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AN ARISTOCRACY OF VOTERS: THE DISFRANCHISEMENT OF BLACKS IN SOUTH CAROLINA

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I. INTRODUCTION

South Carolina was founded not upon a democracy, but upon an aristocracy of voters.[1] Blacks were excluded from the electorate as a formal matter in 1716, when registration procedures were amended to limit voting to "every white man (and no other)."[2] Also denied the franchise were non-Christians, the poor (those either without a freehold of at least fifty acres or not liable to pay fifty pounds in taxes), apprentices, convenanted servants, "any seafaring or other transient man," and, of course, women.[3]

The state was not unique in its narrow view of black political participation. As Chief Justice Taney noted in *Dred Scott v.*

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1. *See* Weeks, *The History of Negro Suffrage in the South*, 9 POL. SCI. Q. 671, 673 (1894).

2. 2 S.C. Stat. 249, No. 227 (1704), *amended by* 3 S.C. Stat. 2, No. 373 (1716).

3. 3 S.C. Stat. 2, 3, No. 373 (1716).

Sandford,[4] which held that black slaves were not citizens, "in no part of the country, except Maine, did the African race, in point of fact, participate equally with the whites in the exercise of civil and political rights."[5] Much of the subsequent history of voting in South Carolina has involved the efforts of whites to maintain, and blacks to pull down, various regimes of the old aristocracy of voters.

II. The Period of Reconstruction

After the Civil War, Benjamin Franklin Perry, a former Unionist from Greenville, was appointed provisional Governor by presidential proclamation on June 13, 1865.[6] He convened the first Reconstruction Constitutional Convention in September of that year and strongly opposed extension of the franchise to blacks. "[T]his is a white man's government," he told the Convention, "and intended for white men only . . . ."[7] The Convention duly adopted laws limiting voting and officeholding to free white men at least twenty-one years of age.[8]

In 1865 the legislature also adopted an elaborate Black Code, which imposed upon blacks, within the limits of emancipation,[9] a status analogous to that of slavery. "Persons of color," defined as anyone having less than seven-eighths of Caucasian blood, were "not entitled to social or political equality with white persons."[10] No black could migrate into the state without posting a $1,000 bond.[11] "Colored children" who were not being taught the habits of industry and honesty were subject to compulsory apprenticeship.[12] Working hours were regulated: on farms and in outdoor service the hours of labor, except on Sunday, were from sunrise to sunset.[13] Servants could not have visi-

4. 60 U.S. (19 How.) 393 (1857).

5. *Id.* at 416.

6. A. Taylor, The Negro in South Carolina During the Reconstruction 40 (1924); G. Tindall, South Carolina Negroes 1877-1900, at 7 (1952).

7. Speech by B. F. Perry, South Carolina Convention of 1865, at 14.

8. S.C. Const. of 1865, art. I, §§ 13, 14; art. IV.

9. *See* U.S. Const. amend. XIII (proposed to the states on February 1, 1865); President Lincoln's Emancipation Proclamation (January 1, 1863).

10. 13 S.C. Stat. 271, No. 4730 (1865).

11. 13 S.C. Stat. 271, 276, No. 4731 (1865).

12. 13 S.C. Stat. 291, 293, No. 4733 (1865).

13. *Id.* at 295-96.

tors or be absent from their master's premises without permission.[14] As far as house servants were concerned, it was "the duty of this class . . . to be especially civil and polite to their masters, their families and guests."[15] Blacks were prohibited from engaging in trade or business without a license obtained from a judge.[16] Idleness was made a criminal offense.[17]

Partially in response to the disfranchisement of blacks and the passage of black codes by South Carolina and other southern states, Congress enacted the Civil Rights Act of 1866.[18] This act declared "all persons born in the United States . . . to be citizens," without regard to race, color, or previous condition of servitude. Congress also enacted the Reconstruction Acts of 1867 and 1868, which gave the right to vote to all resident males twenty-one years of age or older.[19] Excluded from voting were those, essentially whites, who were ineligible to hold office under the proposed fourteenth amendment[20] or who were unable to take an oath that (1) they had not been members of a state legislature or held executive or judicial office and (2) had not fought in, or supported, the Civil War.[21]

Pursuant to the Reconstruction Acts, the Confederacy was divided into five military districts, each under the command of a general officer of the army. The military supervised the registration of voters, and each state was required to determine whether to conduct a constitutional convention and elect a Reconstruction government.[22]

South Carolina held its second Reconstruction Constitutional Convention in November 1867. More than half the delegates, 76 out of 124, were black.[23] The Convention adopted a new constitution, the most critical provision of which was the granting of the right to vote to every male resident of the state

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14. *Id.*
15. *Id.* at 299.
16. *Id.*
17. *Id.* at 303-04.
18. Civil Rights Act of 1866, ch. 31, 14 Stat. 27 (1866).
19. Reconstruction Act of 1867, ch. 153, 14 Stat. 428 (1867); Reconstruction Acts of 1868, ch. 6, 15 Stat. 2, ch. 36, 15 Stat. 14, ch. 25, 15 Stat. 41 (1868).
20. 14 Stat. at 429; U.S. CONST. amend. XIV, § 3.
21. Ch. 6, 15 Stat. 2.
22. P. LEWINSON, RACE, CLASS, & PARTY: A HISTORY OF NEGRO SUFFERAGE AND WHITE POLITICS IN THE SOUTH 40 (1963).
23. G. TINDALL, *supra* note 6, at 8.

twenty-one years of age or older "without distinction of race, color, or former condition."[24]

As a result of extension of the franchise and the presence of federal troops, blacks participated in local, state, and national government for the first time. By the end of Reconstruction in 1877, eight blacks had been elected to Congress, two blacks had served as Lieutenant Governor, one black as a Justice of the state supreme court, and another as secretary of state. For six years blacks composed a majority of the state house of representatives, although they never attained a majority of the senate.[25]

The Reconstruction governments, dominated by Republicans and blacks, have been severely criticized for their corruption and mismanagement. Modern historians, however, have been more generous, pointing to their significant achievements in providing for universal male suffrage, establishing a system of public schools, and promoting the concept of equality before the law.[26] Even prior to passage of a federal public accommodations law in 1875,[27] the Reconstruction legislature prohibited discrimination in common carriers and theaters and provided for proportional representation of the races on juries.[28]

The majority of whites never acquiesced in the sharing of political power with blacks, and a violent opposition to black enfranchisement developed. The Ku Klux Klan became widely active in the state as early as 1868, and political intimidation, including assassination, was commonplace.[29] In 1868, B. F. Randolph, a black senator from Orangeburg, and James Martin, a Republican legislator from Abbeville, were both killed. Two black citizens were also killed in that year, Tabby Simpson at Laurenceville and Johnson Glascoe at Newberry. The motive in all these killings was the political intimidation of the Negro.[30]

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24. S.C. CONST. OF 1868, art. VIII, § 2.

25. G. TINDALL, *supra* note 6, at 9.

26. *See generally* F. SIMKINS & R. WOODY, SOUTH CAROLINA DURING RECONSTRUCTION 93-94 (1932); A. TAYLOR, *supra* note 6, at 1-4.

