plan, each district has the same median point, 61.2, the median in the state, since both populations are distributed equally across the three districts. So each representative’s policy position is the same, 61.2. Under the second plan, however, the representative from the majority minority district’s policy position is the median of the minority voters at 20, and the other two representatives’ policy positions are at the median of the white voters at 70 (assuming the white voters are equally distributed across the two districts).

Suppose that these three representatives serve in a state legislature and the state legislature chooses policy outcomes to please the median representative in the state legislature. In this case the effect of gerrymandering on policy outcomes in the state legislature is clear. In the non-gerrymandered plan the median representative’s ideal point is at 61.2, the median in the state. But in the gerrymandered plan the median representative’s ideal point is at 70. In this case the racial gerrymandering has neutralized the minority voters.

The Evidence

The theoretical result is supported by empirical analysis of the alternative redistricting plans for the South Carolina state Senate by Epstein and O’Halloran (1999). Creating majority minority districts can make the state legislature more conservative. This may partially explain why white Democrats are now an endangered species in the
Texas state legislature even as many white voters still identify as Democrats and register as Democrats in the state. While some like Texas Democratic state representative Pete Gallego might argue that the lack of white Democrats in the state legislature simply reflects a decrease in white voters in the state supporting Democrats, surveys suggest that the decrease in the legislature is sharper. Exit polls show that Democratic U.S. Senate candidate Ron Kirk in 2002 received 30 percent of white vote and Democratic gubernatorial candidate Tony Sanchez received 27 percent. Since both candidates faced popular incumbents, these totals may understate willingness to support Democratic candidates among whites. African-American Democratic legislator Garnet Coleman argues that the reason for the decrease in white Democrats in the state legislature is redistricting: “It . . . shows that somebody was really smart in drawing maps. They knew how to eliminate, through gerrymandering, districts that would elect Anglo Democrats.”

How exactly did this happen? Some white Democratic voters have been combined with minority voters into districts with a majority of minority voters, which have elected their own representatives. Other white Democratic voters in rural areas have been combined with suburban Republican areas. As Chuck Hopson remarked about the proposed new Congressional districts the Killer D’s were revolting against, which would combine rural Democratic white voters with Republican white voters from suburbs of Houston or Dallas, giving Republicans a majority: “We’ll be represented by people driving fancy

28 Governor Rick Perry was fulfilling the term of George W. Bush, so technically not an incumbent. Some have suggested that white support was lower for these two candidates because of anti-minority biases since Kirk is African-American and Sanchez is Hispanic and both brought up issues relevant to minority voters in the campaign, driving whites away from supporting them.
29 Herman, Ken, “Vanishing at Capitol: The White Democrat; As GOP burgeons, opposition members tend to be minorities,” The Austin American-Statesman, Saturday, March 1, 2003.
cars instead of pickup trucks.” Increasing majority minority districts in the Texas state house and senate, as the analysis above shows, does make the legislature more conservative than the state as a whole and in the process squeezes out white Democrats.

**The Effect on Congress**

**The Theory**

What happens if instead of the representatives elected in our simple model serving in a state legislature, they are members of Congress? In this case the policy outcome in Congress will depend on the location of the median in Congress, which depends not just on the policy positions of representatives from this state but in other states as well. Assume that there are 100 other legislators, with policy positions 1, 2, . . . , 100. What happens to the national median under the two plans? Under the non-gerrymandered plan, all three legislators from the state have policy positions at 61.2, which is to the right of the center. Thus the national median of the 103 member legislature is at 52. Under the gerrymandered plan, the state elects one representative at 20 and two at 70, so the median of the national legislature is at 51. The racial gerrymandering has increased the number of liberals elected, and shifted the median nationally and policy to the left.

While this may seem a small effect, consider the situation where all states face the constraint of creating majority minority districts. In states where there is little difference between minority voters’ preferences and white voters’ preferences, then creating majority minority districts will not affect the distribution of policy positions of the representatives sent to Congress in those states. So those states where the median voter in the state is less than the national median will continue to send representatives to the

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left of the median in the same proportion. Thus, creating a majority minority district in New York is unlikely to affect the national median. However, in states where the median voter in the state is greater than the national median (like Texas), creation of majority minority districts will force these states to send representatives whose policy positions are left of the national median, moving the national median to the left. If a large number of states are forced to do this, it can cause policy to move to the left. Of course, this analysis oversimplifies the complex game between states, which we discussed in Chapter 6. Shotts (1999) has analyzed this game and shows that in the more complicated game, the basic intuition that majority minority districts can move national policy to the left is supported.