27. An act to protect all citizens in their civil and legal rights, ch. 114, 18 Stat. 335 (1875). *But see* The Civil Rights Cases, 109 U.S. 3 (1883).

28. 14 S.C. Stat. 386, 386-87, No. 279 (1870); 14 S.C. Stat. 154, 155, No. 72 (1868); 14 S.C. Stat. 236, No. 155 (1869). *See also* Simkins, *Race Legislation in South Carolina Since 1865* (pt. 2), 20 S. ATL. Q. 165 (1921).

29. A. TAYLOR, *supra* note 6, at 189.

30. *Id.*

Political terrorism, from the white perspective, was extremely effective. Many black elected officials were afraid to speak in public or even to live in the districts they had been chosen to represent. One of those was Henry Johnson, who had been elected to the legislature from Fairfield County in 1868. Shortly after his election, he was visited in the middle of the night at his home in Winnsboro by more than one hundred armed and mounted members of the Ku Klux Klan. He managed to escape, but they warned him that if he did not resign his office and retire from politics, they would kill him. Johnson, fearing for his life, moved to Columbia and refused to return to Fairfield.[31] He later told a congressional subcommittee investigating Klan violence in the South that it was impossible for him even to give a political speech in his district. "No, sir. I would not do it for the whole world," he said. "Could you do it with safety?" a subcommittee member asked. "No, sir . . . . I do not believe a meeting could be gotten up. They [blacks] fear being killed, because some have been shot."[32]

One response by the Reconstruction government to the wave of political violence was the establishment of a state police to maintain public order.[33] Dissident whites formed a statewide paramilitary force of their own, consisting of local rifle or sabre clubs. Racial confrontations were frequent and bloody as the disorders continued into the 1870s.

In 1871 thirteen blacks were murdered by the Klan in Union County in retaliation for the killing of Matt Stevens, a former Confederate soldier. According to a reporter for the *New York Tribune*, who interviewed local whites, the purpose of the murders was "to intimidate the blacks so that at the next election they would not dare to vote for any of their own race for office or for any white radical."[34] In February 1871 a black county commissioner, Henry Nash, was killed at Cokesburg. Two blacks were lynched at about the same time in Williamsburg. Later, at least seven blacks were killed during several attacks by whites in Chester, and there were bloody confrontations

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31. *Report of the Joint Select Comm. to Inquire into the Condition of Affairs in the Late Insurrectionary States*, S. REP. No. 41, 42d Cong., 2d Sess. 317 (1871).

32. *Id.* at 318.

33. 14 S.C. Stat. 14, No. 11 (1868).

34. N.Y. Trib., April 28, 1871, *quoted in* A. TAYLOR, *supra* note 6, at 198-99.

in Darlington, Blackville, and Orangeburg.[35]

Since the state was clearly unable to control the racial violence, Congress passed three Enforcement Acts in 1870 and 1871.[36] The third Enforcement Act, known as the Ku Klux Klan Act, authorized the President to use armed force to suppress any insurrection against the United States. After a congressional subcommittee visited South Carolina in June 1871, President Grant declared nine counties in the State—York, Spartanburg, Newberry, Laurens, Lancaster, Fairfield, Chester, Chesterfield and Union—to be in rebellion and dispatched troops to restore order.[37]

III. THE 1876 ELECTION AND THE EDGEFIELD PLAN

The principal leader of the white insurrectionists was Martin Witherspoon Gary, a former Confederate general and resident of Edgefield.[38] He was the author of the notorious "Edgefield Plan," which was patterned on the "Mississippi Plan" for redemption of state government by white Democrats through the systematic use of terrorism and violence.[39] The Edgefield Plan was fully implemented during the critical election for governor in 1876. Wade Hampton, a patrician of great personal prestige and a hero of the Civil War, was running as a Democrat against Daniel Chamberlain, a moderate Republican. Gary's plan adopted the slogan "Fight the Devil with Fire" and proposed "to drive the carpetbaggers from this State at all hazards."[40]

Gary's plan called for the establishment of armed Democratic military clubs, which were to insure a Democratic victory. His "Rules" provided in part:

> 12. Every Democrat must feel honor bound to control the vote of at least one negro, by intimidation, purchase, keeping him

35. A. TAYLOR, *supra* note 6, at 199.

36. Enforcement Act of 1870, ch. 114, 16 Stat. 140 (1870); Enforcement Act Amendments of 1871, ch. 99, 16 Stat. 433 (1871); Enforcement Act of 1871, ch. 22, 17 Stat. 13 (1871).

37. A. TAYLOR, *supra* note 6, at 201.

38. G. TINDALL, *supra* note 6, at 11.

39. F. SIMKINS, PITCHFORK BEN TILLMAN: SOUTH CAROLINIAN 57 (1944); F. SIMKINS & R. WOODY, *supra* note 26, at 499-501.

40. F. SIMKINS & R. WOODY, *supra* note 26, at 568.

away or as each individual may determine, how he may best accomplish it.

16. Never threaten a man individually if he deserves to be threatened, the necessities of the times require that he should die. A dead Radical is very harmless—a threatened Radical or one driven off by threats from the scene of his operations is often very troublesome, sometimes dangerous, always vindictive.[41]

On the eve of the election, the state resembled an armed camp and was closer to absolute lawlessness than it had ever been. According to an anonymous South Carolinian writing for the *Atlantic Monthly*:

> The work of buying arms and organizing democratic primaries and rifle clubs was energetically pushed on, till every democrat in the State had a gun and was enrolled in a primary, and three fourths of the whites belonged to the military.[42]

As far as actual violence was concerned, "the intimidation and killing of negroes during election campaigns is a lamentable but significant sign."[43]

Simon Coker, a state senator from Barnwell, was executed "as he was on his knees in prayer" by members of the Sweetwater Sabre Club from Edgefield; a black legislator was killed in Darlington County; two blacks were lynched in Marlboro; and six more blacks were lynched in Edgefield. There were political riots in Charleston (Sept. 6, 1876); in Ellenton (Sept. 17, 1876), in which two whites and fifteen blacks were killed; and in Cainhoy, in which six whites and one black were killed.[44]

Racial violence reached a frenzy before the 1876 election, appropriately enough, near Edgefield County in the town of Hamburg. It was July 4th, and a company of black militia was celebrating independence with a parade through the public streets. Two white travelers appeared and demanded that the company break ranks and let them pass. The militia refused, a confrontation developed, and heated words were exchanged. The whites eventually passed by, but took out process charging the

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41. *Id.* at 566-67.
42. *The Political Condition of South Carolina*, 39 ATL. MONTHLY 177, 184 (1877).
43. *Id.* at 191.
44. A. TAYLOR, *supra* note 6, at 243; F. SIMKINS, *supra* note 39, at 66.

officers of the company with obstructing the public highway. The case was set for trial in Hamburg on July 8.

On the morning of July 8, hundreds of whites began to pour into Hamburg. They were heavily armed—they had even brought artillery up from Aiken—and were spoiling for a fight with the black militia. One of those who had come was B. R. "Pitchfork Ben" Tillman, captain of the Sweetwater Sabre Club and eventual Governor of the state. A fight broke out. The whites routed the blacks, disarmed them, and executed four by firing squad. The first to be killed was Allan Attaway, the first lieutenant of the black militia company and a member of the Aiken County Commission. The town of Hamburg was sacked, and two more blacks were killed at random.[45]

Corruption during the actual 1876 election was rampant. Gary and several hundred armed men seized the two polling places in Edgefield—the Masonic Hall and the Courthouse—and refused to allow blacks in to vote. Open racial warfare and Gary's doctrine of voting "early and often" were enough to ensure a Democratic majority.[46] Although there were only 7,122 registered voters, 9,289 ballots were cast. While the county had gone Republican at the previous election by 1,000 votes, the Democrats won the 1876 election by an astonishing majority of 3,225 votes.[47]

On the state level, both the Democrats and the Republicans claimed victory, but Chamberlain, who had the support of the military, was formally inaugurated on December 7.[48] A recount of the ballots was made by the general assembly on December 14, and this time, with the inclusion of the previously disputed votes from Edgefield, Hampton was declared the winner. He promptly took the oath and demanded that Chamberlain step down. Chamberlain refused.[49] As a result, South Carolina had two governments until the Hayes-Tilden Compromise of 1877 dramatically altered the balance of political power in the state.

Southern Democrats agreed to support Republican Ruther-

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45. *See* F. SIMKINS, *supra* note 39, at 58, 61-62.

46. O. V. BURTON, UNGRATEFUL SERVANTS? EDGEFIELD'S BLACK RECONSTRUCTION: PART I OF THE TOTAL HISTORY OF EDGEFIELD COUNTY, SOUTH CAROLINA 113 (Princeton Univ. doctoral dissertation 1976).

47. A. TAYLOR, *supra* note 6, at 249.

48. *Id.* at 256.

49. *Id.* at 257-58.

ford B. Hayes in the contested presidential election by awarding him the disputed votes of three unredeemed states, with the understanding that thereafter federal troops would be withdrawn and Reconstruction of the South would be ended.[50] At noon on April 10, 1877, as part of the compromise, federal troops marched out of the statehouse in Columbia. Later the same day Governor Chamberlain made the decision to abdicate his office in favor of Hampton. In a letter to the abolitionist William Lloyd Garrison, Chamberlain confided that "the uneducated Negro was too weak, no matter what his numbers, to cope with the whites."[51]

IV. 1877-1890: The White Redemption

Following the election, the Democrats, through a strategem of expulsions, arbitrary appointments, and Republican resignations, once again seized control of the general assembly.[52] A first order of business was to remove Jonathan Jasper Wright, the black supreme court justice, from office. After secret sessions and the appointment of a special investigating committee, the house passed a resolution impeaching Wright for drunkenness.[53] Wright resigned rather than face trial. On August 5, 1877, Hampton wrote to Wright, accepting his resignation: "I accept the same as a tribute on your part to the quietude of the State, and as in no sense an acknowledgment of the truth of the charges which have been made against you."[54]

In 1877-78 the legislature passed laws abolishing precincts in strong Republican areas,[55] which effectively disfranchised Republican voters unwilling or unable to travel great distances to vote. In addition, separate ballots and boxes were provided for state and federal elections[56] in an effort to deprive federal offi-

50. *See generally* C. Vann Woodward, Reunion and Reaction: The Compromise of 1877 and the End of Reconstruction (1966).

51. Letter from D. H. Chamberlain to William Lloyd Garrison (June 11, 1877), *quoted in* G. Tindall, *supra* note 6, at 15.

52. G. Tindall, *supra* note 6, at 16-17.

53. 1877 S.C. House J. 31, 39, 92, 137, 182, 194, 210, 226, 227 (special session).

54. News and Courier (Charleston), Feb. 25, 1885, *quoted in* Woody, *Jonathan Jasper Wright, Associate Justice of the Supreme Court of South Carolina, 1870-1877*, 18 J. Negro Hist. 124, 127 (1933).

55. 16 S.C. Stat. 565, No. 513 (1878).

56. 16 S.C. Stat. 632, No. 542 (1878).

cials of any supervisory authority over state elections.

Hampton, while no advocate of racial equality, had pledged not to deprive blacks of any rights they had won during Reconstruction;[57] his campaign slogan had been "Free Men! Free Ballots!! Free Schools!!! . . . to the Colored People of South Carolina . . . ."[58] Yet grass roots opposition to the politics of moderation was steadily growing. In Edgefield, for example, which represented the extreme of white intransigence in the state, the local Democratic Party passed a resolution in June 1878 excluding blacks completely from the Democratic primary and declaring that "white supremacy is essential to our continued existence as a people."[59] Other counties adopted the Wade Hampton clause, which provided that only those blacks who had voted for Hampton in 1876 could vote in Democratic Party elections. In 1890 the party made the clause applicable statewide and added the requirement that any black must also have voted Democratic in every election since 1876.[60]

Hampton rejected racial extremism and repeated his pledge not to roll back the civil rights of blacks,[61] but his policies were being undermined, not merely by reactionary forces within the state, but also by the United States Supreme Court. In 1876 the Court declared unconstitutional a number of Reconstruction laws designed to insure equality in voting. In *United States v. Cruikshank*,[62] the Court restricted the offenses that could be tried under the Reconstruction Act of 1870 to intentional efforts by state officials to prevent the right to vote on account of race. In *United States v. Reese*,[63] the Court held other parts of the Act unconstitutional because they did not prohibit state interference with voting solely on the basis of race. *Cruikshank* and *Reese* were only the first in a series of cases that essentially repudiated the Reconstruction experiment and facilitated total po-

57. G. TINDALL, *supra* note 6, at 20-21.

58. C. VANN WOODWARD, THE STRANGE CAREER OF JIM CROW 36 (1955).

59. News and Courier (Charleston), June 4, 1878, *quoted in* G. TINDALL, *supra* note 6, at 26.

60. G. TINDALL, *supra* note 6, at 27-28, 67.

61. Daily Register (Columbia), July 7, 1878, *quoted in* G. TINDALL, *supra* note 6, at 29.

62. 92 U.S. 542 (1876).

63. 92 U.S. 214 (1876).

litical control by white supremists such as Gary and Tillman.[64]

Hampton was elected Governor for a second term in 1878, but in December of that year he was chosen by the general assembly to represent the state in the United States Senate. When he departed for Washington, any hope that racial moderation could prevail went with him.