**The Evidence**

Does Shotts’ reasoning have empirical support? Shotts examines the roll call voting scores of southern members of Congress during the redistricting period as measured by Poole and Rosenthal 2001. Surprisingly, the percentage of liberals increased, from 38% during the period 1986-1990 to 44% from 1992-1996. The percentage of liberals is calculated by measuring what percentage of members of Congress have voting records that are more liberal than the median member of Congress. These figures are shown in Figure 10-9. Notice that while the percent Democratic decreased, the percent liberal increased, reflecting the change in the median voter in the Democratic districts. During the period southerners increased the percentage of members of Congress they sent who were more liberal than the national median even as the number of Democrats decreased. In 1994, the percent Democrats and percent liberal become almost the same, reflecting the fact that more southern Democrats had voting
records that were more conservative than the median voter in Congress than after 1994, when Democrats lost control of Congress. Essentially Republicans replaced the conservative southern Democrats (some switched parties), but the percentage of members who were liberal increased slightly and did not return to the levels before Republicans gained control.
Figure 10-9: Partisanship and Policy Preferences of Southern Representatives
The Killer D’s Once Again

What about Texas where Democratic state legislators fled to Oklahoma rather than vote on a redistricting plan put forward by the Republican majority? Figure 10-10 presents the same data for Texas members of Congress through 2000. Before 1994, while Democrats were a high percentage of the Texas delegation (around 70%), the percent of members of the delegation who have voting records more liberal than the median voter in Congress was much lower, around 50%. In 1994, conservative Texas Democrats were replaced by Republicans and more liberal Texas Democrats. All Texas Democrats had a more liberal voting record than the median voter in Congress, resulting in the Texas delegation providing more liberal members of Congress than conservative ones. When Texas redistricted after the census of 2000, the federal court gave the two new districts to Republicans and designed the remaining districts to facilitate incumbent reelection. Democrats maintained control over the same 17 districts they controlled prior to redistricting while Republicans control increased from 13 to 15 districts, so that the percentage of Democrats from Texas in Congress in 2002 was 53.13%, and given that these districts have changed little, one would expect that the percent voting more liberal than the median voter in Congress would also be 53.13%.
But if Republicans redistrict are they constrained to provide more liberal members of Congress in order to provide majority minority districts than they would otherwise as Shotts contends? After the 1990 census, Texas had two black majority districts and seven Hispanic majority districts, which elected five Hispanic Democrats (one is represented by a white Democrat, the other by a Hispanic Republican), two black Democrats and 10 white Democrats. The plan designed to benefit incumbents and give Republicans the two new districts basically maintained the same distribution of minority districts. This means that the percent of seats held by minorities decreased – blacks have 6.5% of the seats in 2002 and Hispanics have 22%, while black population in the state is 11% and Hispanic is 32%. Both minority groups attempted to gain seats in the redistricting process but were rebuffed by the Democratic incumbents in Congress who
knew that such a plan would take away voters from them. According to Nina Perales, regional counsel for MALDEF, Texas Democrats were against a new Latino district in the Dallas area because it would have affected the district of Democratic white Representative Martin Frost. She remarked: “They fought like mad cats to keep us away. Neither Republicans nor Democrats were proposing additional Latino districts.”

The Democrats would have been able to maintain their same percentage and percentage liberal by replacing white incumbents with new Hispanic districts with a Democratic majority, but chose instead to retain incumbents, making the argument that to do so benefited Hispanic voters in Texas because the incumbents would, through seniority, have powerful positions. A number of Hispanics, like U.S. Representative Charlie Gonzalez, agreed with this position. As political consultant Lisa Montoya reasoned: “It makes sense; these people have seniority. They already hold positions of power on different committees. It would take a new member 10 years to obtain the power they already have.”

Texas Republicans, in attempting to get the district lines redrawn, are proposing to increase the majority minority districts while reducing the percentage that elect Democrats. To pass a new plan in the state senate the Republicans need to have a super majority, which means they need two Democratic state senators to support them. They are therefore lobbying minority state senators by offering more majority minority districts, while still reducing the total number of Democrats in Congress. Minority leaders were divided over the new plan. In a Houston hearing over the Republican

proposed plan in June, 2003, two black Democratic state representatives Garnet Coleman and Ron Wilson “took such bitterly opposing positions that they engaged at one point in a shouting match. . . . Wilson, a member of the House Redistricting Committee, has joined Republicans who say the plan that the committee approved would help blacks by giving them the opportunity to control a third congressional district. . . . But Coleman . . . testified that the plan would reduce black influence in other districts, now held by white Democrats who would lose their seats to Republicans . . .”33 Hispanic leaders have similarly expressed divided opinion. For example, Democratic state senator and president pro tem, Eddie Lucio, “said that he does not like the redistricting proposal put forth . . . [by Republicans] . . . but would consider a plan that created five Hispanic districts along the Rio Grande. That would result in three more Hispanic districts.”34

Is the new Republican plan better for minority voters since it might increase descriptive representation in Congress? Or is the original plan better because of the higher percentage of liberals in Congress and with power (and presumably substantive representation in Congress)? The dilemma for minority voters arises not because increasing majority minority districts results in more conservatives elected (Republicans would be able to elect even more if they were not constrained to provide majority minority districts) but because the original plan preserved incumbents over creating new majority minority districts and Republicans need the votes of minority state senators to pass their plan decreasing the number of liberals.