Blacks, however, were still able to register and vote after 1876, at least in the general elections. For that reason, among others, voter fraud and racially motivated political violence continued. In 1880 the Democratic controlled legislature, fearing that political corruption was destroying the entire election process and would precipitate federal intervention, asked Edward McCrady, a legislator and historian from Charleston, for his help in developing measures of reform. The legislature also hoped to devise a better, a more legally acceptable way to dilute the black and Republican vote.[65] McCrady published a pamphlet the next year in which he urged a return to the limited franchise concept of the eighteenth century. "Raise the standard of citizenship," he wrote, "raise the qualifications of voters. But, raise them equally. If we are the superior race we claim to be, we, surely, need not fear the test."[66]

The general assembly acted upon McCrady's suggestions and passed stringent new voting laws in 1882. All persons were required to reregister in May and June of that year, and those who were eligible to register, but failed to do so, were barred forever from voting. Only those who became eligible after June 1882 were allowed subsequent registration. Local registration officials were given sole discretion to add or delete names from the registration lists. Those who moved their residence, even within the same precinct, had to reregister. Anyone seeking review of the adverse decision of registration officials was required to file a notice of appeal within five days and commence suit within ten

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64. *See* Hodges v. United States, 203 U.S. 1 (1906); James v. Bowman, 190 U.S. 127 (1903); Plessy v. Ferguson, 163 U.S. 537 (1896); The Civil Rights Cases, 109 U.S. 3 (1883); United States v. Harris, 106 U.S. 629 (1883). *See generally* M. KONVITZ & T. LESKES, A CENTURY OF CIVIL RIGHTS 102-23 (1961).

65. Tindall, *The Campaign for the Disfranchisement of Negroes in South Carolina*, 15 J. S. HIST. 213-15 (1949).

66. E. MCCRADY, THE NECESSITY FOR RAISING THE STANDARD OF CITIZENSHIP AND THE RIGHT OF THE GENERAL ASSEMBLY OF THE STATE OF SOUTH CAROLINA TO IMPOSE QUALIFICATIONS UPON ELECTIONS (1881), *quoted in* G. TINDALL, *supra* note 6, at 68.

days.[67]

One of the most creative of the McCrady laws enacted in 1882 was the Eight Box Law,[68] which established a sort of literacy test for voting. Eight separate ballot boxes, appropriately labelled, were provided for local, state, and national offices. In order to cast a valid ballot, each voter had to read the labels and put his ballot in the proper box. The Eight Box Law was an open invitation to fraud, since local officials could always insure that electors, black or white, who would vote "right" would have no trouble reading the labels and that electors who might vote "wrong" would throw their votes away by putting them in the wrong boxes. In practice the law was used for the sole purpose of depriving blacks of the right to vote.[69] One contemporary observor of the Eight Box Law reported that "as soon as the ignorant voters began to understand the arrangement of the boxes, the boxes were shuffled, and many votes were lost before the order was again unraveled."[70] The law was calculated to be, and for the most part was, "beyond comprehension" of the average voter.[71]

Equally effective in diluting the black vote was the congressional redistricting plan drawn by the general assembly in 1882. At that time registered black voters outnumbered white voters by 116,969 to 86,900. To counter this imbalance, the legislature drew what has been described as "one of the most complete gerrymanders ever drawn by a legislative body."[72] Of the seven congressional districts, only one, the seventh district, contained a significant majority of blacks. Its boundaries ran from Columbia almost to Savannah, Georgia, a distance of 150 miles. It split six counties and, at one point, the boundary extended into the Atlantic Ocean to exclude some Democratic precincts.

Given the strategems of the white Democrats, black office holding slowly faded away. The last blacks elected to the Senate were Thomas J. Reynolds of Beaufort and Bruce H. Williams of Georgetown in 1886. The last black elected to the House of Rep-

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67. 1882 S.C. Acts 1110, 1110-115, No. 717.
68. *Id.* at 1115-120.
69. G. TINDALL, *supra* note 6, at 69-70.
70. Weeks, *supra* note 1, at 695.
71. *Id.*
72. D. N. BROWN, SOUTHERN ATTITUDES TOWARD NEGRO VOTING IN THE BOURBON PERIOD, 1877-1890, at 150 (1960).

resentatives was J. W. Bolts of Georgetown in 1900.[73]

V. THE TILLMAN ERA

The McCrady laws, despite their effectiveness, had several drawbacks. They perpetuated and encouraged fraud, which neither the state nor federal government had the ability to curb. The federal government brought a number of criminal prosecutions, but concluded in 1883 that efforts at reform were useless. According to District Attorney Samuel W. Melton, "[I]n the present condition of public sentiment of a large proportion of the people of this State, convictions in these cases are impossible . . . ."[74] The Greenville *Mountaineer* wrote in 1894 that "gross irregularities have occured in the recent election, as indeed they are always occuring where the laws are not stringent and carefully guarded. It is doubtful whether a strictly legal election has been held in South Carolina since the war."[75]

Existing laws also permitted rival white candidates to manipulate the black vote and attempt to bring it back into state politics. That is what happened in the 1890 gubernatorial election. A. C. Haskell, running as an Independent against B. R. Tillman, courted the black vote by promising racial "fair play."[76] From the white point of view, and certainly from Tillman's point of view, a mechanism was sorely needed for removing the Negro entirely from politics. Tillman won the 1890 election on a wave of agrarian discontent and Negro phobia, and in his inaugural address, he pledged to maintain white dominance: "The whites have absolute control of the government, and we intend at any hazard to retain it."[77]

Prior to Tillman's election, local governing bodies were elected by popular vote.[78] In places like Edgefield, where blacks comprised a substantial majority of the population and voter registration was supervised by federal officials, there were numer-

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73. G. TINDALL, *supra* note 6, at 309-10.

74. 9 APPLETON'S ANNUAL CYCLOPAEDIA 739 (1884), *quoted in* G. TINDALL, *supra* note 6, at 72.

75. Greenville Mountaineer, *reprinted in* News and Courier (Charleston), Nov. 4, 1894, *quoted in* A. TAYLOR, *supra* note 6, at 300.

76. Mabry, *Ben Tillman Disfranchised the Negro*, 37 S. ATL. Q. 170, 172 (1938).

77. D. N. BROWN, *supra* note 72, at 151.

78. S.C. CONST. OF 1868, art. IV, § 19; 1873 S.C. Rev. Stat. 146, No. 155.

ous black office holders during Reconstruction.[79] It is not surprising that Governor Tillman, who could never forget the indignity of black rule in his native county, was instrumental in securing passage of legislation during his second term that abolished elected local governments entirely.

In 1894 the general assembly enacted a law requiring county and township commissioners to be appointed by the governor upon the recommendation of the local senator and representatives.[80] All powers to tax, borrow money, appoint local boards, or exercise eminent domain were reserved for the state legislature. Since, as Tillman said, whites had "absolute control" of state government, the legislation put it beyond all possibility that blacks, even in places where they were an overwhelming majority, would have any voice in choosing their local officials.

Tillman, after his second term as Governor and after winning a seat in the Senate, took the lead in calling for a constitutional convention to devise a more effective way to exclude the state's blacks from the voter registration lists. The convention was held in 1895, and Tillman was made chairman of the important Committee on the Franchise. Robert Aldrich, the temporary chairman of the convention, called the delegates to order on September 10. In an emotional address, Aldrich derided the Constitution of 1868 as "made by aliens, negroes and natives without character, all the enemies of South Carolina, and . . . designed to degrade our State, insult our people and overturn our civilization."[81] It was the delegates' duty, he told them, to fix the election laws so that "Anglo-Saxon supremacy" would be preserved.[82] And the delegates, under Tillman's guidance, did just that.

The Convention adopted a new constitutional provision for suffrage. To be able to register, a voter had to pay a poll tax six months before the day of the election and be able to read and write any section of the Constitution or prove that he owned or paid taxes on property in the state worth at least $300.00. For

79. O. V. BURTON, *supra* note 46, at 108.

80. 1894 S.C. Acts 481, 483, No. 320; 1899 S.C. Acts 1, 2, No. 1; 1899 S.C. Acts 113, 113-14, No. 86.

81. Journal of the Constitutional Convention of the State of South Carolina, September 10, 1895, at 1-2.

82. *Id.*

those who could not meet the literacy test, there was an "understanding test" in which a registration officer would read the Constitution to the prospective voter.[83] Because of the high rate of illiteracy and poverty among blacks and the hostility with which registration was conducted by white officials, the suffrage provisions had their desired effect. Black voter registration plummeted.

By October 1896, as reported in the Yorkville *Enquirer*, there were 50,000 white registered voters in the state and only 5,500 black.[84] Precise figures are not available, but the depressed level of black registration persisted well into the twentieth century. During the ten-year period from 1920 to 1930, there were no more than forty-five blacks registered in Greenville, sixty or seventy in Orangeburg, eleven in Edgefield, and between one hundred seventy-five and eight hundred in Columbia.[85]

The 1895 Convention adopted another measure to disfranchise black voters: a law denying the right to vote to those convicted of certain crimes.[86] Included as disfranchising offenses were those that blacks were thought especially prone to commit, such as larceny, adultery, wife beating, incest, house-breaking, perjury, and fornication. Excluded were crimes that whites were thought equally inclined to commit, such as murder and fighting. A man could kill his wife and still vote; but if he merely beat her, he was denied the franchise. The law was a crazy quilt and made sense only when its purpose of excluding blacks from voting was understood. According to David D. Wallace, the state's leading historian and an actual witness to the 1895 convention, "the black squint of this [disfranchising law] should not be over emphasized."[87]

The literacy test and poll tax, which had been adopted by other southern states following Reconstruction, were challenged, but the United States Supreme Court upheld them.[88] In *Giles v.*

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83. S.C. CONST. of 1895, art. II, § 4.

84. Enquirer (Yorkville), Oct. 7, 1896, *quoted in* G. TINDALL, *supra* note 6, at 88.

85. P. LEWINSON, *supra* note 22, at 219-20.

86. S.C. CONST. of 1895, art. II, § 6.

87. D. D. WALLACE, CONSTITUTION OF 1895, at 35 (1927). *See also* F. SIMKINS, *supra* note 39, at 297; G. TINDALL, *supra* note 6, at 82; 1965 Op. S.C. Atty. Gen. 202, No. 1912.

88. *See* Lassiter v. Northhampton County Bd. of Elections, 360 U.S. 45 (1959); Breedlove v. Suttles, 302 U.S. 277 (1937); Williams v. Mississippi, 170 U.S. 213 (1898). *See also* Derfner, *Racial Discrimination and the Right to Vote*, 26 VAND. L. REV. 523

Harris,[89] an extraordinary opinion written by Justice Holmes in 1903, the Court acknowledged that the federal judiciary, as a practical matter, was powerless to do anything about the wholesale disfranchisement of black voters.

> Unless we are prepared to supervise the voting in [Alabama] by officers of the court, it seems to us that all the plaintiff could get from equity would be an empty form. Apart from damages to the individual, relief from a great political wrong, if done, as alleged, by the people of a state and the state itself, must be given by them or by the legislative and political department of the government of the United States.[90]

Primary elections had traditionally been locally controlled. In 1896, however, statewide primaries were instituted.[91] Blacks continued to be excluded, as they had been at least since 1890, by party rule.[92] Since victory in the Democratic primary was tantamount to election to office in South Carolina, even those few blacks actually registered were barred from participating in the only state elections that mattered.[93]

It would be a mistake to assume that after 1895, with blacks safely excluded from state politics, violence and racial confrontation subsided. The 1890s were in fact a perverse golden age of lynching in the state. There were eight reported lynchings in 1895, six in 1897, and fourteen in 1898.[94] One of those killed in 1898 was Frazier B. Baker, the postmaster of Lake City in Williamsburg County. Local whites had bitterly opposed the appointment of a black to the office, and after the Postmaster General refused to remove him, a mob of several hundred whites set fire to Baker's house and shot down members of his household as they fled from the blaze. Baker and a one-year-old child were killed, while Baker's wife and three other children were wounded. A reporter for the Charleston *News and Courier*, who

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(1973).

89. 189 U.S. 475 (1903).

90. *Id.* at 488.

91. 1896 S.C. Acts 56, No. 52; *cf.* 1888 S.C. Acts 11, No. 9; *see also* C. VANN WOODWARD, ORIGINS OF THE NEW SOUTH, 1877-1913, at 372 (1951).

92. Elmore v. Rice, 72 F. Supp. 516, 518-19 (E.D.S.C.), *aff'd*, 105 F.2d 387 (4th Cir. 1947); G. TINDALL, *supra* note 6, at 67.

93. Elmore v. Rice, 72 F. Supp. 516, 521 (E.D.S.C.), *aff'd*, 105 F.2d 387 (4th Cir. 1947).

94. G. TINDALL, *supra* note 6, at 239.

was at the scene, wrote that "the postoffice authorities in Washington are largely responsible for the death of Frazier B. Baker."[95]

The spectre of the black vote continued to haunt Tillman throughout his life. During his last years in the Senate, though weak and enfeebled by paralysis, he strongly opposed women's suffrage prior to ratification of the nineteenth amendment because he felt it would reopen the door to voting by blacks. As Tillman reasoned, black women would try to take advantage of any suffrage law, and it would be much more difficult to exclude them from voting than it had been to exclude black men from voting during and after Reconstruction. Violence worked well enough against men, but perhaps it would not work, or would not be tolerated, against women. Black women were "wild and rabid," "far more pestiferous and hard to control than the men," and it would be "more horrible and terrible" to shoot them when they tried to vote than it had been to shoot black men.[96] South Carolina, along with Alabama, Georgia, Mississippi, Louisiana, Virginia and Maryland, rejected the nineteenth amendment when it was ratified in 1920.[97]

VI. THE FALL OF THE WHITE PRIMARY

The first serious challenge to white political dominance was raised in 1944 when the United States Supreme Court, in *Smith v. Allwright*,[98] held that the Texas white primary was unconstitutional. Since the primary in South Carolina was analogous to that in Texas, the state's system threatened to come falling down. Governor Olin D. Johnston issued a proclamation in April of that year calling for the legislature to repeal "all laws on the statute books pertaining to Democratic Primary elections" and thus remove the primary from state action and federal supervision.[99] "History has taught us," the Governor said, "that we must keep our white Democratic primaries pure and

95. News and Courier (Charleston), Feb. 23, 1898, *quoted in* G. TINDALL, *supra* note 6, at 256.

96. F. SIMKINS, *supra* note 39, at 517.

97. U.S. CONST. amend. XIX.

98. 321 U.S. 649 (1944).