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The Future of Redistricting

Representative Charlie Norwood (discussed in Chapter 8) may have liked the new district boundaries drawn in Georgia for Congress and the state legislature after the 2000 census, but the Justice Department was less happy. Not about the odd shapes of the boundaries (recall from Chapter 6 the perimeter district), but because black votes were spread out across districts more than they had been in the previous plan, particularly in the plan for the state senate. Georgia’s state senate plan appeared to have been designed by legislators who understood the logic of Shott’s analysis for state legislatures. That is, Georgia’s redistricting was in control of Democrats who worried that if they created districts to maximize the probability of electing blacks to the state senate, by packing in minority voters, they would make it easier for Republicans to win and move the median voter in the state senate closer to Republicans, which would actually hurt the minority voters the new plan was supposed to help. “The Senator who chaired the subcommittee that developed the new plan testified he believed that as a district’s black voting age population increased beyond what was necessary to elect a candidate, it would push the Senate more towards the Republicans, and correspondingly diminish the power of African-Americans overall”\textsuperscript{35} Democrats designed a plan that kept the number of majority-minority districts constant but increased what they called “influence” districts where black voters would be significant but not decisive. They created 13 districts with a majority black population, 13 more districts with a black voting age population of between 30-50%, and 4 other ones with a black voting age population of 25-30%. Ten of the eleven black state Senators voted for the plan and 33 of the 34 black state senators.

\textsuperscript{35} See syllabus to Georgia v. Ashcroft, 2003.
representatives voted for it. No Republicans voted for the plan and without the black vote, the plan would not have passed.

The Justice Department did not like the plan since it reduced the black vote in three of the districts from what it had been before. In April 2002, the District Court agreed with the Justice Department and ordered that the plan be rewritten. Georgia legislators shifted black voters back into the three districts. But the case was not over. In August, 2002, the Attorney General of Georgia, black Democrat Thurbert Baker appealed the decision of the district court to the Supreme Court in Ashcroft v. Georgia and the Supreme Court agreed to hear the case although a decision would not be expected before the 2002 election. As Democrats feared, Republicans won a majority in the state senate in 2002 with 30 seats to 26 for Democrats (the previous breakdown was 32 Democrats to 24 Republicans). Although Baker was reelected, Republican Sonny Perdue captured the governorship from incumbent Democrat Barnes (their vote mobilization tactics are discussed in Chapter 2) and after taking office demanded that Baker drop the suit. Baker refused and Perdue sued him. At this writing the case is still before the Georgia Supreme Court.

In June 2003 the U.S. Supreme Court reversed the district court’s decision for failing to adequately examine the entire plan and the effect on minority representation as a whole in the state senate, sending it back to the district court to consider these factors. Remarkably, the five justices who voted to reverse and remand to the district court were appointed by Republicans. Justice Sandra Day O’Connor wrote the option and noted that the Voting Rights Act “gives states the flexibility to implement the type of plan that Georgia has submitted for preclearance – a plan that increases the number of districts
with a majority-black voting age population, even if it means that minority voters in some of those districts will face a somewhat reduced opportunity to elect a candidate of their choice. . . . While courts and the Justice Department should be vigilant in ensuring that States neither reduce minority voters’ effective exercise of the electoral franchise nor discriminate against them, the Voting Rights Act, as properly interpreted, should encourage the transition to a society where race no longer matters.”

The decision by the Supreme Court to reverse and remand in Ashcroft v. Georgia is widely seen as a victory for Democrats in the state and the use of “influence” districts. In 2007 the Voting Rights Act will expire unless it is renewed. What would that mean? In terms of vote denial, we are unlikely to return to the use of the poll tax, literacy tests, whites only primaries and other ways in which votes were directly denied to minorities that are no longer used. However, while there is a movement to allow ex-felons to vote, so far it has been unsuccessful. As for vote dilution, the 14th Amendment and the equal protection clause will not expire. However, states like Georgia would no longer need to seek pre-clearance for redistricting plans and other electoral changes as it did in 2000. Should we not worry about the potential for majority voters to use electoral institutions to dilute minority votes? Will the nation decide that in 2007 race and ethnicity no longer matter in voting?