99. Elmore v. Rice, 72 F. Supp. 516, 520 (E.D.S.C.), *aff'd*, 105 F.2d 387 (4th Cir. 1947).

unadultered so that we might protect the welfare and homes of all the people of our State . . . . White supremacy will be maintained in our primaries. Let the chips fall where they may!"[100]

The legislature answered the call and, at a special session in April 1944, expunged from the state's constitution and statutes every trace of regulation of party primaries. Subsequent primaries were held just as they had been before—blacks were still excluded—but regulation was exclusively by party rule rather than by state statute.

On August 13, 1946, George Elmore, a resident of ward nine in Richland County, tried to vote in the primary, but was turned away because he was black. He filed a lawsuit challenging his exclusion, and the district court, in an opinion by Judge J. Waites Waring of Charleston, held that the primary was unconstitutional state action.[101]

The party attempted to blunt the impact of the decision by organizing itself into clubs open only to whites. Blacks could vote in the primaries only if they took an oath to support the social and educational separation of races and swore their belief in states' rights and their opposition to federal employment discrimination laws.[102] The oath was challenged by a Beaufort County man, David Brown, and Judge Waring held that it too was unconstitutional.[103]

Waring, who had the distinction of being the first federal judge to write an opinion that segregation in public schools was unconstitutional,[104] was vilified. Representative Mendell Rivers denounced him on the floor of the Congress: "He is as cold as a dead Eskimo in an abandoned igloo. Lemon juice flows in his frigid and calculating veins . . . . Unless he is removed there will be bloodshed."[105] Senator Burnet Maybank, who had recommended Waring's appointment to the bench, issued a statement disavowing the judge: "[R]emember Burnet Maybank was the first South Carolinian in public office to state his opposition to

100. *Id.*

101. *Id.* at 528.

102. Brown v. Baskin, 78 F. Supp. 933, 937 (E.D.S.C. 1948).

103. Brown v. Baskin, 80 F. Supp. 1017 (E.D.S.C. 1948).

104. Briggs v. Elliott, 98 F. Supp. 529, 538-48 (E.D.S.C. 1951)(Waring, J., dissenting).

105. 94 CONG. REC. H9752 (1948)(remarks of Mr. Rivers).

the actions of Judge Waring."[106] Two years later, still fuming over Waring, the state house of representatives passed a resolution appropriating funds to buy one way tickets for Waring and "his socialite wife" out of the state and to erect a suitable plaque to the couple in the mule barn at Clemson College.[107]

The abolition of the white primary was a great symbolic victory and caused a surge in black voter registration. In 1940 there were only about 3,000 blacks registered to vote in the state. In 1947, after Judge Waring decided *Elmore v. Rice*,[108] black voter registration jumped to about 50,000.[109] Nevertheless, blacks still remained severely disadvantaged in the electorate as a result of continued use of the 1895 literacy test, comparatively low levels of voter registration, and the entire heritage of "separate but equal." The state also passed two laws in 1950 that limited the effect of increased black voter registration and the participation of blacks in the Democratic primary—one imposing a majority vote requirement in primary elections[110] and the other a full slate law.[111]

Black candidates can often obtain pluralities in majority white jurisdictions when several serious white candidates split the white vote. If there is a runoff requirement, the fragmented whites can merely regroup behind the highest white vote getter and elect that person to office. The 1978 Democratic primary election for secretary of state illustrates how a majority vote requirement can dilute the minority vote. James Clyburn, a black, led the balloting in the first election. In the required runoff, however, he was defeated by his white opponent.[112] While the United States Supreme Court has never decided a case solely on the basis of the use of a majority vote requirement, it has consistently acknowledged that runoff elections tend to dilute mi-

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106. News and Courier (Charleston), July 22, 1948, at 1, *quoted in* R. TERRY, J. WAITES WARING, SPOKESMAN FOR RACIAL JUSTICE IN THE NEW SOUTH 92 (1970).

107. 1950 S.C. HOUSE J. 440.

108. 72 F. Supp. 516 (E.D.S.C.), *aff'd*, 105 F.2d 387 (4th Cir. 1947). *See supra* note 101 and accompanying text.

109. S. LAWSON, BLACK BALLOTS: VOTING RIGHTS IN THE SOUTH, 1944-1969, at 134 (1976).

110. 1950 S.C. Acts 2059, 2098, No. 858.

111. *Id.* at 2092.

112. A. Derfner, The "Second Primary" or "Majority Vote Requirement" 2 (April 12, 1984)(unpublished paper).

nority voting strength in elections conducted at large.[113]

The full slate law, which requires a voter to vote for all the seats being filled, deprives minority voters of the ability to single shot, or concentrate, their votes on one or a few candidates. Voters are forced to vote for opposition candidates—those of another race or political philosophy—and, as a result, their voting strength is diluted.[114]

Abolition of the white primary precipitated yet another voting change: repeal of the poll tax. After desegregation of the primary, the poll tax, which applied only to the general election, had essentially outlived its usefulness as a clog on the franchise. In recognition of this fact, and yielding to a nationwide movement for abolition, the state repealed the poll tax on February 13, 1951.[115]

VII. Modern Civil Rights Legislation and the Voting Rights Act of 1965

In the wake of *Brown v. Board of Education*,[116] the 1954 school desegregation decision, and in response to a burgeoning national civil rights movement, Congress passed the first modern civil rights acts in 1957, 1960, and 1964.[117] Each of the acts contained provisions protecting the rights of minority voters and provided for enforcement by the Attorney General. None of these laws, however, had substantial impact on voter registration or cured the problem of racial discrimination in voting.[118]

These laws were ineffective in enforcing equal voting rights because they depended primarily upon litigation, which was ex-

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113. City of Port Arthur v. United States, 459 U.S. 159, 167 (1983); Rogers v. Lodge, 458 U.S. 613, 627 (1982); White v. Regester, 412 U.S. 755, 766 (1973). *See* Butler, *The Majority Vote Requirement: The Case Against Its Wholesale Elimination*, 17 Urb. Law. 441 (1985).

114. Dunston v. Scott, 336 F. Supp. 206, 212-13 (E.D.N.C. 1972).

115. 1951 S.C. Acts 24, No. 23; F. Ogden, The Poll Tax in the South 190, 241 (1958). *See* U.S. Const. amend. XXIV; Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966).

116. 347 U.S. 483 (1954).

117. Civil Rights Act of 1957, Pub. L. No. 85-315, 71 Stat. 634 (1957); Civil Rights Act of 1960, Pub. L. No. 88-352, 74 Stat. 86 (1960); Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (1964). *See* L. McDonald, Racial Equality 39-48 (1977).

118. Note, *Federal Protection of Negro Voting Rights*, 51 Va. L. Rev. 1051, 1100-95 (1965).

pensive and gave discrimination prone jurisdictions the advantages of inertia and delay. Moreover, even if a voting practice was declared unlawful, a state was always free to enact a new law, equally discriminatory, to take its place. This is what South Carolina had done when the state enacted the majority vote and full slate laws and when it delegated to the Democratic Party the right to conduct primary elections after the Supreme Court decided *Smith v. Allwright*,[119] the Texas white primary case.

As of November 1964, only 138,544 blacks were registered to vote in the state, comprising seventeen percent of the total registered voters.[120] Not surprisingly, very few blacks were elected to office. As late as 1968, only eleven blacks held elective office in the entire state—one third of one percent of all the elected office holders.[121]

In 1965 Congress, acknowledging that the 1957, 1960, and 1964 Civil Rights Acts had failed to remedy the problem of voting discrimination, adopted a wholly new approach[122] and enacted the Voting Rights Act of 1965. Instead of relying on litigation as the primary means to enforce the fourteenth and fifteenth amendments, the Act automatically suspended procedures, such as the literacy test, that had excluded blacks from registration and required federal preclearance or approval of all new voting practices adopted by certain "covered" jurisdictions.[123] The Act also contained other important provisions, including authorization for federal registration of voters.

South Carolina, which was one of the states required to preclear its new voting laws,[124] immediately challenged the Act's constitutionality, but the Supreme Court upheld it. In *South Carolina v. Katzenback*,[125] the Court acknowledged that the Act was an "uncommon exercise of congressional power," but concluded that the suspension of literacy tests, the use of federal examiners to register voters, and the preclearance provisions

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119. 321 U.S. 649 (1944). *See supra* note 98 and accompanying text.

120. U.S. COMM'N ON CIVIL RIGHTS, POLITICAL PARTICIPATION 252-53 (1968).

121. JOINT CENTER FOR POLITICAL STUDIES, NATIONAL ROSTER OF BLACK ELECTED OFFICIALS 7 (1980).

122. H.R. REP. No. 439, 89th Cong., 1st Sess. 11 (1965); *Hearings on S. 1564 before the Senate Comm. on the Judiciary*, 89th Cong., 1st Sess. 14 (1965).

123. Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (1965).

124. S. REP. No. 295, 94th Cong., 2d Sess. 12 (1975).

125. 383 U.S. 301 (1966).

were a legitimate response to the exceptional history of voting abuses documented during the congressional hearings.[126]

After passage of the Act and after the decision in *Reynolds v. Sims*,[127] the state senate adopted a reapportionment plan in 1966 to comply with the one person-one vote requirement. It abandoned its former single-member district format and, for the first time, instituted multi-member districts with at-large voting.[128] At-large voting has a recognized tendency to dilute minority voting strength by allowing a bloc voting majority to elect all the representatives in a district.[129] Whatever the purpose of the senate reapportionment, there is little doubt that its effect was to neutralize the increased minority registration brought about by abolition of the literacy test and to perpetuate the exclusion of blacks from office.[130] At-large voting for the senate was finally abandoned in 1984[131] after protracted federal litigation and administrative proceedings under the preclearance provisions of the Voting Rights Act.[132] The state house of representatives, which had used some multi-member districts prior to *Reynolds v. Sims*, discontinued at-large voting in 1974 following similar judicial and preclearance proceedings.[133]

VIII. CONTINUING LEGAL CHALLENGES TO DISCRIMINATORY VOTING PRACTICES

In 1972 a group of black citizens from around the state brought a law suit challenging the constitutionality of the 1950

126. *Id.* at 334.

127. 377 U.S. 533, *reh'g denied*, 379 U.S. 870 (1964)(invalidating existing and proposed plans for apportionment of seats in Alabama legislature).

128. O'Shields v. McNair, 254 F. Supp. 708, 709 (D.S.C. 1966).

129. Rogers v. Lodge, 458 U.S. 613, 616 (1982); Wise v. Lipscomb, 437 U.S. 535, 540 (1978); White v. Regester, 412 U.S. 755 (1973); Davidson & Korbel, *At-Large Elections and Minority Group Representation*, in MINORITY VOTE DILUTION 65-81 (C. Davidson ed. 1984).

130. U.S. COMM'N ON CIVIL RIGHTS, THE VOTING RIGHTS ACT: UNFULFILLED GOALS 55 (1981)[hereinafter cited as UNFULFILLED GOALS].

131. 1983 S.C. Acts 1333, No. 257 (extra session).

132. *See* Morris v. Gressette, 432 U.S. 491, 495 n.4, 498 (1977); South Carolina v. United States, 598 F. Supp. 757 (D.D.C. 1984). *See also* UNFULFILLED GOALS, *supra* note 130, at 55; U.S. COMM'N ON CIVIL RIGHTS, THE VOTING RIGHTS ACT: TEN YEARS AFTER 217-19 (1975)[hereinafter cited as TEN YEARS AFTER].

133. Stevenson v. West, 413 U.S. 902 (1973); 1974 S.C. Acts 2124, No. 991; TEN YEARS AFTER, *supra* note 132, at 214-17.

full slate statute,[134] and the district court struck down the law. The court noted that the state had included in the Senate Reapportionment Act of 1971 a "numbered seat" law, under which each senate seat was designated a separate office to be filled and voted for individually.[135] The court found that the numbered seat laws were "allowable methods for remedying the same difficulty that the General Assembly had previously sought to correct with the 'full-slate' law" and that they "[met] the needs of a 'full-slate' law without the impairments in the voter's rights that the later entails." Further use of the full slate law was, therefore, unjustified and was enjoined.[136] As the court correctly pointed out, a number post requirement produces an effect similar to that of a full slate law: it diminishes the effectiveness of single shot voting by isolating minority candidates in single seat elections.[137]

The general assembly responded promptly, and predictably, to the district court's full slate decision by enacting a numbered seat requirement for every multiple office in the state that had not previously had one.[138] The net result of the legislature's action was to replace the discriminatory full slate law with a new procedure that had a similar effect of diluting the black vote. The statewide numbered post law was submitted to the Attorney General for approval under the Voting Rights Act, but was denied preclearance. It is, therefore, presently unenforceable.[139]

The 1895 statute with the "black squint," which disqualified voters who had been convicted of certain crimes,[140] came under fire in 1975. Gary Allen, a black car dealer from Aiken, who had been convicted of forgery and, consequently, had been excluded from the registration list, brought a suit, contending that the

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134. *See supra* note 114 and accompanying text.

135. 1971 S.C. Acts 2071, No. 932.

136. Stevenson v. West, No. 72-45, slip op. at 11 (D.S.C. April 7, 1972). *Cf.* Boineau v. Thornton, 235 F. Supp. 175, 177 (E.D.S.C. 1964), *aff'd*, 379 U.S. 15 (1964).

137. Rogers v. Lodge, 458 U.S. 613, 627 (1982); City of Rome v. United States, 446 U.S. 156, 183-85, *reh'g denied*, 447 U.S. 816 (1980); Graves v. Barnes, 343 F. Supp. 704, 725 (W.D. Tex. 1972), *aff'd sub nom.* White v. Regester, 412 U.S. 755 (1973).

138. 1972 S.C. Acts 2383, No. 1204; 1972 S.C. Acts 2384, 2387, 2389, No. 2205. *See* Johnson v. West, No. 72-680, slip op. at 3, 5 (D.S.C. June 14, 1972); O'Shields v. McNair, 254 F. Supp. 708, 714 n. 14 (D.S.C. 1966).

139. Hathorn v. Lovorn, 457 U.S. 255, 269-70 (1982); TEN YEARS AFTER, *supra* note 132, at 216.

140. *See supra* notes 86-87 and accompanying text.

provision was discriminatory. The district court held the statute unconstitutional on the ground that it was capricious and haphazard, but the Fourth Circuit Court of Appeals, sitting *en banc*, reversed and remanded.[141] Following the decision of the appellate court, the Governor signed a law into effect on January 14, 1981, which limited disfranchising crimes to felonies carrying a penalty of five years or more and provided for removal of the disqualification upon service of a sentence.[142] This action mooted Allen's constitutional objections to the 1895 statute.[143]

The Tillman era statute abolishing locally elected governments[144] was gradually eroded, principally by *Reynolds v. Sims*[145] and reapportionment, which threatened some counties with the loss of resident state representatives. Rather than having their officials chosen and their governments run by nonresidents, some jurisdictions implemented locally elected governments and home rule. Many of them, however, following or emulating the example of the senate, adopted at-large voting, which effectively diluted the voting strength of blacks.[146] The home rule movement culminated in 1975 when the general assembly adopted legislation requiring all local jurisdictions to organize new elected governments.[147]

The diluting effect of at-large voting in local elections can clearly be seen in jurisdictions that have switched from at-large to district or neighborhood systems. In Edgefield, for example, after the United States Attorney General objected to at-large elections and district voting was adopted by court order in 1984,[148] the first three blacks since Reconstruction were elected to the county government.[149] In Columbia, no blacks were elected to municipal government until a combination of district

141. Allen v. Ellisor, 477 F. Supp. 321 (D.S.C. 1979), *rev'd and remanded*, 664 F.2d 391 (4th Cir. 1981).

142. 1981 S.C. Acts 1, No. 1.

143. 454 U.S. 807 (1981). *Cf.* Hunter v. Underwood, 105 S. Ct. 1916 (1985).

144. *See supra* notes 78-80 and accompanying text.

145. 377 U.S. 533, *reh'g denied*, 379 U.S. 870 (1964)(invalidating existing and proposed plans for apportionment of seats in Alabama legislature).

146. *See, e.g.*, 1968 S.C. Acts 2613, No. 1121 (Saluda County); 1962 S.C. Acts 1724, No. 732 (Lee County); 1966 S.C. Acts 2627, No. 1104 (Edgefield County).

147. 1975 S.C. Acts 692, No. 283.

148. McCain v. Lybrand, No. 74-281-14 (D.S.C. July 11, 1984).

149. The Citizen-News (Edgefield), Oct. 4, 1984, at 1; The State (Columbia), Jan. 13, 1985, at 1D, col. 1.

and at-large elections was adopted in 1982 as the result of a lawsuit challenging the constitutionality of all at-large voting.[150]

IX. Conclusion

The demise of some of the old restrictions on voting and implementation of the Voting Rights Act, as amended and expanded in 1970, 1975, and 1982,[151] have had a significant impact on voter registration in South Carolina. Statewide, black voter registration is almost equal to that of whites.[152] That is not to say, however, that blacks enjoy the equal opportunity to elect representatives of their choice to office, as guaranteed by the Voting Rights Act.[153] Despite the gains in voter registration, no black in modern times has ever been elected by the voters to a statewide office or to Congress. Those blacks who have been elected, with few exceptions, have run in majority black jurisdictions or districts and have won without significant white support.[154] Although blacks comprise thirty percent of the population of the state, blacks hold only sixteen percent of the seats in the House of Representatives and only eleven percent of the seats on county governing bodies.[155]

Despite the absence of formal barriers to registration and voting, such as the literacy test and the white primary, black voting strength in the state is still abridged. The causes are many and complex, but include the following: lower levels of education and income for blacks, which impede effective campaigning; inexperience in the political process; a distinctive socioeconomic status that makes it difficult for blacks to form coalitions with white voters; white resistence to black political aspirations; the continued use of discriminatory practices that

150. Washington v. Finlay, 664 F.2d 913 (4th Cir. 1981), *cert. denied*, 457 U.S. 1120 (1982); The State (Columbia), Dec. 18, 1982, at 1C, col. 5; Joint Center for Political Studies, *supra* note 121, at 329-30.

151. The Voting Rights Act Amendments of 1970, Pub. L. No. 91-285, 84 Stat. 314 (1970); The Voting Rights Act Amendments of 1975, Pub. L. No. 94-73, 89 Stat. 402 (1975); The Voting Rights Act Amendments of 1982, Pub. L. No. 97-205, 96 Stat. 131 (1982). *See* H.R. Rep. No. 227, 97th Cong., 1st Sess. (1981); S. Rep. No. 417, 97th Cong., 2d Sess. (1982).

152. Joint Center for Political Studies, *supra* note 121, at 325.

153. 42 U.S.C. § 1973 (1976).

154. Joint Center for Political Studies, *supra* note 121, at 325-36.

155. *Id.*

were not banned by the Voting Rights Act, such as at-large elections, the majority vote requirement, staggered terms of office, and numbered post provisions; reapportionment plans designed to perpetuate white incumbents in office and exclude minorities; racial bloc voting; and the adoption and use, despite the preclearance requirements, of voting practices that have the potential or effect of abridging the black vote.[156]

The gains that blacks have made in political participation are recent and tenuous. They were won against intense white opposition and only after unprecedented intervention by Congress, the federal courts, and the Department of Justice and through persistent efforts by the black and civil rights communities. Fortunately, the nation has stronger voting laws today than at any time in its history. In 1982 Congress extended the preclearance provisions of the Voting Rights Act until the year 2007 and amended section two of the Act to ban voting practices that result in discrimination, without regard to their racial purpose.[157] Whether the people of the state are as willing to enforce these laws as Congress was to enact them and whether blacks will ever achieve real political equality remain to be seen.

156. *See, e.g.*, NAACP v. Hampton County Election Comm'n, 105 S. Ct. 1128 (1985); McCain v. Lybrand, 465 U.S. 236 (1984); County Council of Sumter County, South Carolina v. United States, 596 F. Supp. 35 (D.D.C. 1984). *See also The Voting Rights Act: Hearings on S. 53, S. 1761, S. 1975, S. 1992 and H.R. 3112 Before the Subcomm. on the Constitution of the Senate Judiciary Comm.*, 97th Cong., 2d Sess. (1982); *Extension of the Voting Rights Act: Hearings Before the Subcomm. on Civil and Constitutional Rights of the House Judiciary Comm.*, 97th Cong., 1st Sess. (1981); UNFULFILLED GOALS, *supra* note 130; TEN YEARS AFTER, *supra* note 132; ADVISORY COMMS. OF ALA., GA., MISS., S.C., U.S. COMM'N ON CIVIL RIGHTS, VOTING RIGHTS IN ALABAMA, GEORGIA, MISSISSIPPI AND SOUTH CAROLINA (1982).

157. Voting Rights Act Amendments of 1982, Pub. L. No. 97-205, 96 Stat. 131 (1982).